

February 24, 2014

Data Quality Coordinator
Executive Associate Director
Office of Management and Budget
New Executive Office Building
Washington, D.C. 20503
Informationquality@omb.eop.gov

Re: Request for Reconsideration: Office of Information and Regulatory Affairs' Response to Petition for Correction: Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866 (February 2010) and Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866 (May 2013).

Dear Sir/Madam:

America's Natural Gas Alliance, the American Chemistry Council, the American Petroleum Institute, the National Association of Home Builders, the National Association of Manufacturers, the Portland Cement Association, and the U.S. Chamber of Commerce (the "Associations") respectfully submit this Request for Reconsideration ("RFR") to the Office of Management and Budget ("OMB"), pursuant to the Information Quality Act¹ (IQA), seeking reconsideration of our September 4, 2013 Petition for Correction ("2013 Petition for Correction") of the Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (February 2010) ("2010 Estimate") and Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (May 2013) ("2013 Estimate") (collectively, the "SCC Estimates").² We have attached to this RFR the Associations' original 2013 Petition for Correction, which provides the best characterization of reasonableness of our interests. This RFR will not repeat the concerns and requests we raised in the 2013 Petition for Correction. Instead, this RFR will discuss why we believe the January 24, 2014 response ("OMB IQA Response") provided by Administrator Shelanski of the Office of Information and Regulatory Affairs ("OIRA") was unsatisfactory and should be reconsidered.

Further, as noted in the 2013 Petition for Correction, the Associations served largely identical Petition for Corrections on each agency and entity that participated in the Interagency Working Group ("IWG"). In addition to OMB, we have received only one other response, from

¹ P.L. 106-554, §515, 144 Stat. 2763 (2001).

² Since filing our Petition for Correction some time ago, OMB published and disseminated yet another SCC Estimate and corresponding TSD. (78 Fed. Reg. 70,586 (Nov. 26, 2013)). The requests and concerns in our original September 4, 2013 Request for Correction apply equally to the new November 2013 SCC Estimate/TSD. As such, the Associations request that OMB treat our September 4, 2013 Request for Correction, and therefore this RFR, as applying to the November 2013 SCC Estimate/TSD. If OMB does not intend to treat these actions as such, we request to be notified by OMB so that we may petition for correction of the November 2013 SCC Estimate/TSD separately.

the U.S. Environmental Protection Agency, indicating that OMB will respond on behalf of the entire federal government.³ Whether the OMB IQA Response is on behalf of the entire federal government, however, was not stated in that response. We request that OMB either clarify that it is responding on behalf of the federal government or, pursuant to its role as administrator of the IQA, require all entities that participated in the IWG to respond expeditiously to our September 4, 2013 Petitions for Corrections.

Inadequacy of the OMB IQA Response:

In our 2013 Petition for Correction, the Associations urged OMB to withdraw and instruct federal agencies to cease the rulemaking and policymaking uses of the SCC Estimates and TSDs. This Petition for Correction contained all the information required of such petitions by OMB in its own IQA Guidelines,⁴ as well as those guidelines it requires of all other federal agencies and entities.⁵ The OMB IQA Response did not suggest that the 2013 Petition for Correction failed to provide any necessary information. Specifically, the 2013 Petition for Correction: (1) contained several statements identifying it as a request for correction; (2) clearly identified the SCC Estimates and TSDs that were the subject of the petition; (3) provided an exhaustive description of the many ways the SCC Estimates and the TSD did not comply with the “OMB guidelines or OMB’s Government-wide Guidelines” on information quality; (4) provided extensive and precise citation to each information quality directive that the SCC Estimates/TSD violated (most of which were OMB’s own directives); and (5) specifically noted that the Associations wanted the SCC Estimates withdrawn and federal agencies instructed to refrain from using them for rulemaking and policymaking purposes.

