
March 5, 2026

Paige Wantlin
Air Quality Policy Division
Office of Air Quality Planning and Standards
Environmental Protection Agency
109 TW Alexander Drive
Research Triangle Park, NC 27711

Dear Ms. Wantlin:

Western Governors appreciate the opportunity to provide input on the U.S. Environmental Protection Agency's (EPA) Advance Notice of Proposed Rulemaking regarding Visibility Protection: Regional Haze State Plan Requirements Rule Revision (90 FR 47677; EPA-HQ-OAR-2025-1477). The Western Governors' Association (WGA) is a bipartisan coalition of Governors from the 22 westernmost states and territories, and WGA has been engaged on the Regional Haze Rule (RHR) since it was finalized in 1999.

The West has over 75 percent of the Class 1 areas that are subject to the RHR. Consequently, the majority of the rule's regulatory burden falls on western state agencies. This is especially true of states that contain many Class 1 areas, further compounding their regulatory workload under the rule's current implementation.

The RHR's current implementation is resource-intensive, overly prescriptive, and in many cases chronically delayed due to the challenges in reviewing and approving SIPs. Western Governors welcome EPA's effort to improve the RHR for the third implementation period, especially with regard to planning requirements, contributory factors, agency guidance, deadline adjustment, and implementation assistance.

Reduced State Implementation Plan Revision Requirements

Currently, 40 CFR 51.308(f) requires states to submit State Implementation Plan (SIP) revisions at certain intervals, even if the current SIP is effectively making progress toward natural visibility conditions. This process has proven to be burdensome for both states and EPA; some SIP revisions submitted for the second implementation period in August 2022 are still under review as of January 2026, and the third implementation period was scheduled to begin in 2028, though EPA recently announced it would extend the deadline to 2031.

In revising SIP requirements, EPA should recognize state authority under the Clean Air Act (CAA) and accord states sufficient flexibility to create air quality and emissions programs tailored to individual state needs, industries, and economies. Similarly, any RHR requirements should be outcome-oriented and seek to minimize reporting requirements. When a state is meeting a delegated program's requirements, such as under the RHR, the role of a federal agency should be limited to the provision of funding, technical assistance and research support. Many Class 1 areas

are well within their visibility targets, and reducing the SIP revision obligations for these areas would enable state and federal agencies to reallocate limited resources toward other areas. This model is already used in the context of ground-level ozone and particulate matter, which are haze-forming pollutants. Under EPA's Clean Data Policy, states' SIP revision requirements for these pollutants are suspended as long as the area of interest remains in attainment with National Ambient Air Quality Standards.

Reconsideration of Contributory Factors

EPA should reconsider the regulatory significance of internal and external factors that contribute to regional haze. Certain factors, such as wildfire, international pollutant transport, and federal land management practices are outside of state control. The current RHR implementation mechanism for quantifying these factors and subtracting their contribution toward a given Class 1 area's visibility conditions is imperfect. As a result, states are liable for emissions beyond their control.

Western Governors have significant concerns about the lack of tools available to account for pollution resulting from factors outside of state control. For the third RHR implementation period, the profound effects of fire and smoke on visibility in Class I areas should be recognized.

Existing emission control programs administered by state agencies result in haze reduction, but these programs' benefits are considered supplementary to the RHR's primary strategy of selecting and controlling point sources. States should have the maximum discretion to develop implementation and enforcement approaches within their jurisdiction without federal intervention. If existing emission control programs are sufficient to achieve visibility targets, then no further action should be required beyond identifying those emission control programs in a SIP.

Agency Guidance and Implementation Assistance

During the second implementation period, EPA issued implementation guidance three weeks prior to the SIP revision deadline. For the third implementation period, EPA should provide states with timely implementation guidance when the revised RHR regulations are finalized. This guidance should be clear, prompt, and supported by best available science and data. Once implementation guidance is issued, EPA should allow states adequate time to complete SIPs, including extending deadlines if needed. Additionally, state CAA programs require financial and technical support from EPA and Congress, and federal partners should provide funding and resources to states throughout the planning and implementation process.

