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Acting Assistant Administrator, Office of Air and Radiation  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Tomás Carbonell  
Deputy Assistant Administrator for Stationary Sources, Office of Air and Radiation  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

RE: Future Greenhouse Gas Emission Regulations

Dear Mr. Goffman and Mr. Carbonell,

On behalf of the National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation’s states, commonwealths, and territories, we want to congratulate you on joining the Environmental Protection Agency’s Office of Air and Radiation and look forward to working with you to protect natural resources and combat environmental degradation and pollution in the upcoming months, and years to come. Following the U.S. Court of Appeals for the D.C. Circuit’s recent ruling on the Affordable Clean Energy Rule (ACE) which vacated and remanded the rule back to the Environmental Protection Agency (EPA) to consider a new regulatory action, we wanted to update you, and the agency, on NCSL’s policy positions and guidelines should the agency choose to promulgate a new rule to reduce greenhouse gas emissions from stationary sources.

Most importantly, should EPA choose to regulate greenhouse gas emissions from existing electric utility generating units, we are hopeful it will be done so with extensive consultation with state and local officials and their national representative organizations. Flexibility in federal action and maintenance of existing state authorities is key—any regulation must allow for a range of complementary strategies and maintain a strong role for state, local and tribal governments. States must be provided the authority and maximum levels of flexibility to work within an overall framework and ensure achievement of any prescribed goals in the most effective, timely and efficient manner.

Equally as important is the need to ensure that state and local governments not be preempted from enacting policy options that differ from federal choices, or likewise, from enacting stricter
or stronger measures within their jurisdiction. In preserving state authority and flexibility, the federal government should also avoid further cost-shifts to states—should a mandate be imposed, it must be accompanied by funding for states to use in a manner which they deem appropriate.

Any action to regulate greenhouse gas emissions must be designed to balance competing criteria such as equity, economic efficiency and ease of administration while also considering the implications of actions, or inactions, on economic development, energy security and vulnerable populations.

It is NCSL’s policy that the design components of federal regulations must consider:

- The inclusion of goals—short, medium, and long term—as well as a rigorous oversight program that will provide for ongoing study and analysis of the system.
- Provisions for transparent reporting and accountability and incorporate third-party verification to ensure reported outcomes are verifiable.
- The adoption of a system of performance audits and objectively quantifiable benchmarks that allow the federal government to certify state performance results in meeting set minimum standards.
- Uncertainties that are hampering investment in generation, transmission, and distribution and enhance the likelihood that appropriate technologies will be developed in order to achieve desired reductions in GHG emissions in the most economical way possible.
- Potential adaptation issues and provide necessary accommodations for them.
- Should a national program include the auctioning of allowances, the allocation of emissions allowances at no cost can serve as an appropriate transition measure necessary to ensure continued reliability, minimize economic dislocation resulting from the carbon intensity of the existing infrastructure, and allow for development and deployment of needed new technologies and measures to reduce emissions.

Additionally, if the federal government is to act to reduce GHG emissions, appropriate funding must be authorized and appropriated to spur expanded research and development—a task EPA cannot accomplish on its own but can work with its congressional counterparts to obtain. Regulation should not limit the diversity of technologies supported to reach reduction targets as technological advancements cannot be predicted, and state and regional differences must be accounted for to ensure enough flexibility in achieving prescribed national goals.

Further, cost-benefit analysis should be performed as part of any environmental decision making. Sound public policy decision making demands that benefits be proportionate to costs, after factoring in the totality of the circumstances. However, cost-benefit analysis should not be the only determinative factor, but one of many tools that inform decision makers in any environmental decision-making process. In the face of uncertainty in devising analytical methods, any default assumptions that are employed should favor enhanced environmental protection.

NCSL looks forward to continuing a strong relationship with EPA and looks forward to working with the agency as regulations are reviewed and revised, and new ones promulgated. A copy of
NCSL’s Climate Change Resolution and Environmental Federalism Directive are attached, but if you have any questions, please do not hesitate to contact NCSL staff Kristen Hildreth (202-624-3597 or kristen.hildreth@ncsl.org).

Sincerely,

Representative Stephen Handy
NCSL Natural Resources and Infrastructure Committee Co-Chair
Utah House of Representatives

Representative David Tarnas
NCSL Natural Resources and Infrastructure Committee Co-Chair
Hawaii House of Representatives
The National Conference of State Legislatures (NCSL) urges the federal government to renew its commitment to the state-federal partnership for environmental protection.

State governments, acting in partnership with the federal government, play an indispensable role in our mutual effort to protect natural resources and combat environmental degradation and pollution. State implementation of federal law is the cornerstone of our current system of environmental protection. States are particularly dependent upon federal pollution control laws to address the interstate migration and effects of pollutants. Given the increasing trend of delegating more authority to the states, it is essential that the federal government not abandon its commitment to uniform minimum federal standards, the state-federal partnership and the very laws and agencies that guarantee the success of our partnership.

