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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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ADVISORY COMMITTEE

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The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comments on EPA's Revision of Implementation Guidance for
Executive Order 13132, Federalism

Dear Administrator Johnson:

The Local Government Advisory Committee (LGAC) appreciates having the opportunity to work with you and the U.S. Environmental Protection Agency on a wide range of issues of interest and concern to local governments. More specifically, the committee is particularly grateful for recently having had the opportunity to receive a briefing from Office of Policy, Economics and Innovation (OPEI) staff on the status of Agency efforts to revise its internal operating guidance for implementing Executive Order 13132, also known as the E.O. on Federalism. Having been asked to review this guidance, and pursuant to the committee's charter, the LGAC would like to offer the following comments.

Executive Order 13132, Federalism, has been in effect since 1999. The Order enumerates the basic principles of Federalism, and it stresses cooperation with officials representing State and local governments – particularly *elected* officials and their representative organizations. Emphasizing greater sensitivity to intergovernmental concerns, the Order also sets up consultative processes for agencies to follow as they develop and implement regulations that affect State and local governments.

As you know, EPA in 2000 adopted its interim Federalism guidance used by Agency rule-writers as they develop regulations that are likely to impose a “significant federal intergovernmental mandate.” Since the Order refers to the consultation and partnership principles of the Unfunded Mandates Reform Act (UMRA), which in 1995 explicitly set the threshold for triggering intergovernmental consultation at \$100 million in State,

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local and tribal expenditures in any one year, the Agency at that time made a policy decision to adopt the same threshold for triggering the provisions of E.O. 13132. It is this policy that is the basis for the LGAC's concern regarding EPA's implementation of the Order.

Since the Order's effective date of November 1999, only *two* regulations have met the Agency's impact threshold for E.O. 13132, thereby triggering its intergovernmental consultation provisions. We understand that many EPA, State and local government officials have expressed concern about this, and have advocated a change in Agency policy to lower the monetary impact threshold and thus broaden the applicability of the Order. The LGAC wishes to express, in the strongest possible terms, its support for lowering this threshold and expanding the applicability of the Order so that State and local government representatives are consulted on a more routine basis, particularly during the development of rules for which States and communities serve as co-regulators or are otherwise responsible for implementation.

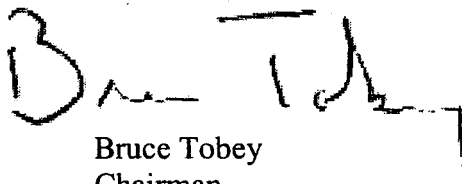
In addition to lowering the threshold for triggering the Order's consultation provisions, the LGAC further recommends that EPA "reverse the assumption" for the Order's applicability. In practical terms, this means that EPA should plan outreach to and consultation with its intergovernmental partners, pursuant to the Order, during development of **all** regulations **unless** the lead program determines that the rule can reasonably be expected **not to exceed \$10 million** in aggregated State, local and tribal implementation costs in any one year. Not only would this "presumption to consult" policy ensure routine cooperation in a manner more consistent with the spirit and intent of the Executive Order, it would result in regulations that can be more effectively implemented and, thus, offer better environmental and public health protection.

During your tenure as Administrator, you have demonstrated your grasp of the issues faced by EPA's intergovernmental partners, particularly resource-related challenges. Increasing Federal mandates are putting more strain than ever on State and local government budgets – budgets that are holding steady at best and, at worst, facing serious decline. With this in mind, it is with confidence in your vision and understanding that we put forth these recommendations.

Sincerely,



Roy Prescott
Chairman



Bruce Tobey
Chairman