

Institute for
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

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Subject: Comments on the SAB Draft Report on the Scientific and Technical Basis of EPA's Proposed Rule titled "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process"

The Institute for Policy Integrity at New York University School of Law¹ submits these comments as a supplement to our prior written comments on the Science Advisory Board's review of EPA's proposed rule on the development and presentation of cost-benefit analysis for significant rulemakings conducted under the Clean Air Act. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

These comments make the following points:

- The SAB should strengthen its important critiques of the proposed rule's approach to less-than-certain impacts and unquantified benefits.
- The SAB should explain that the proposed rule breaks from best practices by drawing biased distinctions between direct and indirect benefits, and by holding benefits analysis to a higher standard than cost analysis. More generally, the SAB should also note that the proposed rule fails to offer evidence of need or a rational justification grounded in evidence.
- The SAB should remove its references to "domestic" interests, which at best will create confusion and at worst could send EPA toward an approach to cost-benefit analysis that courts have found to be arbitrary.

Strengthening the SAB's Recommendations on Less-Than-Certain Impacts and Unquantified Benefits

The SAB's draft report identifies several flaws, biases, and shortcomings in EPA's proposed rule. In one essential recommendation, the draft report points out that the proposed rule "appears to exclude" from consideration the possibility of less-causally-certain but still potentially substantial health impacts, in contravention of best practices for balanced and complete analysis.² Similarly, the draft report also rightly notes that "focus[ing] too heavily on the expected value of a policy" may obscure "low-probability, high-consequence hazards," which may be "very important."³ Policy Integrity made similar points in our prior written and oral comments.

The SAB should strengthen its conclusion in its final report by correcting a contrary statement on page 5 of the draft report. On page 5, the SAB writes that it "is reasonable" for Section 83.3(a)(7) of the

¹ This document does not purport to present New York University School of Law's views, if any.

² SAB Draft Report at 3, 7 (Sept. 9, 2020).

³ *Id.* at 15.

proposed rule to have called for “selection of endpoints for which there is scientific evidence of a clear causal (or likely causal) relationship between exposure and effect.”⁴ In fact, as the SAB observes on page 3, it is *not reasonable* to exclude from consideration relationships that “may be less certain (e.g., possibly causal), but the impact would be substantial.”⁵ The SAB should correct the statement on page 5.

A second essential recommendation made in the draft report concerns how the proposed rule has “depart[ed] from best practices” by emphasizing expected values and other quantitative data while minimizing “significant unquantified benefits or costs.”⁶ Policy Integrity made similar points in our prior written and oral comments. The SAB should strengthen its conclusion on unquantified effects by giving it its own section in the discussion and its own separate recommendation, rather than just tying it together with a broader discussion of expected value and uncertainty analysis.⁷

Addressing Additional Flaws and Biases in the Proposed Rule

Policy Integrity repeats our prior calls for the SAB to identify other ways in which the proposed rule breaks severely from longstanding best practices for economic analysis. In particular, the proposed rule would require analysts to draw an arbitrary distinction between direct and indirect benefits that will often be unworkable and that will undermine giving indirect benefits the weight they deserve. The proposed rule also repeatedly sets higher bars for benefits than costs, such as establishing a higher burden of proof and giving less weight to co-benefits than indirect costs. Such an imbalanced analysis would violate both executive guidance and judicial precedent requiring agencies to treat costs and benefits consistently and not place a thumb on the scale.

More broadly, the proposed rule ironically fails its own standards for regulatory analysis. It fails to offer any concrete details for even a single example to demonstrate its own need. It does not assess the significance of the problem it alleges, does not assess how likely the proposed changes are to address the alleged problem, and ignores evidence already submitted by commenters during the Advance Notice on the *lack* of need. The rule never explains why a codification of best practices is necessary when EPA’s *Guidelines for Preparing Economic Analyses* already exist and are being updated and undergoing SAB review. The few past rulemakings the agency obliquely cited during the Advance Notice as evidence of need in fact provide no evidence of need, as they followed EPA’s *Guidelines* consistently and transparently and even clearly indicated which effects were co-benefits.

The proposed rule also fails its own standards for assessing costs and benefits. EPA claims the rule will not have “an economic impact on regulated entities”⁸—but this ignores all the other important categories of costs and benefits: the very likely increased administrative burdens of a rule that seeks to expand the practice of and criteria for cost-benefit analysis; some quantitative or qualitative assessment of the rule’s alleged transparency benefits to the public; an honest assessment of the informational costs and losses to regulatory efficiency of obscuring or delegitimizing ancillary benefits from co-

⁴ *Id.* at 5.

⁵ *Id.* at 3; *see also id.* at 7. Note that while these pages refer to modifying the language in “Section 82(a)(7),” there does not appear to be such a provision in the proposed rule; we assume that the SAB meant to refer to Section 83.3(a)(7). Regardless, the point remains the same, even if multiple different provisions of the proposed rule were implicated: it is not reasonable to exclude entirely less-than-certain effects when they may be significant. *See* McGartland et al., 2017.

⁶ SAB Draft Report at 15.

⁷ Policy Integrity also agrees with the SAB’s recommendation to clarify that formal probabilistic uncertainty analysis is only required if both feasible and appropriate. *Id.* at 15.

⁸ 85 Fed. Reg. at 35,624.

pollutants; and a meaningful review of the environmental justice effects of undermining the consideration of co-benefits.

The proposed rule lacks any rational justification grounded in evidence, and the SAB should say so.

Removing a Misleading and Arbitrary Reference to “Domestic” Valuations

Finally, the SAB should strike from its report a confusing reference to “domestic” interests that could lead EPA down a path toward an arbitrary economic analysis. The draft report recommends that EPA expand its proposed definition of cost-benefit analysis by saying “that benefits should be derived from willingness-to-pay estimates from domestic individuals (as opposed to international interests).”⁹ The draft report later formulates this as “opportunity costs and benefits [should] represent the willingness-to-pay for a policy outcome valued by United States individuals.”¹⁰

There are multiple problems with these two formulations. To begin, they are not the same. The second applies a single standard to both costs and benefits, while the first singles out only benefits as being limited to “domestic” willingness-to-pay. Singling out benefits as distinct from costs in that way is already problematic. As Policy Integrity has explained to both EPA and the SAB in multiple prior comments (see attached comments),¹¹ because a regulated firms’ compliance costs ultimately fall to that firm’s owners, employees, and/or customers, and because many domestically-located regulated firms have significant numbers of foreign shareholders and customers, regulatory costs are at least as likely as regulatory benefits to fall at least partly outside strict U.S. geographic borders. Suggesting that all opportunity costs should be valued while only “domestic” benefits are valued, as the SAB’s first formulation does, arbitrarily holds benefits to a different standard than costs.

Furthermore, the two formulations are different in that one references “domestic individuals” while the other references “United States individuals.” Those are not the same, as recently observed by the U.S. District Court for the Northern District of California when it struck down as arbitrary the Department of the Interior’s reliance on a “domestic-only” social cost of methane in part for its failure to consider “impacts on 8 million United States citizens living abroad, including thousands of United States military personnel,” as well as “billions of dollars of physical assets owned by United States companies abroad.”¹² The reference to “domestic” is therefore minimally confusing for agency analysts, and potentially could lead to legal problems.

Similarly, the Northern District of California also explained how it was arbitrary for a federal agency to ignore how foreign effects can spill back on to U.S. interests, such as through internationally interconnected markets (i.e., “United States companies impacted by their trading partners and suppliers abroad”) and by internationally interconnected health and security systems (i.e., “global migration and geopolitical security”).¹³ Under the Administrative Procedure Act, such considerations will often be “important aspects of the problem,” and failure to consider them will be deemed arbitrary by courts.¹⁴

⁹ SAB Draft Report at 2.

¹⁰ *Id.*

¹¹ See Policy Integrity’s First Batch of Additional Comments to the SAB Economic Guidelines Review Panel at 7-8 (May 12, 2020); see also Policy Integrity et al., Comments on Quantifying and Monetizing Greenhouse Gas Emissions in the Safer Affordable Fuel-Efficient Vehicles Proposed Rule at 6-13 (Oct. 26, 2018), https://policyintegrity.org/documents/Emissions_Standards_PRIA_SCC_Comments_Oct2018.pdf.

¹² California v. Bernhardt, No. 4:18-cv-05712-YGR (N.D. Cal. July 15, 2020).

¹³ *Id.*

¹⁴ *Id.*

More specifically, under the Clean Air Act, certain provisions even require an international perspective on environmental outcomes.¹⁵ And notably, neither *Circular A-4* nor EPA's *Guidelines* require a domestic-only perspective on costs and benefits.¹⁶

In short, because international effects and interests may ultimately bear on U.S. interest and willingness-to-pay, the distinction between “domestic individuals” versus “international interests” that the SAB draft report seeks to draw is—from both an economic and a legal perspective—oversimplified in a way that is misleading and could result in a legally deficient regulatory analysis.

Even the formulation of “willingness-to-pay for a policy outcome valued by United States individuals”¹⁷ raises potentially thorny questions about the proper valuation of outcomes in the face of behavioral market failures and externalities, such when consumers' *ex ante* willingness to pay for energy efficiency savings may appear to diverge from their *ex post* valuation of the savings actually achieved¹⁸—thorny questions on which the SAB has not been fully briefed in connection to this proceeding, and on which the SAB should therefore not yet comment.

Given all these complexities, the SAB should not make recommendations for refining EPA's definition of cost-benefit analysis along these lines, and should remove any reference to “domestic”-only valuations from its report. To the extent that the SAB feels the current definition of cost-benefit analysis in the proposed rule lacks important nuances, that is yet another reason why the SAB should conclude that the proper repository for best practices for cost-benefit analysis is EPA's *Guidelines for Preparing Economic Analysis*, and why the proposed rule is therefore, in fact, unnecessary and inappropriate.