The January 24, 2014 OMB IQA Response concluded that the SCC Estimates/TSD should not be withdrawn and supported its terse conclusion with little more than a “cut-and-paste” reiteration of the precise TSD language that concerned the Associations. That OMB took over 140 days to provide such an unsatisfactory response is discouraging, but is not the subject of the RFR. The following subject headings contain the precise language of the Associations’ 2013 Petition for Correction. The discussions therein characterize the OMB IQA Response and the many ways it did not comply with the “OMB guidelines or OMB’s Government-wide Guidelines” on information quality.

1. The SCC Estimates fail in terms of process and transparency. The SCC Estimates fail to comply with OMB guidance for developing influential policy-relevant information under the IQA. The SCC Estimates are the product of a “black box” process and any claims to their supposed accuracy (and therefore, usefulness in policymaking) are unsupported.

As the Associations explained in their 2013 Petition for Correction, OMB’s guidelines require it to maximize the quality of disseminated information that it classifies as influential. “Influential information” generally refers to information that “will have a clear and substantial impact on important public policies or important private sector

³ See Letter from Monica D. Jones to Wayne D’Angelo (Nov. 12, 2013).

⁴ Office of Management and Budget Information Quality Guidelines (Oct. 1, 2002) (“OMB Guidelines”).

⁵ 67 Fed. Reg. 8452 (Feb. 22, 2002).

decisions.”⁶ We further explained that the TSD/SCC Estimates, upon which numerous agencies may base billions, if not trillions, of dollars of regulation, are influential information that will have a clear and substantial impact on important public policies and important private sector decisions.⁷

Under OMB Guidelines, such influential information must meet a higher level of “transparency.”⁸ According to OMB, transparency requires that its findings be reproducible, within an acceptable range of imprecision, by third parties.⁹ Influential information must also be transparent with respect to: (1) the source of the utilized data; (2) the various assumptions employed; (3) the analytic methods applied; and (4) the statistical assumptions employed.¹⁰

In furtherance of this required transparency, the 2013 Petition for Correction pointed out to OMB that it has not provided all the inputs to the models, the identity of the IWG participants, their expertise, whether outside consultants/experts participated, how decisions were made, or what information was considered or rejected. The OMB IQA Response failed entirely to shed light on any of these issues.

With respect to the model inputs, the OMB IQA Response stated that the 2010 TSD “provided a detailed discussion of each of the input assumptions for the models . . .”¹¹ This statement is clearly erroneous because, in the Appendix to the OMB IQA Response and in the 2010 TSD itself, OMB notes that it discussed only three of the “key inputs.”¹² While the Associations do not dispute that the three inputs discussed in the 2010 TSD are important, they are by no means the only inputs to the models, nor were the discussions of such inputs adequate.

The OMB IQA Response provided no new information on the IWG, its participants, or the IWG processes by which decisions on assumptions, model inputs, and data quality were made. OMB’s IQA Guidance requires “full, accurate, [and] transparent documentation,”¹³ and “*in all cases*, require a disclosure of the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed.”¹⁴ The purpose of these disclosure requirements is “so that the public can assess for itself whether to question the objectivity of the sources.”¹⁵ Yet, for the IWG – among the most critical data sources – OMB provides no specificity. Simply noting the name of the agencies and entities with which the IWG members are affiliated does not

⁶ OMB Guidelines at 8.

⁷ *Id.*

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ 67 Fed. Reg. 8452, 8456 (Feb. 22, 2002).

¹¹ OMB IQA Response at 2.

¹² OMB IQA Response at 8; See also 2010 TSD.

¹³ *Id.* at 8459.

¹⁴ *Id.* at 8460 (emphasis added).

¹⁵ *Id.* at 8459.

constitute a “high degree of transparency” because it provides the public no information about members’ expertise or potential biases and, therefore, no capability to assess for itself the objectivity of the sources. This information is presumably already in OMB’s possession, readily accessible, not protected by any statute, guidance, or policy, and could be provided to the public with little administrative effort. It is unclear, therefore, why OMB is not revealing information about the IWG members, their expertise, and their decision-making processes. Continuing to shield this information from public view undermines the reliability of the SCC Estimates/TSD and violates the IQA.