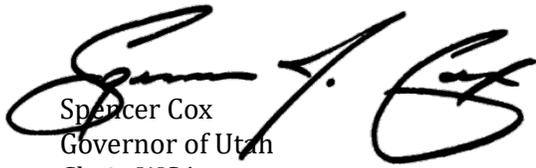
Western Governors appreciate the agency's attention to streamlining the regulatory process for haze management. This correspondence highlights Western Governors' collective, bipartisan policy positions which can be found in attached WGA policy resolutions 2025-02, Air Quality Protection and Management, and 2024-01, Strengthening the State-Federal Relationship.

The Governors maintain that the public notice and comment process is an insufficient channel for state-federal communication on federal actions that may affect state authority or administrative activity. Western Governors strongly urge you to engage in meaningful, substantive and ongoing

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consultation with states in advance of any such decisions or related public processes. Such consultation will result in more effective, efficient, and resilient federal policy, benefiting our shared constituents. We offer our assistance as EPA progresses through the rulemaking process.

Sincerely,



Spencer Cox
Governor of Utah
Chair, WGA



Josh Green, M.D.
Governor of Hawai'i
Vice Chair, WGA

Attachments



Policy Resolution 2025-02

Air Quality Protection and Management

A. BACKGROUND

Clean air is essential for strong communities and superior quality of life. Western states' air quality is influenced by many human activities and natural phenomena. To manage air quality, the Clean Air Act (CAA) established a system of cooperative federalism between states and the federal government. The Environmental Protection Agency (EPA) and states as co-regulators need to consider the unique factors in the West that influence air quality management, such as high elevations, extreme variations in topography, vast landscapes, and international emissions transport. Policies from western states have generated significant emissions reductions over the last 50 years since the CAA was passed. However, the remaining types and number of emissions controllable by states are somewhat limited. Only by working together to understand and address air quality challenges in the West will states and federal partners make improvements to air quality.

B. GOVERNORS' POLICY STATEMENT

Co-Regulation

1. Western Governors value cooperative federalism in air quality management and believe its application can and should be improved. In some cases, federal agencies disregard state expertise and authority over air quality and/or do not solicit timely, valuable input from states. Limited availability of financial resources exacerbates these tensions.
2. EPA should recognize state authority under the CAA and accord states sufficient flexibility to create air quality and emissions programs tailored to individual state needs, industries, and economies. In its timely review of state plans, EPA should focus on the circumstances facing the individual state. EPA should not reject reasonable state policy choices based solely on national consistency, fear of being legally challenged, or on concerns that such choices might not be appropriate for all states.
3. Federal agencies should communicate, consult, and engage early and often with Governors and state air quality agencies as co-regulators. EPA should work with states to clarify responsibilities and procedures to improve coordination and consultation among state agencies, EPA, and federal land managers.
4. EPA rules and guidance should be clear, prompt, and supported by best available science and data. EPA should consult with states throughout the drafting process before a potential rule, rule revision, policy or guidance becomes public. EPA should also provide states with timely implementation guidance when new and revised regulations or standards are published.
5. States require certainty and consistency from Congress and EPA to implement their CAA programs. Congress and EPA should prioritize regulations addressing federally regulated

sources, including mobile, aviation, and marine sources. EPA should consult with states to ensure adequate and effective implementation of federal programs relied on by states for their CAA programs.

6. State CAA programs require financial and technical support from EPA and Congress, including performance partnership grants. Federal partners must provide sufficient resources to carry out actions authorized under section 103 and section 105 of the CAA.
7. Under current rules and guidance, states must monitor National Ambient Air Quality Standards (NAAQS) throughout a 20-year maintenance period, even when there is no threat of an exceedance and/or the standard has been superseded by a more stringent or different standard. States should be allowed to reduce monitoring in maintenance areas that have appropriately demonstrated air quality in the area is below the NAAQS. This allowance will free resources to address pollutants that remain a concern.

Ozone and Particulate Matter

8. Uncontrollable events and conditions (such as wildfire, lightning, biogenic and geogenic emissions, stratospheric ozone intrusion, and transported ozone from international and interstate sources) result in elevated levels of particulate matter (PM) and background ozone. Western Governors have significant concerns about the lack of CAA tools available to account for PM and ozone exceedances resulting from factors outside state control.
9. The West needs additional and ongoing research on background, interstate, and international ozone. This research should be transparent, comprehensive, and coordinated with state air quality agencies and regional organizations. With this new information, EPA should reconsider the one percent threshold for significant contribution for interstate ozone transport obligations.
10. Congress should provide dedicated funding for analysis of background and transported ozone in the West, as it has historically done for the eastern United States. Congress should also provide a mechanism for which factors, such as international transport and background that are beyond states' control, are factored out of an ozone attainment determination.