Respectfully,

Jason A. Schwartz, Legal Director
Institute for Policy Integrity

Attached:

Policy Integrity et al., Comments to EPA on Notice of Proposed Rulemaking for “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process”

Policy Integrity's First Batch of Additional Comments to the SAB Economic Guidelines Review Panel at 7-8 (May 12, 2020)

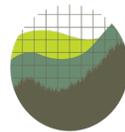
Policy Integrity et al., Comments on Quantifying and Monetizing Greenhouse Gas Emissions in the Safer Affordable Fuel-Efficient Vehicles Proposed Rule at 6-13 (Oct. 26, 2018)

¹⁵ E.g., 42 U.S.C. § 7415.

¹⁶ E.g., OMB, *Circular A-4* at 15 (allowing analysts to consider effects beyond the border); *id.* at 3 (“Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues.”); *id.* at 38 (acknowledging that while analyses may be “conducted from the United States perspective,” implicitly sometimes analyses may be conducted from a global perspective).

¹⁷ SAB Draft Report at 2.

¹⁸ See generally Policy Integrity, *Shortchanged: How the Trump Administration's Rollback of the Clean Car Standards Deprives Consumers of Fuel Savings* (2020), <https://policyintegrity.org/publications/detail/shortchanged-the-trump-administrations-rollback-of-the-clean-car-standards> (describing the behavioral market failures connected to the energy efficiency paradox, and explaining why full valuation of fuel savings is essential and consistent with best practices).



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August 3, 2020

Docket ID No. EPA-HQ-OAR-2020-00044

Subject: Comments on Notice of Proposed Rulemaking for “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process”¹

Submitted by: Center for Biological Diversity, Environmental Defense Fund, Food & Water Watch, Institute for Policy Integrity at New York University School of Law,² Montana Environmental Information Center, Union of Concerned Scientists, Western Environmental Law Center³

These comments contain two main sections, plus a third section responding to the requests for additional comments:

- First, the proposed rule is unnecessary, unjustified, and unsupported by any evidence of need, and so should not be adopted.
- Second, the proposed rule breaks from the best practices for cost-benefit analysis of regulations in several significant ways—in particular by undermining the balanced consideration of co-benefits, and by setting more stringent standards for benefit estimates than cost estimates—and so if the proposed rule were adopted despite being unnecessary and unjustified, it would also be biased and arbitrary.
- Third, many of the requests for additional comments would send EPA down a dangerous path and should not be pursued. As one example, EPA should never “determine that a future significant CAA regulation be promulgated only when monetized benefits exceed the costs of action,”⁴ as doing so would wrongly treat unmonetized benefits as worthless.

I. The Proposed Rule Is Unnecessary and Unjustified

The proposed rule ironically fails to satisfy its own standards for adequately explaining the need for a new regulation.⁵ But because the proposed rule’s standards are unnecessary, unjustified, and arbitrarily biased in significant ways, the proposed rule should not actually be used as the benchmark for measuring the reasonableness of any regulation. Thus, it is much more relevant and condemnatory that the proposed rule fails to satisfy the standards set by statute, executive orders, and longstanding guidance for adequately explaining the need for a new regulation.

¹ 85 Fed. Reg. 35,612 (June 11, 2020).

² No part of this document purports to present New York University School of Law’s views, if any.

³ Our organizations may separately submit additional comments on the proposed rule.

⁴ 85 Fed. Reg. at 35,623.

⁵ *Id.* at 35,618 (“The key elements of a rigorous regulatory BCA include: (1) A statement of need. . . . Each regulatory BCA should include a statement of need that provides (1) a clear description of the problem being addressed, (2) the reasons for and significance of any failure of private markets or public institutions causing this problem, and (3) the compelling need for federal government intervention.”)

A. Regulations Should Present for Public Comment an Adequate Explanation of Need

Multiple legal authorities together require that EPA adequately explain the purpose of its proposed regulation. EPA's stated source of statutory authority, 42 U.S.C. § 7601(a)(1), authorizes regulations only if they are "necessary" to EPA's functions.⁶ The Administrative Procedure Act further prohibits arbitrary rules,⁷ including rules that fail to consider an important aspect of the problem, or for which the explanation of decision "runs counter to the evidence before the agency."⁸ As explained below, here EPA has failed to offer any evidence of need for the proposed rule and, to the contrary, has ignored evidence already presented by commenters that such a rule is unnecessary and unjustified.⁹

Presidential orders and guidance further elaborate on the requirement to explain the need for regulations. Executive Order 12,866 specifies that "agencies should promulgate *only* such regulations as are required by law, are necessary to interpret the law, or are made *necessary by compelling public need*."¹⁰ To that end, Executive Order 12,866 requires agencies to "identify the problem that it intends to address . . . as well as the significance of that problem."¹¹ Agencies also must avoid "duplicative" regulations.¹²

In implementing Executive Order 12,866, OMB's *Circular A-4* clarifies that when a regulation is based on an objective like "improving governmental processes," agencies still must "provide a demonstration of compelling social purpose and the likelihood of effective action."¹³ Those OMB guidelines continue to explain that even if certain "intangible rationales" cannot be quantified, "the analysis should present and evaluate the strengths and limitations of the relevant arguments for these intangible values."¹⁴ Furthermore, for regulations that seek to "make government operate more efficiently," agencies should have "clearly identified measure[s]" and must examine whether those measures are "both effective and cost-effective."¹⁵ And, in this same vein, EPA's own *Guidelines for Preparing Economic Analyses* reiterate that both the "need" for regulation and the "significance of the problem" must be assessed.¹⁶

As the following subsections explore, the proposed rule provides nothing beyond a few vague examples in a failed attempt to demonstrate need, does not assess the significance of the alleged problem, does not demonstrate a compelling social purpose, does not avoid unnecessary duplication, does not assess how likely the proposed changes are to address the alleged problem, and does not assess the strengths or limitations of the scant evidence of need. In short, the proposed rule does not present for public comment an adequate statement of need consistent with requirements of statute and executive orders.

The lack of an adequate statement of need is, perhaps, not surprising, because the proposed rule is unnecessary, as discussed in detail below. Without such a statement, the proposed rule is unjustified and, therefore, should not be finalized.

⁶ *Id.* at 35,613.

⁷ 5 U.S.C. § 706(2)(A).

⁸ *Motor Vehicle Mfrs. Ass'n v. State Farm Ins.*, 463 U.S. 29, 43 (1983).

⁹ *See, e.g.*, Policy Integrity, Comments on Advance Notice of Proposed Rulemaking for "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process" (Aug. 13, 2018), https://policyintegrity.org/documents/EPA_CBA_ANPR_Comments.pdf.

¹⁰ Exec. Order 12,866 § 1(a).

¹¹ *Id.* at § 1(b)(1).

¹² *Id.* at § 1(b)(10).

¹³ OMB, *Circular A-4* at 4 (2003).

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ EPA, *Guidelines for Preparing Economic Analyses* 3-2 (chapter 3 last updated 2010).

If EPA were to attempt to subsequently fabricate a more detailed statement of need, any such explanation of the need for this rulemaking should be re-presented in a new public notice with a new and adequate opportunity for public comment. While EPA claims that this rulemaking is exempt from any requirement to provide an adequate opportunity for public comment,¹⁷ by its own terms the proposed rule's purported goal is "to provide consistency and transparency to the public,"¹⁸ and so it is not at all clear that the rule would qualify as the kind of procedural rule "directed toward improving the efficient and effective operations of an agency" that may fall within the Administrative Procedure Act's narrow exemption to notice-and-comment rulemaking.¹⁹ Moreover, the fact that EPA has submitted the rule to OMB review as well as to this initial round of public comments²⁰ demonstrates that there are no great costs to allowing proper public review of this rulemaking, while the classification of the proposed rule as "significant"²¹ indicates a policy importance and novelty that warrants public review²²—and as such, according to the criteria set out by the Administrative Conference of the United States, EPA "should" allow for public comment on all aspects of this rulemaking.²³ Thus, should EPA attempt to craft a statement of need, the agency should re-propose the rule. In its current form, without any adequate statement of need, the proposed rule is unjustified and must not be adopted.

B. EPA Fails to Present Any Adequate Examples or Justification of Need

The proposed rule's preamble asserts that EPA merely "seeks to codify" existing practices for cost-benefit analysis.²⁴ The proposed rule defines that those existing best practices are reflected in OMB's *Circular A-4* and related OMB guidance, and in EPA's *Guidelines for Preparing Economic Analyses* (though the proposed rule lists only the 2010 version of the *Guidelines*, seemingly ignoring that various chapters were updated in 2014, 2015, and 2016,²⁵ and that the *Guidelines* are currently undergoing revision and review by EPA's Science Advisory Board²⁶).

¹⁷ 85 Fed. Reg. at 35,613

¹⁸ *Id.* (emphasis added); *see also id.* ("The agency believes that the information provided as a result . . . would provide the public with additional information."). Moreover, to the extent that the proposed rule will change regulatory analysis in ways that will alter regulatory outcomes, the proposed rule will bear directly on the interests of the public. As the preamble itself acknowledges, the thoroughness and carefulness of economic analysis bears directly on "the effectiveness of environmental policy decisions." *Id.*

¹⁹ *AFLCIO v. NLRB*, 2020 WL 3041384 at *14 (D.C. Cir., June 7, 2020) (emphasis added); *see also id.* at *13 (explaining that the APA "establishes that an agency rule is essentially presumed to be substantive for the purpose of the notice-and-comment requirement, and that notice-and-comment rulemaking is thus generally required unless a rule satisfies one of the listed exceptions"); *id.* at *15 ("[I]f the agency cannot show that the default assumptions of the APA have been properly displaced because the rule at issue is, in fact, directed at the agency's internal processes despite the incidental effect on the parties, then the rule cannot be characterized as fitting within the APA's narrow procedural exemption, and notice-and-comment is required.").