Additionally, in response to the 2013 Petition for Correction’s transparency concerns, the OMB IQA Response responded that “[t]he Administration sought public comment on the SCC through the formal comment process that applies to all Federal rulemakings.”¹⁶ The “formal comment process that applies to all Federal rulemakings” presumably refers to the process mandated under the Administrative Procedure Act (“APA”).¹⁷ Importantly, in addition to requiring the public be permitted to comment on proposed rules, the APA requires “notice” to be given to potentially interested parties.¹⁸ “Notice is adequate if it appraises interested parties of the issues to be addressed in the rulemaking proceeding with sufficient clarity and specificity to allow them to participate in the rulemaking in a meaningful and informed manner.”¹⁹ Given the wide variety of industries and stakeholders impacted by the SCC Estimates, it is simply not the case that reference to the SCC Estimates in preambles or background documents for proposed rules on vehicle emissions or microwave efficiency standards adequately apprised the full universe of interested parties. Nor does OMB’s present rulemaking for the SCC Estimates suggest it is complying with the APA and case law thereunder. As explained further in the comments that will be submitted by the Associations and others, OMB has not provided the public sufficient information to comment in a meaningful and informed manner.

For sake of perspective, consider EPA’s recent efforts to evaluate whether the Agency can quantify with sufficient accuracy the “economy-wide” impacts of its air regulations.²⁰ Unlike OMB’s SCC Estimates, which attempt to monetize global impacts of U.S. emissions of a ubiquitous substance centuries into the future, EPA’s efforts are far more modest because the Agency is only attempting to consider: (1) domestic costs; (2) traditional pollutants with more direct “dose-response” functions; (3) emissions by far fewer industrial sources; and (4) discrete timeframes.

Even still, EPA claims its effort presents “serious technical challenges . . .”²¹ To address these challenges, EPA presented the issue to the independent Science Advisory Board (“SAB”) and provided public notice in the Federal Register. EPA published detailed

¹⁶ OMB IQA Petition

¹⁷ 5 U.S.C. §553.

¹⁸ 5 U.S.C. §553(b).

¹⁹ *Am. Med. Ass’n v. United States*, 887 F.2d. 760, 767 (7th Cir. 1989).

²⁰ 79 Fed. Reg. 6899 (Feb. 5, 2014).

²¹ *Id.* at 6900.

draft charge questions it would present to the SAB and a similarly detailed analytical blueprint and list of materials for the SAB to consider. Importantly, EPA provided public notice of the provision of all these materials and is seeking comment on them.

In undertaking the far more complex and ambitious task of estimating the SCC, OMB undertook a significantly different approach. OMB tasked its effort to the IWG without any public notification. OMB did not publish nor take comment on its charge questions to the IWG or the analytical blueprint or materials it requested the IWG consider. The public only learned of the IWG and its important role within the Federal government and of the SCC estimates when this information was referenced in the efficiency standard for microwave ovens.

The SAB also operates in a starkly different manner than the IWG. The SAB provides notice of its meetings, as well as opportunities to observe and participate. The SAB's advisories and consultations with EPA are published as are EPA's responses to such. The SAB discloses its members, provides detailed biographies of each member's affiliation and expertise, publishes criteria for participation in the SAB, and offers the public an opportunity to nominate members.

The IWG, on the other hand, provides no notice of its meetings (before or after they occur), and the public has no opportunity to observe, participate, review minutes, communications, or even summaries of such. A record of the IWG's interaction and consultation with OMB, including charges or instructions, is unknown. The IWG's members are secret, as are the means by which they are selected. Their areas of expertise are entirely unknown. All that is known about IWG members are the identities of the federal entities on behalf of which they participate. It is not even known whether they are Federal employees, contractors, or third parties.

