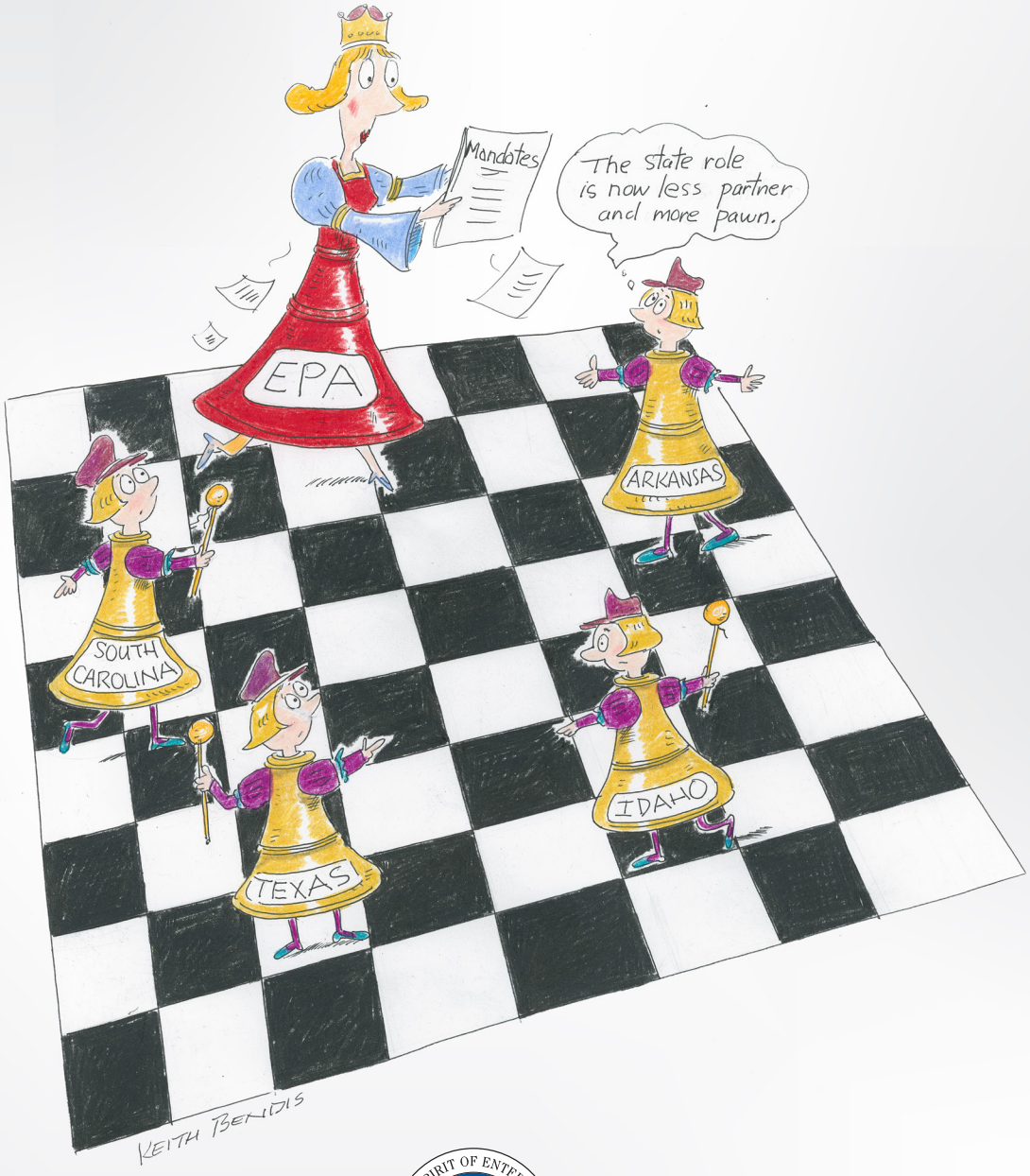
The Growing Burden of Unfunded EPA Mandates on the States



U.S. CHAMBER OF COMMERCE

Environment, Technology & Regulatory Affairs Division

ACKNOWLEDGMENTS

AUTHORS
William L. Kovacs, *Senior Vice President, Environment, Technology & Regulatory Affairs*
Joseph M. Johnson, *Executive Director, Federal Regulatory Process Review & Analysis*
Keith W. Holman, *Senior Policy Counsel and Managing Director*

The authors work in the U.S. Chamber's Environment, Technology & Regulatory Affairs Division.
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U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

The Growing Burden of Unfunded EPA Mandates on the States

No. 8 in a Series of Regulatory Reports

Executive Summary

William L. Kovacs
U.S. Chamber Senior Vice President for
Environment, Technology & Regulatory Affairs

Seven years ago, the U.S. Chamber of Commerce sought to unscramble the federal regulatory process in an attempt to identify the parts of the process that work and those that are broken. We wanted to understand the impacts those broken parts have on employment and how regulations fail to produce their intended results.

We looked at the permitting process for energy infrastructure projects, federal efforts to take control of state environmental programs, the impact of regulations on employment, how environmental advocacy groups use "sue and settle" tactics to create new federal policy, how the costs and benefits of new rules are estimated, whether agencies are honest in telling the public what they are regulating, and how regulations can impact vulnerable communities.[1]

The results were more remarkable than we anticipated. Although the federal regulatory process produces thousands of new regulations each year, only a tiny percentage of these regulations impose such overwhelming costs and complexity to have truly significant nationwide impact. Yet federal agencies issue these most complex and important regulations with the same ease as the most insignificant regulations. From the agency perspective, one process fits all—despite overwhelming evidence to the contrary.

We also observed the mechanisms used by advocacy groups to manipulate the regulatory process through the use of consent decrees with consenting agencies, gaming agency procedures to delay projects until funding was lost, and the willful failure of agencies to disclose to the public what they actually want to regulate. These devices—used widely by interest groups and their allies to steer the regulatory process for the benefit of a chosen few—make regulations far more complex and costly to society than necessary. Unfortunately, federal regulatory agencies embrace this complexity rather than adhere to procedural and analytic transparency in rulemakings.

[1] U.S. Chamber of Commerce, *Project No Project, Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects* (March 2011) available at http://www.projectnoproject.com/wp-content/uploads/2011/03/PNP_EconomicStudy.pdf; U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_lr_0.pdf; U.S. Chamber of Commerce, *Impacts of Regulations on Employment: Examining EPA's Oft-Repeated Claims That Regulations Create Jobs* (Feb. 2013) available at https://www.uschamber.com/sites/default/files/documents/files/020360_ETRA_Briefing_NERA_Study_final.pdf; U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (Aug. 2014) available at https://www.uschamber.com/sites/default/files/021615_fed_regs_costs_benefits_2014reportrevise_jrp_fin_1.pdf; U.S. Chamber of Commerce, *Truth in Regulating: Restoring Transparency to EPA Rulemaking* (April 2015) available at https://www.uschamber.com/sites/default/files/021935_truthinregulating_opt.pdf; U.S. Chamber of Commerce, *Regulatory Indifference Hurts Vulnerable Communities* (Feb. 2016) available at https://www.uschamber.com/report/regulatory-indifference-hurts-vulnerable-communities; U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf.

Continuing the tradition of asking basic questions about the regulatory process, our eighth study, *The Growing Burden of Unfunded EPA Mandates on the States,* examines a challenge now facing the states: ***How can more and more federal mandates be implemented by the states without additional federal resources?*** This question took center stage in 2015, when the U.S. Environmental Protection Agency (EPA) issued three extraordinarily complex and costly new regulations (the "Waters of the United States" (WOTUS) rule, standards to control greenhouse gases from power plants under the "Clean Power Plan" (CPP) and a revised National Ambient Air Quality Standard [NAAQS] for ozone) over just six months. The states are expected to bear the majority of the burden of implementing and enforcing EPA's regulations.

Instead of being the system of cooperative federalism that Congress intended in the 1970s—where the federal and state governments work as partners to protect the environment—the current relationship between EPA and the states has become one-sided, with EPA imposing its will on the states. Becky W. Keogh, director of the Arkansas Department of Environmental Quality (DEQ), recently testified that "[t]he cooperative federalism model that has defined Arkansas' relation with the EPA beginning in the 1970s has morphed into something that can better be described as **coercive federalism**."[2]

The recent disintegration of the federal-state partnership can be traced to several factors that have grown worse over the past decade:

1. Presently, the respective states administer **96.5%** of all federal delegated environmental programs, yet federal categorical grants to states fund no more than **28%** of the amounts needed to run the programs of the 30 states that supplied us with information. The remaining funds must be obtained from state appropriations or fees on regulated entities within a state.

2. The real-dollar grant assistance to the states declined **29%** between 2004 and 2015, while EPA has imposed approximately **$104 billion** in new annual regulatory mandates on the states. In simple terms, the cost of EPA's regulations increased by 35% between 2004 and 2015, while EPA's categorical grants to the states for such programs declined by 29% during this same period.

3. Throughout this entire period, EPA asserted that its regulations did not impose any new unfunded costs on states, notwithstanding the fact that the states implement 96.5% of EPA's delegated regulations. Quantifying EPA's failure to recognize the unfunded cost of its regulations on states is the fact that while EPA issued 8,733 regulations from 2000 to 2015—and conducted a formal Regulatory Impact Analysis (RIA) for only 50 of those rules—EPA found that only **6** rules imposed a federal mandate on states.

4. Complicating matters, in cases where a state has balked at being forced to take on a new EPA mandate, EPA has responded by issuing a Federal Implementation Plan (FIP) in lieu of the state's implementation plan. In fact, the current administration has issued 50 FIPs between 2008 and 2014, which is more than 10 times the number of FIPs issued by all prior administrations combined since 1989.

[2] Letter from Becky Keogh, Director, Arkansas DEQ, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (March 2, 2016) at 1 (emphasis added), available at http://www.epw.senate.gov/public/_cache/files/89138698-8bc6-4cec-b624-eebe81b3e251/arkansas.pdf.

5. Most disturbingly, EPA's most recent rash of regulations positions the agency to do the following:

    - Direct the energy fuel mix of the states under the Clean Power Plan rule;
    - Assume regulatory control over vast portions of the land mass of the United States under its Waters of the United States rule; and
    - Determine where new projects and facilities can be built across the nation by determining which areas are in nonattainment under the new Ozone NAAQS regulations, thereby prohibiting the construction of new facilities or the expansion of existing ones.

Again, to quote Arkansas DEQ Director Keogh, "the state role is now less partner and more pawn."[3] Our Constitution set up a system of federalism in which those powers not granted to the federal government are reserved for the states. EPA's regulatory reign has transformed our nation from one founded on federalism to one of blatant federal commandeering of the states without compensation for the states' efforts.

Recommendations

Congress needs to take several specific steps to prevent EPA from commandeering the states:

- ***Redefine the term "mandate" in the Unfunded Mandates Reform Act (UMRA).*** A "mandate" should be defined as "any federal requirement that obligates a state or a subdivision of a state to expend state or local resources to comply."

- ***Require agencies to perform an analysis of probable unfunded mandate impacts***. Agencies must calculate the costs of implementing the biggest federal rules that will be borne by state and local governmental bodies, then consult with the states ***before*** proposing such rules.

- ***Agencies should be prohibited from issuing new regulations that impose unfunded mandates on states unless they demonstrate that states will have access to necessary funding for the new regulations.***

- ***States should have a right to obtain judicial review of agency failures to conduct UMRA cost analyses.***

- ***Congress should enact the Regulatory Accountability Act.*** The Regulatory Accountability Act modernizes the 70-year-old informal notice and comment rulemaking process for agencies whenever they develop their largest, most complex new regulations. The legislation would help give state and local governments more of a say in shaping the most important new rules.

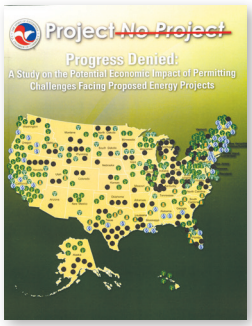
- ***Congress should enact the Sunshine for Regulatory Decrees and Settlements Act.*** This legislation would help ensure that states are consulted before agencies create new state and local mandates through settlements, by requiring public comment at least 60 days prior to the filing of the decree or settlement.

- ***Congress should reinstate the U.S. Advisory Committee on Intergovernmental Relations (ACIR).*** A revitalized ACIR could be an effective watchdog for cooperative federalism.