²⁰ 85 Fed. Reg. at 35,624.

²¹ *Id.*

²² *See id.* at 35,617 (explaining that rules that are "notably novel or significant for other policy reasons, would benefit from rigorous analysis to inform the public").

²³ ACUS Recommendation 92-1, *The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements* § 2 (1992) ("For rules falling within the 'procedure or practice' exception in 5 U.S.C. 553(b)(A), agencies should use notice-and-comment procedures voluntarily except in situations in which the costs of such procedures will outweigh the benefits of having public input and information on the scope and impact of the rules, and of the enhanced public acceptance of the rules that would derive from public comment.").

²⁴ 85 Fed. Reg. at 35,617.

²⁵ EPA, *Guidelines for Preparing Economic Analysis*, <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>.

²⁶ *See, e.g.*, Policy Integrity, Comments to EPA Science Advisory Board Economic Guidelines Review Panel, <https://policyintegrity.org/projects/update/initial-comments-to-epa-science-advisory-board-on-economic-analysis-guidelines>.

As explained below in Section II of these comments, the proposed rule does not merely codify these existing documents but, in fact, distorts and biases existing best practices in several significant ways. But even if EPA were correct in characterizing the proposed rule as merely seeking to codify existing practices, such codification is unnecessary. Through 2016, EPA had consistently and transparently conducted its cost-benefit analyses under the guidance of *Circular A-4* and its own *Guidelines*.²⁷ EPA now fails to offer any concrete examples or justification for why those existing guidelines are not still sufficient.

The proposed rule vaguely alleges that there has been “inadequate adherence to existing EPA and OMB guidance.”²⁸ EPA cites to “recent . . . examples,” but list no concrete example.²⁹ EPA offers “one example” of alleged double-counting, but does not provide so much as the name of that rulemaking.³⁰ Nor does EPA explain how this “one example” of alleged double-counting, if real, would justify any of the proposed rule’s myriad provisions other than on the issue of defining the baseline. And, in fact, double-counting historically has not been a problem, as major EPA rules like the Mercury and Air Toxics Standards did not double-count pollution-reduction benefits vis-à-vis the National Ambient Air Quality Standards.³¹

Similarly, on the issue of indirect benefits, the proposed rule refers only vaguely to the allegations of “commenters” and to the “reports” they cite.³² The proposed rule provides no concrete examples of when or how frequently there has been an issue with regulatory analyses not transparently communicating which benefits were either indirect or related to reductions of co-pollutants.

The Advance Notice that preceded this proposed rule did list two rules as examples of when industry groups have complained about the regulatory analysis—the Mercury and Air Toxics Standards (MATS) and the Oil and Gas New Source Performance Standards (NSPS)³³—and EPA’s summary of the comments received on the Advance Notice lists one additional rule—the Clean Power Plan.³⁴ However, none of those rules provides an example of analysis lacking in consistency or transparency.

For example, industry has complained that EPA issued the MATS rule even though the “monetized benefits from one of the pollutants being directly regulated (i.e., mercury) were significantly lower than the estimated costs of the rule,” and that the rule’s total monetized benefits outweighed costs only because the agency considered the ancillary benefits from the reduction of a co-pollutant.³⁵ As the Advance Notice’s presentation of this example made clear, industry’s complaints with the MATS rule were (1) that the rule was justified by the highly significant but nevertheless largely unquantified

²⁷ Note that, in holding up *Circular A-4* and EPA’s *Guidelines* as much more suitable repositories for the best practices for cost-benefit analysis, these comments do not imply that those existing guidance documents are not in need of updates or refinements. However, the solution would be to update those documents through a transparent process of public input and peer review, not to supplant those documents with a regulation.

²⁸ 85 Fed. Reg. at 35,617.

²⁹ *Id.*

³⁰ *Id.* EPA does not even really explain whether it agrees with the commenter that the suggested rule was a case of double-counting, instead just vaguely agreeing there could be a generic risk of double counting if baselines are not carefully set, without detailing whether and when that has ever been the case. *Id.*

³¹ See Kimberly M. Castle & Richard L. Revesz, *Environmental Standards, Thresholds, and the Next Battleground of Climate Change Regulations*, 103 Minn. L. Rev. 1349, 1415-1416 (2019); Policy Integrity, Comments to EPA on the MATS Supplemental Finding at 5-6 (Jan. 15, 2016), <http://policyintegrity.org/projects/update/comments-on-supplemental-finding-for-epa-mercury-rule>.

³² 85 Fed. Reg. at 35,622.

³³ 83 Fed. Reg. 27,524, 27,526 (June 13, 2018).

³⁴ EPA, *ANPRM Overview of Public Comments* (Apr. 22, 2020), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2020-0044-0031>.

³⁵ 83 Fed. Reg. at 27,526 (characterizing the MATS rule’s justification).

benefits of reducing mercury and other toxic pollutants, and (2) that the rule's massive net monetized benefits included co-benefits. Neither an alleged lack of consistency nor transparency is part of this complaint from regulated industry. In fact, EPA's consideration of unquantified and ancillary benefits was fully consistent with longstanding regulatory precedent and best practices, and was conducted transparently, especially with respect to setting the baseline and addressing uncertainty.³⁶ Tellingly, the MATS rule's summary table of costs and benefits was very explicit in labeling exactly which of the total monetized benefits came from the partial estimate of mercury-related benefits, versus the "PM_{2.5}-related Co-Benefits" or the "Climate-related Co-Benefits."³⁷

Similarly, with the Oil and Gas NSPS, industry again wishes that EPA had not counted co-benefit or unquantified benefits, or possibly wishes that EPA had manipulated its valuation of the social cost of methane to falsely lower the rule's benefits.³⁸ But industry's complaints about the Oil and Gas NSPS have nothing to do with consistency or transparency. Like the MATS rule, the original Oil and Gas NSPS regulation was massively net beneficial and supported by a consistent, transparent, and rigorous regulatory impact analysis.³⁹ Again, the rule's summary table was clear about how monetized benefits were derived from estimates of the social cost of methane, while non-monetized benefits included health effects from reductions in VOCs, particulate matter, and ozone, as well as other important non-monetized benefits.⁴⁰

The same is true of the Clean Power Plan, which also distinguished between climate benefits and "air pollution health co-benefits" in its summary table.⁴¹ While such distinctions may, in fact, not always be appropriate or necessary to present in a summary accounting table (see below, Section II.A.),⁴² the only three rules that EPA has in the past put forward as possible evidence of a need to improve "consistency and transparency" reveal none of the alleged issues that the proposed rule seeks to rectify. This is unsurprising, because all three of those rules followed OMB's *Circular A-4* and EPA's *Guidelines for Preparing Economic Analysis*, which are quite clear and detailed on the treatment of co-benefits, unquantified benefits, baselines, uncertainty, and other issues.

As such, EPA fails to offer any evidence of the need for the proposed rule. The lack of evidence of need is true for the entire proposed rule, but in particular, the few, vague examples EPA has offered in the past (like MATS and the Oil and Gas NSPS) provide no evidence of any historical problems with transparency or consistency in the presentation of co-benefits. Furthermore, EPA fails to explain how a regulatory requirement for an "additional presentation" featuring only a subset of benefits while excluding co-benefits would reduce "public confusion."⁴³ Quite the opposite, having two separate presentations—one that reflects all costs and benefits while the other includes only a subset but excludes co-benefits—could create confusion and cast doubt on the legitimacy of the costs and benefits not included in the second summary. (See Section II.A. below for more details on this problem.) EPA

³⁶ See, e.g., Policy Integrity, Comments to EPA on the MATS Supplemental Finding (submitted Jan. 15, 2016), <http://policyintegrity.org/projects/update/comments-on-supplemental-finding-for-epa-mercury-rule>; Amicus Brief of Policy Integrity, *Michigan v. EPA*, Nos. 14-46, 14-47, 14-49 (submitted Mar. 4, 2015), http://policyintegrity.org/documents/SCOTUS_brief_MATS_March2015.pdf.

³⁷ 77 Fed. Reg. 9304, 9306 (Feb. 16, 2012).

³⁸ 83 Fed. Reg. at 27,526 (characterizing the Oil and Gas NSPS rule).

³⁹ See, e.g., Policy Integrity, Comments to EPA on the Proposed Oil and Gas NSPS (submitted Dec. 4, 2015), http://policyintegrity.org/documents/Oil_Gas_Comments_Dec2015.pdf

⁴⁰ 81 Fed. Reg. 35,824, 35,890 (June 3, 2016).

⁴¹ 80 Fed. Reg. 64,662, 64,680 (Oct. 23, 2015).

⁴² And for this reason, EPA should not, as it suggests in a section seeking additional comments, "require a detailed disaggregation of both benefit and cost categories within the table that summarizes the overall results of the BCA in the preamble of future significant CAA rulemakings." 85 Fed. Reg. at 35,624.

⁴³ *Id.* at 35,622.

should abandon its proposal for this unjustified, unnecessary, and misleading approach to cost-benefit analysis.

C. EPA Fails to Conduct Any Analysis of the Costs, Benefits, or Distributive Impacts of *This Proposed Rule*

The proposed rule states as its goal to require EPA “to provide analysis to the public that will present *all* of the benefits and costs in a consistent manner for *all* significant CAA rulemakings.”⁴⁴ By its own classification, the proposed rule is a “significant regulatory action”⁴⁵ taken under the Clean Air Act.⁴⁶ Yet EPA has seemingly not conducted any analysis of the costs or benefits of this proposed, significant rule, in violation of the proposed rule’s own standards as well as, more importantly, Executive Order 12,866.

