



Via regulations.gov

Ms. Amy Hambrick
Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
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Washington, D.C. 20460

Re: Supplemental Proposed Rule, Environmental Protection Agency: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources; Oil and Natural Gas Sector Climate Review; 87 Fed. Reg. 74702-74847 (December 6, 2022)

Ms. Hambrick:

The U.S. Chamber of Commerce (the “Chamber”) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (“EPA”) supplemental notice of proposed rulemaking entitled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” dated December 6, 2022 (the “Methane Proposal” or “Proposal”).¹ This proposal supplements EPA’s previous “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” dated November 15, 2021 (the “Notice”).² We commented on the Notice on January 31, 2022.³ In our comments, we suggested that EPA supplement the Notice, and we commend EPA for doing so now. We have separately commented on the substance of the Methane Proposal, and those comments can be found in the docket for this rulemaking.⁴

¹ 87 Fed. Reg. 74,702 (Dec. 6, 2022).

² 86 Fed. Reg. 63,110 (Nov. 15, 2021).

³ See U.S. Chamber of Commerce, Comments on Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Docket ID No. EPA-HQ-OAR-2021-0317) (Comment ID EPA-HQ-OAR-2021-0317-0921) (Jan. 31, 2022), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0317-0921> [hereinafter Chamber January 2022 Comment Letter].

⁴ See U.S. Chamber of Commerce, Comments on Supplemental Proposed Rule, Environmental Protection Agency: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions

In addition to those separate comments, here the Chamber focuses on the Methane Proposal's use of the Interagency Working Group's ("IWG") social cost of greenhouse gas ("SC-GHG") estimates⁵ and on EPA's External Review Draft of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances ("External Review Draft").⁶ The Chamber appreciates the opportunity to share our feedback and would like the opportunity to further engage with EPA on the issues raised below.

Addressing the challenge of climate change requires citizens, governments, and businesses to work together. The Chamber continues to leverage the innovation and strength of American business to find sound and durable solutions that improve our environment, grow our economy, and leave the world better for generations to come. We offer these comments to respectfully raise vulnerabilities in the Methane Proposal associated with the use of the SC-GHG estimates along with actionable suggestions for EPA.

SC-GHG estimates have been applied to multiple federal regulations, among other actions, that impose significant costs, including to companies represented by the Chamber. Use of the SC-GHG estimates in connection with these actions has resulted in estimates of hundreds of billions of dollars in reported climate-related benefits that are claimed to offset (in whole or in part) the costs of the actions. For this reason, the Chamber has a direct and substantial interest in ensuring that any SC-GHG estimates that are used in agency rulemakings, including the rulemaking process for the Methane Proposal, are the product of a sound, transparent, and inclusive process and are not misleading or inaccurate. In the Methane Proposal, EPA estimates the climate-related

Guidelines for Existing Sources; Oil and Natural Gas Sector Climate Review (Docket ID No. EPA-HQ-OAR-2021-0317) (Feb. 13, 2023) [hereinafter Chamber Methane Proposal Comments].

⁵ The SC-GHG estimates, which include social cost estimates for carbon dioxide ("SCC"), methane ("SCM") and nitrous oxide ("SCN"), are intended to represent the economic impact of emitting a ton of the particular GHG in a given year. For purposes of these comments, the SC-GHG estimates refer to the interim SC-GHG estimates released in February 2021. *See* U.S. Gov't Interagency Working Grp. on Soc. Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane and Nitrous Oxide Interim Estimates under Executive Order 13990* (Feb. 2021) ("2021 TSD"). The principles advanced in these comments would extend to any future SC-GHG estimates applied under any Final Rule with shortcomings similar to those of the interim SC-GHG estimates.

⁶ *See* EPA, Supplementary Material for the RIA for the Supplemental Proposed Rulemaking, NSPS and EG for Existing Sources: Oil and Natural Gas Sector Climate Review-EPA External Review Draft of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances (Docket ID No. EPA-HQ-OAR-2021-0317) (Document ID EPA-HQ-OAR-2021-0317-1549) (Dec. 6, 2022), <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-1549> [hereinafter EPA External Review Draft].

benefits to be \$48 billion by applying the SC-GHG estimates in the agency's cost-benefit analysis.⁷

The Chamber supports the appropriate consideration of GHG emissions as part of cost-benefit analyses under the Executive Order 12866 process, where permissible under an agency's statutory authority. Our comments complement and incorporate by reference the attached comments that the Chamber, along with other interested associations, submitted in June 2021, in response to a May 2021 notice by the IWG, which centered on the continuing need for a robust and transparent IWG process.⁸

