

SECTION FOUR

» Mitigation Option Implementation: Jurisdiction and Programmatic Issues

State climate plans developed in the past decade were designed to develop comprehensive policy in all sectors, using all implementation tools at all appropriate levels of government (e.g. local, state, federal) in order to capture the broadest and most effective choices for low cost, high co-benefit solutions. Many of these policies were understandably focused on actions available to states and localities where federal jurisdiction was not applicable, or where federal willpower was lacking. But the recommendations are not restricted to state and local jurisdiction. Indeed, many policy options were viewed as more appropriate for federal or shared federal/state implementation. Nearly all state plans contain advisory or advocacy statements regarding the need for federal action for specific policy options and categories. Often these statements are a preface to state or regional (multi-state) policy recommendations, and typically take the form,

“The Council strongly recommends that this state advocates for adoption of an aggressive federal [state policy type] program, as only a comprehensive national program can address all of the complexities associated with implementation of a single-state or regional plan. In the event the federal government does not take action or delays action in this area, we recommend the following. Should a federal program be established after the recommended program is in place, it is our recommendation that the program described here be discontinued.”

Jurisdictional issues are a major consideration in any comprehensive economy-wide climate plan. As seen in Sections 2 and 3, no single policy or action can achieve national or state reduction goals at acceptable cost levels. However, if done properly, a portfolio of measures across all sectors and employing a wide range of policy instruments can achieve reductions beyond national goals, strengthen the economy, and increase income.

The task of implementing this portfolio is no less complex than the diversity of measures it contains. Measures such as automobile emissions standards, threshold appliance or building efficiency standards, renewable fuel standards, most market-based mechanisms such as cap-and-trade, and many others are clearly better suited to federal or shared federal/state implementation. Issues of boundary effects, equity and competitiveness are dramatically reduced or eliminated through this approach.

On the other hand, the state action plan portfolio also contains land use measures sometimes referred to as ‘location efficiency’ and other action areas more applicable to state and local jurisdiction. The problems and opportunities for improved location efficiency, for instance, vary from state to state and locality to locality. Likewise, opportunities for cost-effective transit policies vary dramatically based upon population density and historical development patterns. Effective transit and location efficiency climate policy measures need to be embraced and enacted by the levels of government with traditional jurisdiction over such matters – local, metropolitan, and state. As a result, stakeholder representatives did not recommend national land use policies.

To better understand the jurisdictional issues of comprehensive climate action, the 23 super options were reclassified from their economic sectors to the level of government traditionally exercising sole, primary or shared jurisdiction. Authority over these policies varies from state to state, with some states exercising little or no control over local jurisdictional authority (typically “Home Rule” states),

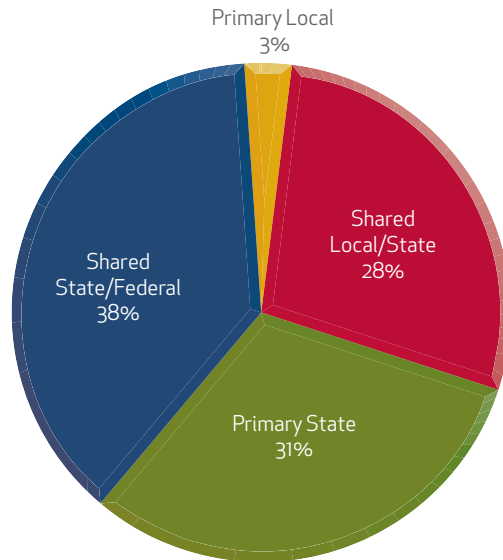
while others may exercise a great deal (typically “Dillon’s Rule” states). The classifications used here are therefore generalized to show what is typical but by no means universal.

Figure 4-1 shows the breakdown of emissions reductions offered by full stakeholder implementation of the 23 super option policies by the level of government most likely to possess traditional jurisdiction.

Figure 4-1. Potential 2020 Emission Reductions by Government Level

2020 Stakeholder Implementation Potential GHG Emissions Reductions by Jurisdiction

Source: Center for Climate Strategies, 2010.