Instead of conducting any meaningful analysis, in the preamble’s section on regulatory analysis under Executive Orders 12,866 and 13,563, EPA writes that “EPA does not anticipate that this rulemaking will have *an economic impact on regulated entities*.”⁴⁷ Whether or not this rulemaking will have a specifically “economic” impact particularly on “regulated entities” alone—a questionable conclusion given the proposed rule’s potential impacts on regulatory analyses and outcomes—by its own terms the proposed rule would have purported costs and benefits to EPA and the public. Indeed, EPA hopes that the rule will somehow increase “transparency to the public.”⁴⁸ And to the extent EPA is correct that the proposed rule would change how the agency conducts its own regulatory analyses, then the rulemaking would likely entail “administrative costs [or] savings.”⁴⁹ Both effects, to the extent they would actually transpire as EPA assumes, would be cognizable costs and benefits of a significant regulatory proposal and, as such, warrant analysis. Though these effects (if they were real) might perhaps be hard to monetize, that does not excuse EPA from its obligation to assess the effects quantitatively or qualitatively to the extent feasible. EPA must therefore answer such questions as:

- How many rulemakings would these proposed changes likely affect each year? To answer this question, EPA should begin by identifying which historical regulatory analyses the agency believes these proposed changes would have affected, and in what specific ways. As noted above, none of the examples that have been cursorily mentioned in the advance notice or proposal provides any actual evidence of need for this proposed rule. If EPA cannot concretely identify any historical regulatory analyses for which “consistency and transparency” would have actually improved under these proposed changes, EPA should reconsider the need for the proposed rule.
- Do the assumed benefits to “consistency and transparency” actually outweigh the potential costs to obscuring or delegitimizing certain important categories of regulatory effects, such as ancillary benefits from co-pollutants, or the additional administrative burdens and potential regulatory delays or litigation risks that might result from the proposed rule? Because the proposed rule actually departs from existing best practices for cost-benefit analysis in several significant ways, as discussed below in Section II, those departures entail costs—both informational costs and costs to regulatory efficiency and net social welfare for any future rules based on distorted analysis—and those costs must be assessed.

⁴⁴ *Id.* at 35,613 (emphases added).

⁴⁵ *Id.* at 35,624.

⁴⁶ *Id.* at 35,613 (citing Clean Air Act § 301(a)(1) as authority).

⁴⁷ *Id.* at 35,624 (emphasis added).

⁴⁸ *Id.* at 35,613.

⁴⁹ OMB, *Circular A-4* at 37 (2003).

If, in the alternative, EPA really believes the rule will have no costs and benefits, then EPA has thoroughly undermined any case for the need for such a rule, for why would a rule with no costs and no benefits that is not required by statute need to be promulgated?

Furthermore, Executive Order 12,866 requires agencies to consider the “distributive impacts” of their rules,⁵⁰ and Executive Order 12,898 requires agencies, “[t]o the greatest extent practicable,” to address any “disproportionately high and adverse human health or environmental effects” that policies may have “on minority populations and low-income populations.”⁵¹ Yet the proposed rule refuses to consider its environmental justice impacts, inexplicably claiming an exemption because “it does not establish an environmental health or safety standard.”⁵² Had the proposed rule undertaken the required analysis of distributive impacts and environmental justice, it would have revealed that many of the proposed rule’s distortions of standard cost-benefit analysis will obscure how future regulations may disproportionately burden communities of color and low-income communities. As discussed below, the proposed rule undermines the consideration of co-benefits (Section II.A.) and sets overly stringent standards for certainty before assessing health endpoints (Sections II.B-C.). Because co-pollutants like particulate matter disproportionately affect communities of color and low-income communities,⁵³ and because the role of race, ethnicity, and socioeconomic factors in influencing the causal and correlative links between pollution and health has been understudied,⁵⁴ the changes contemplated by the proposed rule will further obscure the environmental justice effects of future regulations. By ignoring the proposed rule’s own costs, benefits, and distributive impacts, EPA has arbitrarily failed to consider important aspects of the rulemaking.

II. The Proposed Rule Arbitrarily Breaks from the Best Practices for Cost-Benefit Analysis

As explained in the first section, the proposed rule is unnecessary and unjustified and so should not be adopted. But even if a codification of existing practices could somehow be justified in the abstract, the specific requirements of the proposed rule break from the best practices for cost-benefit analysis of regulations in several significant ways that render the proposal biased and arbitrary.

A. Arbitrarily Devaluing Indirect Benefits

The proposed rule seeks to have analysts “clearly distinguish between the social benefits attributable to the specific pollution reductions or other environmental quality goals that are targeted by the statutory provision” versus “other welfare effects.”⁵⁵ The proposed rule insists that doing so will enhance transparency and reduce confusion.⁵⁶ However, to the contrary, the proposed rule’s standard would increase confusion if implemented, by requiring analysts to engage in controversial line-drawing exercises around statutory objectives, and by casting doubt on whether co-benefits deserve the balanced treatment and due consideration they are entitled to. Indeed, the intent of this proposed exercise seemingly is to undermine the consideration of co-benefits. Though the proposed rule does not explicitly say so, Administrator Wheeler has publicly interpreted the proposed rule as barring EPA from

⁵⁰ Exec. Order 12,866 § 1(a); *see also* Exec. Order 13,563 § 1(c).

⁵¹ Exec. Order 12,898 § 1-101 (Feb. 11, 1994).

⁵² 85 Fed. Reg. at 35,625.

⁵³ *See, e.g.*, Jason Schwartz, *Weakening Our Defenses: How the Trump Administration’s Deregulatory Push Has Exacerbated the Covid-19 Pandemic* 7 (Policy Integrity Report, 2020) (summarizing environmental justice impacts of various pollutants), https://policyintegrity.org/files/publications/Weakening_Our_Defenses_Covid_Deregulation_Report.pdf.

⁵⁴ *See, e.g.*, EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* 8-28 to 8-29 (2013), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492> (noting the lack of studies examining the possible higher mortality effects to Black Americans from ozone exposure).

⁵⁵ 85 Fed. Reg. at 35,622.

⁵⁶ *Id.*

considering co-benefits in designing and selecting regulatory standards.⁵⁷ The proposed rule is therefore deeply problematic for multiple reasons.

To begin, distinguishing between benefits “targeted by the statutory provision” versus “other welfare effects” can be a complex, controversial, and ultimately fruitless endeavor. A regulation can have multiple statutory authorities. A statute can also have multiple objectives. Legislative objectives may not always be clear. A specific statutory provision’s objectives may be informed by the broader objectives of the entire act. Analysts should not assume, absent explicit statutory language, that any statute has the objective of barring consideration of important indirect effects. For example, any broad statutory language, like “reasonable” or “appropriate,” should be read broadly to authorize consideration of all important effects, whether direct or indirect. In interpreting the phrase “appropriate and necessary” under Section 112 of the Clean Air Act, the Supreme Court noted that it would not be appropriate to ignore indirect costs to human health.⁵⁸ Similarly, distinguishing between direct and indirect effects may turn on thorny questions of law and science. Take once again, for example, the benefits that come from reducing particulate matter when regulating mercury and other toxic pollutants under Section 112 of the Clean Air Act: though particulate matter certainly can also be regulated through other statutory provisions, the benefits from particulate matter reductions are directly relevant to the evaluation of whether it is “appropriate and necessary” under Section 112 to regulate power plants, and some components of particulate matter also meet the definition of hazardous air pollutants.⁵⁹

Second, even if it were possible to always distinguish between pollutants that are the “statutory objective” and those that are “other,” doing so could lead to an inappropriate belittlement of key effects. If done carefully and with context—as EPA did in the MATS rule and the Clean Power Plan—it may at times be possible to distinguish between direct and indirect effects in the text or tables of a preamble or regulatory impact analysis. However, always drawing such distinctions in a summary table without providing sufficient context, or requiring an additional presentation to highlight only a subset of effects deemed to be within the “statutory objective,” could lead to the “other welfare effects” being discounted.

By belittling key co-benefits, the proposed rule would break from longstanding best practices for the consideration of indirect effects. Executive Order 12,866 makes no distinction between direct and indirect effects, instead instructing agencies to “assess all costs and benefits.”⁶⁰ *Circular A-4* instructs agencies to apply “[t]he same standards of information and analysis quality” to both direct and indirect effects,⁶¹ and notes that important indirect effects should carry enough weight that, just like direct effects, they can “change the rank ordering of the main alternatives in the analysis.”⁶² *Circular A-4* further suggests that it is appropriate to put ancillary benefits together with direct benefits on the same side of the ledger in a cost-benefit analysis,⁶³ and also notes that in a cost-effectiveness analysis, the

⁵⁷ See Sean Reilly, *EPA Limits Future Regs with Cost-Benefit Overhaul*, E&E News PM, June 4, 2020.

⁵⁸ *Michigan v. EPA*, 135 S.Ct. 2699, 2707 (2015) (after noting it would be irrational to ignore whether compliance technologies imposed countervailing risks to human health that more than offset the benefits of emissions reductions, concluding that “[n]o regulation is ‘appropriate’ if it does significantly more harm than good”).

⁵⁹ See Policy Integrity, Comments to SAB on Scientific and Technical Basis of EPA’s Proposed Mercury and Air Toxics Standards for Power Plants Residual Risk and Technology Review and Cost Review at 3 (Jan. 10, 2020), https://policyintegrity.org/documents/J_Lienke_-_written_statement_for_SAB_re_MATS_Reconsideration_-_January_2020_%28signed%29.pdf.

⁶⁰ Exec. Order 12,866 § 1(a).

⁶¹ *Circular A-4* at 26.

