



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

October 16, 2014

The Honorable Gina McCarthy
Office of the Administrator
U.S. Environmental Protection Agency Administrator
1200 Pennsylvania Avenue, N.W., Room 1101A
Washington, DC 20460

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William T. Pound
Executive Director

Docket ID No. EPA-HQ-OAR-2013-0602

Dear Administrator McCarthy,

The National Conference of State Legislatures (NCSL) appreciates the opportunity to provide input on the Environmental Protection Agency's (EPA) proposed rule for Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units that aims to reduce carbon emissions from power plants, pursuant to Section 111(d) of the Clean Air Act.

Continued Consultation with States

NCSL strongly urges the EPA to expand its educational and consulting efforts with state legislatures, both as the agency works to finalize its proposed rule by June 2015 and as states move forward with drafting their state implementation plans (SIPs) that would be due in June 2016. NCSL encourages EPA to work with those state legislatures where new authorization or enabling legislation may be required in order to comply with the carbon emissions standards.

Ensuring Flexibility and States Authority

EPA should ensure states are provided the authority and flexibility to work within an overall framework and should take into account state and regional differences, in order to ensure sufficient flexibility for each state to determine how to best achieve nationally-set goals. The final rule should continue to afford states the flexibility to form regional cooperatives and implement innovative policies that advance federal efforts to reduce the effects of climate change. Likewise, the final rule should not place a limit on the diversity of technologies, as future advancements cannot be predicted, and should be applied to all sources of emissions in order to ensure that climate change goals are achieved in the most cost effective, timely and efficient manner for each state.

SIP Submission Timeline

NCSL strongly urges EPA to take into account states' legislative session schedules and reduce the requirements states must meet in order to receive an extension for submitting a complete SIP. This would provide states a more appropriate timeline to comply with EPA's proposal.

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NCSL is encouraged that the draft rule recognizes that, “state administrative procedures can be lengthy, some states may need new legislative authority, and states planning to join in a multi-state plan will likely need more than thirteen months to get necessary elements in place,” and supports the agency’s ability to provide states extensions. However, NCSL believes the 13 months between the expected finalization of the rule (June 2015) and the deadline for states to submit implementation plans (June 2016), is not enough time for states to make any legislative changes that may be needed in order to submit a complete SIP, given the incompatibility of EPA’s proposed timeline with state legislative calendars.

More than half the state legislatures will have adjourned from their regular session before EPA releases its final rule and may not be able to begin legislatively addressing any required changes until their 2016 regular session. As a result, those states would have more in the range of six months to develop an implementation plan. In addition, four states only hold regular session every other year putting them at an even further disadvantage.

Though state legislatures may hold a special session, such sessions are often limited in scope and duration depending upon the state in question. For those legislatures able to convene a special session (in 16 states, *only* the governor may call a special session), there can be significant costs to the state, which may run into tens of thousands of dollars per day. For additional information on the [state legislative calendars](#) and processes for special state legislative sessions, please consult NCSL’s [website](#).

Therefore, the June 2016 timeframe for states to submit an implementation plan or meet the requirements for an extension—a description of the plan approach, initial quantification of the level of emission performance that will be achieved in the plan, a commitment to maintain existing measures that limit CO₂ emissions, an explanation of the path to completion, and a summary of the state’s response to any significant public comment on the approvability of the initial plan—poses significant challenges.

NCSL thanks the EPA for the ability to comment on the proposed rule and strongly urges the agency to reduce the requirements for states to receive an extension for submitting a full SIP, while continuing consultation with states throughout the implementation process.

We look forward to working with you and your staff as continue your efforts with the Clean Power Program. To discuss this further, please contact NCSL staff, [Ben Husch](#) (202-624-7779) or [Melanie Condon](#) (202-624-3597).

Sincerely,



Senator Debbie Smith
Nevada Senate
President, NCSL



Senator Curt Bramble
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