Exceptional Events

11. Exceptional event demonstrations are resource intensive, costly, and place a significant burden on strained state resources, especially when EPA does not accept, review, or approve these state submissions in a timely manner. EPA should consider the resource burden placed on state and local air quality agencies to complete exceptional event demonstrations. Western Governors are encouraged by attempts from EPA to provide CAA demonstrations and tools to demonstrate exceptional events and look forward to continued collaboration with states.
12. EPA should streamline the process for exceptional event demonstrations, provide additional technical assistance, grants, and funding for state personnel, and allocate resources to review state demonstrations regardless of regulatory significance status.

13. Specific guidance and additional EPA resources could help address these challenges. In addition, EPA should develop a database with information on air quality impacts that affect the West (e.g., wildfires, dust storms, volcanic activity, etc.) and provide a clearinghouse with tools that states can use for exceptional event demonstrations.
14. Western Governors believe the states and EPA would benefit from the following approaches to exceptional events demonstrations: (1) aggregation of multiple factors contributing to air quality to prove a single exceptional event exceedance demonstration; (2) regional exceptional event demonstrations; and (3) reference to previously submitted and approved exceptional events demonstrations for repeated event types.

Regional Haze

15. Good visibility in the 122 western Regional Haze Program Class 1 Areas, which include many of the crown jewels of the West's national parks and wilderness areas, positively affects western states' economies. The profound effects of fire and smoke on visibility in Class I areas in the West should be recognized in the Regional Haze Guidance and Rule.
16. Prior to developing a new rulemaking or guidance on regional haze, EPA should provide states with the opportunity to collaborate and maintain transparency between EPA and state decision making and permitting regarding regional haze.
17. While the Regional Haze program has seen great successes in improving visibility in the West, implementing this program continues to be time and resource intensive. EPA should allow states adequate time to complete Regional Haze state implementation plans (SIPs), including extending deadlines if needed.
18. Given the importance of improved visibility in the West, federal partners should provide funding and resources to states throughout the planning and implementation process. This includes funding through the Western Regional Air Partnership that assists states in completing monitoring and analysis.

Wildfire and Prescribed Fire

19. More frequent and intense wildfires are steadily reducing the West's gains in air quality improvement. Smoke from wildfires can cause air quality to exceed the NAAQS for particulate matter and ozone, affecting public health, safety, and transportation. The presence of smoke in western states is increasingly persistent and seasonal in nature, which can further exacerbate public health effects, especially for vulnerable populations.
20. Effective forest management techniques, including mechanical thinning of forests and prescribed fires, can dramatically reduce the size and severity of wildfires and their corresponding effect on air quality.
21. Western Governors support the increased use of prescribed fire, when and where it is safe, to reduce the air quality effects of uncharacteristic wildfire in the West. Federal and state land managers should have the ability to use prescribed fires when local air quality, weather, and site conditions are appropriate and public health is protected.

22. Prescribed fire practices should include smoke management planning coordinated between state land managers, state air agencies, state health departments, EPA, other federal agencies, and federal land managers. State or regional prescribed fire councils can help facilitate this coordination.
23. Western Governors call on EPA and federal land managers to improve existing air quality tools and create additional air quality tools for states to encourage the use of prescribed fire. These should include simplified exceptional events guidance for prescribed fire, and tools to address the air quality effects from wildfire in the West.
24. Western Governors emphasize that fire management and smoke effects cross state lines, and request that EPA work with the U.S. Forest Service, the Bureau of Land Management (BLM), and other public land management agencies to develop a framework for proposing, reviewing, and approving prescribed fire events across interstate, regional areas, and entities.
25. Western Governors encourage EPA, the Centers for Disease Control and Prevention, and other federal public health agencies to continue researching interactions between smoke and public health. Such research will inform western states' efforts to expand the use of prescribed fire as a wildfire mitigation tool. Western Governors appreciate efforts to quantify the effects of wildfire and prescribed fire such as EPA's Comparative Assessment of the Impacts of Prescribed Fire Versus Wildfire (CAIF) and establishing a multi-agency memorandum of understanding on Wildland Fire and Air Quality Coordination.

