



February 19, 2021

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Acting Assistant Administrator, Office of Air and Radiation  
Environmental Protection Agency  
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Washington, D.C. 20460

Tomás Carbonell  
Deputy Assistant Administrator for Stationary Sources, Office of Air and Radiation  
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**Robin Vos**  
Assembly Speaker  
Wisconsin  
President, NCSL

**Martha R. Wigton**  
Director  
House Budget & Research  
Office  
Georgia  
Staff Chair, NCSL

**Tim Storey**  
Executive Director

**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](mailto:kristen.hildreth@ncsl.org)).

Sincerely,

Handwritten signature of Stephen Handy in black ink.

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

Handwritten signature of David Tarnas in black ink.

Representative David Tarnas  
NCSL Natural Resources and Infrastructure  
Committee Co-Chair  
Hawaii House of Representatives

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: ENVIRONMENTAL FEDERALISM**

3 **TYPE: DIRECTIVE**

4 The National Conference of State Legislatures (NCSL) urges the federal government to  
5 renew its commitment to the state-federal partnership for environmental protection.

6

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

16

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

- 19 • NCSL supports the prevention of pollution at its source and believes that federal  
20 legislation and regulation, through delegated authority to the states, should  
21 encourage the implementation of activities designed to minimize the generation  
22 of hazardous pollution by regulated entities.
- 23 • NCSL further supports federal funding of pollution prevention research and  
24 development, training, technical assistance, and regulatory guidance for states.
- 25 • The present level of commitment and funding for natural resource and  
26 environmental protection efforts should be enhanced; specifically, the federal  
27 government should prevent efforts to further erode its commitment to provide  
28 technical support, research and financial assistance to states and avoid further  
29 cost shifts to the states.

- 30 • The federal government should provide funding to the states in the form of block  
31 grants that provide for maximum state flexibility to use federal monies in the  
32 manner which they deem proper and in a manner which is consistent with their  
33 intended purpose.
- 34 • Environmental protection should be based on a holistic comprehensive, flexible  
35 and integrated program that addresses environmental issues, the nation's  
36 broader economic prosperity, and policies that ensure long-term energy  
37 affordability & reliability.
- 38 • Uniform minimum federal standards for environmental protection should be  
39 preserved and strengthened.
- 40 • Statutory authority for states to enact state environmental standards that are  
41 more stringent than their minimum federal counterparts should be maintained  
42 and renewed.
- 43 • Within the framework of uniform minimum federal standards, states should have  
44 maximum flexibility in devising approaches and methods for obtaining  
45 compliance with such standards. The federal government should adopt  
46 performance-based standards which prescribe the end to be accomplished and  
47 leave the means of obtaining the end up to individual states. In return for this new  
48 level of autonomy, the federal government should adopt a system of performance  
49 audits and objectively quantifiable benchmarks that would allow the federal  
50 government to certify state performance results in meeting uniform minimum  
51 federal standards.
- 52 • Implementation schedules established under the framework of uniform minimal  
53 federal standards should ensure that the time to deploy emissions control  
54 technology reflects normal construction industry experience, technology  
55 availability and practices that maximize order and efficiency to avoid wasteful  
56 financial expenditures and any risks to energy reliability.
- 57 • Within this framework, states should have the flexibility to work with utilities to  
58 coordinate the closure and retrofitting of existing power generation stations in a  
59 manner that will ensure the continued supply of electricity and that will allow  
60 power generators to upgrade their facilities in a manner that provides reasonable

61 cost while attaining environmental compliance. State flexibility should allow for  
62 regulatory options for units that are necessary for grid reliability, that commit to  
63 retire or repower and establishing interim progress standards that ensure  
64 generation units meet EPA regulations in an orderly, cost-effective manner.

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

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

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

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

86 • NCSL supports a citizen's right to access public information. NCSL supports  
87 "right-to-know" laws and other statutory and regulatory mechanisms that readily  
88 provide public access to public information while acknowledging the need to  
89 balance this right with security concerns relating to the distribution of sensitive  
90 material such as water security information regarding water infrastructure and  
91 sources of supply.

- 92 • NCSL supports the preservation of state authority to enforce chemical security  
93 standards that are more stringent than those established by the federal  
94 government.
- 95 • NCSL opposes any attempt to preempt or circumvent the authority of state courts  
96 and local administrative bodies. Proposed federal legislation that would centralize  
97 decision-making in the Federal courts for compensation for land use and other  
98 regulatory actions represents a major threat to our Constitutional system of  
99 federalism. Improving the efficiency of the state and local judicial process is an  
100 issue for state legislatures, not Congress. Land use and regulatory policy must  
101 remain a primary responsibility of the states. The authority of state courts must  
102 be preserved.
- 103 • NCSL opposes federal trade agreements containing mechanisms that undermine  
104 state environmental laws and regulations -- or that usurp state authority to set  
105 and maintain environmental policy and investments in the public interest --  
106 including tactics such as “regulatory cooperation entities,” “harmonization,”  
107 “mutual recognition,” “international standardization,” “reducing trade irritants” or  
108 other means by which the Constitutional powers or decisions of the states could  
109 be directly or indirectly overridden, modified or preempted.
- 110 • In acknowledgement of the unique needs and concerns of the arctic ecosystem  
111 that is undergoing rapid environmental change and extensive exploration for  
112 natural resources, NCSL urges ratification of the United Nations (UN) Convention  
113 on the Law of the Sea, negotiated in 1982, and of the Treaty on Persistent  
114 Organic Pollutants, adopted by the U.S. in 2001 but never ratified.
- 115 • NCSL believes federal environmental health regulations require more and better  
116 data about the unique exposure patterns and sensitivities of children who are  
117 uniquely vulnerable to environmental exposures because they are in a dynamic  
118 state of growth, with many vital systems not fully developed upon birth.
- 119 • NCSL supports consideration of the sensitivity of children to environmental  
120 contamination in all federal environmental policy, legislation, and regulation.