⁶² *Id.*

⁶³ *Id.* (suggesting agencies might first subtract countervailing disbenefits from ancillary benefits before “put[ting] both of these effects on the benefits side”); see also *id.* at 3 (“Identify the expected undesirable side-effects and ancillary benefits of the

ancillary benefits should be compared against direct costs and other effects.⁶⁴ In its guide to presenting costs and benefits in an accounting statement, *Circular A-4* distinguishes categories of costs and benefits only by whether they are monetized or quantified or not—with no distinction between direct and indirect effects.⁶⁵ EPA’s *Guidelines* similarly advise to present “all identifiable costs and benefits” together, including “directly intended effects and associated costs, as well as ancillary (or co-) benefits and costs.”⁶⁶ EPA should continue to rely on these existing guidelines, and not the proposed rule, in considering and presenting co-benefits.

Finally, the proposed rule also suggests that, in any rulemaking with co-benefits, EPA should “explore whether there may be more efficient, lawful and defensible, or otherwise appropriate ways of obtaining ancillary benefits.”⁶⁷ This suggestion is problematic for multiple reasons. To start, undertaking multiple regulations, each focused on individual pollutants rather than a unified, multi-pollutant regulatory strategy, may carry additional costs: administrative costs from designing and issuing multiple regulations; paperwork costs from implementing and complying with multiple regulations; and any lost efficiencies that a multi-pollutant compliance strategy may achieve that distinct pollutant-specific rulemakings might preclude. Additionally, any analysis of a regulatory alternative that requires a separate rulemaking would have to consider the realistic probability of whether such alternate or separate rulemakings could actually occur, as well as the forgone benefits during any delay in waiting for the additional rulemakings. Such an analysis could prove vexing if not impossible for an administration, especially when different authorities span across different agencies or different offices within an agency, each with their own rulemaking and enforcement capacities. Moreover, as courts have repeatedly reminded agencies, the existence of overlapping authorities does not excuse an agency from rationally implementing all of its statutory mandates: “The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations”⁶⁸; and “Just as EPA lacks authority to refuse to regulate on the grounds of [the existence of another] statutory authority, EPA cannot defer regulation on that basis.”⁶⁹ As EPA’s *Guidelines* already acknowledge, the rational implementation of rulemaking authorities requires the consideration of net social benefits, including from reductions of other environmental co-contaminants. EPA should not depart from existing best practices on the consideration of co-benefits.

B. Failing to Treat Costs and Benefits Consistently

The proposed rule repeatedly sets higher bars for benefits than for costs. For example, “EPA proposes to select the endpoints for which the scientific evidence indicates there is (a) a clear causal or likely causal relationship between pollutant exposure and effect”⁷⁰ Not only is that an inappropriately high bar for calculating benefits (as discussed below, Section II.C.), but it is an inconsistently high bar as compared to costs. For compliance costs, EPA seems to suggest that the standard is merely whether

proposed regulatory action and the alternatives. These *should be added to the direct benefits and costs* as appropriate.”) (emphasis added).

⁶⁴ *Id.* at 12 (“When you can estimate the monetary value of *some* but not all of the ancillary benefits of a regulation, but cannot assign a monetary value to the primary measure of effectiveness, you should subtract the monetary estimate of the ancillary benefits from the gross cost estimate to yield an estimated net cost.”).

⁶⁵ *Id.* at 45, 47.

⁶⁶ EPA, *Guidelines* at 11-2.

⁶⁷ 85 Fed. Reg. at 35,622.

⁶⁸ *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007).

⁶⁹ *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 127 (D.C. Cir. 2012).

⁷⁰ 85 Fed. Reg. at 35,620.

estimates are “relatively precise” and “reasonable”⁷¹—or even just “adequate[]”⁷²—a much more lax standard than “clear causal.”

Similarly, for quantifying health endpoints, the proposed rule emphasizes the need to “match” location and population characteristics,⁷³ to consider whether the “age” of the data “affect[s] the suitability of the study or model,”⁷⁴ to never use “upper-bound” estimates unless paired with lower-bound and central estimates,⁷⁵ and to apply a host of other criteria. None of these criteria, or comparable equivalents, are applied by the proposed rule to the consideration of compliance cost estimates, even though the age of data,⁷⁶ the location matching,⁷⁷ and other similar considerations often should be weighed in determining the relevance of cost estimates. Note, however, that the solution to this problem of the proposed rule treating costs and benefits differently is not to “apply” similar “requirements . . . to all risk assessments,” as EPA suggests in a section on additional considerations.⁷⁸ That would only exacerbate the problem of unnecessarily issuing a new proposed regulation that at best duplicates—and at worst distorts—existing best practices for cost-benefit analysis. Rather, the solution to the proposed rule’s problem of treating costs and benefits differently is simply to withdraw the proposed rule and revert to relying on existing guidance, like *Circular A-4* and EPA’s *Guidelines*, which already offer a more balanced treatment to both costs and benefits.

EPA also misleadingly implies in the proposed rule that health benefits are more likely than costs to be uncertain, by calling out specifically the need to “report probability distributions for each health benefit” without similarly highlighting the best analytical tools for disclosing the uncertainty around cost estimates.⁷⁹ By repeatedly setting more stringent standards for benefit estimates than for cost estimates, the proposed rule reveals itself to be an arbitrary distortion of existing guidelines and not a mere codification.

Finally, while the proposed rule would require that analysts “must” engage in questionable line-drawing exercises in every rulemaking to exclude co-benefits from an additional required presentation, the proposed rule only requires similar treatment of indirect costs “to the extent possible” and when the statute provides a specific listing of costs.⁸⁰ When the statute silently allows the general consideration of costs, or when the differentiation of direct versus indirect costs is deemed not “possible,” the proposed rule would seemingly allow the continued grouping of all costs together even as it requires an arbitrary different treatment of direct versus indirect benefits (see above, Section II.A.). Giving relatively less weight to indirect benefits while giving full weight to indirect costs is yet another way of arbitrarily treating costs and benefits differently. In reality, indirect benefits “are simply mirror images” of indirect

⁷¹ 85 Fed. Reg. at 35,619.

⁷² *Id.* (“In this case, a general equilibrium approach may be more appropriate to more adequately estimate social cost.”).

⁷³ *Id.* at 35,621.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See, e.g., Jason Schwartz & Jeffrey Shrader, *Muddying the Waters: How the Trump Administration Is Obscuring the Value of Wetlands Protection from the Clean Water Rule 3-4* (2017), https://policyintegrity.org/files/publications/Muddying_the_Waters.pdf (explaining EPA’s arbitrary exclusion of benefit estimates deemed too old even while the agency inconsistently used similarly old cost estimates, despite recent changes that likely affected compliance costs).

⁷⁷ See, e.g., Policy Integrity, Comments on the Revised Definition of “Waters of the United States” at p.31, Apr. 15, 2019, https://policyintegrity.org/documents/Clean_Water_Rule_Revisions_Comment_2019.4.15-final.pdf (explaining how EPA had—without adequate justification—substituted cost estimates based on district-level data for individual states with instead estimates based on an average of neighboring states’ costs).

⁷⁸ 85 Fed. Reg. at 35,623.

⁷⁹ *Id.* at 35,621.

⁸⁰ *Id.* at 35,627.

costs.⁸¹ This becomes especially apparent when deregulating: the benefits of the original action become the costs of the rollback. More generally, agencies are required by the courts to treat costs and benefits alike and consider each with comparable analysis, and may not “put a thumb on the scale by undervaluing the benefits and overvaluing the costs.”⁸² The proposed rule puts several thumbs on the scale, and so is arbitrary.

C. Distorting Evidentiary Standards and Underemphasizing Sensitivity Analysis

The proposed rule calls for estimates of public health and environmental benefits to be based on “a clear causal or likely causal relationship between pollutant exposure and effect.”⁸³ In other words, the proposed rule would exclude the consideration of important categories of benefits if the causal relationship is still somewhat uncertain or if the evidence, though compelling, is perhaps too new to have been fully integrated into more formal consensus reviews.⁸⁴ This high evidentiary bar breaks from existing best practices and would distort regulatory analyses. (It is also inconsistent with the evidentiary standards set by the proposed rule for compliance cost estimates, as noted above, Section II.B.)

Executive Order 12,866 calls for the assessment of all “anticipated” benefits,⁸⁵ not only those benefits that are certain to occur. While *Circular A-4* allows for the exclusion of some “highly speculative or minor consequences,”⁸⁶ it otherwise calls on agencies to “monetize quantitative estimates whenever possible,” provided that assumptions are disclosed and defensible, and that the “likelihood of such effects” is made clear.⁸⁷ In providing specific recommendations on assessing environmental effects when the science remains uncertain, *Circular A-4* advises “present[ing] results from a range of plausible scenarios, together with any available information that might help in qualitatively determining which scenario is most likely to occur.”⁸⁸ When possible, *Circular A-4* recommends using quantitative methods such as presenting probability distributions⁸⁹ and, minimally, conducting sensitivity analyses to determine whether including a more uncertain parameter would change the sign of the net benefits calculation.⁹⁰

EPA’s *Guidelines* similarly call for analysts to “characterize the full uncertainty distribution associated with risk estimates. Not only does this contribute to a better understanding of potential regulatory

⁸¹ Samuel J. Rascoff & Richard L. Revesz, *The Biases of Risk Tradeoff Analysis: Towards Parity in Environmental and Health-and-Safety Regulation*, 69 U. Chi. L. Rev. 1763, 1793 (2002).

⁸² *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1198 (9th Cir. 2008); *see also* *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011) (chastising the agency for “inconsistently and opportunistically fram[ing] the costs and benefits of the rule”); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (holding that if an agency “trumpet[s]” economic benefits, it must also disclose costs); *Mont. Env’tl. Info. Ctr. v. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1098 (D. Mont. 2017) (finding it “arbitrary and capricious” to “quantify socioeconomic benefits while failing to quantify costs”).

⁸³ 85 Fed. Reg. at 35,620.