Methane Emissions

26. Methane is a potent greenhouse gas emitted from a variety of sources, including oil and gas operations, coal mines, landfills, agriculture, wastewater facilities, and natural sources. There are environmental and economic benefits of reducing methane emissions and opportunities for the beneficial use of this natural resource.
27. Many western states – in cooperation with industry in those states – have already implemented regulatory strategies that reduce methane emissions from oil and gas operations, while expanding the use and sale of methane.
28. In any federal methane regulation, federal agencies should: (1) ensure that the capture, commoditization, and sale of methane is supported; (2) give states the flexibility to integrate a variety of technologies and tools to achieve methane emission reduction standards; (3) recognize co-beneficial methane emissions reductions that result from existing state regulation of volatile organic compounds; (4) ensure federal rules are coordinated with states to ensure alignment of federal and state regulatory structures; and (5) work with states to ensure the consistent use of a single, clear method of quantifying methane emissions.
29. In regulating methane emissions, BLM and EPA should adequately consider states' environmental and economic concerns. Consultation between state and federal partners on rules regulating methane emissions is essential to the co-regulator relationship needed to improve air quality for our states.

Hydrofluorocarbon Emissions

30. Hydrofluorocarbons (HFCs) are a category of gases used in refrigeration and industrial applications that have the potential to significantly contribute to climate change. The federal American Innovation and Manufacturing Act of 2020 established federal restrictions on HFC production and consumption and will lead to a significant phasedown by 2036, but more action is needed. Any action taken by federal partners on refrigerant management should include consultation with states to ensure alignment of federal and state regulations.
31. Federal agencies should promote and fund research, development, and deployment of refrigerant alternatives to aid manufacturers, lower costs, and incentivize industry transitions to products compliant with state HFC restrictions. This includes updating federal building codes to safely allow the use of alternative refrigerants.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2027. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.



Policy Resolution 2024-01

Strengthening the State-Federal Relationship

A. **BACKGROUND**

1. Western Governors are proud of their unique role in governing and serving the citizens of this great nation. As the chief elected officials of sovereign states, they bear enormous responsibility and have tremendous opportunity. Moreover, the faithful discharge of their obligations is central to the success of the Great American Experiment.
2. It was the states that confederated to form a more perfect union by creating a national government with specific responsibilities for common interests. In this union, the states retained their sovereignty and much of their authority.¹
3. Under the American version of federalism, the powers of the federal government are narrow, enumerated and defined. The powers of the states, on the other hand, are vast and indefinite and encompass all powers of governance not specifically bestowed to the federal government by the U.S. Constitution. This principle is memorialized in the Tenth Amendment, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
4. This reservation of power to the states respects the differences between regions and peoples, recognizes a right to self-determination at a local level, and provides for flexible, tailored solutions to policy challenges. It also requires the federal government to engage with states – our nation's dynamic laboratories of democracy – on a government-to-government basis befitting their co-sovereign status.
5. In addition to states' reserved sovereign authorities, Congress has recognized state authority in federal statute by: (1) directing the federal government to defer to state authority, including such authority over land and water use, education, domestic relations, criminal law, property law, local government, taxation, and fish and wildlife; and (2) delegating federal authority to states, including the regulation of water quality, air quality, and solid and hazardous waste.
6. [Executive Order 13132](#), Federalism, reinforces these constitutional, statutory, and judicial principles and directs federal agencies to have an accountable process to ensure meaningful and timely input from state officials in developing policies with federalism implications.
7. The relationship between state and federal authority is complex and multi-dimensional. There are various contexts in which these authorities manifest and intersect:

¹ The U.S. Supreme Court has confirmed that, "[d]ual sovereignty is a defining feature of our Nation's constitutional blueprint" and "States entered the Union with their sovereignty intact." *See, e.g., Sossamon v. Texas*, 563 U.S. 277, 283 (2011).

