



E-Mailed to: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).  
Attention: Docket ID No. EPA-HQ-OAR-2009-0491

September 29, 2010

THE  
ENVIRONMENTAL  
COUNCIL OF  
THE STATES

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EPA Docket Center  
Attention Docket ID No. EPA-HQ-OAR-2009-0491, U.S.  
United State Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Sir/Madam:

**RE: ENVIRONMENTAL PROTECTION AGENCY  
40 CFR Parts 51, 52, 72, 78, and 97  
[EPA-HQ-OAR-2009-0491; FRL-9174-9]  
RIN 2060-AP50**

**Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and  
Ozone**

I am pleased to submit this comment letter on behalf of the members of the Environmental Council of the States (ECOS).

Michael J. Linder  
Director, Nebraska Department of  
Environmental Quality  
PRESIDENT

Richard Opper  
Director, Montana Department of  
Environmental Quality  
VICE PRESIDENT

Thomas Burack  
Commissioner, New Hampshire  
Department of Environmental Services  
SECRETARY-TREASURER

David K. Paylor  
Director, Virginia Department of  
Environmental Quality  
PAST PRESIDENT

ECOS and state environmental agencies have discussed a number of categories of state implementation costs as a result of implementing new rules with the United States Environmental Protection Agency's (EPA) Office of Policy (formerly the Office of Policy, Economics, and Innovation). For each new EPA rule, states may incur slightly different implementation costs. Cost categories may differ from state to state depending on unique legislative and regulated community differences as well. States ask that EPA consider state costs for a wide range of implementation start-up and recurring activities in its implementation cost estimation for this rule, as well as for other rules, as appropriate and using the attached checklist. ECOS requests EPA consider this full range of implementation cost items in its estimations for this rule before the final rule takes effect. ECOS also requests that EPA seek to secure federal funding for the states to cover the customary portion of the costs associated with the state implementation of this federal rule and consider the availability of funding support in its planning for new rule adoption schedules and other implementation activities following new rule issuance.

Start-up and recurring implementation costs to the states as a result of this rule are detailed in the attachment to this letter and may include, for example, obtaining additional delegated authority, attending EPA training, developing a system for monitoring affected entities, purchasing new equipment to enforce the new regulation, providing compliance assistance, conducting ongoing public outreach and education programs (to the regulated communities) on how to comply with the state agency's implementation of the rule, collecting and reviewing data from monitoring, recording and storing data, and conducting enforcement inspections and follow-up actions.

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R. Steven Brown  
Executive Director

ECOS appreciates that air rules are issued based on their public health benefit and not the costs in accordance with the Clean Air Act. Our view is that we do not necessarily object to the issuance of the rule, but the costs discussed here are those for a government agency, whether federal, state, or local, to implement and enforce the rule, and that no matter which level of government implements the rule, costs will have to be addressed. We seek to make sure here that all pertinent costs are included in any estimate the agency produces. Failure to include an accurate assessment of the implementation costs may result in a rule that is not implemented properly or in a timely manner, which may adversely affect human health.

ECOS requests that EPA concurrently publish implementation guidance for this rule to states at the time of new rule issuance. Timely issuance of implementation guidance would facilitate state adoption of the new rule as well as increase state and EPA staff resource efficiency in completing activities related to new rule adoption.

We appreciate the opportunity to offer these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Steven Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Steven Brown  
Executive Director