Not surprisingly, much government authority is shared between levels, meaning either level typically has the authority to enact the policy or measure. Some examples of shared state and federal authority include agriculture incentive programs, waste management regulations and appliance standards. Shared state and local jurisdiction include smart growth, transit and building codes.

This analysis shows the importance of integrating local, state and federal actions, as well as policy instruments, to minimize costs and maximize co-benefits. For example:

- » 38% of total potential emissions reductions can be achieved through measures under shared federal and state jurisdiction;
- » 31% of potential emissions reductions can be achieved through measures primarily under state jurisdiction; and
- » 31% of potential emissions reductions can be achieved through measures primarily under local or shared local/state jurisdiction.

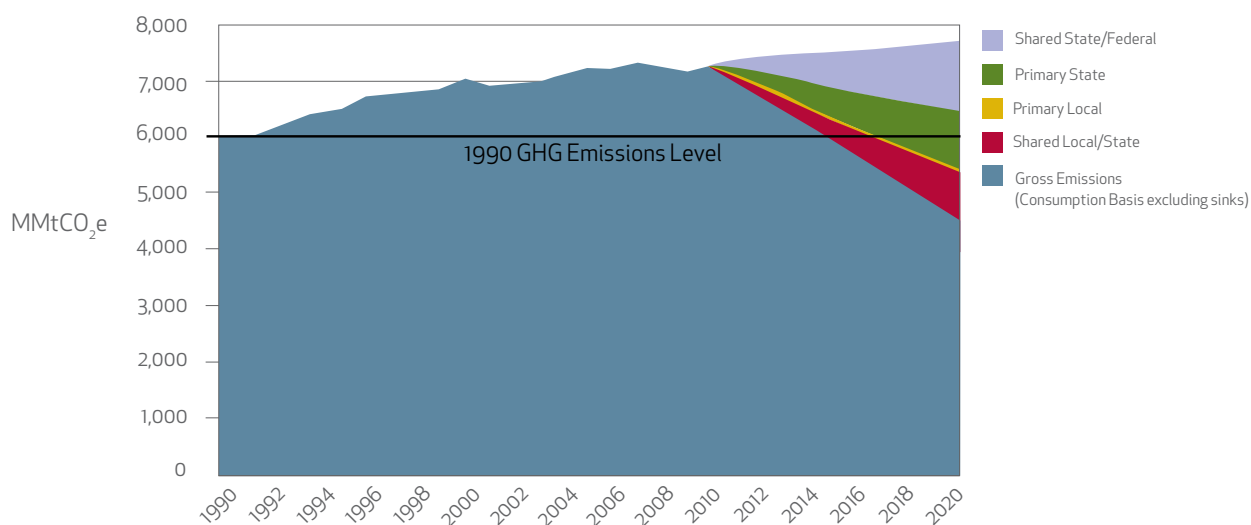
While the source of these data (state climate action plans) introduces some bias against exclusively federal policies (particularly due to the time period of federal recalcitrance in which they were developed), the role of the states and localities is undeniable. And the critical partner among the three levels of government appears to be the states; 97% of all emissions reductions are achievable by policies where the states have either primary or shared jurisdiction.

Of course, the underlying assumption here is that these 23 super policy options are implemented nationally, and while many states have led the nation in the design and implementation of climate programs, there is no immediate prospect that all 50 states will independently adopt such measures. The federal role in bringing about comprehensive and cost-effective climate action is clear. Equally clear from this study, however, is that only a national partnership among government levels can achieve the most comprehensive and economically beneficial reductions.

Figure 4-2 is a corollary to Figure 2-6, except instead of showing the reduction wedges by economic sector they are shown by government jurisdiction. The wedges show that even achieving 1990 levels will require multiple levels of government working together.

Figure 4-2. U.S. GHG Emissions 1990-2020 with Reduction Potential by Implementation Jurisdiction, Stakeholder Implementation

Source: Center for Climate Strategies, 2010.



MMtCO₂e = million metric tons carbon dioxide equivalent; GHG = greenhouse gas.