- a) **State Primacy** – All powers not specifically delegated to the federal government in the Constitution. In the absence of Constitutional delegation of authority to the federal government, state authority should be presumed sovereign. *Examples: groundwater, wildlife management (outside of the Endangered Species Act), natural resources management, electric transmission siting.*
 - b) **Shared State-Federal Authority** – Fact patterns in which federal authority and state primacy intersect. *Examples: wild horses and burros on federal lands, interstate water compacts.*
 - c) **Federal Authority Delegated to States** – Federal authority that Congress has delegated to states by statute. Many such statutes require federal agencies to set federal standards (and ensure those standards are met) but authorize states to implement those standards. *Examples: water and air quality, solid and hazardous waste.*
 - d) **Federal Statutory or Other Obligations to States** – Where the federal government has a statutory, historical, or moral obligation to states. *Examples: Payments in Lieu of Taxes; Secure Rural Schools Act; shared mineral royalties; agreements to clean up radioactive waste that was generated by federal nuclear weapons production.*
 - e) **Exclusive Federal Authority** – Powers enumerated in the Constitution as exclusive powers of the federal government. In areas of exclusive federal authority, state law can be preempted if Congress clearly and unambiguously articulates an intent to occupy a given field or to the extent it conflicts with state law. *Examples: national defense, production of money.*
8. In contravention of the Founders’ design, the balance of power has shifted toward the federal government and away from the states. Increasingly prescriptive regulations tie the hands of states and local governments, dampen innovation, and impair on-the-ground problem-solving. Failures of the federal government to consult with states reflect insufficient appreciation for local knowledge, preferences, and competencies. In many cases, these federal actions encroach on state legal prerogatives, neglect state expertise, and/or infringe on state authority.
 9. The federal government often requires states to execute policy initiatives without providing the funding necessary for their implementation. State governments cannot function as full partners if the federal government requires them to devote their limited resources to compliance with unfunded federal mandates.
 10. State authority and autonomy is also eroded when prescribed federal policies become effectively mandatory through the contingency of federal funding streams that states depend on to deliver critical services.
 11. Too often, federal agencies: solicit input from states after a decision is already made or a public process is started; ask states to provide feedback on a proposed action without providing details or documents regarding what the agency is proposing; or do not respond to state input or incorporate feedback from states into their decisions. This does not afford states with the respect and communication required by law, and states currently have no

recourse for an agency's failure to consult except for litigation on the merits of a federal decision.

12. Congress and Executive Order 13132 currently require federal agencies to document the effects of their actions on states in certain circumstances. In practice, federal agencies rarely prepare these prescribed federalism assessments or statements. Even when federal agencies prepare such documents, they are not ordinarily informed by input from affected states. In addition, these documentation requirements only apply at the end of the rulemaking process and cannot substitute for early and meaningful consultation with states.
13. Federal agencies have suggested to states that there are legal or other barriers to state consultation, such as: federal agency policies restricting *ex parte* communications; concerns about the applicability of Federal Advisory Committee Act (FACA) procedures to meetings between state and federal officials; and issues with sharing information that would otherwise be exempt from disclosure under the Freedom of Information Act (FOIA).
14. Federal agencies do not adequately incorporate state data and expertise into their decisions. This can result in duplication, inefficiency, and federal decisions that do not reflect on-the-ground conditions. Consideration and incorporation of state, tribal, and local data and analysis will result in federal actions that are better-informed, more effectively coordinated among all levels of government, and tailored to the communities they affect.
15. Many of these issues stem from a profound misunderstanding throughout the federal government regarding the role and legal status of states. Over the past several years, Western Governors have worked to improve the federal government's understanding of state sovereignty, authority, and state-federal consultation; meaningful structural change, however, has yet to occur.

B. GOVERNORS' POLICY STATEMENT

1. A good faith partnership between states and the federal government will result in more efficient, economic, effective, and durable policy, benefiting the Governors' and the federal government's shared constituents and resulting in a nation that is stronger, more resilient, and more united.
2. Improving state-federal communication and coordination is a goal that transcends party lines, and it is among the Governors' highest priorities. The Governors urge Congress and the Executive Branch to make fundamental changes to realign and improve the state-federal paradigm.

State Sovereignty and Authority

3. States are co-sovereigns with the federal government pursuant to the Tenth Amendment of the U.S. Constitution and other federal law. Congress and federal agencies must recognize state sovereignty and must not conflate states with other entities or units of government. States should not be treated as stakeholders or members of the public.
4. State authority is presumed sovereign in the absence of Constitutional delegation of authority to the federal government.