While EPA and SAB processes are not perfect, and the Associations may well disagree with how they are implemented and with their outcomes, the contrast between the information transparency and public engagement in EPA's "economy-wide modeling effort" and the opacity of OMB's "global" modeling effort is both striking and disturbing. Nothing in the OMB IQA Response (or the present rulemaking) has remedied this opacity. The Associations are not satisfied with the OMB IQA Response because it incorrectly asserted that all model impacts were provided, continued to shield data required to be provided by the IQA and other Administration directives, and incorrectly suggested that the SCC Estimates were the subject of a public comment process.

2. The models with inputs (hereafter referred to as "the modeling systems") used for the SCC Estimates and the subsequent analyses were not subject to peer review.

The 2013 Petition for Correction contained a detailed discussion of the Administration's rules and directives for peer review and how those rules and directives were not followed in the case of the TSD/SCC Estimates. The OMB IQA Response provided three statements in response: (1) the 2010 TSD discussed "how we arrived at these model inputs"; (2) "the models that underlie the SCC estimates were published in peer reviewed literature"; and (3) OMB is taking comment on the SCC Estimates/TSD.

The first item (2010 TSD discussed how IWG arrived at these model inputs) is not responsive to the Associations' concerns about peer review. Nor is OMB's rulemaking responsive to our concerns about the lack of peer review. Accepting comment on the IWG's conclusions, without providing commenters with the underlying information necessary for credible evaluation, does not substitute for peer review. OMB's suggestion to the contrary in the OMB IQA Response²² is without merit. OMB itself noted that "[p]eer review should not be confused with public comment and other stakeholder processes."²³

The sole responsive statement in the OMB IQA Response addressed OMB's statement in the TSD that the models underlying the SCC estimates were published in peer reviewed literature, thereby implying that they were peer reviewed. While the Associations commend OMB for clarifying that the models were published in peer reviewed literature, but not peer reviewed, this clarification did not address the need for peer review that we noted in our 2013 Petition for Correction. OMB indicates in its IQA Guidelines that the effectiveness of "journal peer review" is often "overstated," and cited instances where flawed science was published in respected journals. Ultimately OMB concluded that "[f]or information likely to have an important public policy or private sector impact, OMB believes that additional quality checks beyond peer review are appropriate."²⁴

Even if publication of the models in peer reviewed literature was sufficient to suggest that the models were peer reviewed, such review of the three models does not equate to peer review of the modeling systems (models plus inputs) or the treatment of the model output. Indeed, it is this full spectrum of judgments and decisions that constitute the SCC Estimates — and it is this full spectrum of judgments and decisions which must be peer reviewed.

The SCC Estimates/TSD are precisely the type of influential scientific information that OMB envisioned in its Final Information Quality Bulletin for Peer Review when it stated "[m]ore rigorous peer review is necessary for information that is based on novel methods or presents complex challenges for interpretation. Furthermore, the need for rigorous peer review is greater when the information contains precedent-setting methods or models, presents conclusions that are likely to change prevailing practices, or is likely to affect policy."²⁵ Importantly, the Final Information Quality Bulletin for Peer Review and the IQA under which they were promulgated characterize these as the "*minimum standards* for when peer review is required for scientific information. . . ."²⁶

²² OMB IQA Response at 4.

²³ *Final Information Quality Bulletin for Peer Review*; OMB (Dec. 15, 2004).

²⁴ 67 Fed. Reg. at 8455

²⁵ *Final Information Quality Bulletin for Peer Review* at 12.

²⁶ *Id.* at 7 (emphasis added).

The OMB IQA Response merely reiterated that OMB has violated and presumably intends to continue to violate its own minimum standards for peer review. As such, the Associations find the OMB IQA response highly unsatisfactory.

3. Even if the process used to develop the SCC Estimates was transparent, rigorous, and peer-reviewed, the modeling conducted in this effort does not offer a reasonably acceptable range of accuracy for use in policymaking.