Here, the Chamber re-emphasizes the ongoing need for an open, transparent, and centralized IWG process and urges continued efforts to promote those values. Since the IWG issued its estimates, the federal government has acknowledged that a more complete and open process is required before the IWG issues any final SC-GHG estimates. This was most evidenced by IWG's public release of the Technical Support Document ("TSD") for its February 2021 interim SC-GHG estimates,⁹ after much prior criticism as to the lack of openness.¹⁰ Thus, we are encouraged by planned updates to the IWG process, including additional public comment and peer review on the estimates, while also reserving judgment (until further details are provided) on the approach of such peer review.¹¹ In addition, in February 2022, a federal district court

⁷ See 87 Fed. Reg. at 74,713.

⁸ See Aluminum Association, American Chemistry Council, American Exploration & Petroleum Council, American Farm Bureau Federation, American Fuel & Petrochemical Manufacturers, American Gas Association, American Highway Users Alliance, American Iron and Steel Institute, American Petroleum Institute, American Public Gas Association, American Public Power Association, Associated Builders and Contractors, Associated General Contractors of America, Council of Industrial Boiler Owners, The Fertilizer Institute, Independent Petroleum Association of America, Interstate Natural Gas Association of America, National Association of Manufacturers, National Lime Association, National Mining Association, National Rural Electric Cooperative Association, Portland Cement Association, and the U.S. Chamber of Commerce, Comments on Notice of Availability and Request for Comment on the "Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990," 86 Fed. Reg. 24,669 (June 21, 2021) [hereinafter June 2021 Coalition Comments].

⁹ See White House, OMB, *Regulatory Matters: Social Cost of Greenhouse Gases*, <https://www.whitehouse.gov/omb/information-regulatory-affairs/regulatory-matters/#scghgs> (last visited Feb. 6, 2023).

¹⁰ See June 2021 Coalition Comments, *supra* note 8, at 11–12.

¹¹ Defs.' Suppl. Brief at 23, *Louisiana v. Biden*, No. 2:21-cv-01074-JDC-KK (W.D. La. Jan. 21, 2022), ECF No. 90 (The IWG "intends to publish its proposed final estimates within the next two months. Upon publication of the proposed final estimates, there will be an additional comment period, as well as a scientific peer-review process. Based on the public comments and the results of peer review, the [IWG] then intends to publish Final Estimates later in 2022."); see also Request for Nominations of Experts for the Review of Technical Support Document for the Social Cost of Greenhouse Gases, 87 Fed. Reg. 3,801 (Jan. 25, 2022).

issued a preliminary injunction (now on appeal) that forbade use of the interim SC-GHG estimates, relying in part on a number of concerns regarding the IWG process;¹² but that injunction has since been stayed pending appeal by the Fifth Circuit.¹³ These developments only serve to underscore the need for continued efforts to improve the IWG process going forward and ensure final SC-GHG estimates that are technically sound and well-accepted among the regulated community.

Rather than operate within the IWG process, EPA has instead decided to publish new estimates via its External Review Draft, ahead of or in place of any updates from the IWG and in conjunction with the Proposal. This decision raises new and wholly avoidable concerns, as outlined in greater detail below. In doing so, EPA has created the appearance that it has usurped IWG's role in leading the development of a SC-GHG metric, undermining the benefits of a cohesive, multi-agency approach and uniform peer-review process. The agency's decision to include the External Review Draft in this rulemaking has sowed confusion among interested parties and risks unnecessarily intertwining the Methane Proposal and the External Review Draft, potentially leading to delays in finalizing and implementing any final methane regulations. EPA's decision to include the External Review Draft in the Methane Proposal also hinders the credibility of the External Review Draft. To address these issues, EPA should withdraw the External Review Draft from this rulemaking and defer to the IWG's process for updating the SC-GHG values.¹⁴

Moreover, although EPA appeared to be taking lead in organizing peer review of IWG's updated SC-GHG estimates on behalf of the IWG and the agencies,¹⁵ the presumption—based on prior precedent and stated in Executive Order 13990—was that further iterations of the SC-GHG estimates would be published for peer review by the IWG directly under a separate OMB docket. EPA deviated from this practice by releasing the External Review Draft as an appendix to the Methane Proposal. By doing so, EPA has limited the public's awareness of this draft largely to those potentially subject to any finalized methane regulations, despite the fact that the SC-GHG estimates will have a much broader potential impact.