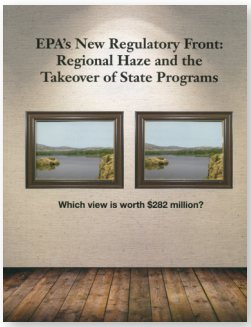
[3] *Id.*

Reports

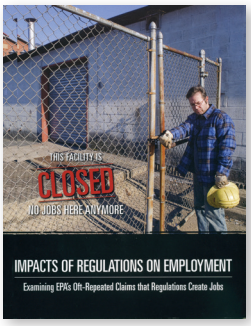
The U.S. Chamber has spent the past six years studying the causes of dysfunction in the current federal regulatory system. Chamber-issued reports have identified several problems with the current federal regulatory process:[4]



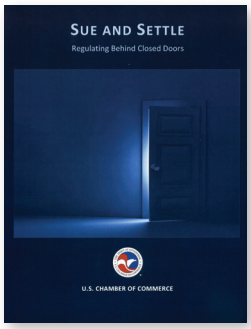
Understanding the costs of needless roadblocks to obtaining permits for new infrastructure projects (March 2011)



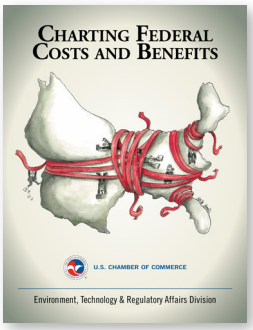
Understanding how federal agencies override states' regulatory discretion (July 2012)



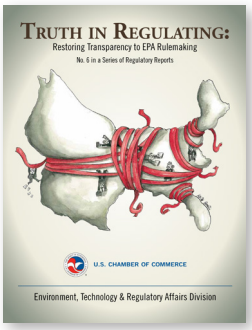
Understanding the impacts of regulations on employment loss and displacement (February 2013)



Understanding how private parties control agencies through the "sue and settle" process (May 2013)

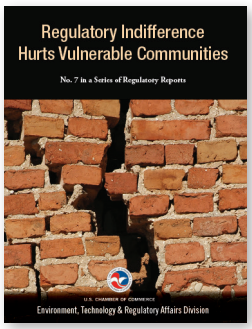


Understanding how a tiny number of new rules carry the vast majority of all additional regulatory costs and benefits (August 2014)



Understanding how EPA is not transparent in explaining the cost-per-ton of pollutant reductions, or what the public actually gets for its money (April 2015)

[4] U.S. Chamber of Commerce, *Project No Project, Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects* (Mar. 2011) available at http://www.projectnoproject.com/wp-content/uploads/2011/03/PNP_EconomicStudy.pdf; U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_lr_0.pdf; U.S. Chamber of Commerce, *Impacts of Regulations on Employment: Examining EPA's Oft-Repeated Claims that Regulations Create Jobs* (Feb. 2013) available at https://www.uschamber.com/sites/default/files/documents/files/020360_ETRA_Briefing_NERA_Study_final.pdf; U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf; U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (Aug. 2014) available at https://www.uschamber.com/sites/default/files/021615_fed_regs_costs_benefits_2014reportrevise_jrp_fin_1.pdf; U.S. Chamber of Commerce, *Truth in Regulating: Restoring Transparency to EPA Rulemaking* (April 2015) available at https://www.uschamber.com/sites/default/files/021935_truthinregulating_opt.pdf; U.S. Chamber of Commerce, *Regulatory Indifference Hurts Vulnerable Communities* (February 2016) available at https://www.uschamber.com/report/regulatory-indifference-hurts-vulnerable-communities.



Our February 2016 report, *Regulatory Indifference Hurts Vulnerable Communities*, found that when agencies make unfounded assumptions about new rules—even relatively small ones—industries and the communities where they are located can suffer major impacts. Our dysfunctional regulatory process allows agencies to issue rules that do far more local harm than good.

Although our previous reports have focused on the impact that federal regulatory decisions have on infrastructure projects, businesses, workers, and local communities, heavy burdens from these decisions also fall on the **states**. For example, the Chamber's May 2012 report, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs*, examined how EPA uses "sue and settle" agreements with environmental advocates to override state regional haze plans—and impose its preferred, more burdensome, requirements. In those cases, states have objected to having EPA take unilateral action that binds the states without their consent (and even without their knowledge). Moreover, the Chamber's May 2013 report, *Sue and Settle: Regulating Behind Closed Doors*, described situations where agreements entered into by EPA forced stringent new regulatory schemes on the states, even over the strenuous objections of the states themselves.[5]

EPA actions documented in our prior reports (e.g., overruling state regional haze plans, unilaterally imposing federal watershed requirements on Chesapeake Bay states, forcing cripplingly stringent new water quality standards on the state of Florida) have caused growing tension between the agency and the states. Making matters worse, within a period of less than six months in 2015, EPA finalized three massive new regulatory programs that are expected to have profound impacts on the states:

- EPA and the U.S. Army Corps of Engineers issued the **"Waters of the United States"** definition rule under the Clean Water Act.[6] The rule dramatically expands federal jurisdiction over land uses, usurps state and local water quality programs, and threatens property rights across the country.

- EPA issued new standards to control the emissions of greenhouse gases from new, modified, and existing power plants under the **Clean Power Plan**.[7] The rule gives EPA unprecedented control over the ways energy can be generated and used within the states, and could adversely affect the reliability and affordability of electricity in this country.

- EPA issued a revised, more stringent **National Ambient Air Quality Standard for ozone**.[8] The revised standard will force parts of several states into "nonattainment," making it very difficult for these areas to attract new businesses or grow existing ones.

Each of EPA's regulatory initiatives greatly expands federal power at the expense of state and local governments—and greatly expands the workload of the states. At the same time that EPA assigns new duties to the states, there is a growing concern that the states do not have adequate resources to do what it being asked of them.

For example, in May 2013, the U.S. Government Accountability Office (GAO) issued a report,

[5] U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* at 15–20.

[6] EPA and U.S. Army Corps of Engineers, "Definition of 'Waters of the United States,' Final Rule," 80 Fed. Reg. 37,054 (June 29, 2015).

[7] EPA, "Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources' Electric Utility Generating Units," Final Rule, 80 Fed. Reg. 64,509 (Oct. 23, 2015); EPA, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," Final Rule, 80 Fed. Reg. 64,661 (Oct. 23, 2015).

[8] EPA, "National Ambient Air Quality Standard for Ozone," Final Rule, 80 Fed. Reg. 65,292 (Oct. 26, 2015).

Funding for 10 States' Programs by Four Environmental Protection Agency Categorical Grants.[9] That report noted that:

> State environmental agencies use federal grants, in addition to their own funds, to help implement and enforce the nation's environmental laws. . . . As the nation slowly recovers from the economic downturn that began in 2007, the importance of federal grants has increased, as some states have reduced their funding for certain environmental programs to address decreased state revenues and significant deficits in funding.[10]

The GAO study concluded that in several states "the effects from those cuts include permitting backlogs, decreased capacity to conduct permitting and monitoring activities, and loss of outreach and technical assistance activities."[11]

Similarly, on March 18, 2015, the Environmental Council of the States (ECOS)—a national group that advocates for the interests of environmental agencies in the states—in a resolution titled "On Environmental Federalism," noted that "federal financial support to implement environmental programs delegated to the states has declined since 2005" and "cuts in federal and state support adversely affects [sic] the states' ability to implement federal programs in a timely manner."[12] The resolution also notes that "where the federal government requires that environmental actions be taken, the federal government ought to fund those actions, and not at the expense of other state programs."[13]

How Did Congress Intend the Federal-State Relationship to Work?

Under the principle of cooperative federalism, the states assist the federal government in implementing nationwide programs and policies, using state agencies and state personnel to administer and enforce federal laws that the federal government by itself cannot.[14] Cooperative federalism has been the mechanism Congress has chosen to effect such sweeping federal policies as public housing and welfare programs, education, civil rights, and public health, environmental, and occupational safety standards. In return, the federal government provides technical guidance, a uniform regulatory structure, and—significantly—**federal funding** support for state activities that actually carry out federal policies. Examples of federal funding incorporated into these cooperative federalism programs include block grants (e.g., Community Development Block Grants), formula grants (e.g., the Aid to Families with Dependent Children program), and categorical grants (e.g., the Head Start program).

Congress also explicitly designed the 1970 Clean Air Act (CAA) and other environmental laws to work on a cooperative federalism model.[15] Congressman Harley Staggers, the floor manager of the House version of the CAA, clearly articulated why the states are essential co-regulators with EPA: "[i]f we left it all to the federal government, we would have about everybody on the payroll of the United States."[16] Indeed, the EPA has historically provided the states with grants, known as categorical grants, to assist them in implementing the various statutes. Section 105 of the CAA provides that EPA has the authority to make categorical grants to state air pollution

[9] GAO, *Funding for 10 States' Programs Supported by Four Environmental Protection Agency Categorical Grants*, Report No. 13-504R (May 6, 2013).

[10] *Id.* at 1.

[11] *Id.* at 4.

[12] ECOS Resolution, "On Environmental Federalism," Resolution 00-1 (revised March 18, 2015) at 2.

[13] *Id.* at 3.

[14] J.P. Dwyer, *The Practice of Federalism Under the Clean Air Act*, 54 MD. L. REV. 1183, 1183-84 (1995).

[15] *Id. See also Train v. Natural Resources Defense Council, Inc.*, 421 U.S. 60, 79 (1975) ("Thus, so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.").

[16] 116 Cong. Rec. 19,204 (1970) (comments of Rep. Staggers).

control agencies in amounts up to **60%** of their program costs.[17] Congress understood that the states—not federal authorities—are best equipped to deal with implementation and enforcement issues, ***if*** they are given adequate resources:

> In 1963, Congress recognized that the federal government could not handle the enforcement task alone, and that the primary burden would rest on the State and local governments. . . . On all levels, the air pollution control program has been underfunded and undermanned. To implement the greater responsibilities of this bill, great financial commitments will have to be made and met at all levels.[18]

Congress clearly intended in 1970 that EPA provide state agencies with sufficient grant funding (up to 60% of their program costs) to enable them to do the job of implementing and enforcing the CAA:

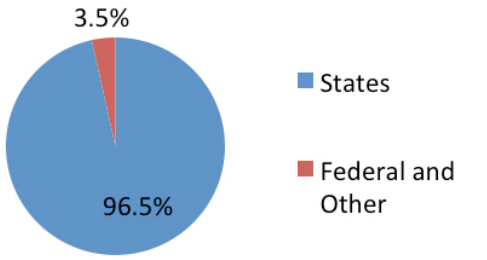
> The Committee [on Public Works] expects that the grantmaking authority in section 105 will be used to make three-to-one support (three to two in case of maintenance support) grants available to the States.[19]

Thus, the ultimate success of EPA's CAA programs and those under other laws depends on the states' ability to perform their responsibilities, which in turn depends on the resources available to the states themselves.

The States Do Almost All of the Work Implementing and Enforcing Environmental Laws

According to ECOS, in 2013, the states implemented approximately **96.5%** of federal environmental laws through delegated programs.[20] State agencies also conduct **90%** of all environmental inspections, enforcement actions, and data collection, and they issue the vast bulk of the permits needed to build or operate a facility.[21]

Figure 1: Implementation of Federal Environmental Programs



Source: ECOS

In a February 15, 2013, hearing before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, an ECOS witness testified that **"[S]tates find themselves in 2013 with a lot more [environmental] rules, and the possibility of a lot less money to implement them. States are very unsure how much longer these two trends can continue before the core environmental programs in each state begin to significantly suffer."**[22]

[17] 42 U.S.C. § 7405(a).

[18] 116 Cong. Rec. 32,901 (1970) (comments of Sen. Ed Muskie).

[19] S. Rep. No. 91-1196, *National Air Quality Standards Act of 1970: Report of the Committee on Public Works United States Senate Together With Individual Views to Accompany S. 4358*, 91st Cong., 2d Sess. 5 (Sept. 17, 1970); Prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress for the Committee on Public Works, U.S. Senate. *See A Legislative History of the Clean Air Amendments of 1970*, Vol. I. 405 (1974).

[20] Testimony of Teresa Marks, Director, Arkansas Department of Environmental Quality, and President, Environmental Council of the States, before the House Energy and Commerce Committee, Subcommittee on Environment and the Economy (Feb. 15, 2013) at 3, available at http://docs.house.gov/meetings/IF/IF18/20130215/100242/HHRG-113-IF18-Wstate-MarksT-20130215.pdf.

[21] *Id.*

[22] *Id.*

The Question:

In light of the concerns voiced by ECOS and the GAO report, the Chamber sought to better understand the effect that federal funding levels have on state environmental agencies, and the degree to which the states are now being "commandeered" by EPA to take on aggressive new regulatory programs without adequate resources or technical assistance from the federal government.

What Did Our Research Reveal?

In October 2015, the Chamber made a Freedom of Information Act (FOIA) request to EPA to provide the amount of annual grant funding it provides to the individual state environmental agencies. The Chamber received EPA's final response to our FOIA request on February 25, 2016. The FOIA response detailed the total categorical grant amounts it provided to the states in fiscal year (FY) 2013 and FY2014, along with estimated funding levels for FY2015 and FY2016. *See* Appendix A for EPA's FOIA response.

Also in October 2015, the Chamber petitioned all 50 states through open records requests for a breakdown of their environmental agency expenditures and the associated grant funding they received from EPA. We sought to discover how much funding the EPA provides to states to assist in their efforts to implement federal environmental requirements. In total, the Chamber received responses from 39 of the 50 states. *See* Appendix B for summaries of the state open records responses. The responses we received varied significantly from state to state in terms of completeness and level of detail. A total of 30 states provided data that we believe have sufficient quality and detail to allow state-to-state comparisons. Table 1 provides a summary of the 30 states' comparative data.