This analysis should also inform the discussion about federal preemption. There are essentially two forms of preemption; the first is preemption that enables a national scale program to operate efficiently. This preemption is necessary to achieve the benefits of federal programs like those recommended in the state action plans and illustrated by the sample quote at the beginning of this section. Preemption in this case is appropriate and necessary to resolve the complications and equity issues associated with this class of measures.

The second form of preemption is a very different matter. Preemption here is used to limit the ability of states and localities with overlapping jurisdiction to implement similar but more stringent policies and measures. In these cases there is no compelling programmatic or equity reason to deny states and localities this authority. An example is building codes. The federal government could adopt a minimum national energy building code to require efficient new and renovated buildings in states and localities that have not yet done so on their own. But if the new federal code denied states and localities the authority to enact and enforce more stringent codes this would in effect obstruct the emissions reductions these codes might achieve.

Federal preemption to prevent such actions would have the effect of limiting the national GHG reductions and associated economic opportunities to those politically achievable in Congress. As we have seen by the comparison of the state stakeholder and congressional scenarios, this is only about half of what stakeholders working at the state level have embraced and recommended as the most politically and economically feasible approaches.

Have climate action plan stakeholders offered any advice to state and national policy makers regarding what should be done to implement these policies? The answer is yes, although like the policies themselves there is significant diversity of opinion regarding how this should be accomplished. Recommendations for similar policies can take many forms. A renewable portfolio standard, for example, can call for aggressive mandatory contributions of renewable power or they can be voluntary. They can include energy efficiency measures in addition to renewables, and can even be defined as a clean energy portfolio standard to include generation from non-renewable low or zero GHG generation. The specifics may vary, but the mechanism is essentially the same.

Table 4-1 summarizes guidance from state climate action plans and CCS sector-expert analysts who performed the policy analysis and worked with the stakeholders as the policies were developed. Some of the non-federal actions have already been taken by states and localities, on a limited basis. This guidance reflects the most common or relevant recommendations for implementation of the action plan policies, but they are by no means all-inclusive. Readers interested in the detailed state-specific policy designs are encouraged to review the individual state plan documents, available at www.climatestrategies.us.

The guidance in Table 4-1 is organized by government level. At the federal level there are two columns, one titled “Existing Authority” and the other, “New Authority.” Existing authority comments reflect actions available to the administration and agencies under current law, although new appropriations may be required. New authority comments reflect actions the Congress would most likely have to authorize. A careful review of Table 4-1 illustrates the principles of shared jurisdictional and interlocking authority between levels of government discussed above.

Table 4-1. Potential Federal, State and Local Actions to Implement the 23 Super Options

Sector	Climate Mitigation Actions	Federal		State	Local
		Existing Authority	New Authority	Actions by Governors, Executive Branch, Public Utilities Commissions, Legislatures	Actions by Municipalities
Agriculture, Forestry, Waste Management (AFW)					
AFW-1	Crop Production Practices to Achieve GHG Benefits	Continue funding and associated R&D under the Farm Bill.	Enact a national GHG program that allows for carbon offsets from the agricultural sector.	State agriculture commodities purchasing programs that recognize in-state production with lower carbon content.	Enhance programs of county extension offices in nutrient management and technology transfer.
AFW-2	Livestock Manure - Anaerobic Digestion and Methane Utilization	Continue funding and associated R&D under the Farm Bill.	Enact a national GHG program that allows for carbon offsets from the agricultural sector.	Provide cost share for demonstration programs.	Local extension offices provide technology transfer.
AFW-3	Forest Retention	Regional Plans under National Forest Management Act (NFMA).	Enact a national GHG program that allows for carbon offsets from the forest sector.	State programs to incentivize local smart growth planning and development.	Implement smart growth programs; urban growth boundaries.
AFW-4	Reforestation/Afforestation	Reforestation Trust Fund under NFMA for National Forest Lands.	Enact a national GHG program that allows for carbon offsets from the forest sector.	State/local tax incentives for working forest lands or lands with permanent conservation easements; Establish bioenergy markets as a way to promote the establishment/maintenance of working forests.	Local tax incentives for working lands or lands with permanent conservation easements.

