
October 10, 2018

The Honorable William L. Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator Wehrum:

Western Governors write to express our concerns regarding the Environmental Protection Agency's (EPA's) proposed rule, Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, [83 FR 44746](#). While our states may have various opinions on the substance of this proposed action, we are united in our concern regarding the lack of meaningful consultation with states in advance of its publication.

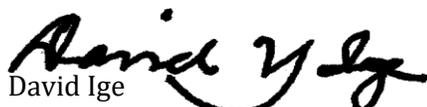
The EPA acknowledges that the proposed rule may have federalism implications and impose substantial direct compliance costs on states. Yet, the agency did not consult with Governors or their designees regarding the proposed rule prior to its publication. In the proposal, EPA specifically solicits comment from state officials through the same process as the American public and does not describe any plans to consult with states.

Pursuant to the U.S. Constitution and our system of federalism, state governments are co-sovereigns and co-regulators with the federal government. As the chief elected officials of sovereignties, Western Governors expect to engage with federal officials on the formulation and execution of public policy through early, meaningful, substantive, and ongoing consultation, which must occur outside of, in addition, and prior to the public comment process.

The rulemaking procedures required by the Administrative Procedure Act do not satisfy the federal government's duty to consult with states as co-sovereigns, especially where federal authority is delegated to states. Executive Order 13132 requires agencies to consult with state officials early in the process of developing proposed rules with federalism implications that impose substantial direct costs on states. It also requires agencies to have a consultation process, distinct from notice and comment procedures, to ensure meaningful input from state officials. Western Governors urge EPA to engage in meaningful and substantive consultation with Governors or their designees on the proposed rule as soon as possible and take concrete actions to assure that federalism concerns are addressed before the rulemaking proceeds.

Thank you for your attention to this critical issue. We will also submit this letter through [regulations.gov](#) for administrative recordkeeping purposes, while maintaining it is an insufficient channel for state-federal communications on agency actions with substantive impacts on states.

Sincerely,



David Ige
Governor of Hawaii
Chair, WGA



Doug Burgum
Governor of North Dakota
Vice Chair, WGA