⁸⁴ The language of “casual or likely causal” seems intended to evoke the terminology used in EPA’s *Integrated Science Assessments* for various pollutants like ozone, *see* EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* lxxi (2020) [hereinafter “Ozone ISA”], <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=348522> (defining “causal” and “likely to be causal”), which may go years between updates and also use an older cutoff date for the inclusion of literature, *see id.* at lxxii (explaining that the 2020 ISA for Ozone only reflects literature through March 2018, and before that the 2013 ISA had only included literature through June 2011).

⁸⁵ Exec. Order 12,866 § 6(a)(3)(C)(i); *see also* Exec. Order 13,563 § 1(c) (“[E]ach agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible”).

⁸⁶ *Circular A-4* at 26.

⁸⁷ *Id.* at 27.

⁸⁸ *Id.* at 39.

⁸⁹ *Id.* at 40.

⁹⁰ *Id.* at 41-42.

outcomes, it also enables economists to incorporate risk assessment uncertainty into a broader analysis of uncertainty.”⁹¹

In short, the proposed rule would raise the bar and exclude any health or environmental endpoints that are slightly uncertain even if, despite the uncertainty, they might prove highly significant to the cost-benefit analysis. This proposal is especially problematic given the controversial nature of some recent assessments of causality. For example, EPA’s recent *Integrated Science Assessment of Ozone* downgraded the relationship between short-term ozone exposure and total mortality from “likely to be causal” (as determined in 2013) to just “suggestive of . . . a causal relationship.”⁹² This very recent downgrading was controversial and strongly opposed by scientific groups like the American Thoracic Society, which had provided to EPA “overwhelming evidence” of the causal relationship between ozone and mortality.⁹³

Rather than excluding any benefit that falls slightly short of any particular determination of conclusive causality, EPA should continue—as instructed by *Circular A-4* and its own *Guidelines*—to consider all important categories of costs and benefits, characterizing their likelihood when some uncertainty exists, and testing the sensitivity of the cost-benefit analysis to the inclusion, exclusion, or alteration of key assumptions around such estimates.

At the same time that the proposed rule seeks to raise the bar on evidence of causality, the proposed rule also seeks to alter the standard for studies that suggest alternate concentration-response functions. On the one hand, the proposed rule may set the bar too high by perhaps requiring a degree of “match[ing]” for location and population that may be hard to achieve and that may exclude otherwise relevant studies. Compare the proposed rule with, for example, the EPA *Guidelines’* warning that a perfect “match” should not be the standard for benefit transfer analysis.⁹⁴ EPA’s *Guidelines* instead advise analysts to identify for benefit transfer those “suitable” case studies—including relevant studies of sufficient quality from the gray literature—that are similar enough to “inform” the policy decision.⁹⁵

On the other hand, the proposed rule’s specific references to “studies that do not find a significant concentration-response relationship” and to the use of “alternative” and “multiple” concentration-response functions⁹⁶ raises the prospect of sanctioning the use of studies that break from the consensus scientific understanding that many key pollutants have no clear threshold for safe exposure.⁹⁷ On this issue, note, for example, the warning in EPA’s *Guidelines* that focusing too much on outlier and tail-end risk estimates can lead to biased benefits estimates.⁹⁸ It is certainly important to consider and disclose uncertainty in the underlying risk assessments, to appropriately weigh emerging scientific understandings, and to test the sensitivity of calculations to changes in key assumptions. But the proposed rule incongruently seems willing to give weight to individual studies that break from consensus to find a lack of a concentration-response relationship, even as the proposed rule simultaneously raises the bar to demand scientific consensus on causality before considering benefit endpoints. In this way, the proposed rule departs from the best practices for economic analysis, which instead direct analysts to consider all important categories of effects while using sensitivity analysis and

⁹¹ EPA, *Guidelines* at 7-5.

⁹² Ozone ISA at ES-6.

⁹³ Am. Thoracic Society, EPA Proposal to Change How It Evaluates Environmental Policy Ignores Science, Newswise (June 5, 2020), <https://perma.cc/J59K2DZE>.

⁹⁴ EPA, *Guidelines* at 7-45 to 7-46.

⁹⁵ *Id.* at 7-45 to 7-46.

⁹⁶ 85 Fed. Reg. at 35,621.

⁹⁷ Castle & Revesz, *supra*, 103 Minn. L. Rev. at 1392 (explaining that EPA has consistently found benefits from reducing exposure below the NAAQS for ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, and particulate matter).

⁹⁸ EPA, *Guidelines* at 7-5.

other tools to properly disclose and weigh uncertainty. *Circular A-4* and EPA's existing *Guidelines* provide better advice on these matters, and EPA has developed extensive guidance specifically on the assessment of the health effects of pollution:⁹⁹ these existing documents should not be supplanted by the proposed rule.

D. Failing to Provide Sufficient Nuance

EPA is correct in quoting *Circular A-4* that “good regulatory analysis cannot be developed according to a formula. Conducting high-quality analysis requires competent professional judgment.”¹⁰⁰ For that very reason, not only is it inadvisable to ossify requirements for cost-benefit analysis in the Code of Federal Regulations, but attempting to summarize complex issues in regulatory analysis within a few sentences or paragraphs of a rulemaking preamble is problematic. For example, the proposed rule's preamble spends just two paragraphs on the choice of partial equilibrium versus general equilibrium approaches.¹⁰¹ By contrast, EPA's recent draft update to its *Guidelines for Preparing Economic Analyses* spends ten pages on the factors in choosing between such models,¹⁰² and that chapter of the *Guidelines* is currently being reviewed both by the public and EPA's Science Advisory Board.¹⁰³ Because the methodology for cost-benefit analysis is sophisticated and nuanced, and because good analysis requires flexibility and professional judgment, the existing guidelines and their future updates are the appropriate repositories of the best practices for cost-benefit analysis, and a regulation like the proposed rule is inadvisable.

E. Insufficiently Protecting Personally Identifiable Information and Other Data

The proposed rule explains that “[i]f the data and models are proprietary,” then EPA will protect confidential business information, personally identifiable information, and other privileged information from disclosure.¹⁰⁴ However, the proposed rule does not make clear whether personally identifiable information will also be appropriately protected if the data are not specifically “proprietary” but are still privileged or otherwise in need of protection, nor does the proposed rule explain the consequences if underlying data is simply infeasible to disclose. Many organizations and academics have raised significant concerns with EPA's so-called “Strengthening Transparency in Regulatory Science” (STRS) rule,¹⁰⁵ and those same concerns apply to this proposal as well. These comments hereby incorporate relevant comments on the STRS rule.¹⁰⁶ Those incorporated comments are also responsive to the proposed rule's request for additional comments on whether additional study selection criteria are

⁹⁹ See, e.g., EPA, *Preamble to the Integrated Science Assessments* (2015); EPA, *Framework for Human Health Risk Assessment to Inform Decision Making* (2014).

¹⁰⁰ 85 Fed. Reg. at 35,619.

¹⁰¹ *Id.* at 35,619-20.

¹⁰² EPA, *Guidelines for Preparing Economic Analyses: Review Copy Prepared for EPA's Science Advisory Board's Economic Guidelines Review Panel* 8-16 to 8-26 (2020), [https://yosemite.epa.gov/sab/sabproduct.nsf/RSSRecentHappeningsBOARD/30D5E59E8DC91C2285258403006EEE00/\\$File/GuidelinesReviewDraft.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/RSSRecentHappeningsBOARD/30D5E59E8DC91C2285258403006EEE00/$File/GuidelinesReviewDraft.pdf).

¹⁰³ See, e.g., Policy Integrity, *Second Batch of Additional Comments to the Science Advisory Board Economic Guidelines Review Panel, Covering Chapters 9-10*, at pp. 4-5 (May 20, 2020), https://policyintegrity.org/documents/SAB_Econ_Guidelines_Review_Panel_Addn_Comments_Batch_2_2020.05.20-signed_.pdf (calling for EPA to set standards for transparency around usage of CGE models).

¹⁰⁴ 85 Fed. Reg. at 35,622.

¹⁰⁵ See, e.g., Madison E. Condon, Michael A. Livermore & Jeffrey G. Shrader, *Assessing the Rationale for the U.S. EPA's Proposed “Strengthening Transparency in Regulatory Science” Rule*, 14 Rev. Envtl. Econ. & Pol'y 131 (2019), <https://academic.oup.com/reep/article/14/1/131/5681775?guestAccessKey=ecb48664-e1fd-42b0-b4f1-19093b8f923d>.

¹⁰⁶ See, e.g., Policy Integrity, *Comments on Strengthening Transparency in Regulatory Science, Supplemental Notice, May 14, 2020*, <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-11911>.

appropriate,¹⁰⁷ as EPA should abandon this proposed rule and the proposed STRS rule, both of which would lead to biased results. Instead, EPA should return to relying on existing guidance.

III. Comments on Additional Requests

Again, as shown repeatedly above, the proposed rule is unnecessary, unjustified, and arbitrarily biased, and so should not be finalized or adopted. Nevertheless, we include responses below to some of EPA's additional requests for comments.

First, as to all the various requests for comments about whether EPA should codify additional requirements, such as on technological change or weight-of-evidence frameworks,¹⁰⁸ the response is: no, EPA should not, for the same reasons given above on why the proposed rule is unnecessary. Existing guidance, including *Circular A-4* and EPA's *Guidelines* (and any updates or supplements to those documents that have gone through an appropriate review process), provide sufficient instruction for analysts on these matters.

EPA asks for comments on how it should "take into consideration the results of a BCA in future rulemakings under specific provisions of the CAA."¹⁰⁹ But EPA does not need to adopt a new regulation to direct its decisionmakers on that question. Where there is a relevant statutory provision, caselaw will already provide guidance on such questions; otherwise, Executive Order 12,866 already instructs that "to the extent permitted by law," agencies should "adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."¹¹⁰ Furthermore, under the Administrative Procedure Act, rulemakings must be supported by non-arbitrary justifications, including the assessment of all important aspects of the problem under consideration.

