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Submitted via the Federal eRulemaking Portal: www.regulations.gov

RE: Response to Request for Information on Climate Pollution Reduction Grants

FR: Prof. Greg Dotson, University of Oregon School of Law

I am submitting the following comments in response to the Environmental Protection Agency's (EPA) request for information regarding the Climate Pollution Reduction Grants (CPRG) program established in new section 137 of the Clean Air Act (CAA) by the Inflation Reduction Act (IRA).¹ These comments are being submitted on my own behalf and do not represent the views of the University of Oregon.²

The EPA has received \$5 billion to assist states, air pollution control agencies, tribes, and local governments in developing and implementing climate pollution reduction strategies. The CPRG program provides \$250 million for planning grants, \$4.607 billion in climate implementation grants, and \$142.5 million for administrative funding.³ This letter will outline priority objectives and principles for the program, recommend a "fast-start" implementation grants option, and emphasize the importance of EPA's encouragement for coordinated regional efforts.

A. CPRG Program Objectives and Principles

Congress has created the CPRG program to fund and assist nonfederal, governmental climate action. President Biden has pledged to achieve at least a 50% reduction in GHG emissions by 2030. State, tribal, and local governments can meaningfully contribute to achieving this reduction in emissions. Accordingly, the EPA's CPRG program should recognize the potential of ongoing climate change mitigation efforts taken by states and other eligible entities. The CPRG program can build upon and support programs that states and eligible entities have established to reduce GHG emissions in order to ensure quick and effective implementation of climate action plans. I suggest EPA implement the CPRG program with the following objectives and principles in mind.

1. Program Objectives

The CPRG program has dual objectives: to reduce GHG emissions and to build governmental capacity at subnational levels to address climate change. In achieving these objectives, Congress

¹ Inflation Reduction Act, Pub. L. No. 117-169, § 60114, 136 Stat. 1818, 2076 (2022).

² These comments were developed with the assistance of Greg Giunta, Edward Nunez, and Cora Sutherland.

³ IRA § 60114.

directed the EPA to be cognizant of “the degree to which greenhouse gas air pollution is projected to be reduced . . . with respect to low-income and disadvantaged communities.”⁴

2. Program Principles

To achieve its objectives, I suggest that the EPA use the following principles in implementing the CPRG program:

- 1. Ensure integrity of climate pollution reduction actions.** Approved climate action plans should provide specific and actionable programs, policies, measures, and projects, and should provide information on the degree to which emissions reductions will occur.
- 2. Recognize that the readiness to address climate change can vary greatly among applicants.** The CPRG program should recognize that the current capacity and willingness to respond to climate change varies greatly among the states. Some states have worked to develop climate programs over a period of nearly two decades. Others are still reluctant to take robust climate action. The EPA should accommodate these differences in implementing the CPRG program by encouraging states with less institutional experience addressing climate change to benefit from full utilization of the planning grants. The EPA should support those states and other applicants with greater capacity to address climate change by funding their continued implementation of “no-regrets” policies that might already be underway. An option for achieving this, the concept of “fast-start” implementation grants, is described in greater detail below.
- 3. Adopt processes that allow grants to be awarded without delay.** Congress has provided substantial but limited funding for the CPRG program. Accordingly, the EPA should seek to maximize the effectiveness of these funds and ensure that every dollar is put to productive use. However, the EPA should avoid adopting policies that commit the agency to conducting burdensome analyses prior to awarding implementation grants. For example, a decision to require comparative effectiveness analysis between states’ various policies and programs prior to awarding grants would be counterproductive. Such analyses could unduly burden applicants, constrain agency decision-making, and needlessly delay the awarding of grants and achievement of GHG reductions.
- 4. Center the program on equity and take advantage of completed processes.** Congress has directed the EPA to ensure that applicants provide information on how an application will affect low-income and disadvantaged communities. As part of this

⁴ Clean Air Act, § 137(c)(2) (codified at 42 U.S.C. § 7437(c)(2) (2022)).

information, the EPA should ask applicants to identify which parts of an applicant’s programs, policies, measures, and projects have already completed consultation with the public and low-income and disadvantaged communities. For example, a program that has already undergone a political or administrative process that incorporates equity priorities can more readily deploy CPRG funds. EPA should also focus on applications that can quickly deploy CPRG funds in a way that centers low-income and disadvantaged communities.