¹² Memorandum Ruling, *Louisiana v. Biden*, No. 2:21-cv-01074 (W.D. La. Feb. 11, 2022), ECF No. 98.

¹³ *Louisiana v. Biden*, No. 22-30087 (5th Cir. Mar. 16, 2022) (per curiam) (staying district court's decision pending appeal). An application to vacate the stay was filed before the U.S. Supreme Court. *Louisiana v. Biden*, No. 21A658 (U.S. Apr. 28, 2022). The Court denied the stay application on May 26, 2022.

¹⁴ EPA should also consider the comments made on this same issue by the American Petroleum Institute, sent to Mr. Goffman on December 1, 2022 and available here: <https://www.api.org/-/media/files/misc/2023/api-epa-sc-ghg-peer-review-panel-comment-letter>.

¹⁵ See 87 Fed. Reg. 3,801 (Jan. 25, 2022).

Even though the External Review Draft was published alongside the Methane Proposal, EPA characterizes its use as a “sensitivity analysis” that is not integral to the Methane Proposal itself or any required regulatory impact analysis.¹⁶ By releasing the External Review Draft in tandem with the Methane Proposal and as part of the same rulemaking, the Chamber is concerned that EPA’s finalization or implementation of the Methane Proposal may be delayed due to conflation with or objection to the External Review Draft. Including the External Review Draft unnecessarily opens the Methane Proposal up to additional risk of legal challenges that could delay its implementation. As the Chamber notes in its parallel comments to the Methane Proposal,¹⁷ we support effective, durable methane regulations, and by calling attention to EPA’s approach to the External Review Draft, our intent is not to delay any final methane regulation. We instead only recommend that EPA withdraw the External Review Draft and defer to the IWG process for updating the SC-GHG estimates as required per Executive Order 13,990.

Beyond procedural concerns, there are lingering questions as to the relationship between EPA’s External Review Draft and the IWG’s role and ongoing review of its SC-GHG estimates. For example, it is not clear whether the External Review Draft represents an official update to the SC-GHG estimates currently under development by the IWG. EPA is a member of the IWG, making its decision to release its draft independent of IWG a puzzling move and confusing for those keeping track of the development of the SC-GHG estimates. EPA’s move also raises concerns as to the cohesiveness of the IWG and its work. Release of the External Review Draft has necessarily shifted focus away from IWG’s expected TSD—leading to the question of whether EPA has usurped IWG’s role going forward. With the IWG still directed to release updated SC-GHG estimates, as well as recommendations for further review and update and guidance for agencies regarding use of the estimates,¹⁸ EPA’s move raises questions as to whether the IWG will continue that work. Relatedly, it is unclear if other IWG member agencies were included in the development of the External Review Draft or will use or reject EPA’s draft.

The Chamber is also concerned that EPA’s decision to release the External Review Draft may set a new precedent, whereby each agency under the IWG’s umbrella will publish its own SC-GHG estimates, which would defeat the entire purpose of the uniform IWG process and foster nothing but continuing regulatory uncertainty. While the process and transparency of the IWG has not been sufficiently robust thus far, as

¹⁶ See 87 Fed. Reg. at 74,713, 74,843.

¹⁷ See 2021 SNOPR Comments, *supra* note 4.

¹⁸ See Exec. Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021).

we explain above and have explained previously,¹⁹ there was nevertheless the understanding among the regulated community that the IWG's work represented the collected interests of the various government bodies under its purview and that the end result would be a single set of SC-GHG estimates for agencies to apply. EPA's move to release the External Review Draft upends those expectations. Also, the release of additional and potentially conflicting agency-specific SC-GHG estimates will likely lead to more protracted litigation and lingering regulatory uncertainty across the regulated communities.

For the reasons discussed above and based on the arguments incorporated by reference in the attached comments, we strongly suggest that EPA ensure that the recommendations herein are addressed before proceeding with the application of the SC-GHG estimates in a potential final methane rule. Further, we recommend that EPA withdraw the External Review Draft and defer to the IWG's process for updating the SC-GHG estimates.

We hope EPA finds these comments useful for its decision-making process in this rulemaking. We thank you for your consideration of these comments and further extend our offer to assist EPA in this effort.

Sincerely,

A handwritten signature in black ink that reads "Martin J. Durbin". The signature is written in a cursive, flowing style.

Martin J. Durbin
President, Global Energy Institute,
and Senior Vice President, Policy
U.S. Chamber of Commerce

¹⁹ See June 2021 Coalition Comments, *supra* note 8.