After evaluating the information provided by EPA and the 30 state environmental agencies, we decided to focus specifically on the amounts of EPA grant funding given to state air quality programs each year in support of meeting CAA requirements. The funding relationship between EPA and state air programs is fairly straightforward and simple. By contrast, other state programs receive grant funding from multiple sources (e.g., infrastructure grants versus categorical grants for program implementation), and untangling the many grant programs and activities that characterize the state-EPA relationship is difficult in many states.

Furthermore, the overwhelming majority of new EPA regulatory requirements arise from new air quality rules. **Thus, a critical question is the extent to which EPA funding keeps pace with new mandates imposed on state air quality programs.**

EPA Funding Levels for Nine State Air Quality Programs

Based on the information provided to the Chamber, we can specifically evaluate the extent to which EPA provides grant funding for clean air programs in nine states, together with the air quality budgets of those nine states. By matching EPA grant data for state air programs with state air program budget data, the Chamber was able to compare air program expenditures the nine states had in 2013 and 2014 with EPA grant funds for those years. Because the EPA data also extend to proposed ("prop." in Tables 2 through 10) grant funding for 2015 and 2016, we have some indication of EPA's funding priorities going forward.

Table 1: FY2014: State Environmental Agency Budgets						
	Federal Funds	**Fees**	**General Funds**	**Other Funds**	**Total Budget**	**Federal Funds % of Total**
Arizona	$18.9	$82.6	n/a	$39.6	**$141.1**	*13.4%*
Colorado	$22.3	$46.9	$5.5	$0.4	**$75.1**	*29.7%*
Florida	$151.6	$767.4	n/a	$221.6	**$1,141.5**	*13.3%*
Georgia	$28.8	$56.8	$25.9	n/a	**$111.5**	*25.8%*
Idaho	$40.2	$3.5	$14.8	$7.9	**$66.4**	*60.5%*
Illinois	$62.3	n/a	n/a	$234.9	**$297.2**	*21.0%*
Iowa	$18.8	$27.4	$3.6	$4.9	**$54.7**	*34.4%*
Louisiana	$22.8	n/a	$2.8	$98.1	**$123.7**	*18.4%*
Maine	$20.7	n/a	$6.4	$48.0	**$75.1**	*27.6%*
Maryland	$73.4	$249.4	$36.6	n/a	**$359.3**	*20.4%*
Michigan	$150.8	n/a	$29.1	$327.3	**$517.2**	*29.2%*
Missouri	$41.6	n/a	$11.8	$241.1	**$294.5**	*14.1%*
Montana	$19.9	$32.2	$5.2	n/a	**$57.3**	*34.7%*
Nebraska	$30.0	$31.5	$5.4	n/a	**$66.9**	*44.8%*
Nevada	$12.3	$17.4	$0	n/a	**$29.7**	*41.4%*
New Jersey	$194.9	$9.9	$331.0	n/a	**$535.8**	*36.4%*
New Mexico	$21.3	$37.9	$11.5	$40.0	**$110.7**	*19.3%*
New York	$79.2	$265.8	$111.6	n/a	**$456.6**	*17.3%*
North Dakota	$8.5	$12.3	$30.0	n/a	**$50.8**	*16.7%*
Pennsylvania	$256.4	$215.4	$949.8	$227.2	**$1,648.8**	*15.6%*
South Carolina	$26.5	$22.4	$30.0	$8.7	**$87.6**	*30.3%*
South Dakota	$7.5	n/a	$5.8	$9.1	**$22.4**	*33.5%*
Tennessee	$67.0	$68.5	$117.7	n/a	**$253.1**	*26.5%*
Texas	$58.0	$445.0	$12.2	$4.2	**$519.4**	*11.2%*
Utah	$19.5	$8.7	$11.0	$13.9	**$53.1**	*36.7%*
Vermont	$10.3	$13.1	$9.4	$15.2	**$48.0**	*21.5%*
Virginia	$56.0	$73.0	$37.4	$56.0	**$222.4**	*25.2%*
Washington	$73.5	$40.9	$26.0	n/a	**$140.4**	*52.4%*
West Virginia	$95.3	$87.3	$6.5	$52.0	**$241.1**	*39.5%*
Wisconsin	$45.1	$18.3	$38.8	$86.1	**$188.3**	*24.0%*

Texas

Table 2: CAA EPA Grants to Texas Compared With TDEQ CAA Budget				
	(millions current-year dollars)			
	2013	2014	2015	2016
TDEQ CAA Budget	$120.17	$121.01	n/a	n/a
EPA CAA Funding	$8.9	$11.18	$11.11 (prop.)	$13.05 (prop.)

Sources: Texas DEQ and EPA

Note: The federal fiscal year ends September 30, but the Texas fiscal year ends August 31. This discrepancy may result in some differences in fund allocation, depending on disbursement dates and how the state allocates budgets.

Table 2 shows the total amount of funding that the Texas Department of Environmental Quality (TDEQ) allocates for CAA programs. In 2014 that amount was just over $121 million, but the grant from EPA was just $11.8 million, which is only **9.3%** of the amount TDEQ budgeted to its CAA activities. The remainder of the funding that TDEQ uses for CAA programing is obtained from permit and licensing fees.

South Carolina

Table 3: CAA EPA Grants to South Carolina DEHC Compared With DEHC CAA Budget				
	(millions current-year dollars)			
	2013	2014	2015	2016
DHEC CAA Budget	$3.0	$5.6	n/a	n/a
EPA CAA Funding	$2.1	$2.1	$2.08 (prop.)	$2.45 (prop.)

Sources: South Carolina DHEC and EPA

Table 3 shows EPA air quality grant funding to the South Carolina Department of Health & Environmental Control (DHEC), and South Carolina's CAA budget. EPA air grants to South Carolina represented the largest EPA share of state CAA spending in any state that responded to the Chamber's request for information—about 48% on average. However, South Carolina's self-reported spending on CAA programs represents a much smaller portion of the state environmental budget than in any other state, just 6.4% of that total in 2014. Note that South Carolina's CAA budget nearly doubled from 2013 to 2014 and will likely increase further due to additional air quality mandates.

New Mexico

Table 4: CAA EPA Grants to New Mexico Environment Department Compared With Environment Department CAA Budget				
	(millions current-year dollars)			
	2013	2014	2015	2016
Environment Department CAA Budget	$7.4	$8.5	n/a	n/a
EPA CAA Funding	$3.3	$2.5	$2.47 (prop.)	$2.91 (prop.)

Sources: New Mexico Environmental Department and EPA

Table 4 shows the New Mexico Environment Department's CAA budget along with EPA's clean air grants to the state in 2013 and 2014. EPA grants have averaged about 36% of New Mexico's total CAA budget. Significantly, however, the amount the state received from EPA declined by a third between 2013 and 2014, even as the state's budget increased by 15% in that year alone.

West Virginia

Table 5: CAA EPA Grants to West Virginia DEP Compared With DEP CAA Budget				
	(millions current-year dollars)			
	2013	2014	2015	2016
DEP CAA Budget	$7.8	$8.6	n/a	n/a
EPA CAA Funding	$1.9	$1.9	$1.85 (prop.)	$2.17 (prop.)

Sources: West Virginia DEP and EPA

In Table 5, EPA clean air grants to West Virginia are shown with the West Virginia Department of Environmental Protection's (WVDEP) CAA budget. The state receives on average 23% of the funds required to implement CAA requirements from EPA grants.

Importantly, West Virginia is projected to have one of the most burdensome paths forward under the CPP. In a letter to the Senate Environment and Public Works (EPW) Committee, Secretary Randy Huffman of WVDEP criticized EPA's CPP requirements for subjugating state interests, saying "[under] EPA's regulations, the federalism embodied in section 111(d) [of the Clean Air Act] is only illusory."[23] Secretary Huffman went on to state that **"[t]he development and implementation of [the CPP] has placed a huge burden on states without providing any new resources whatsoever."**[24]

Furthermore, Secretary Huffman noted that although the EPA issued "non-binding" guidance with the Clean Energy Incentive Program (CEIP) as a complement to the CPP, the CEIP is an "example of EPA's use of a non-regulatory docket to develop guidance that will be binding on states in development of compliance plans subject to EPA approval."[25] In essence, EPA is assuming control of the entire state electricity generation infrastructure through its compliance plan approval process, yet the states are forced to commit the extensive resources necessary to completely transform their electricity infrastructure to please EPA.

Utah

Table 6: CAA EPA Grants to the Utah DEQ Compared With DEQ CAA Budget

	(millions current-year dollars)			
	2013	2014	2015	2016
DEQ CAA Budget	$12.3	$13.5	n/a	n/a
EPA CAA Funding	$2.95	$3.0	$3.0 (prop.)	$3.5 (prop.)

Sources: Utah DEQ and EPA

EPA clean air grants to Utah are compared with the Utah Department of Environmental Quality CAA budget in Table 6. Over the 2013–2014 period, EPA grants averaged 23% of Utah's CAA budget.

Missouri

Table 7: CAA EPA Grants to the Missouri DEQ Compared With DEQ CAA Budget

	(millions current-year dollars)			
	2013	2014	2015	2016
DEQ CAA Budget	$16.0	n/a	n/a	n/a
EPA CAA Funding	$3.3	$3.5	$3.5 (prop.)	$4.1 (prop.)

Sources: Missouri DEQ and EPA

Table 7 shows the Missouri Department of Natural Resources, Division of Environmental Quality (DEQ) CAA budget compared with EPA clean air management grants to the state. In 2013, the only year of data Missouri provided, EPA grants were 20.6% of the state CAA budget.

Idaho

Table 8: CAA EPA Grants to the Idaho DEQ Compared With DEQ CAA Budget

	(millions current-year dollars)			
	2013	2014	2015	2016
Total DEQ CAA Budget	$6.5	$6.8	n/a	n/a
EPA CAA Funding	$1.9	$1.8	$1.8 (prop.)	$2.1 (prop.)

Sources: Idaho DEQ and EPA

Table 8 compares amounts for clean air management grants reported by EPA with the Idaho Department of Environmental Quality clean air budget. EPA grants comprise, on average, 28% of the funds necessary to implement and enforce CAA programs in Idaho.

In a letter to the Senate EPW Committee, Idaho's DEQ echoed the sentiments of other states in remarking that **"federal requirements continue to increase while federal funding has**

[23] Letter from Randy C. Huffman, Cabinet Secretary, West Virginia Department of Environmental Protection, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (Feb. 19, 2016) at 2, available at http://www.epw.senate.gov/public/_cache/files/e78f9874-f661-4b53-83ba-8ac0ab810ee4/west-virginia.pdf.

[24] *Id.* at 3 (emphasis added).

[25] *Id.* at 3.

largely remained stagnant or in many cases has decreased. This trend is burdensome to our department, jeopardizes state primacy in many areas, and hampers our commitment to quality public service for Idaho citizens."[26]

In most cases, states do not complain about a single EPA program that imposes a massive burden on the state budget—although for many states the CPP may come close. Instead, the problem is the near constant, often overlapping, flow of new requirements and required revisions to existing State Implementation Plans (SIPs)—typically developed at a major cost of time and staff resources. Idaho commented that even as it has had to devote significant resources to developing a PM2.5 SIP on a very short timetable, the requirements of the CPP will almost certainly place an unprecedented strain on the department's budget. As Idaho's comment to the EPW stated, **"new and ongoing tasks strain already stretched resources, particularly when federal funding used to support DEQ's air quality program has been reduced each of the last three years while salary, benefit, and other costs in the state have increased."**[27]

Tennessee

Table 9: CAA EPA Grants to the Tennessee DEC Compared With TDEC CAA Budget

	(millions current-year dollars)			
	2013	2014	2015	2016
Total TDEC CAA Budget	$17.6	$17.9	n/a	n/a
EPA CAA Funding	$3.6	$3.7	$3.67 (prop.)	$4.3 (prop.)

Sources: Tennessee DEC and EPA

Table 9 compares award amounts for air management grants reported by EPA with the Tennessee Department of Environment and Conservation (TDEC) clean air account budget. EPA CAA implementation grants to Tennessee comprise, on average, 20% of the state's CAA budget. Tennessee will face additional budgetary pressure to meet requirements for the CPP, ozone, and other clean air mandates.

Oklahoma

Table 10: CAA EPA Grants to the Oklahoma DEQ Compared With DEQ CAA Budget

	(millions current-year dollars)			
	2013	2014	2015	2016
Total DEQ CAA Budget	$14.5	$13.5	n/a	n/a
EPA CAA Funding	$3.6	$2.7	$2.65 (prop.)	$3.1 (prop.)

Sources: Oklahoma DEQ and EPA

Table 10 compares award amounts for air management grants reported by EPA with the Oklahoma Department of Environmental Quality clean air account budget. Oklahoma receives from EPA only about 22% of the funds necessary to implement CAA requirements. In response to the Senate EPW inquiry, Oklahoma stated that funding for CAA programs was not currently a serious concern but that "any additional major unfunded mandates from EPA could strain the program's resources."[28] With the CPP and the litany of additional upcoming CAA deadlines, Oklahoma is likely to face budget pressures in the coming years, as federal funds to undertake these new requirements are not forthcoming.