In furtherance of the above, the following principles should guide NCSL's federal lobbying efforts with respect to the state-federal environmental partnership:

- NCSL supports the prevention of pollution at its source and believes that federal legislation and regulation, through delegated authority to the states, should encourage the implementation of activities designed to minimize the generation of hazardous pollution by regulated entities.
- NCSL further supports federal funding of pollution prevention research and development, training, technical assistance, and regulatory guidance for states.
- The present level of commitment and funding for natural resource and environmental protection efforts should be enhanced; specifically, the federal government should prevent efforts to further erode its commitment to provide technical support, research and financial assistance to states and avoid further cost shifts to the states.
• The federal government should provide funding to the states in the form of block grants that provide for maximum state flexibility to use federal monies in the manner which they deem proper and in a manner which is consistent with their intended purpose.

• Environmental protection should be based on a holistic comprehensive, flexible and integrated program that addresses environmental issues, the nation’s broader economic prosperity, and policies that ensure long-term energy affordability & reliability.

• Uniform minimum federal standards for environmental protection should be preserved and strengthened.

• Statutory authority for states to enact state environmental standards that are more stringent than their minimum federal counterparts should be maintained and renewed.

• Within the framework of uniform minimum federal standards, states should have maximum flexibility in devising approaches and methods for obtaining compliance with such standards. The federal government should adopt performance-based standards which prescribe the end to be accomplished and leave the means of obtaining the end up to individual states. In return for this new level of autonomy, the federal government should adopt a system of performance audits and objectively quantifiable benchmarks that would allow the federal government to certify state performance results in meeting uniform minimum federal standards.

• Implementation schedules established under the framework of uniform minimal federal standards should ensure that the time to deploy emissions control technology reflects normal construction industry experience, technology availability and practices that maximize order and efficiency to avoid wasteful financial expenditures and any risks to energy reliability.

• Within this framework, states should have the flexibility to work with utilities to coordinate the closure and retrofitting of existing power generation stations in a manner that will ensure the continued supply of electricity and that will allow power generators to upgrade their facilities in a manner that provides reasonable
cost while attaining environmental compliance. State flexibility should allow for
regulatory options for units that are necessary for grid reliability, that commit to
retire or repower and establishing interim progress standards that ensure
generation units meet EPA regulations in an orderly, cost-effective manner.

- There should be consistent, uniform and vigorous federal enforcement of
  environmental laws to deter non-compliant behavior and to reward those who are
  acting in compliance with such laws. The federal government should continue its
  present role of overseeing the efficacy of state efforts to enforce uniform minimal
  federal environmental protection standards.

- In light of the Supreme Court rulings in Seminole Tribe of Florida v. Florida and
  Alden v. Maine, which suggest that citizens will no longer be able to sue states in
  federal court for violations of federal environmental protection laws, the federal
  government needs to allocate adequate resources to ensure compliance among
  the states.

- Cost-benefit analysis should be performed in environmental decision making.
  Sound public policy decision making demands that benefits should be
  proportionate to costs, after factoring in the totality of the circumstances.
  However, cost-benefit analysis should not be the only determinative factor in any
  environmental decision making process. Rather, such an analysis should be one
  of the many tools that inform decision makers in formulating sound public policy.
  In the face of uncertainty in devising analytical methods, any default assumptions
  that are employed should favor enhanced environmental protection.

- In order to finance environmental protection efforts, Congress should create
  funding mechanisms that consistently generate revenue solely for such uses. All
  monies from such funds should be fully appropriated for their intended uses.

- NCSL supports a citizen's right to access public information. NCSL supports
  "right-to-know" laws and other statutory and regulatory mechanisms that readily
  provide public access to public information while acknowledging the need to
  balance this right with security concerns relating to the distribution of sensitive
  material such as water security information regarding water infrastructure and
  sources of supply.
• NCSL supports the preservation of state authority to enforce chemical security standards that are more stringent than those established by the federal government.

• NCSL opposes any attempt to preempt or circumvent the authority of state courts and local administrative bodies. Proposed federal legislation that would centralize decision-making in the Federal courts for compensation for land use and other regulatory actions represents a major threat to our Constitutional system of federalism. Improving the efficiency of the state and local judicial process is an issue for state legislatures, not Congress. Land use and regulatory policy must remain a primary responsibility of the states. The authority of state courts must be preserved.

• NCSL opposes federal trade agreements containing mechanisms that undermine state environmental laws and regulations -- or that usurp state authority to set and maintain environmental policy and investments in the public interest -- including tactics such as “regulatory cooperation entities,” “harmonization,” “mutual recognition,” “international standardization,” “reducing trade irritants” or other means by which the Constitutional powers or decisions of the states could be directly or indirectly overridden, modified or preempted.


• NCSL believes federal environmental health regulations require more and better data about the unique exposure patterns and sensitivities of children who are uniquely vulnerable to environmental exposures because they are in a dynamic state of growth, with many vital systems not fully developed upon birth.