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Sector	Climate Mitigation Actions	Federal		State	Local
		Existing Authority	New Authority	Actions by Governors, Executive Branch, Public Utilities Commissions, Legislatures	Actions by Municipalities
AFW-5	Urban Forestry		Enact a national GHG program that allows for carbon offsets from the forest sector.	State cost share programs to promote expansion and maintenance of urban forests.	Partner with state on cost share programs; explore programs with local electrical utilities on shade tree planting programs.
AFW-6	MSW Source Reduction		National programs with industry associations to develop cradle to grave to cradle management of products and packaging; programs to reduce junk mail.	Government lead by example source reduction programs; programs to reduce junk mail.	Government lead by example source reduction programs.
AFW-7	Enhanced Recycling of Municipal Solid Waste		Programs to assist states in the development of end use markets for recycled commodities.	Provide incentives for use of recycled construction materials; mandatory targets for landfill diversion.	Increased disposal fees; pay-as-you-throw programs.
AFW-8	MSW Landfill Gas Management		Enact a national GHG program that allows for carbon offsets from the waste management sector.	Mandatory programs for landfill gas collection and control or beneficial use.	
Energy/Electricity Supply (ES)					
ES-1	Renewable Portfolio Standard	State-level public utility commissions.	Enact national minimum RPS overseen by Department of Energy.	Enact or make more stringent RPS; extend beyond current expirations.	Promote renewable energy procurement at municipal agencies.
ES-2	Nuclear	Resolve spent fuel issue; address accident risks; resolve accident insurance subsidies.	Enhanced authority for nuclear Regulatory Commission.	Address siting issues perhaps by proactively identifying acceptable new facility sites.	Monitor siting developments to ensure adequate emergency evacuation plans.
ES-3	CCSR	Fund R&D, develop CCSR-specific UIC regulations for safe reliable storage.	Examine and address liability issues, monitoring, and verification.	Support federal RD&D, commission technical feasibility studies of potential reservoir sites.	Facilitate/share right-of-way exclusions, if/as needed, through metropolitan corridors for transmission pipelines.
ES-4	Coal Plant Efficiency Improvements and Repowering	Work with industry to address NSR issues.	None needed.	PUC to enact minimum performance standards for coal station combustion efficiency.	Support PUC activities to increase coal station efficiency.

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Sector	Climate Mitigation Actions	Federal		State	Local
		Existing Authority	New Authority	Actions by Governors, Executive Branch, Public Utilities Commissions, Legislatures	Actions by Municipalities
Residential, Commercial and Industrial (RCI)					
RCI-1	Demand Side Management Programs	Expand funding and eligibility criteria for weatherization programs	Incentivize states to meet DSM performance standard; fund state or utility DSM through national CO ₂ allowance auction revenue.	Decoupling of utility sales from profits in regulated markets. Performance incentives for DSM. Establish systems benefits charges to fund DSM.	Implement local DSM peer competition programs between municipalities or school districts.
RCI-2	High Performance Buildings (Private and Public Sector)	Establish stringent federal facility carbon footprint standard; fund agency budgets as needed to comply	Offer incentives for "beyond code" private-sector building performance	Establish public sector lead by example standard; Offer incentives for "beyond code" building performance. Develop a retained savings policy where energy bill savings can be retained for capital investments.	Establish public sector lead by example standard; Offer incentives for "beyond code" building performance.
RCI-3	Appliance Standards	Federal government has authority to set appliance standards.	Establish annual process to include new equipment and existing appliances not already subject to federal standards in federal standard setting. Mandate testing for appliances to receive Energy Star label.	Implement standards for appliances not covered under federal rules. Implement Energy Star or other appliance efficiency procurement requirement for state purchasing.	Implement Energy Star or other appliance efficiency procurement requirement for local government purchasing.
RCI-4	Building Energy Codes	ARRA (2009) requires states applying for federal energy grants to meet most recent building energy codes and demonstrate plan for enforcement.	Enact mandatory minimum EE codes for new and retrofit construction based on state climate zones. Require enforcement by state or local jurisdictions. Require building benchmarking and labeling as part of code process.	Enact state "stretch" codes more stringent than federal minimums. Require enforcement by state or local jurisdictions. Give code agency authority to update codes rather than legislature. Require building benchmarking and labeling as part of code process.	Adopt local "stretch" codes more stringent than federal or state minimums; establish lower thresholds for retrofits to meet new code compliance. Require building benchmarking and labeling as part of code process.
RCI-5	Combined Heat and Power	Energy Improvement and Extension Act (2008) provides for a 10% investment tax credit (ITC) up to 15 megawatts. CHP can also receive accelerated depreciation.	Net metering and interconnection standards for all distributed generation. Increase accelerated depreciation allowance for CHP. Federal CHP feed in tariff. Implement reasonable standby rates, backup rates, and exit fees. Include CHP/heat recovery in federal EE/renewable performance standard.	Output-Based Environmental Regulations for new generation facilities. Net metering and interconnection standards for all distributed generation. Feed in tariff for CHP. Include CHP/heat recovery in EE/renewable performance standard. Implement reasonable standby rates, backup rates, and exit fees.	Output-Based Environmental Regulations for new generation facilities. Net metering and interconnection standards for all distributed generation. Feed in tariff for CHP.

