

United States Senate  
WASHINGTON, DC 20510

March 9, 2015

The Honorable Howard A. Shelanski  
Administrator  
Office of Information and Regulatory Affairs  
725 17th Street, NW  
Washington, DC 20503

Dear Administrator Shelanski:

Congress and the American people deserve greater transparency and government accountability regarding the social cost of carbon (SCC)<sup>1</sup>—a theoretical measure of climate change damages the Administration uses to justify onerous regulations. The estimates were developed by a secretive Interagency Working Group (IWG) absent notice or public participation. Only after numerous written requests from Congress and the public, the Office of Information and Regulatory Affairs (OIRA) agreed to provide the opportunity for public comment on the SCC beginning November 26, 2013.<sup>2</sup> A year has passed since the comment period closed,<sup>3</sup> but OIRA has not responded to the comments and it is unclear whether the comments have been reviewed. In fact, the Administration has not provided the public with any new information on the status of the SCC since the 2013 update. Accordingly, we write to request OIRA—as a steward of the regulatory process and IWG—fulfill its obligation to be fully responsive to the public and Congress in these matters.

While we continue to have significant concerns over the process establishing and the substance underlying the SCC, public information on the estimates is paramount given its increasing application to federal—and state—programs. Despite President Obama’s Executive Order 13563 mandate to “promote predictability and reduce uncertainty” in the regulatory system,<sup>4</sup> the Administration has used the SCC in an expansive and erratic manner with little to no public notice. The SCC was first applied to Department of Energy (DOE) conservation program standards and has since been cited in nearly 100 proposed and final rules from DOE, the Environmental Protection Agency (EPA), and the Departments of Transportation, Housing and Urban Development, and Agriculture.<sup>5</sup> These include some of the most expensive and

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<sup>1</sup> Interagency Working Group on Social Cost of Carbon, *Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Exec. Order 12866*, U.S. GOV’T (May 2013), [http://www.whitehouse.gov/sites/default/files/omb/inforeg/social\\_cost\\_of\\_carbon\\_for\\_ria\\_2013\\_update.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf).

<sup>2</sup> Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Exec. Order No. 12866, 78 Fed. Reg. 70586 (Nov. 26, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-11-26/pdf/2013-28242.pdf>.

<sup>3</sup> Comment period ended February 26, 2014. See Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Exec. Order No. 12866, Notice of extension of public comment period, 79 Fed. Reg. 4359 (Jan. 27, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-27/pdf/2014-01605.pdf>.

<sup>4</sup> Exec. Order No. 13563, §1(a), 76 Fed. Reg. 3821 (Jan. 21, 2011).

<sup>5</sup> See Memorandum from CONG. RESEARCH SERV. to S. Comm. on Env’t & Pub. Works (Jan. 26, 2015) (on file with Committee).

burdensome regulations. For example, all the climate-related benefits of EPA's Clean Power Plan were derived from the SCC estimates.<sup>6</sup> However, evidence indicates severe deficiencies in the models used, so a review of the public comments on the SCC could result in changes to the estimates and alter the rule before it is made final. Most recently, the Council on Environmental Quality proposed use of the SCC in its revised draft guidance for National Environmental Policy Act reviews,<sup>7</sup> which may delay approval of individual infrastructure or energy development projects. Given these trends, OIRA responses to public comments on the SCC could ameliorate the regulatory uncertainty over future application of the estimates.

OIRA responses to SCC comments and public access to information on the IWG is also necessary to comport with Presidential directives on the regulatory process. At the beginning of the Obama Administration, the President issued a Memorandum on Transparency and Open Government, which directed agencies to "establish a system of transparency, public participation, and collaboration"<sup>8</sup> because "[p]ublic engagement enhances the Government's effectiveness and improves the quality of its decisions."<sup>9</sup> Executive Order 13563 also acknowledged the public must have a "meaningful opportunity to comment" in the regulatory process.<sup>10</sup> Yet, in regards to the SCC, the Administration has largely ignored these mandates.

Above all, it is only reasonable for the public to know how OIRA plans to use their comments. We want to encourage public participation in the regulatory process, not stifle it by ignoring those individuals who engaged in the process by submitting comments. In an effort to preserve the integrity of the regulatory process and bring the much needed level of transparency to the IWG, we respectfully request OIRA's cooperation and thorough responses to the following by no later than March 30, 2015:

1. Please make arrangements for OIRA officials to provide a briefing for Congressional staff on OIRA's involvement in the IWG and role in the public comment process.
2. All documents and communications referring or relating to OIRA's plans for reviewing the public comments. Please provide all documents in electronic format.
3. How many comments were submitted, including those submitted to the online docket as well as those submitted directly to OIRA, during the public comment period? What were the major issues raised in the comments? Do any of the comments support revising the SCC estimates? Please make public all comments received on the SCC.