- a) Federal legislative and regulatory actions should be limited to issues of national significance or scope, pursuant to federal constitutional authority. Preemption of state laws should be limited to instances of necessity.
 - b) Where Congress preempts state law (acting pursuant to federal constitutional authority), federal law should accommodate state laws, regulations, and policies before its enactment and permit states that have developed alternate standards to continue to enforce and adhere to them.
 - c) Federal agencies should construe federal law to preempt state law only when a statute contains an express preemption provision or there is some other compelling evidence that Congress intended to preempt state law.
5. Congress and federal agencies should respect the authority of states to determine the allocation of state administrative and financial responsibilities in accordance with state constitutions and statutes. It should further:
- a) Ensure that federal government monitoring is outcome-oriented;
 - b) Minimize federal reporting requirements; and
 - c) Refrain from dictating state or local government organization.
6. When a state is meeting the requirements of a delegated program, the role of a federal agency should be limited to the provision of funding, technical assistance and research support. States should have the maximum discretion to develop implementation and enforcement approaches within their jurisdiction without federal intervention. Federal agencies should recognize and credit states' proactive actions.
7. Congress and federal agencies should avoid imposing unfunded federal mandates on states. In addition:
- a) Federal assistance funds, including funds that will be passed through to local governments, should flow through states according to state laws and procedures;
 - b) States should have the flexibility to transfer a limited amount of funds from one grant program to another and to coordinate the administration of related grants;
 - c) Federal funds should provide maximum state flexibility without specific set-asides; and
 - d) Governors should have the authority to require coordination among state executive branch agencies, or between levels or units of government, as a condition of the allocation or pass-through of funds.
8. Congress and the Executive Branch should create or re-establish entities to discuss and act on federalism issues, in consultation with states. These entities should have the ability and resources to make recommendations to improve the state-federal relationship and include states in their membership or actively involve states in their discussions.

State-Federal Consultation

9. Federal agencies must engage in consultation with states on a government-to-government basis in accordance with states' legal status. Congress should clarify and promote the need for state-federal consultation.
10. Improving state-federal consultation will result in more effective, efficient, and long-lasting federal policy for the following reasons:
 - a) Governors have specialized knowledge of their states' environments, resources, laws, cultures, and economies that is essential to informed federal decision making;
 - b) Federal agencies can reduce duplication through the use and incorporation of state expertise, data, and documentation;
 - c) Authentic communication and information exchange will help federal agencies determine whether an issue is best addressed at the federal level; and
 - d) Through meaningful dialogues with affected states, federal agencies can also avoid unintended consequences and address or resolve state concerns.
11. Each Executive department and agency should have a clear and accountable process to provide each state – through its Governor or their designees – with early, meaningful, substantive, and ongoing consultation in the development of federal policies that affect states. The extent of the consultation process should be determined by engaging with affected states. At a minimum, this process must involve:
 - a) Conducting consultation through federal representatives who can speak or act on behalf of an agency;
 - b) Inviting states to provide input outside of a public process and before proposals are finalized;
 - c) Enabling states to engage with federal agencies on an ongoing basis to seek refinements to proposed federal actions prior to finalization;
 - d) Providing robust information and documents (including non-final, non-public, draft, and supporting documents) about potential federal actions, including proposed rules, to Governors or their designees;
 - e) Addressing or resolving, where possible, state issues, concerns, or other input unless precluded by law;
 - f) Documenting how state concerns were resolved or why they were unable to be resolved in final decisions; and
 - g) Making reasonable efforts to achieve consistency and avoid conflicts between federal and state objectives, plans, policies, and programs.