[26] Letter from John H. Tippets, Director, Idaho Department of Environmental Quality, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (Feb. 11, 2016) at 1 (emphasis added), available at http://www.epw.senate.gov/public/_cache/files/272d2f70-d234-4d20-87bd-490a8061575a/idaho.pdf.

[27] *Id.* at 2 (emphasis added).

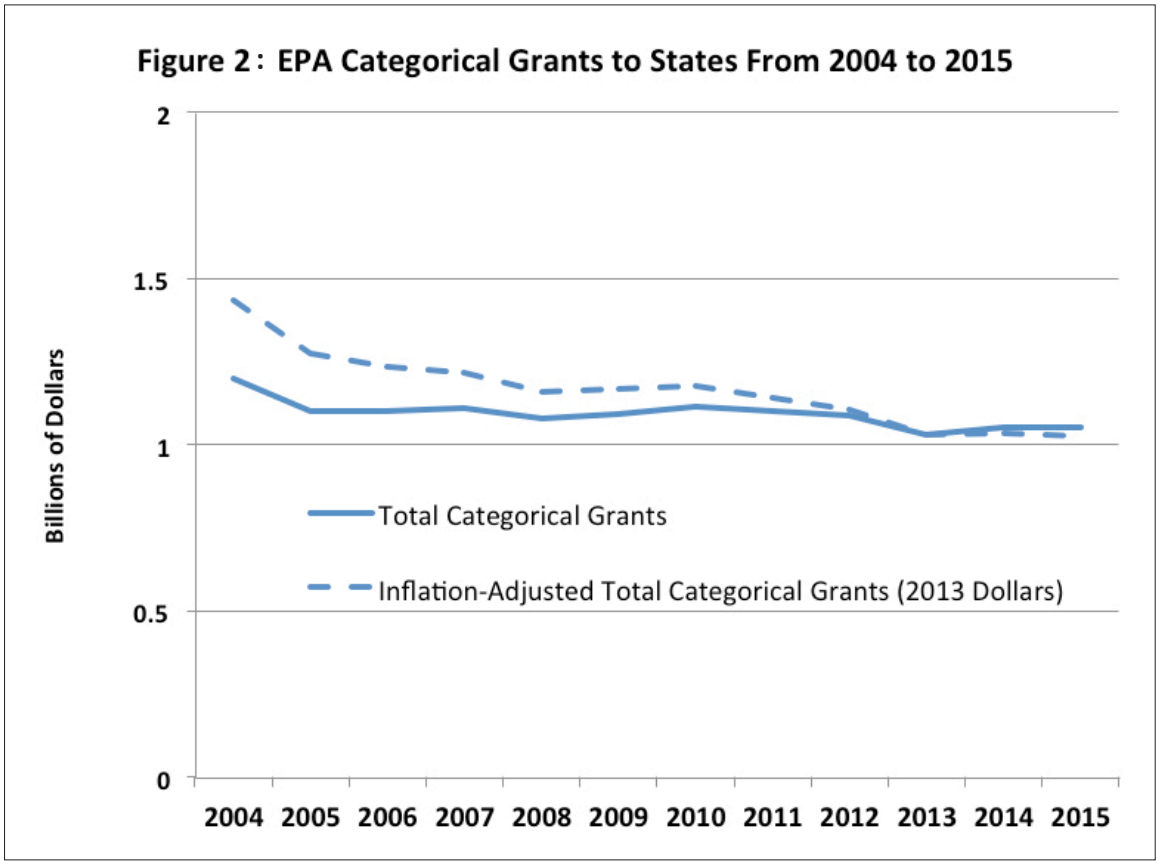
[28] Letter from Scott A. Thompson, Executive Director, Oklahoma Department of Environmental Quality, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (Feb. 4, 2016) at 3, available at http://www.epw.senate.gov/public/_cache/files/288647f3-5f63-4040-a1f7-e6df128f1594/oklahoma.pdf.

The Implications of Our Findings

Despite Flat Federal Funding Levels, EPA Does Not Hesitate to Impose Heavy New Mandates on the States

Yearly budget data collected by the Congressional Research Service between 2004 and 2015 demonstrate that EPA grants to the states have been flat or, in real terms, steadily declining since 2004.[29] In 2015, categorical grants to the states were about 29% lower in inflation-adjusted dollars than they were in 2004.

At the same time that EPA's real-dollar grant assistance to the states declined by 29%, the agency imposed approximately **$104 billion** in new annual regulatory obligations. As the figure below shows, the cost of new EPA regulations issued each year from 2004 through 2015 has significantly and continually increased.



Source: Congressional Research Service

[29] Likewise, the 2013 GAO report noted that "annual appropriations for these grants have decreased by approximately $85 million between fiscal year 2004 and fiscal year 2012." GAO, *Funding for 10 States' Programs Supported by Four Environmental Protection Agency Categorical Grants*,13-504R Information on EPA Categorical Grants (May 6, 2013).

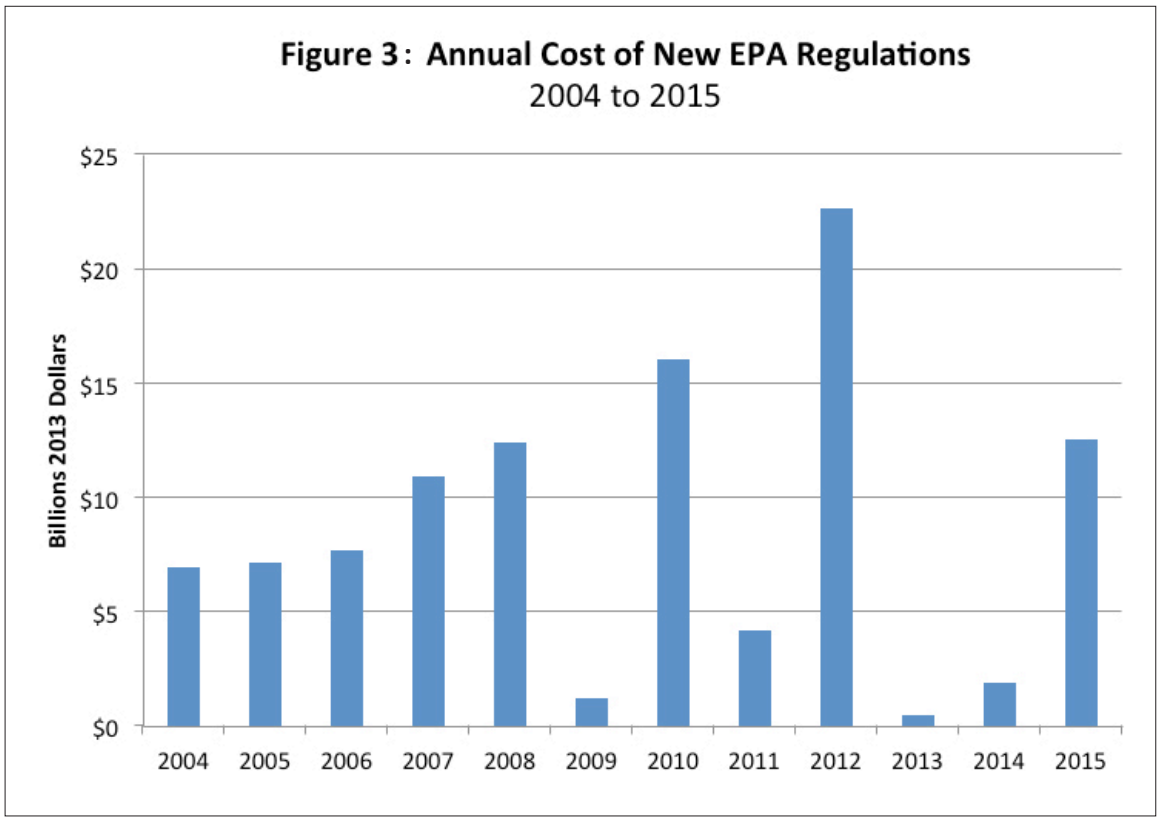
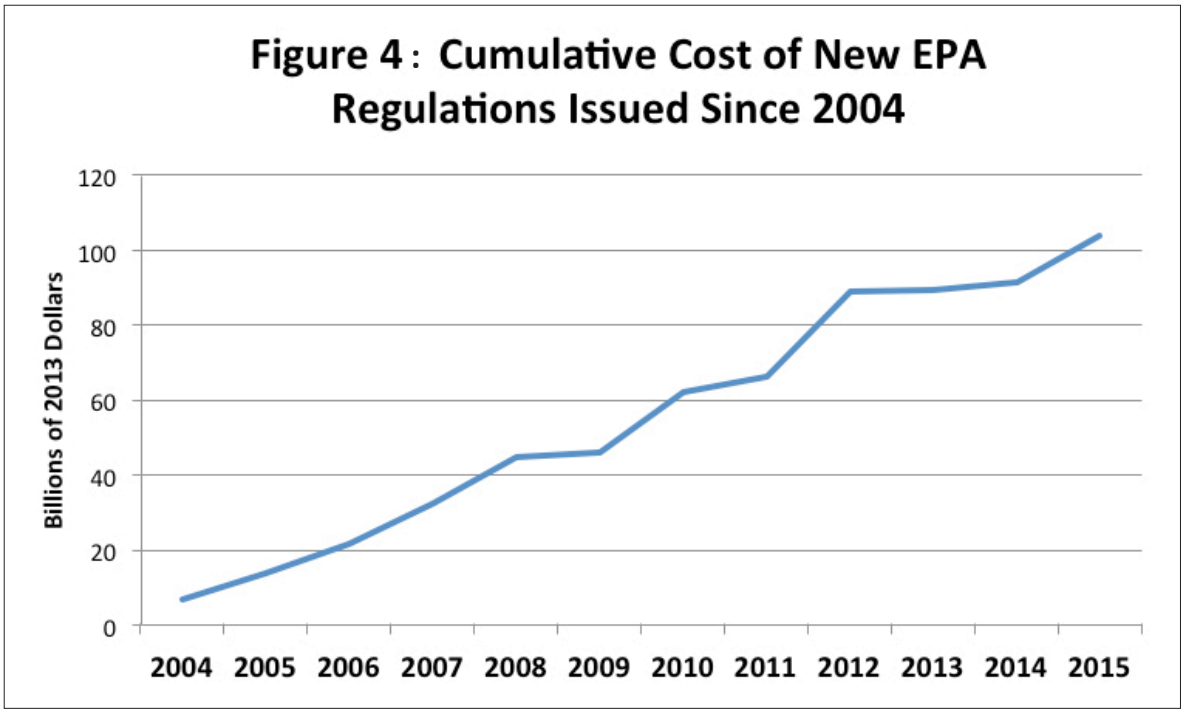


Table 11: Billion-Dollar-Plus EPA Regulations by Year: 2004 to 2015

2004: Interstate Ozone Transport/Control of Emissions from Non-road Diesel Engines
2005: Clean Air Interstate Rule/Regional Haze Rules and Guidelines for BART Determinations
2006: NAAQS for Particulate Matter
2007: Clean Air Fine Particle Implementation Rule
2008: Ozone NAAQS/Lead NAAQS
2010: NAAQS for Sulfur Dioxide
2011: Boiler MACT
2012: Utility MACT
2015: Definition of "Waters of the United States"[30]/Clean Power Plan/Ozone NAAQS

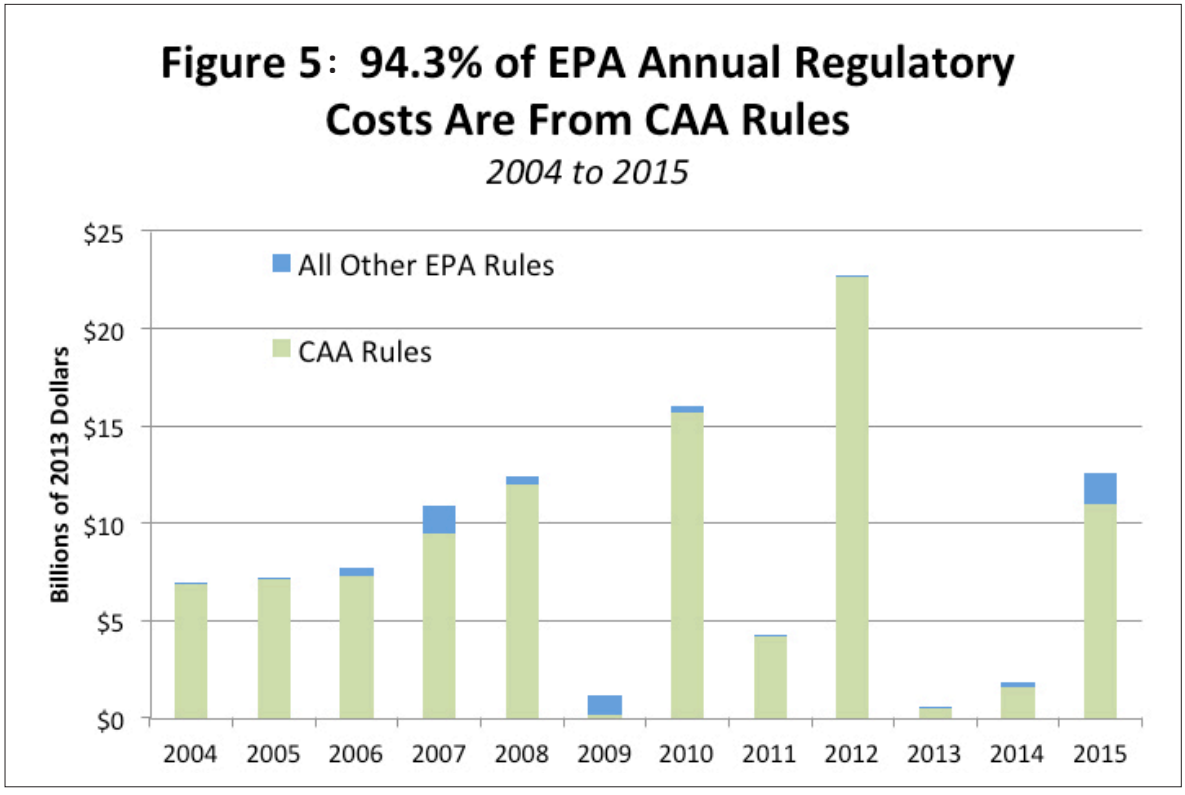
Sources: EPA and Federal Register

[30] EPA has consistently maintained that the WOTUS rule would cost no more than $463 million annually, but industry and state and local government officials have presented a strong case that the expansion of federal regulatory authority, Clean Water Act permitting, and resulting significant project cancellations or modifications—none of which EPA has modeled or estimated the costs of—will be substantial and vastly exceed the $1 billion mark.