B. “Fast-Start” Implementation Grants

In recognizing the variability in readiness to address climate change among applicants, the CPRG program could accommodate states (and other eligible entities) that have already developed programs, policies, measures, and projects to reduce GHG emissions through the adoption of “fast-start” implementation grants. This section explains how such a process might work.

1. “Fast-start” implementation grants should be available to applicants that have already developed climate action plans. Applicants that have already established climate action plans should be able to access implementation funds as soon as possible. EPA has the discretion to allow for applicants to pursue “fast-start” implementation grants as a subset of the GHG air pollution reduction implementation grants. Congress has specified that funds for GHG air pollution reduction implementation grants must be obligated no later than September 30, 2026.⁵ Providing for near-term awarding of “fast-start” grants, prior to completion of a comprehensive climate plan, would fit well with this short window of availability for these implementation funds. According to the Center for Climate and Energy Solutions, thirty-two states have released some form of climate action plans and one state is updating a plan.⁶ These “[c]limate action plans generally include [GHG] emissions reduction targets and detail actions the state can take to help meet those goals.”⁷

2. “Fast-start” implementation grants could be recognized in the planning process through the establishment of “no-regrets” plans. Congress expected the EPA to require a climate plan to be submitted with an application for implementation grants.⁸ However, the EPA has the discretion to allow a portion of a climate planning grant to be used by a state applicant to prepare a “no-regrets” climate plan that might

⁵ CAA § 137(a)(2) (codified at 42 U.S.C. § 7437(a)(2) (2022)).

⁶ *U.S. State Climate Action Plans*, Center for Climate and Energy Solutions, <https://www.c2es.org/document/climate-action-plans/> (last updated Dec. 2022).

⁷ *Id.*

⁸ CAA § 137(b) (codified at 42 U.S.C. § 7437(b) (2022)).

be a subset of a more comprehensive climate plan. The EPA could provide for a state applicant to submit a “no-regrets” climate plan shortly after receiving a planning grant and while preparing a more comprehensive plan to address climate change. This “no-regrets” plan could be minimally burdensome and yet satisfy the application requirements for “fast-start” implementation grants. A “no-regrets” plan could include underfunded state activities that would help address climate change in anticipation of the completion of a more comprehensive climate plan. For instance, enhanced energy efficiency and promotion of electrification are categories of activities that might constitute “no-regrets” policies.

3. A “no-regrets” plan could readily meet Congress’ requirements for climate plans. Applications for implementation grant funding must include information related to the degree to which GHG air pollution is projected to be reduced in total and with respect to low-income and disadvantaged communities.⁹ States that have already undergone climate planning processes prior to the enactment of the IRA should be able to satisfy this requirement without an undue burden in the development of a “no-regrets” plan.

4. “Fast-start” implementation grants will benefit all applicants. By allowing applicants that are ready to implement their plan to move forward as soon as possible, all applicants will benefit. First-movers will drive manufacturing and workforce capacity to respond to climate change that will benefit applicants that do not take advantage of “fast-start” implementation grants. For instance, if all applicants were focused on deployment of a certain renewable energy technology (e.g., solar panels) at precisely the same time, they could face limitations in availability. By allowing demand to be staggered through the use of “fast-start” implementation grants, all applicants could benefit from a smoother demand curve. Similarly, spreading implementation of climate plans over time could ease demand for consultants or contractors for various tasks.

C. Coordination of Regional Efforts

Reducing GHG emissions will involve a coordinated effort of states within different regions of the United States. The EPA should encourage states and eligible entities to engage in interstate projects which reduce GHG emissions when creating their climate action plans. Climate action plans and projects that state coalitions have launched to reduce GHG emissions should also be considered for the CPRG program funding, including fast-start implementation to immediately apply for implementation grant funding, if applicable. An interstate project that serves as an example is the West Coast Electric Highway, which would create a network of fast charging

⁹ CAA § 137(c)(2) (codified at 42 U.S.C. § 7437(c)(2) (2022)).

stations along Interstate 5, Highway 99, and other major roadways in California, Oregon, Washington, and British Columbia.¹⁰ The project is overseen by the California Governor's Office interagency group, the Oregon Department of Transportation, the Washington State Department of Transportation, and Plug In BC, which represents the British Columbia government and industry partners.¹¹

¹⁰ Washington State Department of Transportation, *West Coast Electric Highway*, West Coast Green Highway, <http://www.westcoastgreenhighway.com/electrichighway.htm> (last visited Jan. 18, 2023).

¹¹ *Id.* Funding would not be available for foreign entities.