Table 4-1, continued from previous page

Sector	Climate Mitigation Actions	Federal		State	Local
		Existing Authority	New Authority	Actions by Governors, Executive Branch, Public Utilities Commissions, Legislatures	Actions by Municipalities
Transportation and Land Use					
TLU-1	Vehicle Purchase Incentives, Including Rebates	Historic tax credit and other incentive programs.	Additional funding for incentive programs and additional authorizations for tax credits.	New and additional state legislation providing both funding and authorization for vehicle purchase incentive programs.	Generally vehicle purchases not affected by local actions. Some incentive by local practices may be implemented.
TLU-2	Renewable Fuel Standard (Biofuels Goals)	Federal RFS (Renewable Fuels Standard).	Removal of Barriers to State "over and above" RFS goals that go beyond federal goals.	New and additional state legislation and rule development for "over and above" RFS development that goes beyond federal requirements.	Generally renewable fuels standards not affected by local actions. Some incentive by local practices may be implemented.
TLU-3	Smart Growth/Land Use	Federal facilities placement decisions.	Removal of Barriers to State and Local Actions.	Funding and regulatory reform to incentivize "smart growth" land use. Removal of barriers to local actions.	Changes in regulatory and programmatic local government actions to promote smart growth.
TLU-4	Transit	Federal Funding for Capital investment in transit systems.	Additional federal funding of capital, preventive maintenance, and operation and maintenance of transit systems.	Additional funding and "fast tracking" of both capital investment and increasing operation and maintenance of transit systems.	Increased development of transit capacity and maintenance of level of effort to sustain transit services.
TLU-5	Anti-Idling Technologies and Practices	Voluntary Partnership programs with USEPA, including Smartway.	New federal minimum standards for anti-idling technologies and practices.	State minimum standards, funding, and enforcement of anti-idling technologies and practices.	Local rules and enforcement would support state and federal programs.
TLU-6	Mode Shift from Truck to Rail	Federal regulatory and infrastructure funding programs.	Additional federal funding of rail infrastructure and reform of federal regulations to incentivize more energy-efficient transportation.	State funding and incentives to promote more energy-efficient transportation of goods.	Changes to local land uses to allow for more rail capacity would enable increase in energy-efficient transportation of goods.

ARRA = American Recovery and Reinvestment Act of 2009; CCSR = carbon capture and storage or reuse; CHP = combined heat and power; CO₂ = carbon dioxide; DSM = demand side management; EE = energy efficiency; GHG = greenhouse gas; MSW = municipal solid waste; NSR = new source review; PUC = Public Utility Commission; R&D = research and development; RFS = renewable fuel standard; UIC = underground injection control; USEPA = U.S. Environmental Protection Agency.