Sources: EPA and Federal Register

Virtually all of these new mandates are **air quality** mandates, as shown below.



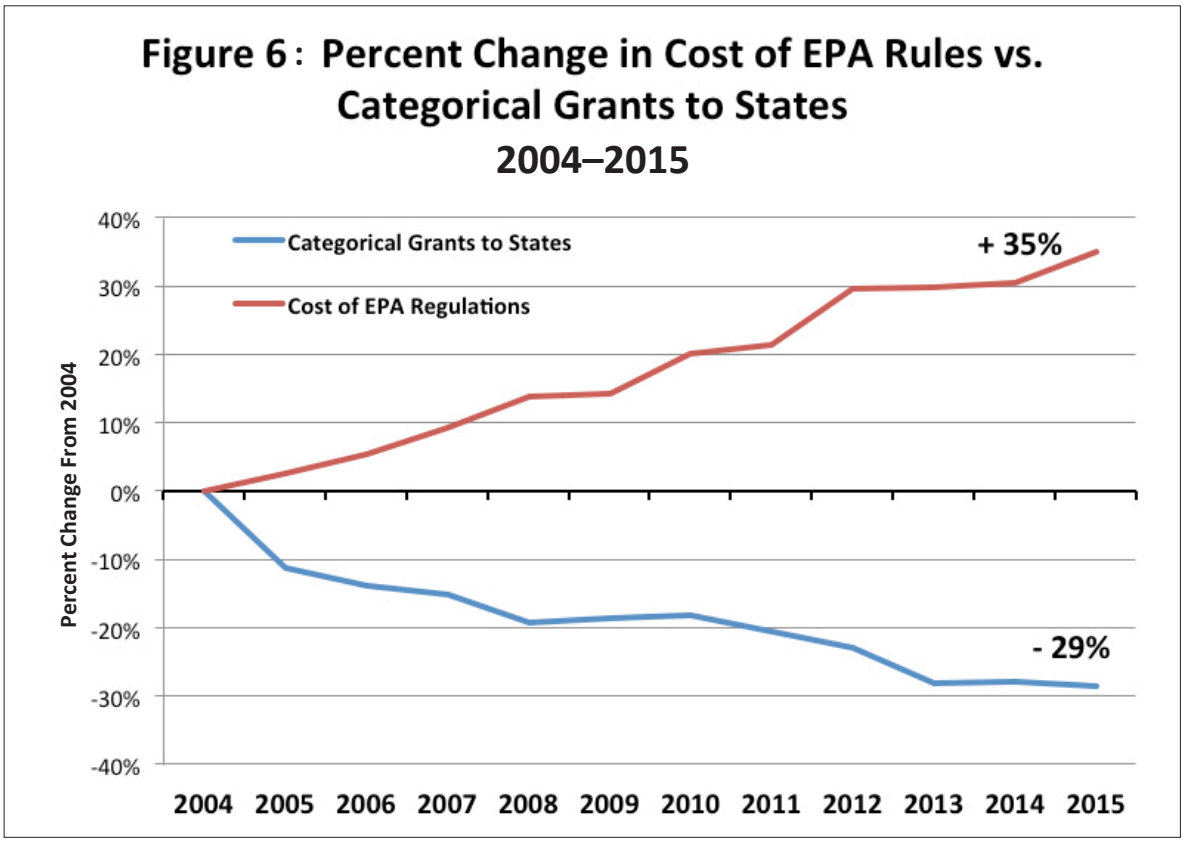
Sources: EPA and Federal Register

While much of this new regulatory burden is borne by businesses and the private sector, these regulations also shift to the states the task of creating workable implementation and enforcement plans—and then administering them. Several of the major federal rulemakings finalized between 2004 and 2015 have required state agencies to rewrite state rules, revise implementation plans, conduct additional air quality monitoring and/or modeling, and revise and reissue permits. These activities require large amounts of state agency staff time and resources. As an official from the Mississippi Department of Environmental Quality (MDEQ) recently observed:

> In regard to the Clean Air Act alone, recent EPA regulatory actions and changes have resulted in a convergence of deadlines that we anticipate will be difficult for us to manage. Just in the month of January, 2016, MDEQ staff was charged with meeting deadlines for commenting on the "Clean Power Plan" (CPP) draft federal implementation plan, the "Exceptional Events" rule, and the revised Cross State Air Pollution Rule (CSAPR). Over the next six calendar years, MDEQ will have the daunting task of developing State Implementation Plan amendments (including attendant interim deadlines) to address CPP, CSAPR, and EPA's recent "SIP call" addressing the long-standing Startup, Shutdown and Malfunction (SSM) defense. The deadlines related to the CPP, CSAPR, and SSM SIP call overlap (and in some cases conflict with) deadlines regarding compliance with regional haze rules, and sulfur dioxide and ozone National Ambient Air Quality Standards. We estimate that complying with all these deadlines will require the devotion, above and beyond what would otherwise be required to conduct core functions, of as many as eleven full time employees, in an agency of less than 425 total employees.[31]

As noted earlier, the states are responsible for implementing **96.5%** of environmental programs. Yet despite the growing regulatory burden described above, the amount of aid in the form of federal grants that EPA provides to the states for compliance assistance has not been keeping pace.

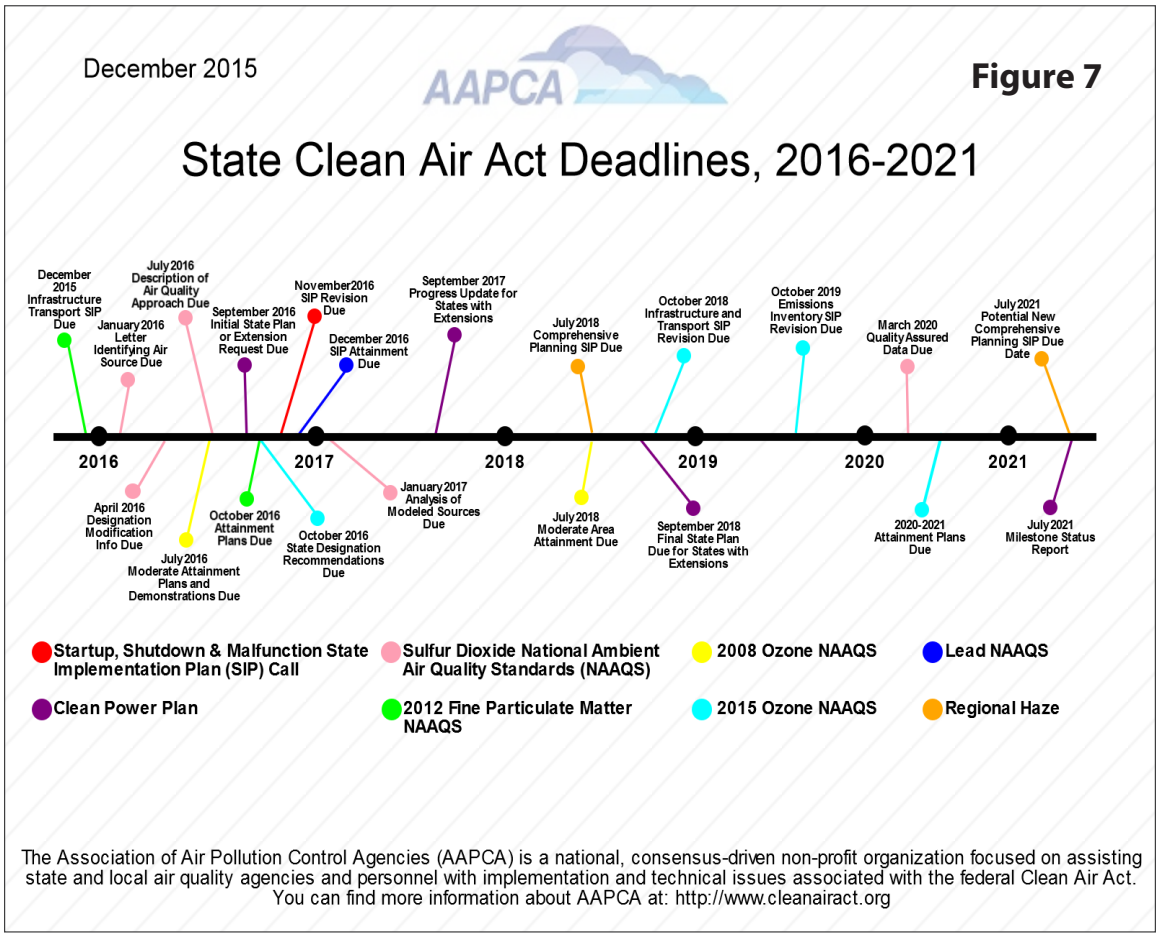
[31] Letter from Gary C. Rikard, Executive Director, Mississippi Department of Environmental Quality, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (Feb. 8, 2016) available at http://www.epw.senate.gov/public/_cache/files/b8c2fe2a-b564-4bfb-aa42-555c0a70612f/mississippi.pdf.



Sources: EPA and Federal Register

Thus, the states are being forced to continually do more with fewer resources. Higher burdens from increased federal mandates for implementation of new or expanded regulations place many state environmental agencies in an increasingly difficult position. Many states will have no choice but to make up the shortfall through greatly increased fees or by appropriating additional taxpayer dollars. Additionally, environmental advocacy groups are likely to push states and/or EPA toward the most rigorous interpretation of EPA mandates with respect to regulatory implementation and enforcement, further straining state agency budgets.

Figure 7, from the Association of Air Pollution Control Agencies, illustrates the difficult and costly road ahead for state air agencies to implement several new clean air mandates.



The Association of Air Pollution Control Agencies (AAPCA) is a national, consensus-driven non-profit organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. You can find more information about AAPCA at: http://www.cleanairact.org

When EPA Bypasses Congress and Imposes Costly New Mandates Beyond What Congress Intends, It Should Realize That Congress May Not Fund Those Mandates

As discussed in detail above, EPA's funding support of state environmental agencies has remained flat or has even decreased since 2004. This has caused several states to ***call on Congress to increase overall funding for EPA***, which they believe will translate into larger grants to the states. For example, the California EPA recently commented in a letter to the Senate EPW Committee that:

> Congress passed these laws with provisions for the federal government to assist states technically and financially in carrying out these federal programs. Unfortunately, this assistance, especially the necessary federal funds, has remained stagnant or decreased in real terms over time. This lack of resources can make it difficult to consistently provide the needed level of attention when implementing these important safeguards.[32]

[32] Letter from Matthew Rodriquez, Secretary for Environmental Protection, California Environmental Protection Agency, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (Feb. 9, 2016) at 4.

Under the principle of cooperative federalism, California EPA is certainly correct in noting that when Congress enacts statutory programs, it needs to provide the states with the resources to do the job it is assigning to them. But how should Congress respond when the Executive Branch acts unilaterally to impose sweeping new mandates, entirely on its own authority, without congressional involvement?