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<sup>6</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34830 (June 18, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13726.pdf>.

<sup>7</sup> Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews, 79 Fed. Reg. 77802 (Dec. 24, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-24/pdf/2014-30035.pdf>.

<sup>8</sup> Memorandum from President Barack Obama, *Transparency and Open Government* (Jan. 21, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment).

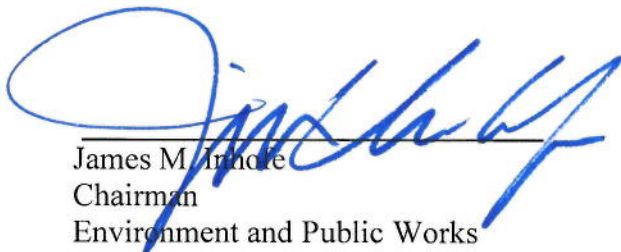
<sup>9</sup> *Id.*

<sup>10</sup> Exec. Order No. 13563, §2(b), 76 Fed. Reg. 3821 (Jan. 21, 2011).


4. What is OIRA's process for reviewing the comments? Please provide the names and titles of reviewing officials and whether or not they participated in the IWG.
5. What is the status of reviewing the public comments? Are there any plans for responding to the comments? If so, what is the reason for the delay in responding to the comments? Please specify the dates in which the review started and ended or is anticipated to end.
6. Are there any plans for making responses to comments available to the public online? If so, where will comments be posted? Will responses to comments on the SCC reflect a consensus of the IWG?
7. Has the IWG reviewed the comments? If so, what is the role of the IWG in reviewing the comments? Did the IWG review the comments after OIRA's review or was it a simultaneous review? When did the IWG receive the comments? Please specify the IWG participants, including the names, titles, and agency, of each IWG participant reviewing the comments, and the dates in which each IWG participant's review started and ended or is anticipated to end.
8. What is the status of the IWG's review of comments? If the IWG has not reviewed the comments, please indicate the reason and specify the plans, if any, the IWG has for reviewing the comments.
9. Has the IWG reconvened to review the SCC estimates? If so, please specify what prompted its reconvening, the date it was reconvened, the number of times and dates the IWG has met, when the group plans to meet in the future, as well as who reconvened the group, the participants involved, the role of each participant, and provide any new materials being considered by the IWG. If not, please specify whether there are any plans for reconvening the IWG, including the date to be reconvened, expected participants and their role, and provide any new material the IWG plans to consider.

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Andore  
Chairman  
Environment and Public Works



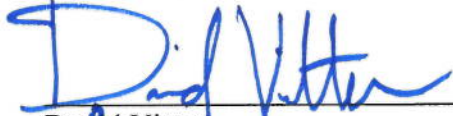
Jeff Sessions  
United States Senator



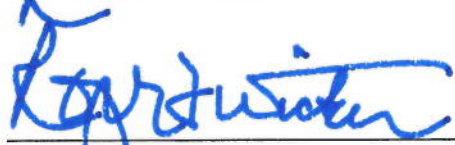
Administrator Shelanski

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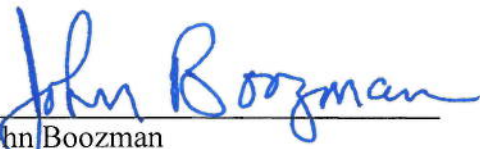
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David Vitter  
United States Senator



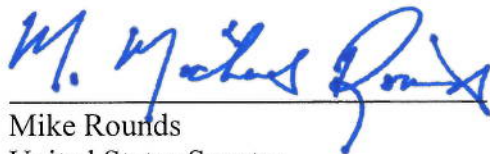
Roger Wicker  
United States Senator



John Boozman  
United States Senator




Shelley Moore Capito  
United States Senator



Mike Rounds  
United States Senator



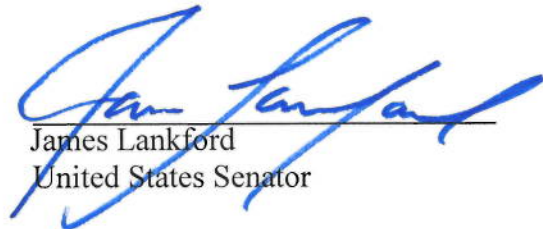
John Barrasso  
United States Senator



Roy Blunt  
United States Senator



Deb Fischer  
United States Senator



James Lankford  
United States Senator