Attachment

**Table 3: Revised State Administrative Activity Cost Framework**

Start-Up Activity Categories	Specific Activities
1. Tracking EPA's Rulemaking Progress	<input type="checkbox"/> Review the Federal Register notices and/or other documents in order to decide whether to apply for delegated authority. <input type="checkbox"/> Attend EPA-sponsored meetings/conferences on the rulemaking <input type="checkbox"/> Attend other non-EPA meetings/conferences on the rulemaking <input type="checkbox"/> Provide EPA directly with comments on the proposed rule. <input type="checkbox"/> Provide EPA with comments on the proposed rule through a third party (e.g., ECOS). <input type="checkbox"/> Conducted other start-up activities associated with tracking EPA's rulemaking process.
2. Obtaining Additional Delegated Authority	<input type="checkbox"/> Work with EPA to obtain delegated authority <input type="checkbox"/> Amend state law to incorporate the requirements of the new regulation. <input type="checkbox"/> Issue new regulations in accordance with the requirements of state law <sup>1</sup> <input type="checkbox"/> Incur litigation costs associated with the change in state laws. <input type="checkbox"/> Conduct other start-up activities associated with obtaining additional delegated authority or the decision whether or not to obtain that authority.
3. Designing Implementation Plan	<input type="checkbox"/> Design alternative standards to those in the federal regulation <input type="checkbox"/> Perform activities related to obtaining EPA approval for the state implementation plan <input type="checkbox"/> Meet with stakeholders and respond to concerns <input type="checkbox"/> Conduct other start-up activities associated with designing implementation plans
4. General Start-Up Activities	<input type="checkbox"/> Develop internal guidance and procedures for implementing the new regulation <input type="checkbox"/> Hire additional staff because of this rule <input type="checkbox"/> Attend EPA training or other non-EPA sponsored training for implementing the new regulations <input type="checkbox"/> Conduct internal training <input type="checkbox"/> Conduct other start-up activities
5. Compliance Assistance	<input type="checkbox"/> Conduct outreach programs for affected entities <input type="checkbox"/> Conduct public outreach and education programs to create awareness <input type="checkbox"/> Develop training programs to help affected entities comply with the new regulation <input type="checkbox"/> Conduct other start-up activities associated with compliance assistance
6. Permit Administration	<input type="checkbox"/> Develop additional infrastructure for permit administration because of this rule <input type="checkbox"/> Develop specific permit requirements <input type="checkbox"/> Conduct other start-up activities associated with permit administration
7. Monitoring	<input type="checkbox"/> Develop a system for monitoring affected entities <input type="checkbox"/> Purchase new equipment for monitoring purposes <input type="checkbox"/> Develop new infrastructure for carrying out monitoring <input type="checkbox"/> Conduct other start-up activities associated with monitoring
8. Inspection and Enforcement	<input type="checkbox"/> Establish new procedures for enforcing the new regulation <input type="checkbox"/> Purchase new equipment for enforcing the new regulation <input type="checkbox"/> Conduct other start-up activities associated with enforcement
Recurring Activity Categories	Specific Activities
9. Compliance Assistance	<input type="checkbox"/> Conduct ongoing training (in addition to the initial start-up period) <input type="checkbox"/> Respond regularly to letters, phone calls, emails or other inquiries in order to assist affected entities; respond to inquiries by the media and the public <input type="checkbox"/> Conduct ongoing public outreach and education programs to create awareness <input type="checkbox"/> Conducted other recurring activities associated with compliance assistance
10. Permit Administration	<input type="checkbox"/> Conduct regular reviews of submitted documents and supporting materials <input type="checkbox"/> Verify data sources on a regular basis <input type="checkbox"/> Consult with facilities regularly about permitting process <input type="checkbox"/> Issue notifications to affected entities about permits <input type="checkbox"/> Provide opportunities for the public and/or stakeholders to comment on ongoing permitting processes <input type="checkbox"/> Issue/review permits to affected entities <input type="checkbox"/> Conduct other recurring activities associated with permit administration
11. Monitoring	<input type="checkbox"/> Collect data from monitoring on a continuous basis <input type="checkbox"/> Review collected data on a regular basis <input type="checkbox"/> Record and store monitoring data <input type="checkbox"/> Report monitoring data <input type="checkbox"/> Provide notifications of monitoring requirements and schedule <input type="checkbox"/> Conducted other recurring activities associated with monitoring.

**Table 3: Revised State Administrative Activity Cost Framework**

12. Inspection and Enforcement	<input type="checkbox"/> Conduct and review regular inspections for regulatory enforcement purposes <input type="checkbox"/> If a national inspection priority, conduct additional inspections as per state-region negotiated workplan <input type="checkbox"/> Respond to citizen complaints <input type="checkbox"/> Issue warnings and/or citations for violations <input type="checkbox"/> Take legal action to enforce regulation <input type="checkbox"/> Collect fines for violations <input type="checkbox"/> Provide notifications of enforcement actions <input type="checkbox"/> Keep records for enforcement actions <input type="checkbox"/> Report enforcement activities to EPA <input type="checkbox"/> Conducted other recurring activities associated with enforcement <input type="checkbox"/> Incur additional recurring costs associated with enforcement activities
13. Other	<input type="checkbox"/> Any other types of recurring activities not categorized above

<sup>1</sup>While some states may simply incorporate federal rules by reference, others must undergo an in-depth rulemaking process involving public notice, impact statements, rulemaking hearings, recordkeeping and various other steps