In practice, the Executive Branch has no assurance that a program it has imposed unilaterally will receive congressional funding. This is particularly true when high-profile national priorities—such as replacing aging water infrastructure in urban areas—are not receiving full funding from Congress. Some of the most controversial regulatory mandates recently imposed by EPA, such as the Clean Power Plan and the WOTUS definition rule, were developed and imposed by the Executive Branch, without any explicit grant of additional authority, appropriations, or other involvement by Congress. Even if the Executive Branch has the authority to impose such mandates, only Congress has the authority under the Constitution to fund federal programs.[33] Under our constitutional system's balance of powers, it is not the role of Congress to simply rubber-stamp funding requests for Executive Branch policies—particularly those that Congress itself has declined to enact.[34]

Moreover, even if Congress were to give EPA a larger appropriation, the states have no assurance that the agency would actually apply the additional funds to state grants. EPA has often made funding allocation decisions based on policy choices, rather than on long-term needs. In its FY2012 budget, for example, EPA chose to increase spending for climate-related activities by more than $48 million, while eliminating $60 million in Clean Diesel grants.[35] In its FY2015 budget, EPA chose to cut $581 million from states' Clean Water and Drinking Water State Revolving funds, in part to increase climate spending by $45.2 million.[36] Thus, the level of EPA appropriations from Congress does not necessarily equate to higher or lower levels of state grant funding from EPA.[37]

EPA Chooses Not to Acknowledge or Evaluate Unfunded Mandates

The Unfunded Mandates Reform Act[38] requires federal agencies to assess the effects on state and local governments before imposing mandates on them of $100 million or more per year without providing federal funding to implement the mandate. In essence, UMRA is intended to prevent federal agencies from shifting the costs of federal programs to the states.

Unfortunately, UMRA suffers from two critical weaknesses. First, the definition of a "federal mandate"—that is, "any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon States, local governments, or tribal governments"[39]—has proven far too narrow. Federal agencies routinely argue that new regulatory requirements impose ***no*** enforceable duty on the states themselves, basing their claim on the theory that the federal agency is standing by and can always step in to implement the program if the state chooses

[33] U.S. Const. Art. I, sec. 7, cl. 1; Art. I, sec. 9, cl. 1.

[34] Congress, which had expressly and repeatedly *rejected* the type of carbon emissions reduction approach that the agency has imposed with the CPP, refused to give EPA tens of millions of dollars in additional funds for implementation of the CPP. *See* EPA, FY2016 "Budget in Brief" (Feb. 2015) at 2, available at https://www.epa.gov/sites/production/files/2015-02/documents/fy_2016_bib_combined_v5.pdf. Congress has thus far declined to provide these requested CPP assistance funds. For their part, the states must comply with the CPP without any new financial assistance from EPA.

[35] EPA, FY2012 "Budget in Brief" (Feb. 2011) at 13, available at http://tinyurl.com/gunq3sl. (not a tiny url issue)

[36] EPA, FY2015 "Budget in Brief" (March 2014) at 13, 24, available at https://www.epa.gov/sites/production/files/2014-03/documents/fy15_bib.pdf.

[37] Indeed, as shown in Figure 3, federal categorical grants to the states remained flat between 2004 and 2015, even as EPA's overall appropriations from Congress rose and fell. *See* EPA, FY2016 "Budget in Brief" at 11 available at https://www.epa.gov/sites/production/files/2015-02/documents/fy_2016_bib_combined_v5.pdf.

[38] Pub. L. 104-4, 109 Stat. 48 (1995).

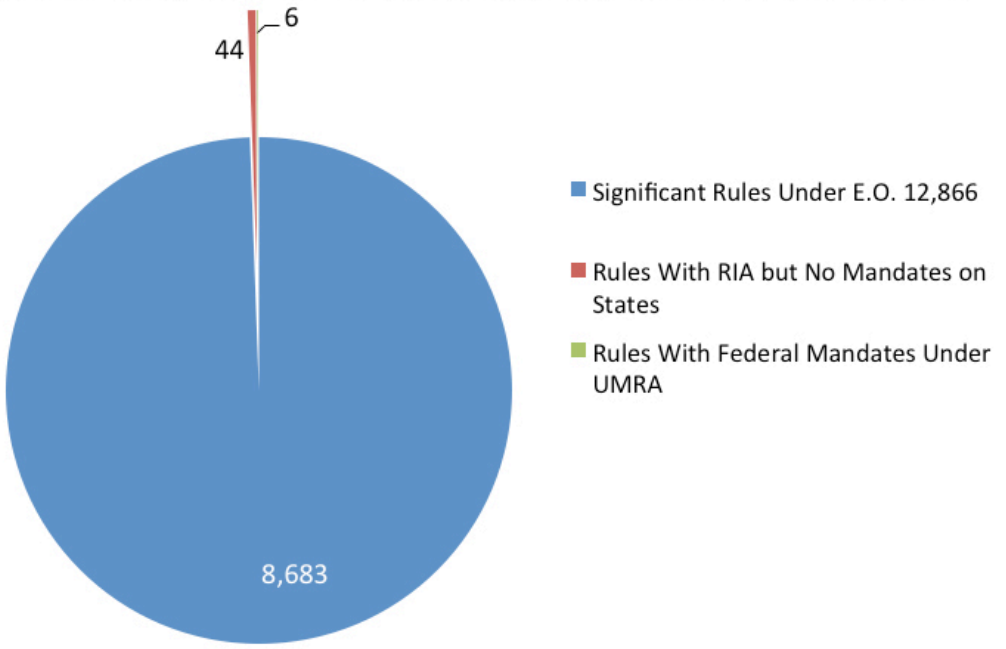
[39] *See* 2 U.S.C. § 658(5).

not to. Under this argument, because the states are essentially free to decline to administer new requirements, the requirements are not "mandates" and therefore are not subject to UMRA's analysis requirements.

The Chamber's research confirms that EPA relied on this rationale almost exclusively in its rulemakings since 2000. While EPA issued a total of 8,733 new regulations from 2000 through 2015,[40] the agency produced a formal RIA for only 50 of those rules.[41] These 50 rules included all of the EPA's highest-impact regulations, including the 18 rules finalized in that period with a cost of over $1 billion.[42] EPA determined that only **6** rules—including **only 2 of its 20** highest-impact rules—actually imposed an unfunded federal mandate on states under UMRA.[43] It is difficult to understand how the agency could conclude that **none** of the other 18 rules—which include the Clean Air Interstate Rule[44] and the revised NAAQS standards for ozone, lead, and particulate matter—would trigger UMRA's analytical requirement.

Figure 8: EPA Rules With Acknowledged Mandates on States: 2000–2015

EPA issued 8,733 rules between 2000 and 2015, of which 50 had a formal RIA.
Of the 50 RIA rules, EPA found that the rule had a federal mandate to the states under UMRA in only 6 cases.



Sources: EPA and Federal Register

[40] *See* U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (Aug. 2014) available at https://www.uschamber.com/sites/default/files/021615_fed_regs_costs_benefits_2014reportrevise_jrp_fin_1.pdf. In 2014 and 2015, EPA issued an additional 539 rules and 579 rules respectively, resulting in 8,733 rules the agency issued between 2000 and 2015.

[41] EPA, *Online Directory of Regulatory Impact Analyses*, available at https://www3.epa.gov/ttn/ecas/ria.html.

[42] *See* U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (Aug. 2014) available at https://www.uschamber.com/sites/default/files/021615_fed_regs_costs_benefits_2014reportrevise_jrp_fin_1.pdf. In 2014, EPA issued one additional billion-dollar-plus rule, resulting in 18 billion-dollar rules the agency issued between 2000 and 2014. EPA, "Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards," 79 Fed. Reg. 23,413 (April 28, 2014).

[43] The six rules were: "Requirements for Cooling Water Intake Structures Rule," 79 Fed. Reg. 48,299 (Aug. 15, 2014); "Boiler MACT Rule for Major Sources," 76 Fed. Reg. 15,554 (March 21, 2011); "Area Sources," 76 Fed. Reg. 15, 608 (March 21, 2011); "Commercial and Industrial Solid Waste Incinerators (CISWI) Rule," 76 Fed. Reg. 15,704 (March 21, 2011); "Mercury Air Toxics Standards (MATS) Rule," 77 Fed. Reg. 9,304 (Feb. 16, 2012; and "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," Final Rule, 80 Fed. Reg. 64,661 (Oct. 23, 2015).

[44] 70 Fed. Reg. 25,161 (May 12, 2005).

Although EPA failed to recognize unfunded mandates in its rulemakings, the U.S. Advisory Commission on Intergovernmental Relations, a federal commission that operated from 1959 to 1996, had no difficulty seeing such mandates. In a draft report on unfunded mandates issued in 1996, ACIR noted that the federal involvement in activities traditionally considered to be state and local affairs had increased in prior years,[45] and that:

> In recent years, federal involvement has taken the form of direct orders to meet federal requirements, often with no federal financial assistance. The extensive and complex nature of this involvement is illustrated by the following example: More than 200 separate mandates were identified to ACIR by state and local governments, involving about 170 federal laws reaching into every nook and cranny of state and local activities.[46]

Significantly, one of those 170 federal laws ACIR complained about was the Clean Air Act. ACIR observed that:

> As the requirements [of Clean Air Act regulations] have become increasingly detailed and specific, states have become implementers of federal laws with less and less discretion over how to implement them and with less federal assistance for their administration. As a result, the requirements often do not reflect conditions and citizens' preferences in the state.[47]

The second problem with UMRA is that the statute provides no private right of action wherein an affected party—such as a state, local, or tribal government—can challenge an agency's self-determined finding that a rule includes no unfunded mandates on state and local governments. If UMRA is to fulfill its congressional purpose of preventing federal agencies from shifting the costs of massive new federal programs to the states, affected stakeholders must be able to enforce the law.

"Sue and Settle" Agreements Increase Unfunded State Mandates

The U.S. Chamber of Commerce's May 2013 report, *Sue and Settle: Regulating Behind Closed Doors*,[48] found that a total of **71** lawsuits between 2009 and 2012 were settled under circumstances that can be categorized as "sue and settle" cases.

"Sue and settle" occurs when an agency accepts a lawsuit from outside advocacy groups that redirects the priorities and responsibilities of the agency through legally binding, court-approved settlements negotiated behind closed doors—with no participation by other affected parties, including states, or the public.

The majority of the settlements occurred in the environmental context, particularly under the Clean Air Act. These settlements directly resulted in more than 100 new federal rules, many of which impose significant new costs on the states.

[45] U.S. Advisory Commission on Intergovernmental Relations, ACIR Preliminary Report: *The Role of Federal Mandates in Intergovernmental Relations* (Jan. 1996) at 2, available at http://www.library.unt.edu/gpo/acir/Mandates.html#Intro.

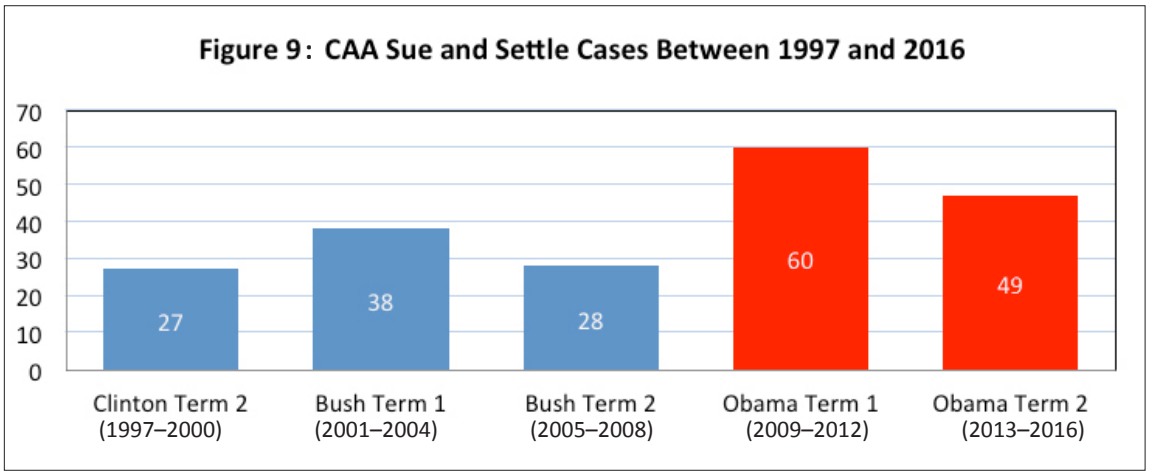
[46] *Id.*

[47] *Id.* at 8. On behalf of the states, ACIR recommended that Congress relax the Clean Air Act's deadlines, provide performance goals rather than mandates, increase federal financial assistance (grants), and eliminate penalties for failure to comply and replace them with incentives. *Id.* at 20.

[48] U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf.

Table 12: Sue and Settle Agreements Result in Costly New State Burdens
• Florida Nutrient Standards for Estuaries and Flowing Waters—up to **$632 million** annual costs[49] • Regional Haze Implementation rules—**$2.16 billion** additional cost to comply[50] • Chesapeake Bay Clean Water Act rules—up to **$18 billion** cost to comply[51] • 2013 Revision to the Particulate Matter NAAQS—up to **$350 million** annual costs[52] • Clean Power Plan—between **$5.1 billion and $8.4 billion** annual costs[53] • "Waters of the United States" Revised Definition—between **$158 million and $465 million** annual costs[54] • 2015 Revision to the Ozone NAAQS—up to **$1.4 billion** annual costs[55]

The sue and settle approach remains very popular. *Federal Register* notices of draft CAA consent decrees that date back to 1997 show that these agreements are more common than at any time in the past (as indicated in Figure 9).