In the OMB IQA Response, OMB seemingly acknowledged that a tipping point exists whereby data is so uncertain it renders the ultimate estimate unusable, and that “[i]n the absence of quantitative estimates, we would use a qualitative description of the types of impacts on society that we would expect.”²⁷ OMB further stated that, “[i]t is not clear to us, however, how the SCC estimates would be near such a threshold.”²⁸ While the Associations welcome OMB’s acknowledgement that a threshold exists where quantitative estimates become unworkable, we do not share OMB’s view that impacts predicted in 2300 are not yet “near such a threshold.”

Significantly, the 2010 TSD appears to be somewhat in agreement with the Associations on this point. After noting extensively the “uncertainty, speculation, and lack of information” on key inputs necessary to estimate the SCC, the TSD disclaims that “[t]he purpose of the SCC estimates presented here is to make it possible for agencies to incorporate the social benefits from reducing carbon dioxide emissions into cost-benefit analysis of regulatory actions that have small, or ‘marginal,’ impacts on cumulative global emissions.”²⁹ Again, the Associations do not endorse the notion that the SCC Estimates are useful for even “marginal” regulatory actions, but we concur with the 2010 TSD’s apparent conclusion that the SCC Estimates have limited utility in rulemaking.

Further, the Petition for Correction made a point that an estimate that changed so dramatically in a short period of time indicated “variability over the short term,” to which the OMB IQA Response replied that this variability was a “reflection of the rapid pace of ongoing research on a topic of profound interest to the scientific community . . . and that rapidly evolving scientific understanding makes it more important, not less, to review and update the estimates on a periodic basis.”³⁰ The Associations believe that OMB misinterpreted the nature of our concern over the degree of “variability over the short term.” While the scientific understanding of these issues may be “rapidly evolving” and changing based on “the rapid pace of ongoing research,” we do not understand why OMB fails to view these frequent and fundamental changes in scientific understanding as evidence that the estimates are highly uncertain. If the scientific understanding is in flux, then the conclusions derived from that scientific understanding are *per se* uncertain.

²⁷ OMB IQA Response at 4.

²⁸ *Id.*

²⁹ 2010 TSD at 4-5.

³⁰ OMB IQA Response at 5.

When an estimate changes with the frequency and magnitude that the SCC Estimates have changed, it is entirely reasonable to question whether the latest estimate is accurate or certain enough for rulemaking. The Associations agree that our understanding of the SCC is in flux, but we think such fluctuations should guide OMB to rely on transparency, collaboration, and peer review – and not proffer estimations that are merely snapshots in its evolutionary understanding of the SCC. The OMB IQA Response does not provide a satisfactory response to this concern.

4. The IWG has failed to disclose and quantify key uncertainties to inform decision makers and the public about the effects and uncertainties of alternative regulatory actions as required by OMB.

The Associations’ 2013 Petition for Correction challenged OMB’s decision to eliminate the 2010 TSD’s more lengthy discussion of uncertainty from all subsequent iterations of the TSD. The OMB IQA Response suggests that subsequent iterations (May 2013 and November 2013) should be viewed as having appropriately discussed uncertainty because they reference the 2010 TSD.³¹ The Associations disagree. We believe it is important that each time OMB presents changes to its SCC Estimate and the modifications that lead to that estimate, it should provide a full discussion of the context for those estimates — including disclosing sources of uncertainty.

Incorporating by reference a discussion of uncertainty buried 30 pages into a TSD previously issued and revised in multiple years and multiple versions makes it unnecessarily difficult for rule writers and regulators to view the SCC Estimates in the context of their profound uncertainty. Indeed, each of the subsequently issued TSDs utilize the same exact text as the 2010 TSD (except for those portions referencing the change in the estimate). The discussion of uncertainty, however, is uniquely shorthanded, down to a reference to the 2010 TSD, in what seems like an effort to downplay the TSD’s discussions of uncertainty. While the easiest approach would be to leave the text in place when updating the TSD, it required an affirmative step to remove the uncertainty discussion and replace it with a shorthanded reference.