EPA asks for comments on whether it "should determine that a future significant CAA regulation be promulgated only when the monetized benefits exceed the costs of the action."¹¹¹ The agency absolutely should not do so. Treating unmonetized benefits as worthless violates Executive Orders, longstanding agency practices, and caselaw.¹¹²

EPA asks for comment on whether to inflate the \$100 million threshold for "economically significant" rulemakings from a base year of 1995.¹¹³ Doing so would create a confusing and unhelpful divergence between EPA's definition of "economically significant" versus OMB's definition, as used by every other agency, under Executive Order 12,866 and *Circular A-4*. OMB has continued to use the \$100 million threshold even under President Trump's recent executive orders as well,¹¹⁴ and a review by the Regulatory Studies Center at the George Washington University found that inflating the threshold would not meaningfully change the classification of any recent economically significant regulations.¹¹⁵

EPA asks for comment on "whether non-domestic benefits and costs of regulations, when examined, should be reported separately from domestic benefits and costs of such regulations."¹¹⁶ This issue

¹⁰⁷ 85 Fed. Reg. at 35,623.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Exec. Order 12,866 § 1(b)(6).

¹¹¹ 85 Fed. Reg. at 35,623.

¹¹² See, e.g., Policy Integrity Comments on MATS, *supra* note 36, at 2-3; Policy Integrity Amicus Brief, *supra* note 36, at 12-15 (summarizing regulatory history and literature).

¹¹³ 85 Fed. Reg. at 35,623.

¹¹⁴ See, e.g., Dominic J. Mancini, Acting Admin. OIRA, *Guidance Implementing Executive Order 13771* at 3 (Apr. 5, 2017).

¹¹⁵ Daniel R. Perez, *A Useful Measure of Regulatory Output*, <https://regulatorystudies.columbian.gwu.edu/useful-measure-regulatory-output> (Jan. 11, 2017).

¹¹⁶ 85 Fed. Reg. at 35,623.

comes up most frequently in the context of climate change and the valuation of the social cost of greenhouse gases. We have provided EPA with extensive comments in the past on why either abandoning the global values estimated in 2016 by the Interagency Working Group on the Social Cost of Greenhouse Gases in favor of a so-called “domestic only” calculation of climate damages, or else relegating consideration of global effects to an appendix or sensitivity analysis, arbitrarily excludes or devalues climate damages that directly and indirectly affect the United States and its citizens and residents. We hereby incorporate such recent comments,¹¹⁷ and we also direct EPA’s attention to the recent decision of the U.S. District Court for the Northern District of California that found the Bureau of Land Management’s use of a domestic-only social cost of methane estimate to be arbitrary.¹¹⁸

EPA asks for comments on alternate forms of presenting disaggregated costs and benefits, such as within a table that either separates those effects deemed to “pertain to the specific statutory objective” from “other welfare effects,” or else that separates effects by listed statutory factors.¹¹⁹ For all the reasons given above on why separating out certain effects from others is not only unnecessary, but may also create more confusion, may delegitimize the consideration of certain effects, and so may break from existing best practices on cost-benefit analysis, EPA should not adopt any of these alternative modes of categorizing certain effects in ways that highlight some effects at the expense of others.

EPA asks for comments on possible requirements for retrospective analysis.¹²⁰ Any such potential requirements should be concretely proposed in a separate notice that fully explains the need specifically for a rule-based solution to this matter (as opposed to relying on existing or new guidance on retrospective review) and that allows a new and adequate opportunity for public comment.

EPA asks for comments on how the “sequencing of rules might affect the estimation of benefits and costs.”¹²¹ If EPA follows existing guidelines for transparently defining the baseline for analysis, including the proper consideration of other rules simultaneously under development, then the sequencing of rules often will not affect the estimation of benefits and costs, and, as such, the proposed rule is unnecessary. Notably, though, on the issue of the costs and benefits of sequential rules: as compared to sequential rulemakings that each individually address a single pollutant, addressing multiple pollutants through a single rulemaking may reduce administrative and paperwork costs and may create cost-minimizing opportunities for multi-pollutant and novel compliance strategies, and these considerations counsel in favor of fully weighing important indirect benefits from the reduction of co-pollutants.

EPA asks for comments on whether to extend its proposed requirement for the disclosure of data to block the use of third-party models when the model and assumptions cannot be made publicly available.¹²² Though the use of black box models can be problematic, and though sometimes the public’s interest in transparency may outweigh either the third party’s interest in confidentiality or the model’s informative value, there may also be circumstances when certain data or models must remain more protected. As with the proposed criteria for disclosure of all data, a blanket one-size-fits-all approach that only allows for the binary choice of either full disclosure or prohibition is likely not the proper solution to this issue.

¹¹⁷ See, e.g., Joint Comments on the Flawed Monetization of Forgone Benefits in the Proposed Rule, Oil and Nature Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, Nov. 25, 2019, https://policyintegrity.org/documents/Methane_Rule_Joint_SCC_Comments.pdf.

¹¹⁸ *California v. Bernhardt*, No. 4:18-cv-05712 (N.D. Cal. July 15, 2020).

¹¹⁹ 85 Fed. Reg. at 35,624.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

In conclusion, the proposed rule is unjustified, unnecessary, and arbitrarily biased, and should not be finalized.

Sincerely,

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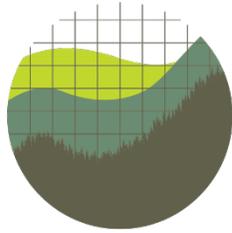
Clare Lakewood, Climate Legal Director and Senior Attorney, Center for Biological Diversity

Thomas Singer, Senior Policy Advisor, Western Environmental Law Center

Rosalie Winn, Senior Attorney, Environmental Defense Fund

Attachments:

- Joint Comments on the Flawed Monetization of Forgone Benefits in the Proposed Rule, Oil and Nature Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review, Nov. 25, 2019, https://policyintegrity.org/documents/Methane_Rule_Joint_SCC_Comments.pdf
- Policy Integrity, Comments on Strengthening Transparency in Regulatory Science, Supplemental Notice, May 14, 2020, <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-11911>.



Institute for
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

May 12, 2020

Dr. Shaunta Hill-Hammond, Designated Federal Officer, EPA Science Advisory Board
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Subject: First Batch of Additional Comments to the Science Advisory Board Economic Guidelines Review Panel, Covering Chapters 1–7

The Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law¹ submits the following additional comments to the Science Advisory Board’s Economic Guidelines Review Panel. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. These comments build on, and incorporate, our initial written and oral comments.²

Given the short time between the May 1 notice of the SAB panel’s additional meetings and the May 12 deadline set for written comments, these comments focus on the first seven chapters of the draft *Guidelines*, which the SAB panel plans to review during its first two meetings. Policy Integrity will submit additional comments on chapters eight through eleven in advance of the panel’s third meeting. This first batch of comments will proceed in chapter order, rather than in order of issue importance, to facilitate the panel’s review.

Table of Contents

<i>Comments on the Glossary</i>	2
<i>Comments on Chapter 1</i>	2
<i>Comments on Chapter 2</i>	3
<i>Comments on Chapter 3</i>	3
<i>Comments on Chapter 4</i>	5
<i>Comments on Chapter 5</i>	7
<i>Comments on Chapter 6</i>	11
<i>Comments on Chapter 7</i>	25

¹ This document does not purport to present New York University School of Law’s views, if any.

² Policy Integrity, Initial Written Comments (Apr. 15, 2020), https://policyintegrity.org/documents/SAB_Econ_Guidelines_Review_Panel_Initial_Comment_2020.04.15-signed_.pdf; Policy Integrity, Transcript of Oral Comments Presented on April 23, 2020, https://policyintegrity.org/documents/SAB_Econ_Guidelines_Review_Panel_Oral_Comment_2020.04.22.pdf.

Comments on the Glossary

Additions: The SAB should encourage EPA to include additional definitions for key terms. For example, “breakeven analysis” is a key concept for the proper consideration of unquantified effects, but neither the draft *Guidelines* nor *Circular A-4* provides a concise definition of the term. Other missing terms worthy of a definition in the glossary include: sensitivity analysis, bounding analysis, and ecosystem services.

Revisions: EPA should consider whether to add the concept of international trade effects to the definition of “economic impact analysis.” Note that international trade is listed as a “relevant group” in EPA’s Table 9.2 on examples for analyzing the economic impacts of regulations.³

While the definition of “elasticity of supply” appropriately notes that most goods are increasingly price elastic over time, the definition of “elasticity of demand” lacks that broader statement, instead only giving as one example that gasoline will be more price elastic in the long term. The definition for “elasticity of demand” should echo the broader statement on the long-term elasticity of most goods.⁴ Additionally, EPA might consider defining what “short term” means, especially in an important context like fuel prices, but also more generally for elasticities. For example, a study relied upon by the Bureau of Ocean Energy Management found that “90 percent of the long run response” to a change in the relative price between traditional fuels had already occurred before the eleventh year following a price change, suggesting that the line between “short run” versus “long run” may be considerably less than ten years.⁵

In the definition of “non-use value,” EPA should delete the words “mere” (page i-11, line 18) and “paternalistic” (*id.* line 19), as they have an unnecessarily pejorative connotation.

VSL: In the definition of “value of statistical life,” EPA should replace the example (“if 10,000 individuals are each willing to pay \$500 for a reduction in risk of 1/10,000, then the value of saving one statistical life equals \$500 times 10,000—or \$5 million”) with numbers that actually reflect EPA’s current VSL, and to be consistent with the example EPA uses on its website on “Mortality Risk Valuation.”⁶ Starting at page i-12 line 40, the text should read: “For example, if 100,000 individuals are each willing to pay \$100 (2016\$) for a reduction in risk of 1/100,000, then the value of saving one statistical life would equal \$100 times 100,000—or \$10 million.” The definition should also make clear that the value must be updated for inflation and income growth.