Sources: Federal Register *Notices of Section 113(g) Clean Air Act Proposed Settlements*

The current administration has agreed to more CAA settlements in 7-plus years (**109**) than prior administrations did over a 12-year period (**93**). The settlement agreements that result from these lawsuits often have tremendous impact on the way that states, communities, and businesses can operate. In several states, the sue and settle agreements that led to EPA-directed regional haze plans ultimately force state air agencies to further federal objectives by conducting related implementation tasks such as revising their state regulations to reflect the new conditions imposed on them by EPA.[56]

[49] EPA, "Proposed Nutrient Standards for Florida's Coastal, Estuarine & South Florida Flowing Waters" (Nov. 2012) available at https://www.epa.gov/sites/production/files/2015-07/documents/factsheet-coastal-2012.pdf.

[50] U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_lr_0.pdf.

[51] Sage Policy Group, Inc., *The Impact of Phase I Watershed Implementation Plans on Key Maryland Industries* (April 2011) available at http://www.sagepolicy.com/wp-content/uploads/2009/06/builders4-14.pdf; *Chesapeake Bay Journal* (Jan. 2011) available at http://www.bayjournal.com/issue/9975.

[52] EPA, "Overview of EPA's Revisions to the Air Quality Standards for Particulate Matter" (2012) available at https://www3.epa.gov/ttnecas1/regdata/RIAs/finalria.pdf.

[53] EPA, "Regulatory Impact Analysis, Clean Power Plan Final Rule, Executive Summary at ES-9" (Oct. 23, 2015) available at https://www.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

[54] EPA, U.S. Army Corps of Engineers, "Economic Analysis of the EPA-Army Clean Water Rule" (May 20, 2015) available at https://www.epa.gov/sites/production/files/2015-06/documents/508-final_clean_water_rule_economic_analysis_5-20-15.pdf. EPA has consistently maintained that the WOTUS rule would cost no more than $463 million annually, but industry as well as state and local government officials have presented a strong case that the expansion of authority, Clean Water Act permitting, and resulting significant project cancellations or modifications—none of which EPA has modeled or estimated the costs of—will be substantial and likely exceed the $1 billion mark.

[55] EPA, "Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone" (September 2015) (EPA-452/R-15-007) available at http://tinyurl.com/zd5g3qz.

[56] *See* U.S. Chamber of Commerce, *EPA's New Regulatory Front* (July 2012).

Likewise, in the Clean Water Act context, sue and settle agreements have had major impacts on state and local land uses. For example, as the result of a lawsuit filed by environmental groups, EPA agreed in May 2010 to impose new requirements on the six states that contribute flow to the Chesapeake Bay.[57] As a result of that settlement, states are now having to impose more stringent operating requirements on farmers, businesses, and other sources within the watershed. For example, in order to meet a milestone for EPA's mandated Total Maximum Daily Load effluent "budget" for the bay, Pennsylvania "will need to implement over 22,000 acres of additional forest and grass buffers." This means that Pennsylvania landowners will need to change the current land use on over **22,000 acres** in order to meet the mandate agreed to by EPA.[58] This translates to a major new administrative chore for state agency personnel.

Many of the sue and settle agreements entered into since 2009 are only now having impacts that can be widely felt. For example, EPA announced on December 30, 2010, that it had reached a settlement agreement with advocacy groups and several states to issue new standards for greenhouse gas (GHG) emissions from electric utilities by May 2012.[59] While EPA ultimately withdrew the draft GHG rules that it proposed pursuant to this settlement agreement, the successor rules issued by EPA under the Clean Power Plan will, under EPA's own economic analysis, impose between **$5.1 billion and $8.4 billion** in annual compliance costs on states, businesses, and communities.[60]

In addition to the sue and settle cases described above, since 2014, advocacy groups have given EPA notice of their intent to file **more than 40** additional lawsuits under the CAA.[61] And CAA settlements are only a portion of the sue and settle problem. Advocacy groups continue to settle lawsuits under the Clean Water Act, the Safe Drinking Water Act, and the Endangered Species Act. The bottom line is that these sue and settle agreements impose new obligations and burdens that states, communities, and businesses have no say on before a court makes them legally binding.

EPA Fails to Adequately Consult With States Before Imposing Mandates

Beyond a shared stake in the success of federal environmental programs, cooperative federalism requires the federal government to work in good faith with the states as equal partners. Although the collaborative relationship between EPA and the states has historically been productive, states have complained in recent years that EPA does not consult with them before taking actions that affect them.

For example, the Chamber's May 2012 report, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs*,[62] detailed numerous cases in which EPA entered into sue and settle agreements with advocacy groups that imposed new regional haze obligations on specific states. In many cases, states were not informed by EPA that it was negotiating with advocacy groups—nor were states consulted before EPA actually agreed to settlement terms. In those cases, states have objected to having EPA take unilateral action that binds the states without their consent (and often without their knowledge).

[57] *Fowler v. EPA*, No. 10-00005 (settled May 10, 2010).

[58] *See* EPA, "Interim Evaluation of Pennsylvania's 2014-2015 Milestones and WIP Progress," (June 10, 2015) available at https://www.epa.gov/sites/production/files/2015-07/documents/pennsylvania2014-2015interimmilestoneevaluation_61015.pdf at 3.

[59] EPA, "Notice of Proposed Settlement Agreement," 75 Fed. Reg. 82,392 (Dec. 30, 2010).

[60] EPA, "Regulatory Impact Analysis, Clean Power Plan Final Rule, Executive Summary at ES-9" (Oct. 23, 2015) available at https://www.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf.

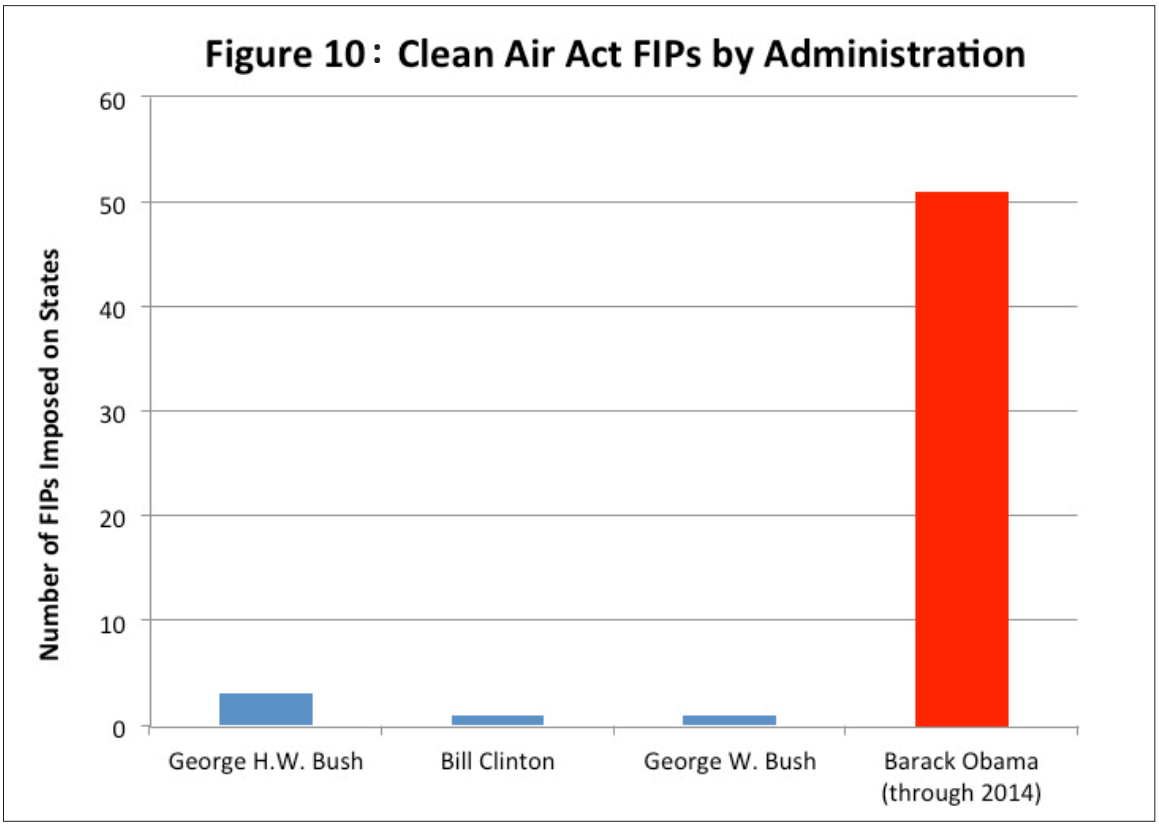
[61] *See* EPA, "Notices of Intent to Sue the U.S. Environmental Protection Agency Documents," available at https://www.epa.gov/noi.

[62] U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_lr_0.pdf.

Among the most egregious of unilateral federal actions forced upon states has been the imposition by EPA of Federal Implementation Plans (FIPs). Under the CAA, FIPs are designed as a backstop to be used where a state has refused or is unable to develop a State Implementation Plan that is acceptable to EPA. In recent years, however, EPA has increasingly chosen to impose FIPs on states in order to compel specific policy outcomes (e.g., substituting its preferred regional haze control requirements over requirements developed by several states[63]). Arkansas, for example, has recently complained:

> We have seen a decrease in time and tolerance for State Implementation Plans (SIPs) and a dramatic increase in EPA takeovers, or Federal Implementation [Plans] (FIPs). Historically FIPs were used as the weapon of last resort for our EPA partner, its nuclear option for States that were unfaithful to the partnership or denied the marriage outright. However, under the prevailing paradigm, FIPs are used as an everyday tool (often of dubious origin) in the EPA's vast arsenal. To give perspective on this shift, it is worth noting that in the past seven years the States have experienced more of these federal hostile takeovers, known as FIPs, than were delivered in the **prior three administrations combined, ten times over**.[64]

As Figure 10 clearly shows, EPA under the current administration has imposed far more FIPs on states that any other administration since 1989. These FIPs include **13** dealing with regional haze, **9** relating to GHG permitting programs, and **28** for the cross-state air pollution rule.



Source: William Yeatman, Competitive Enterprise Institute

[63] *Id.*

[64] Letter from Becky Keogh, *supra* note 2, at 1 (emphasis in original).

The recent trend of EPA taking direct control of environmental regulation in the states is troubling—and unlikely to be successful. Because EPA itself has experienced relatively flat funding levels from Congress since 2011—and may not see substantial funding increases in the near term—the federal agency clearly lacks the resources to administer hundreds of additional FIPs across the United States.

Rather than being treated by EPA as co-regulators with complementary powers, states complain that their views and concerns are increasingly ignored by EPA. As one state official put it, "the State role is now **less partner and more pawn**."[65]

> **"Our experience with the EPA during the development of the CPP was that they treated the states, who are ostensibly co-implementers of the Clean Air Act with EPA, no different from any other party who commented on the rule. When they conducted conference calls and other 'collaborative' meetings with state regulators, such 'collaboration' was perfunctory, with EPA failing, or refusing, to provide the most basic of information needed by the states to understand the proposed rule. Often EPA and the States are co-regulators in name only."**
>
> *- Gary C. Rikard, executive director, Mississippi DEQ*[66]

Moreover, states complain that they are not adequately consulted before EPA decides to take significant actions, such as imposing major new regulatory initiatives such as the previously mentioned Clean Power Plan rules and the WOTUS rule. Finally, states complain that EPA fails to give the comments and concerns of state environmental agencies the weight and respect to which a co-regulator should be entitled. Recently, for example, social-media-generated mass comments supporting the WOTUS rule were cited by EPA, while the agency downplayed comments critical of the rule submitted by state and local governments.[67] The views and comments of state agencies should receive the deference of a co-regulator and the "special solicitude" of a state sovereign under our rulemaking process.

> **"EPA should work more closely with, and in many cases defer to, the states on critical issues like designations and State Implementation Plans (SIPs). For the new SO2 standard, EPA appears to be moving in a direction inconsistent with Maryland's recommendation of attainment. Data and analysis shows the area of concern is below the standard. New controls are being implemented because of the federal Mercury and Air Toxics rule. EPA's decision will create a huge new workload for the State with very little, if any, additional environmental protection."**
>
> *- Maryland Department of the Environment, Cooperative Federalism*[68]

EPA's failure to consult with the states violates the spirit, if not the letter, of Executive Order 13,132, "Federalism."[69] Executive Order 13,132 requires federal agencies to develop a process for "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

[65] *Id* (emphasis in original).
[66] Letter from Gary C. Rikard, *Supra* note 38.
[67] The U.S. Government Accountability Office found that EPA's "Thunderclap" social media support campaign for the WOTUS rule violated prohibitions on the use of appropriated funds for "unauthorized publicity or propaganda purposes" and that this campaign amounted to grassroots lobbying. GAO, Opinion B-326944, *Environmental Protection Agency—Application of Publicity or Propaganda and Anti-Lobbying Provisions* (Dec. 14, 2015) available at http://www.gao.gov/assets/680/674163.pdf. *See also* E. Steen, General Counsel, American Farm Bureau Federation, *How Rules Ought Not Be Made: A Case Study of EPA's "Waters of the U.S." Rule* (April 4, 2016) available at https://classic.regonline.com/custImages/240000/240779/ETRA/2016SteenPresentationonEPAWOTUS.pdf.
[68] Letter from Benjamin Grumbles, Secretary, Maryland Department of the Environment, to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (Feb. 23, 2016).
[69] 64 Fed. Reg. 43,255 (Aug. 10, 1999).

implications."[70] While the states have no practical method of enforcing the Executive Order, the Office of Information and Regulatory Affairs within the Office of Management and Budget could do a much better job of ensuring that EPA actually consults with the states before and during the rulemaking process.