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- 123
- 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.

1 **COMMITTEE: NATURAL RESOURCES AND INFRASTRUCTURE**

2 **POLICY: CLIMATE CHANGE**

3 **TYPE: RESOLUTION**

4 The National Conference of State Legislatures (NCSL) urges the federal government to  
5 consult with state elected officials, their national representative organizations and  
6 existing interstate partnerships in developing a federal program. As Congress and the  
7 administration examine proposals for reducing greenhouse gas emissions, NCSL  
8 encourages the federal government to always take the following principles into account:

- 9 • Federal action should be flexible, allowing for a range of complementary  
10 strategies at the state and federal level maintaining a strong role for state, local  
11 and tribal government in any federal action.
- 12 • Federal legislation should provide states the authority and flexibility to work within  
13 an overall framework; to apply the law effectively to all sources of emissions and  
14 ensure achievement of climate change goals in the most cost effective, timely  
15 and efficient manner for each state.
- 16 • Federal legislation should not preempt state or local governments from enacting  
17 policy options that differ from federal choices or from enacting stricter or stronger  
18 measures within their jurisdiction.
- 19 • Federal legislation should afford states the flexibility to form regional  
20 cooperatives and implement innovative policies that advance federal efforts to  
21 reduce the effects of climate change.
- 22 • Congress must authorize and appropriate sufficient funds for federal, state and  
23 local governments to implement any federal legislation. These funds should be  
24 newly authorized appropriations, not reprogrammed resources.
- 25 • Federal legislation should ensure state legislative authority in any federal climate  
26 change legislation and affirm the active role played by state legislatures in both  
27 fiscal and substantive aspects of state policymaking.

- 28 • Federal legislation providing for the allocation of greenhouse gas reduction  
29 programs to states should include language making decisions related to such  
30 allowances subject to state legislative approval.

31

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

34

- 35 • Any national system must include short, medium and long-term goals and  
36 incorporate a rigorous oversight program that provide for ongoing study and  
37 analysis of the system to ensure it is achieving intended goals.
- 38 • A new national program should serve to address uncertainties that are  
39 hampering investment in generation, transmission and distribution and enhance  
40 the likelihood that appropriate technologies will be developed, and other solutions  
41 implemented so as to achieve the desired reductions in greenhouse gas (GHG)  
42 emissions in the most economical manner possible.
- 43 • Federal legislation should be designed appropriately to balance competing  
44 criteria, including, but not limited to, equity, economic efficiency and ease of  
45 administration.
- 46 • Revenue derived from a greenhouse gas reduction program should be directed  
47 to complementary policies focused on mitigating climate change consumer costs  
48 including but not limited to energy research & development, weatherization,  
49 conservation and energy efficiency activities.
- 50 • A national program to reduce GHG emissions must also address adaptation  
51 issues.
- 52 • Auctioning of allowances may be the most economically efficient mechanism for  
53 achieving a GHG emissions reductions goal. However, the allocation of  
54 emissions allowances at no cost can serve as an appropriate transition measure  
55 necessary to ensure continued reliability, minimize economic dislocation resulting  
56 from the carbon intensity of the existing infrastructure, and allow for development  
57 and deployment of needed new technologies and measures to reduce emissions.

- 58 • Priority distribution of allowances at no cost should be to those entities in affected  
59 sectors where existing regulatory structure provides the necessary oversight to  
60 ensure that the value of such allowances is accounted for in establishing price  
61 rates for consumers.
- 62 • The allocation of GHG reduction program to states under a federal GHG  
63 reduction program should include language making decisions related to such  
64 allowances subject to state legislative approval.
- 65 • The establishment of any new federal program should include provisions for  
66 transparent reporting and accountability and incorporate the use of third-party  
67 verification to ensure reported outcomes are verifiable.

68

### 69 **Unintended Consequences**

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

74

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

83

84 NCSL also urges the federal government to fully consider how legislation will affect low-  
85 income households that already struggle to balance needs and expenses. NCSL  
86 encourages the federal government to expand and enhance long-term funding for the  
87 Department of Energy's Weatherization Assistance Program and to ensure that any new

88 federal program does not undermine existing federal, state and private sector energy  
89 assistance and outreach programs that assist our most vulnerable citizens.

90

## 91 **Research and Development**

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

96

97 NCSL urges the federal government:

- 98 • To ensure that legislation not limit the diversity of technologies supported, as  
99 future advancements cannot be predicted.
- 100 • To take into account state and regional differences, and not limit or specify the  
101 technologies used in each state and ensure sufficient flexibility for each State to  
102 determine how to best achieve nationally-set goals.
- 103 • To promote current and future innovations and expand the use of such  
104 technology through R&D transfer agreements with other countries.
- 105 • To promote policies and procedures to increase natural carbon sequestration of  
106 CO<sub>2</sub> that will include sustainable timber harvesting, control burns, reseeded and  
107 rehabilitation of natural and introduced grassland plants.