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FOR FURTHER INFORMATION CONTACT: Ms. Beverly Steburg, U.S. Department of Education, Region IV, 61 Forsyth Street, SW., Suite 18T91, Atlanta, Georgia 30303. Telephone: (404) 562-6336. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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Program Authority: 29 U.S.C. 772.

Dated: March 8, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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DEPARTMENT OF ENERGY

Office of General Counsel Federalism; Intergovernmental Consultation

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of statement of policy.

SUMMARY: The Department of Energy (DOE) is publishing a statement of policy on intergovernmental consultation in the development of regulations that have federalism implications. This statement of policy implements provisions in President Clinton's Executive Order on Federalism that require Federal agencies to consult with State and local governments in the development of regulatory policies that may have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

EFFECTIVE DATE: This policy is effective March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, S.W., GC-74, Washington, D.C. 20585, (202) 586-2902.

SUPPLEMENTARY INFORMATION: The President issued Executive Order 13132, "Federalism," on August 4, 1999 (64 FR 43255, Aug. 10, 1999). Section 6(a) of the Order requires each covered Federal agency to have "an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "State and local officials" is defined in section 1(d) of the Order to mean "elected officials of State and local governments or their representative national organizations." "Regulatory policies that have federalism implications" refers to actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government." E.O. 13132, section 1(a).

On October 28, 1999, the Administrator, Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB), issued to heads of executive departments and agencies guidance for implementing Executive Order 13132. Pursuant to section 6 of the Order, the Administrator requested that each agency federalism official submit a description of the agency's consultation process to OMB by January 31, 2000. The General Counsel, who is the DOE federalism official, has submitted this statement of policy to OMB.

The intergovernmental consultation procedures required by Executive Order 13132 and by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) are similar. For that reason, DOE has modeled this statement of policy on its final policy statement on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995, which DOE published on March 18, 1997 (62 FR 12820). This will permit DOE to use the same basic consultation process for development of a regulation that both contains a significant Federal intergovernmental mandate and has federalism implications.

The intergovernmental consultation process required by Executive Order 13132 expands and supersedes the consultation procedures under Executive Order 12875, "Enhancing the Intergovernmental Partnership" (58 FR 58093, Oct. 28, 1993). E.O. 13132 section 10(b). However, Executive Order 13132 supplements, but does not supersede, the requirements in Executive Order 12372, "Intergovernmental Review of Federal Programs" (3 CFR, 1982 Comp., p. 197). E.O. 13132 section 10(a). Executive Order 12372 directs Federal agencies, to the extent permitted by law, to rely on State and local processes for consultation with elected State and local government officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development.

Issued in Washington, D.C., on February 11, 2000.

Mary Anne Sullivan,
General Counsel.

DOE adopts the following Statement of Policy:

Statement of Policy on Intergovernmental Consultation in the Development of Regulations That Have Federalism Implications

I. Purpose

This Statement of Policy implements the requirement in section 6 of Executive Order 13132, "Federalism," (64 FR 43255, Aug. 10, 1999), that each agency have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "State and local officials" means elected officials of State and local governments or their representative national organizations.

II. Applicability

This Statement of Policy applies to the development of any regulation that has federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

III. Intergovernmental Consultation

When to begin. As early as possible in the development of a notice of proposed rulemaking, the responsible Secretarial Officer, in consultation with the General Counsel and the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs, should determine whether a proposed regulation has federalism implications. Upon determining that a proposed regulation has federalism implications, the Secretarial Officer responsible for the rulemaking should provide adequate notice to pertinent State and local officials.

Content of notice. The notice from the responsible Secretarial Officer to State and local officials should: (1) describe the nature and authority for the rulemaking; (2) give DOE's estimate of the effects on State and local governments of the regulatory options being considered for proposal, including whether they would impose direct compliance costs not funded by the Federal Government or would preempt State law; and (3) invite them to participate in the development of the regulation by participating in meetings or workshops with DOE or by presenting their views in writing on the likely effects of regulatory options being considered by DOE staff or legally available policy alternatives that they wish DOE to consider.

How to notify State officials. With respect to State governments, the Secretarial Officer should give actual notice by letter, using a mailing list maintained by the DOE Office of Intergovernmental and External Affairs that includes elected chief executives, the National Governors Association, the National Conference of State Legislatures, and the Council of State Governments.

How to notify local officials. With respect to local governments, the Secretarial Officer should give notice through the **Federal Register** and by letter to the Executive Director of the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the International City/County Management Association, and any State Municipal League not represented by a national association. If a draft proposed regulation might have federalism implications in a limited area of the United States, then the Secretarial Officer, in consultation with the Office of Intergovernmental and External Affairs, should give actual notice by letter to appropriate local officials and the appropriate State Municipal League(s), if practicable.

Consultation. The timing, nature, and detail of the consultation with State and local officials should be appropriate to the nature of the regulation involved. In consultation with State and local officials, staff in the office of the Secretarial Officer responsible for the rulemaking and the Office of Intergovernmental and External Affairs should seek comment, as appropriate, on: (1) The need for Federal regulation; (2) compliance costs of regulatory options DOE is considering for proposal; (3) legally available policy alternatives; and (4) ways to avoid or minimize conflict between State law and Federally protected interests. If a rulemaking would impose an unfunded mandate or preempt State law, staff in the office of the Secretarial Officer responsible for the rulemaking and the Office of Intergovernmental and External Affairs must consult, to the extent practicable and permitted by law, with State and local officials early in the process of developing a notice of proposed rulemaking. Under Executive Order 13132, a regulation would impose an unfunded mandate if it has federalism implications; would impose substantial direct compliance costs on State and local governments; and is not required by statute.

Exemption from the Federal Advisory Committee Act. Secretarial Officers are encouraged to meet with State and local elected officials to exchange views, information, and advice concerning the

implementation of intergovernmental responsibilities or administration. Section 204(b) of the Unfunded Mandates Act of 1995 (2 U.S.C. 1534(b)) exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings for this purpose that do not include other members of the public.

Documenting compliance. The **SUPPLEMENTARY INFORMATION** section of any notice of proposed and final rulemaking that has federalism implications should describe DOE's determinations and intergovernmental consultation activities under Executive Order 13132. The **SUPPLEMENTARY INFORMATION** section of a notice of final rulemaking must include: (1) in a separately identified section, a "federalism summary impact statement," and (2) the certification of compliance required by section 8(a) of Executive Order 13132. The federalism summary impact statement must include a description of DOE's prior consultation with State and local officials; a summary of the nature of State and local officials' concerns and DOE's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of State and local officials have been met. If intergovernmental consultations precede the notice of proposed rulemaking, the **SUPPLEMENTARY INFORMATION** section of the notice of proposed rulemaking should include a preliminary federalism summary impact statement.

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DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 00-11; Atmospheric Chemistry Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for participation in the Atmospheric Chemistry Program (ACP) Science Team. The research program supports the Department's Global Change Research Program, the U.S. Global Change Research Program, and the Administration's goals to understand atmospheric chemistry associated with air quality and climate change. Of particular interest are experimental and