EPA Ignores Judicial Precedents

The Tenth Amendment of the U.S. Constitution[71] prohibits the federal government from "us[ing] the States as implements of regulation"—that is, to commandeer the states to carry out federal law.[72] In *New York v. United States*, the Supreme Court found that the federal government may "offer States the choice of regulating (an) activity according to federal standards or having state law pre-empted by federal regulation."[73] But "where the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished."[74] Similarly, in *Printz v. United States*, the Court concluded that state officials may not be "dragooned . . . into administering federal law."[75] The federal government also cannot coerce the states into carrying out a federal policy by threatening to punish states that fail to comply.[76]

Recent EPA mandates effectively compel the states to regulate. In the CPP, for example, meeting federal emission targets necessitates more than requiring sources to install emission control equipment or taking the kinds of actions that the EPA itself could administer in a state that chose not to accept the CPP mandate. Instead, the CPP requires the states to do things that EPA has no authority to do itself—such as reorganizing utility sectors, changing a state's long-established mixture of energy sources, and rewriting state laws and regulations.

Other EPA rules—such as the Startup, Shutdown, and Malfunction provisions—force the states to undertake massive efforts to rewrite the bulk of their regulations (or even state statutes) and revise existing permits to reflect changes in federal policy. Likewise, the WOTUS rule requires a massive effort by state agencies and local governments—such as counties, water districts, and weed control agencies—to administer, comply with, and enforce expanded federal permitting and water quality requirements. These are tasks that realistically can be carried out ***only*** at the state and local levels. There is no way that EPA could administer and enforce the entire Clean Water Act regulatory program across the country without tens of thousands of additional employees.[77]

Rather than being collaborative and respectful, EPA has attempted to commandeer the states into carrying out its preferred policies and has threatened to punish them with sanctions if they refuse to comply—yet it has provided them with no additional resources to accomplish their assigned tasks.

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[70] 64 Fed. Reg. 43,257 (Aug. 10, 1999) (Section 6, "Consultation").

[71] U.S. Const. Amend. 10 (The Tenth Amendment provides "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.").

[72] *New York v. United States*, 505 U.S. 144, 161 (1992). ("If a State's residents view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant [and] have the Federal Government rather than the State bear the expense of a federally mandated regulatory program."). *Id.* at 167.

[73] *Id.* ("This arrangement . . . has been termed "a program of cooperative federalism, is replicated in numerous federal regulatory schemes.").

[74] *Id.*

[75] 521 U.S. 898 (1997).

[76] *NFIB v. Sibelius*, 567 U.S. _ , 132 S. Ct. 2566, 2602 (2012); *South Dakota v. Dole*, 483 U.S. 203, 211-12 (1987) (threats impermissibly "undermine the status of the States as independent sovereigns in our federal system.").

[77] As explained above, because EPA itself has experienced relatively flat funding levels from Congress since 2011, and may not see substantial funding increases in the near term, the federal agency clearly lacks the resources to administer environmental regulatory programs in the place of the states across the United States.

Recommendations

It is clear that EPA has imposed new mandates on the states that are not funded, thereby threatening state sovereignty and the concept of cooperative federalism that has guided federal environmental law since 1970. Congress needs to take several specific steps to prevent EPA from treating the states as its pawns.

1. Amend the Unfunded Mandates Reform Act.

Redefine the term "mandate" in the Unfunded Mandate Reform Act (UMRA). A mandate should be defined as "any federal requirement that obligates a state or a subdivision of a state to expend state or local resources to comply."

Federal agencies should be required to perform an analysis of probable unfunded mandate impacts. Employing the above new definition of mandate, agencies need to calculate the costs of implementing federal rules that will be borne by state and local government bodies. Principles of transparency embedded in other administrative analytical requirements, such as Executive Order 12,866,[78] should be extended to the requirements of the UMRA analysis.

Further, if a new regulation will impose a new unfunded mandate, agencies should consult with states before drafting a notice of proposed rulemaking. This consultation should be documented in a manner similar to the documentation that accompanies agency consultation with small entity representatives under the Small Business Advocacy Review Panel process under the Regulatory Flexibility Act.[79]

Congress should prohibit agencies from issuing major new regulations that impose unfunded mandates on states, unless the agencies demonstrate that states will have access to whatever funding is necessary to implement the new regulations.

States should have a right to obtain judicial review of agency failures to conduct UMRA cost analyses. At a minimum, states should have the ability to challenge the federal government in court when it imposes new unfunded mandates and does not conduct a cost analysis that calculates and discloses the burdens its new requirements are anticipated to impose on state and local governments.[80]

2. Congress Needs to Bring the Administrative Procedure Act up to Date.

Congress should enact the Regulatory Accountability Act. The Regulatory Accountability Act modernizes the 70-year-old informal notice and comment rulemaking process for agencies whenever they develop their largest, most complex new regulations. The Regulatory Accountability Act would achieve these important goals by:

- Defining "high-impact" rules as a way to distinguish the up to five[81] rulemakings each year that would impose more than $1 billion a year in compliance costs.
- Giving the public an earlier opportunity to participate in shaping the most costly regulations.
- Requiring agencies to be better prepared before they propose a costly new rule,

[78] Executive Order 12,866, "Regulatory Planning and Review," 58 Fed. Reg. 51,735 (Sept. 30, 1993) (provides guidance to federal agencies for cost-benefit analysis in rulemakings).

[79] 5 U.S.C. § 609.

[80] Many of the recommended improvements to UMRA would be achieved if Congress passes H.R. 50/S. 189, the "Unfunded Mandates Information and Transparency Act of 2015."

[81] *See* U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (Aug. 2014). In addition to the one to three high-impact rules Executive Branch agencies issue each year, independent agencies issue an unknown number of high-impact rules that would be covered under the Regulatory Accountability Act.

making agencies justify the need for the rule and show that their proposal is actually the best alternative. Although agencies often resist undertaking this detailed degree of preparation, making them "do their homework" produces a better rule.

- Requiring agencies (including independent agencies) to select the least costly regulatory alternative unless the agency can demonstrate that a more costly alternative is necessary to protect public health, safety, or welfare.

- Requiring agencies to consider the cumulative impacts of regulations and the collateral impacts their rules will have on businesses and job creation.

- Providing for on-the-record administrative hearings for the up to five high-impact rules each year, in order to verify that the proposed rule is fully thought out and well supported by good scientific and economic data.

- Restricting agencies' use of "interim final" regulations, which allow the public no opportunity to comment before a regulation takes effect

3. Bring Transparency and Accountability to the "Sue and Settle" Process

Congress needs to enact the Sunshine for Regulatory Decrees and Settlements Act. This legislation would (1) require agencies to give notice when they receive notices of intent to sue from private parties, (2) afford affected parties an opportunity to intervene ***prior to the filing*** of the consent decree or settlement with a court, and (3) publish notice of a proposed decree or settlement in the *Federal Register* and take (and respond to) public comments at least 60 days prior to the filing of the decree or settlement. The legislation would also require agencies to do a better job of showing that a proposed agreement is consistent with the law and in the public interest.

EPA and other federal agencies should be required to consult with states before settling lawsuits that create new state/local obligations. Because of their critical role as co-regulators and partners with federal agencies under the cooperative federalism model, federal agencies should be required to consult with states before imposing any new obligations on them. The Office of Management and Budget should require agencies to document consultation meetings with state and local governmental personnel and evaluate agency compliance with Executive Order 13,132, "Federalism."[82]

4. Restore the Advisory Committee on Intergovernmental Relations.

The Advisory Commission on Intergovernmental Relations (ACIR), whose recommendations are discussed above, should be reconstituted by Congress. A revitalized ACIR could be an effective watchdog for cooperative federalism. Congress should consider ACIR's 1996 recommendations for unfunded mandate reforms. Also ACIR could enter into a Memorandum of Understanding with the Office of Information and Regulatory Affairs on UMRA and the "Federalism" Executive Order.

[82] 64 Fed. Reg. 43,255 (Aug. 10, 1999).

Appendix A

In October 2015, the Chamber made a Freedom of Information Act request to EPA to provide the amount of annual funding it provides to the individual state environmental agencies. The Chamber received EPA's final response to our FOIA request on February 25, 2016; it is available at the links below:

Environmental Protection Agency Federal Grant Resources: State Totals for Each Grant FY 2013, 2014, 2015 (March 2014).[83]

Environmental Protection Agency Federal Grant Resources: State Totals for Each Grant FY 2014, 2015, 2016 (February 2015).[84]

[83] Available at https://www.uschamber.com/sites/default/files/foia2475kovacsfy_2013_2014_2015_state_totals_for_each_grant.pdf.
[84] Available at https://www.uschamber.com/sites/default/files/foia2475-2fy_2014_2015_2016_state_totals_for_each_grant.pdf.

Appendix B

In October 2015, the U.S. Chamber submitted requests to all 50 states under each state's open records/FOIA regulations.

1. **Nine** states provided detailed information, which is discussed in the report. The links below are to the nine state responses.

Idaho[85]	Oklahoma[88]	Texas 2011[91]	Texas 2014[94]
Missouri[86]	South Carolina[89]	Texas 2012[92]	Utah[95]
New Mexico[87]	Tennessee[90]	Texas 2013[93]	West Virginia[96]

2. **Thirty** additional states responded to the Chamber's open records/FOIA request with varying levels of information:

Arkansas	Iowa	Montana	Pennsylvania
Arizona	Kansas	Nebraska	South Dakota
Colorado	Louisiana	Nevada	Vermont
Delaware	Maine	New Jersey	Virginia
Florida	Maryland	New York	Washington
Georgia	Massachusetts	North Dakota	Wisconsin
Illinois	Michigan	Ohio	
Indiana	Mississippi	Oklahoma	

The information provided by the above states is available for inspection at U.S. Chamber Headquarters upon request.

3. **Eleven** states did not respond to the U.S. Chamber's open records request:

Alabama	Connecticut	Minnesota	Rhode Island
Alaska	Hawaii	New Hampshire	Wyoming
California	Kentucky	Oregon	

[85] Available at https://www.uschamber.com/sites/default/files/idaho.pdf.
[86] Available at https://www.uschamber.com/sites/default/files/missouri.pdf.
[87] Available at https://www.uschamber.com/sites/default/files/new_mexico.pdf.
[88] Available at https://www.uschamber.com/sites/default/files/oklahoma.pdf.
[89] Available at https://www.uschamber.com/sites/default/files/south_carolina.pdf.
[90] Available at https://www.uschamber.com/sites/default/files/tennessee.pdf.
[91] Available at https://texashistory.unt.edu/ark:/67531/metapth326670/m1/4/.
[92] Available at http://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/045-12.pdf.
[93] Available at http://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/045-13.pdf.
[94] Available at http://www.tceq.state.tx.us/assets/public/comm_exec/pubs/sfr/045-14.pdf.
[95] Available at https://www.uschamber.com/sites/default/files/utah.pdf.
[96] Available at https://www.uschamber.com/sites/default/files/west_virginia.pdf.

Notes on Methodology

Overall, 39 states were responsive to our request and provided at least some information asked for in the three questions we posed. The Chamber requested the following information from each state:

1. *The budgeted amount your state allocated to its department of environmental quality, by funding source, for the fiscal years 2011, 2012, 2013, and 2014*

2. *Specifically*
    a. *The amount of funds for each year derived from fees*
    b. *The amount of funds for each year originating in the state's general fund*
    c. *The amount of funds for each year provided by the federal government through grants, including the federal agency that originated such grants, as well as the grant program under which funds were provided, if applicable*

3. *For your 2011, 2012, 2013, and 2014 department of environmental quality budgets, identify the total amount of funds dedicated to implementation of the Clean Air Act and Clean Water Act.*

In order to assess each individual state's response to our inquiry and make the individual responses comparable for purposes of analysis, we adopted a budget classification system similar to the one ECOS used for purposes of comparing state environmental budgets. This allowed the Chamber in most cases to allocate resources from each responsive state's line item budget into four funding source categories: (1) general state funds, (2) fees, (3) federal funds, and (4) "other" funds. "Other" funds captures the fact that states often have line item funds in their budget that rely on intra-state transfers or automatic earmarks that do not go through the appropriations process for a given fiscal year as "general fund" monies do.

The data presented is taken from the states' answers to questions (1) (state funds budgeted to environmental agency) and (2) (source of funds from: fees [a], general fund [b], or federal grants [c]). The data provided by states varies widely in quality. Accordingly, while we attempted to standardize the information to facilitate comparison among the states, comparing dollar amounts between states is still not instructive.

See Appendix B for summary information on state responses to the Chamber's open records requests.

U.S. CHAMBER OF COMMERCE