• NCSL supports consideration of the sensitivity of children to environmental contamination in all federal environmental policy, legislation, and regulation.
• NCSL supports federal funding for health research on the effects of exposure of children to environmental toxicants, and consistent reporting and tracking of birth defects, cancer, and other relevant diseases in children.
The National Conference of State Legislatures (NCSL) urges the federal government to consult with state elected officials, their national representative organizations and existing interstate partnerships in developing a federal program. As Congress and the administration examine proposals for reducing greenhouse gas emissions, NCSL encourages the federal government to always take the following principles into account:

- Federal action should be flexible, allowing for a range of complementary strategies at the state and federal level maintaining a strong role for state, local and tribal government in any federal action.
- Federal legislation should provide states the authority and flexibility to work within an overall framework; to apply the law effectively to all sources of emissions and ensure achievement of climate change goals in the most cost effective, timely and efficient manner for each state.
- Federal legislation should not preempt state or local governments from enacting policy options that differ from federal choices or from enacting stricter or stronger measures within their jurisdiction.
- Federal legislation should afford states the flexibility to form regional cooperatives and implement innovative policies that advance federal efforts to reduce the effects of climate change.
- Congress must authorize and appropriate sufficient funds for federal, state and local governments to implement any federal legislation. These funds should be newly authorized appropriations, not reprogrammed resources.
- Federal legislation should ensure state legislative authority in any federal climate change legislation and affirm the active role played by state legislatures in both fiscal and substantive aspects of state policymaking.
Federal legislation providing for the allocation of greenhouse gas reduction programs to states should include language making decisions related to such allowances subject to state legislative approval.

NCSL urges the federal government, should it choose to act on this issue, to take into account the following principles regarding program design components:

- Any national system must include short, medium and long-term goals and incorporate a rigorous oversight program that provide for ongoing study and analysis of the system to ensure it is achieving intended goals.
- A new national program should serve to address uncertainties that are hampering investment in generation, transmission and distribution and enhance the likelihood that appropriate technologies will be developed, and other solutions implemented so as to achieve the desired reductions in greenhouse gas (GHG) emissions in the most economical manner possible.
- Federal legislation should be designed appropriately to balance competing criteria, including, but not limited to, equity, economic efficiency and ease of administration.
- Revenue derived from a greenhouse gas reduction program should be directed to complementary policies focused on mitigating climate change consumer costs including but not limited to energy research & development, weatherization, conservation and energy efficiency activities.
- A national program to reduce GHG emissions must also address adaptation issues.
- Auctioning of allowances may be the most economically efficient mechanism for achieving a GHG emissions reductions goal. However, the allocation of emissions allowances at no cost can serve as an appropriate transition measure necessary to ensure continued reliability, minimize economic dislocation resulting from the carbon intensity of the existing infrastructure, and allow for development and deployment of needed new technologies and measures to reduce emissions.
• Priority distribution of allowances at no cost should be to those entities in affected sectors where existing regulatory structure provides the necessary oversight to ensure that the value of such allowances is accounted for in establishing price rates for consumers.

• The allocation of GHG reduction program to states under a federal GHG reduction program should include language making decisions related to such allowances subject to state legislative approval.

• The establishment of any new federal program should include provisions for transparent reporting and accountability and incorporate the use of third-party verification to ensure reported outcomes are verifiable.

**Unintended Consequences**

NCSL believes that federal legislation regarding the reduction of greenhouse gases should take into account the implications of actions and/or inactions on economic development, energy security, and those most vulnerable citizens. Evaluation should include the life cycle impacts of policy options including ancillary impacts.

NCSL believes that federal legislation should require continuing assessments of the potential impacts to the United States of climate change, by state or region including effects on water resources, agriculture, infrastructure, natural systems, environmental quality, public health, biodiversity and the cultures of our native peoples. Such an assessment will support the development of domestic and international adaptation/mitigation strategies. The Environmental Protection Agency (EPA) should provide funding and assist states in developing assessments and adaptation plans at the state and regional level.

NCSL also urges the federal government to fully consider how legislation will affect low-income households that already struggle to balance needs and expenses. NCSL encourages the federal government to expand and enhance long-term funding for the Department of Energy's Weatherization Assistance Program and to ensure that any new
federal program does not undermine existing federal, state and private sector energy assistance and outreach programs that assist our most vulnerable citizens.

**Research and Development**

NCSL strongly urges the federal government to authorize and appropriate funding and provide other incentives to spur expanded research and development (R&D), as well as advance the demonstration and deployment of new and existing technologies to improve energy efficiency, advance mitigation strategies and reduce GHG emissions.

NCSL urges the federal government:

- To ensure that legislation not limit the diversity of technologies supported, as future advancements cannot be predicted.
- To take into account state and regional differences, and not limit or specify the technologies used in each state and ensure sufficient flexibility for each State to determine how to best achieve nationally-set goals.
- To promote current and future innovations and expand the use of such technology through R&D transfer agreements with other countries.
- To promote policies and procedures to increase natural carbon sequestration of CO2 that will include sustainable timber harvesting, control burns, reseeding and rehabilitation of natural and introduced grassland plants.