OMB’s IQA Guidelines require it to take steps to assure the “utility” and “objectivity” of the information it disseminates. “Utility” “refers to the usefulness of the information to its intended users, including the public.”³² “Objectivity” requires presentation of information “in an accurate, clear, complete, and unbiased manner.”³³ Why OMB took an affirmative step to make each subsequent TSD less useful, less clear, and less complete is not clear. The OMB IQA Response’s defense of this practice, therefore, provides an unsatisfactory response to a valid concern.

³¹ OMB IQA Response at 5-6.

³² 67 Fed. Reg. at 8459.

³³ *Id.*

5. By presenting only global SCC estimates and downplaying domestic SCC estimates in 2010 and 2013, the IWG has severely limited the utility of the SCC for use in cost-analysis and policymaking.

OMB's entire response to this important issue was to state that "[w]e continue to conclude that the use of a global value is a reasonable conclusion, based on the reasons explained in the 2010 TSD," and then to copy the discussion from the 2010 TSD. This recital of its earlier justification for its presentation of global impacts did not address the issue and is therefore insufficient. The Associations, while aware of the justification provided in the 2010 TSD, find it inconsistent with OMB Circular A-4 and analogous regulatory actions with potential global impacts, and misleading to risk managers.

The OMB IQA Response's defense of the "use of a global value" is, therefore, particularly unresponsive and insufficient because the 2013 Petition for Correction did not call for abandonment of the use of the global value. Instead, the 2013 Petition for Correction specifically requested that, "*if and when reliable estimates of the SCC become available, we strongly recommend presenting both the domestic and global SCC figures separately.*"³⁴

The OMB IQA Response did not address (or even acknowledge) the Association's request to add a presentation of domestic values, nor did it address (or even acknowledge) any of the reasonable concerns that this presentation of values would cause risk managers confusion, and therefore fails to meet the IQA's objectives for "utility" of information it disseminates. The OMB IQA Response simply responded that "use of a global value is a reasonable conclusion" and then block-quoted the 2010 TSD. This reply is not responsive and not sufficient.

6. The IWG must (i) supplement the record to provide all of the data, models, assumptions, and analyses relied on to arrive at the SCC Estimates, and (ii) allow the public a reasonable opportunity to review and comment on the supplemented record.

As discussed above, OMB did not respond to this concern/request at all. Elsewhere in the OMB IQA Response, OMB noted that it was accepting comment on the latest TSD. Nothing in the OMB IQA Response or the docket for that rulemaking, however, provides any of the information on the data, model assumptions, or inputs that the Associations requested. Indeed, OMB provided no new information whatsoever within its "request for comments." As such, its present "request for comments" provides only the appearance of transparency and perpetuates a "black-box" SCC-estimation process. This concern/request was effectively ignored in the OMB IQA Response.

In sum, the Associations found the OMB IQA Response to be entirely unsatisfactory, insufficient under the IQA, and inconsistent with all OMB and Administration-wide standards and policies for information quality. These standards demonstrate OMB's commitment to information quality. It follows that OMB, as the developer and implementer of Administration-wide IQA guidelines and policies, needs to be particularly responsive to requests under the IQA.

³⁴ Emphasis in 2013 IQA Petition.

The Associations are therefore, concerned that OMB has failed to apply these standards and procedures in developing the SCC Estimates/TSDs and in responding to the Associations' 2013 Petition for Correction. We submit this Request for Reconsideration in sincere hope that those IQA standards will be applied. The appropriate corrective action remains the withdrawal of the SCC Estimates/TSDs, and an Administration-wide directive from OMB that these SCC Estimates not be used in any regulatory action or in policy-making.

Thank you for considering this Request for Reconsideration. If you have any questions, please feel free to contact Wayne D'Angelo at wdangelo@kelleydrye.com or 202.342.8525.

Respectfully submitted,



America's Natural Gas Alliance

American Chemistry Council

American Petroleum Institute

National Association of Home Builders

National Association of Manufacturers

Portland Cement Association

U.S. Chamber of Commerce

cc: Howard A. Shelanski, Administrator

Dominic J. Mancini

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