12. Governors affirm their reciprocal role in advancing a clear, predictable, timely, and accountable consultation process. Governors or their designees must continue to provide clear expectations for the appropriate scope and scale of consultation and must work with federal agencies to make consultation processes as efficient as practicable. As chief executives, Governors must also ensure the views of the state are clearly and consistently conveyed throughout the consultation process by prioritizing significant issues and resolving competing viewpoints across state government.
13. In many cases, federal agencies are required – whether by statute, executive order, regulation, policy, or other mandate – to consult, cooperate, and coordinate with states before taking action. However, due to states’ unique legal status, the need for federal-state engagement is not limited to express directives and should extend to any federal actions that may have direct effects on states, on the relationship between the federal government and states, or on the distribution of power or responsibilities among the various levels of government. Federal agencies should consult with states regarding what types of agency actions typically affect states and the extent of consultation required for these types of actions.
 - a) These actions include the implementation of federal statutes and the development, prioritization, and implementation of agency policies, rules, programs, reviews (e.g., Governor’s Consistency Reviews), plans (e.g., resource management plans), budget proposals and processes, strategic planning efforts (e.g., reorganization), and federal litigation or adjudication that affects states.
 - b) When a federal agency proposes to enter into any agreement or settlement that affects states, the agency should provide all affected Governors or their designees with notice of the proposal and consult with, and seek the concurrence of, Governors or their designees who respond to the notice.
14. Congress and the Executive Branch should require federal agencies to promulgate regulations in consultation with Governors, setting forth their procedures to ensure meaningful, substantive consultation with states on federal actions that affect states. This direction should also clarify that, for rulemakings affecting states:
 - a) An agency’s satisfaction of rulemaking requirements under the Administrative Procedure Act (including the solicitation of public comments) does not satisfy an agency’s obligation to consult with states; and
 - b) Consultation should occur before publication of a notice of proposed rulemaking or before an advanced notice of proposed rulemaking is submitted to the Office of Management and Budget (OMB).
15. Congress and the Executive Branch should consider the following additional accountability measures:
 - a) Requiring the designation of a federalism official with the responsibility for implementing state-federal consultation and publish this official’s name, title, and contact information on the agency’s website;

- b) Requiring OMB to regularly submit a report to Congress and Governors on state-federal consultation and implementation of agency consultation rules;
 - c) Requiring federal agencies to provide a summary of their efforts to consult with states, including a discussion of state input and how that input was considered or addressed, in any proposed and final rules;
 - d) Creating a process where Governors can notify OMB of an agency's failure to consult or comply with their consultation procedures; and
 - e) Providing an opportunity for Governors or their designees to seek judicial review of an agency's failure to consult.
16. Congress and the Executive Branch could make federalism reviews more effective by:
- a) Working with Governors to develop specific criteria and consultation processes for initiating and performing these reviews.
 - b) Providing Governors with an opportunity to comment on federalism assessments before any covered federal action is submitted to OMB for approval.
17. Congress and federal agencies should take the following actions to clarify that *ex parte* policies, FACA, and FOIA are not barriers to consultation:
- a) Federal agencies should (and Congress should require them to) clearly identify and provide rationale for any perceived barriers to consultation;
 - b) Federal agencies should clarify that consultation with state officials does not qualify as *ex parte* communications and that *ex parte* communications are not prohibited at any point during an informal rulemaking process;
 - c) Congress should clarify that meetings held exclusively between federal personnel and state elected officials or their designees acting in their official capacities or in areas of shared responsibilities or administration (and not for the purpose of obtaining collective advice) do not qualify as requiring compliance with FACA procedures; and
 - d) Congress should clarify that FOIA's exemptions apply to federal records shared or exchanged with states (as if those records were shared, exchanged, or created solely within the federal government) and create a statutory exemption to FOIA disclosure for state records in instances where publication of state records provided to federal agencies would violate existing state law.

State Data and Expertise

18. Federal agencies should utilize state data, expertise, and science in the development of federal actions that affect states.
19. Congress and the Executive Branch should, subject to existing state requirements for data protection and transparency, require agencies to incorporate state and local data and expertise into their decisions. This data should include scientific, technical, economic, social, and other information on the issue the agency is trying to address.
20. States merit greater representation on all relevant committees and panels advising federal agencies on scientific, technological, social, and economic issues that inform federal regulatory processes.

Local Agency Decision-Making Authority

21. Regional, state, and local federal agency offices, and their staff, serve as experts in the specific geographic areas in which they serve. These offices are also usually more attuned to the needs of their state partners. However, these offices are not typically entrusted to make strategic decisions on federal policies and programs affecting their areas and impacting the constituents being served. The knowledge of these local federal agency offices should be utilized to ensure federal policies are carried out in a manner that truly benefits the surrounding communities. Western Governors encourage local federal agency offices to continue developing relationships with their state counterparts in order to further promote and improve state-federal coordination. Furthermore, federal agencies should engage in enhanced cooperation with their local agency offices and empower such offices with decision-making authority to ensure federal programs can be deployed in a manner that reflects the nuanced needs of the surrounding communities.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2026. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult westgov.org/resolutions for the most current copy of a resolution and a list of all current WGA policy resolutions.