



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

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April 4, 2011

Administrator Lisa Jackson
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Improving EPA Regulations – State, Local and Tribal Governments (Docket ID No. EPA–HQ–OA–2011–0163)

Dear Administrator Jackson:

I am writing on behalf of the National Conference of State Legislatures (NCSL) in response to the Environmental protection Agency's (EPA) request for comment on development of a plan to implement Executive Order 13563 "Improving Regulation and Regulatory Review." NCSL welcomes the opportunity to provide our thoughts on issues of importance to state legislatures that can be addressed during the design and implementation of the review process.

In reviewing existing regulations during this process, NCSL urges you to examine issues concerning the costs for state and local government associated with the regulation. As you know, EPA revised its internal guidance on November 12, 2008 lowering the threshold for consultation with state and local governments from \$100 million to \$25 million for those actions that have federalism implications. NCSL supported this change and would urge application of the new trigger during the review of any significant regulation. If the regulation under review has cost state and local governments greater than \$25 million the review process should include a consultation with state and local groups as called for under Executive Order 13132: Federalism. In such cases NCSL would urge that consultation be done as early in the review process as possible to ensure it is a meaningful component of the review. This should apply to both regulations in effect prior to the issuance of the revised federalism guidance as well as regulations where actual implementation costs exceeded original costs estimates and should have triggered the \$25 million threshold for consultation.

NCSL urges EPA to incorporate into the review process a comparative analysis of the cost estimates for state and local government developed during the rulemaking process and the actual costs of implementing the rule once issued. This analysis should include a review of what went into the estimates as well as how accurately they reflected the real world costs associated with the regulation. For instance, did the cost estimates for the regulation include both the cost of implementing the rule and the cost for states to come into compliance with the regulation? Were both one-time and ongoing costs accounted for in the cost estimate? If not, why was one category of costs not included? Were the cost estimates an accurate accounting for actual cost associated with implementation of the regulation? Was the funding provided for implementation of the regulation

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sufficient and/or awarded in a reasonable manner? What were the implications for implementation of unfunded or underfunded regulations? Could the regulation be modified to minimize the fiscal impact on state and local governments?

NCSL would also recommend that EPA incorporate into the design of the review process an evaluation of the level of consultation that occurred during the development of any regulation under review. Consultation with state and local governments should occur early in the process and provide ample time for response prior to the regulation entering interagency review or being sent to the Office of Management and Budget. As part of this evaluation, NCSL encourages the agency to reach out to NCSL and the other organizations they are required to consult with under E.O. 13132 to determine if meaningful consultation occurred during the development of the regulation.

While important to the design of the review process there are several issues that are equally important to the regulatory development process. For example:

- Consultation on regulations and guidance documents with state and local elected officials should be conducted early in the process. It should not occur so late in the process that there is no opportunity to provide meaningful input because the regulation is already in interagency review or has been sent to the Office of Management and Budget.
- Estimates related to a regulation's impact on state or local government should include one-time and ongoing regulatory implementation costs and the costs of state compliance activities.

Despite the diversity of programs and topics covered by the agency these issues should be addressed in uniform manner across the agency.

If you have questions about these comments, or for further discussion, please do not hesitate to contact NCSL staff: Tamra Spielvogel (202-624-8690 or tamra.spielvogel@ncsl.org) or Max Behlke (202-624-3586 or max.behlke@ncsl.org). Thank you again for the opportunity to provide input on EPA's plans for implementing Executive Order 13563. NCSL looks forward to continuing conversations with EPA on its efforts to improve agency regulations and the regulatory review process.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Morris", with a horizontal line extending to the right.

Representative Jeff Morris, Washington
Chair, NCSL Environment Standing Committee