



October 29, 2018

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington D.C., 20004

**Toi Hutchinson**  
State Senator  
Illinois  
President, NCSL

**Jon Heining**  
General Counsel  
Legislative Council  
Texas  
Staff Chair, NCSL

**William Pound**  
Executive Director

Re: Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program. Docket ID No. EPA-HQ-OAR-2017-0355

Dear Acting Administrator Wheeler:

The National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation's states, territories, and commonwealths, appreciates the opportunity to provide input on the agency's Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, more commonly referred to as the Affordable Clean Energy (ACE) rule. In February 2018 our organization provided input on the advanced notice of proposed rulemaking (ANPRM) for State Guidelines for Greenhouse Gas (GHG) Emissions from Existing Electric Utility Generating Units (EGUs), and this letter echoes many of those same remarks.

### **Continued Consultation with States**

In February 2018, the Environmental Protection Agency (EPA) developed its FY 2018-2022 Strategic Plan, with its second goal being "Cooperative Federalism: Rebalance the power between Washington and the states to create tangible environmental results for the American people," under which the agency stated its objectives being to "enhance shared accountability," and "increase transparency and public participation." In our earlier comments we urged the agency to undertake a formal rulemaking process in addition to facilitating both formal and informal meetings with stakeholders to ensure that the agency could accurately assess, from numerous viewpoints, the various impacts of the revision of guidelines for EGUSs and ensure that the voices and many interests across the nation play a role in the process. As the national organization representing state legislatures, it is essential that state governments, who are partners with the federal government in regulating such emissions, have a clear understanding of any and all potential changes outlined in ACE. Unfortunately, during the drafting of the proposed rule, the agency fell short on achieving its stated goal and objectives and neglected to meet with state and local representative national organizations prior to publication in the federal register.

GHG emission regulation is a divisive issue across the nation. As EPA begins to finalize this rulemaking NCSL strongly encourages frequent consultation with state and local governments, and their respective national organizations to lead to a more positive outcome with better results, while also strengthening the federal, state and local government partnership.

### **Ensuring Flexibility and States Authority**

Although NCSL was disheartened by the lack of consultation, we were pleased to see the proposed rule providing significant authority and flexibility to states, allowing them to work within an overall framework while taking into account state and regional differences, ensuring sufficient flexibility for each state to determine how to best achieve nationally set goals. We appreciate the agency's recognition that "states should have broad flexibility in developing their plans and establishing and applying standards of performance." Forgoing a one-size fits all approach, the proposed rule allows states to account for their unique environmental characteristics when regulating such emissions. Additionally, NCSL is encouraged by the agency's decision to be consistent with the "spirit of cooperative federalism," and "provide [the] information sufficient to assist states in the development of state plans." This ensures that states, while granted autonomy in the creation of their plans, will be provided regulatory certainty in their development.

As NCSL has stated previously, a final rule should not place a limit on the diversity of technologies a state may utilize as further advancements, which may be more cost-effective, timely and efficient but cannot be predicted. While the proposed rule provides states a list of "candidate technologies" to choose from to improve a plant's heat rate efficiency, it is our hope that as technologies evolve, the available "candidate technologies" is also updated.

### **Reasonable and Appropriate Timelines for State Implementation**

While NCSL is encouraged by the proposals longer implementation timelines as compared to the 2015 Clean Power Plan final rule, as EPA finalizes the rule we urge the agency to maintain the proposed timelines and to consider states' legislative session schedules if changes are made in the final rule. The implementation timeline of a rule must be compatible with state legislative calendars to ensure states have enough time to make any legislative changes needed to comply with a rule.

State legislatures' in-session dates vary significantly across the nation, and although state legislatures may hold a special session post adjournment, such sessions are often limited in scope and duration depending on the state in question. For additional information on the state legislative calendars and processes for special state legislative sessions, please contact the NCSL staff listed below, or [visit NCSL's website](#).

### **New Source Review Modifications**

We are pleased to see that the agency's proposed revisions to the New Source Review (NSR) permitting program provides states increased flexibility. However, as EPA puts together its final rule, we urge it to reform the NSR in such a way that achieves improvements that enhance the environment and increase production capacity, while encouraging efficiency, fuel diversity and the use of resources without weakening the requirements intended to reduce emissions from new or modified sources of air pollution. Additionally, routine maintenance, repair or replacement activities that are not major modifications should not trigger NSR requirements.

### **Cost Benefit Analysis**

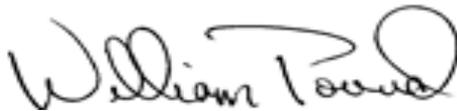
The regulatory impact analysis for ACE contains a variety of replacement scenarios, each predicting significant variation in the costs of the proposed rule. As such NCSL is concerned

with the potential significant cost burdens, and advocates that as the agency finalizes the rule, that the benefits and costs be reviewed to ensure that they are accurately calculated and take into consideration our below concerns. Cost-benefit analysis is vital to environmental decision making; however, it should not be the only determinative factor in any such process. Benefits should be proportionate to the costs, after the totality of the circumstances have been factored in. In the face of uncertainty in devising analytical methods, any default assumptions that are employed should favor enhancing environmental protection. NCSL also urges EPA to ensure that the final economic analysis of the regulation will accurately quantify the full impact the changes will have, for each scenario.

Additionally, as EPA moves to finalize the regulation, NCSL urges the agency to further examine the health costs and benefits of the proposed changes is needed – regulations which possess such significant impacts on environmental health require more and better data. The agency’s own Regulatory Impact Analysis of the rule cited “data, time, and resource limitations,” as primary factors in the agency’s lack of quantitative analysis of the impacts of the “co-benefits associated with exposure to several [hazardous air pollutants] HAPS.” As such, NCSL would encourage the agency to provide a quantitative, rather than a qualitative, analysis of the impact of such HAPS, specifically considering the effect on children and other uniquely sensitive vulnerable populations.

NCSL looks forward to continuing dialogue with the agency as the regulatory process surrounding the ACE proposed rule as it moves forward. Please contact NCSL staff, Kristen Hildreth ([kristen.hildreth@ncsl.org](mailto:kristen.hildreth@ncsl.org), 202-624-3597) and Ben Husch ([ben.husch@ncsl.org](mailto:ben.husch@ncsl.org), 202-624-7779) with any additional questions.

Sincerely,

A handwritten signature in black ink that reads "William T. Pound". The signature is written in a cursive, flowing style.

William T. Pound  
Executive Director  
National Conference of State Legislatures

**Enclosure**  
[ANPRM Comments, Feb. 2018](#)