Comments on Chapter 1

Highlight Unquantified Effects: Text Box 1.1 purports to represent OMB’s *Agency Checklist for Regulatory Impact Analysis*, and yet includes no reference to unquantified or qualitative effects—which, as the *Guidelines* otherwise do acknowledge, is a key part of any complete regulatory analysis. OMB’s checklist refers to qualitative in each of the last two bullet points.⁷ EPA should similarly include

³ See generally Michael Livermore & Jason Schwartz, “Regulating Regulation: Impact Assessment and Trade” in *Megaregulation Contested: Global Economic Ordering After TPP* (2019, Kingsbury, Benedict et al., eds.) (explaining how to appropriately incorporate international trade effects into regulatory impact analysis).

⁴ N. Gregory Mankiw, *Principles of Economics* at 91 (2009, 5th ed.) (“Goods tend to have more elastic demand over longer time horizons.”).

⁵ See Policy Integrity Comments to BLM on Errors and Omissions in the Substitution Analysis in the Wright Area Coal Leasing Remand Environmental Assessment, at 3 n. 18 (Oct. 4, 2018),

https://policyintegrity.org/documents/Wright_Area_Remand_EA_Comments_on_Substitution-final.pdf (citing Clifton Jones, *The Role of Biomass in U.S. Industrial Interfuel Substitution*, 69 *Energy Policy* 122, 124 (2014)).

⁶ <https://www.epa.gov/environmental-economics/mortality-risk-valuation>.

⁷ https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/regpol/RIA_Checklist.pdf.

references to unquantified effects in appropriate places in the text box. For example, EPA could make these redline additions:

- Does the RIA explain and support a reasoned determination that the benefits (including unquantified benefits) of the intended regulation justify its costs (including unquantified costs)?
- Does the preferred option have the highest net benefits (considering unquantified effects as well as quantified effects)—unless a statute requires a different approach?

A separate bullet point specifically on unquantified effects is also warranted, such as:

- Does the RIA characterize the likely magnitude and significance of any important unquantified effects to the extent feasible, such as through breakeven analysis?

Comments on Chapter 2

Reaffirm Best Analytical Practices: While the draft *Guidelines* assert that specific statutes may “mandate specific economic analyses” that are “not discussed here” (page 2-1), the *Guidelines* also elsewhere emphasize that good economic analyses aim to inform the public, Congress, and decisionmakers of all the effects of policy options and so “should identify those options that are more efficient or cost-effective *even if the regulatory approaches may be prohibited by statutory or judicial requirements (OMB 2003)*” (page 3-4; emphasis added). The SAB should encourage EPA to make similar statements with respect to the entire economic analysis, such that analysts include full estimates of all important costs and benefits, consistent with best economic practices, even if some decisionmakers may feel that they are not permitted by statute to fully consider those effects in selecting between regulatory alternatives. Chapter 2 would be an appropriate place to reemphasize that distinction.

Comments on Chapter 3

Alternative stringencies: On page 3-1, at line 14, EPA should change “may” to “should,” reflecting the fact (as acknowledged elsewhere in the *Guidelines*) that regulatory alternatives *should* always include different level of stringency.

Market failures and other regulatory goals: On page 3-2 at lines 10-11, EPA incorrectly states that “For pollution problems, the social purpose *is* to correct a ‘market failure.’” (emphasis added). While classic externalities and other market failures are surely the most common and often driving reasons for federal environmental regulation, it is not true that the only social purpose for addressing pollution problems “*is*” correcting market failures. Distributional equity, for instance, could also be the supplemental or even primary goal in addressing pollution. This sentence should be revised as follows: “For pollution problems, the social purpose often is to correct a ‘market failure,’ though distributional equity and other goals may also be motivating factors.”

On page 3-2 at footnote 48, EPA should add a citation to the growing literature on externalities and behavioral market failures. One such source would be Hunt Allcott & Cass R. Sunstein, *Regulating Externalities*, 34 J. Policy Analysis & Mgmt. 698 (2015). As the draft *Guidelines* already acknowledge at page 4-16, externalities are not the only ways that markets can fail, and it is important to pay attention to behavioral market failures in the design of an efficient regulatory solution. EPA should therefore acknowledge this literature in the section on market failures in Chapter 3 as well.

On page 3-2 at line 33, EPA should add a footnote after the phrase “perfect markets with full information,” to clarify that, in fact, labor markets are rarely perfectly competitive and the workers who seek high-risk jobs may not have perfect information or equal bargaining power—and, further, that such

imperfections may cause an underestimation of the value of statistical life when based on labor market studies. Moreover, such workers may not be representative of average rational attitudes toward risk, since employers offer wage premiums not to attract the average person, but instead to attract the last person needed to fill a job.

Do Not Presume a “Preferred” Option: On page 3-4, at line 26, as well as elsewhere in the *Guidelines*, EPA talks about the need to analyze both a “preferred option” and more stringent and less stringent options. This language presumes that the agency has settled on a “preferred option” even before any analysis has taken place. There may be times when statutory factors, like technological feasibility, point toward a particular option as a starting place, but no option should be presumptively “preferred” before any economic analysis has been completed. The SAB panel should consider and advise EPA on more appropriate terminology to use, to encourage analysts to approach a suite of reasonable regulatory alternatives without having already identified one as the “preferred” option.

Use More Balanced Language on Variations by Firm Size: On page 3-6, lines 12-15, the description of considering regulatory alternatives by firm size is overly focused on the potential differences in costs. This discussion should also remind analysts of the importance of weighing the forgone benefits from any relaxation of regulatory requirements for certain sized firms, and of the efficiency in equalizing marginal compliance costs across firms.⁸ *Circular A-4’s* language on this same point, for example, is more balanced: “The balance of benefits and costs can shift depending on the size of the firms being regulated. Small firms may find it more costly to comply with regulation, especially if there are large fixed costs required for regulatory compliance. On the other hand, it is not efficient to place a heavier burden on one segment of a regulated industry solely because it can better afford the higher cost.”

Problematic Language on “Statutory Objective”: In general, the *Guidelines* appropriately continue to remind analysts (e.g., at page 5-3) that “when calculating net benefits all welfare effects should be included, as it is the total willingness to pay for all changes induced by a regulation that determinates economic efficiency.” However, some of the specific language and approaches the *Guidelines* applies to indirect effects are potentially problematic.

Footnote 62, at page 3-6, reads: “The statutory objective of the regulation is the specific objective of the statutory provisions under which the regulation is promulgated.” First, that sentence is somewhat of a tautology and does not offer analysts much guidance. Second, the statement seems to assume a single, knowable statutory objective. In fact, a regulation can have multiple statutory authorities. A statute can also have multiple objectives. Legislative objectives may not always be clear. A specific statutory provision’s objectives may be informed by the broader objectives of the entire act. Policy Integrity’s prior written and oral comments already flagged the difficulty of trying to distinguish between pollutants that are the “statutory objective” versus those that are “other” contaminants, and the problems with relegating “other” effects to some secondary status. If footnote 62 is kept, it should include more useable guidance for analysts and should acknowledge the complexities in identifying a statutory objective. The footnote should also clarify that analysts should not assume, absent explicit statutory language, that any statute has the objective of barring consideration of important indirect effects. For example, any broad statutory language, like “reasonable” or “appropriate,” should be read broadly to authorize consideration of all important effects, whether direct or indirect.

Page 3-6 at lines 33-34, raises the possibility of considering options to separately or simultaneously regulate “other” contaminants “directly.” As Policy Integrity noted in our prior written and oral comments, undertaking multiple regulations, each focused on individual pollutants rather than a unified,

⁸ See Policy Integrity, Letter to U.S. Small Business Admin. on Suggested Improvements to the Implementation of the Regulatory Flexibility Act, Feb. 24, 2012, https://policyintegrity.org/documents/Policy_Integrity_Letter_to_SBA_on_RFA.pdf.

multi-pollutant regulatory strategy, may carry additional costs: administrative costs from designing and issuing multiple regulations; paperwork costs from implementing and complying with multiple regulations; and any lost efficiencies that a multi-pollutant compliance strategy may achieve that distinct pollutant-specific rulemakings might preclude. Additionally, any analysis of a regulatory alternative that requires a separate rulemaking would have to consider the realistic probability of whether such alternate or separate rulemakings could actually occur, as well as the forgone benefits during any delay in waiting for the additional rulemakings. Such an analysis could prove vexing if not impossible for an administration, especially when different authorities span across different agencies or different offices within an agency, each with their own rulemaking and enforcement capacities. Indeed, the *Guidelines* generally do not permit EPA to consider separate rules that have not yet even been proposed let alone finalized in either the baseline or policy scenarios of a cost-benefit analysis (see page 5-10). Moreover, as courts have repeatedly reminded agencies, the existence of overlapping authorities does not excuse an agency from rationally implementing all of its statutory mandates: “The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations”⁹; “Just as EPA lack authority to refuse to regulate on the grounds of [the existence of another] statutory authority, EPA cannot defer regulation on that basis.”¹⁰ As the *Guidelines* already acknowledge, the rational implementation of rulemaking authorities requires the consideration of net social benefits including from reductions of other environmental contaminants. The SAB should object to any proposal to consider separate or simultaneous rulemakings without sufficient attention to the practical and economical challenges posed by such an undertaking.

Comments on Chapter 4

Equity in Evaluating Environmental Policy: At page 4-1, lines 25-26, the *Guidelines* delineate “economic efficiency” and “cost-effectiveness” as “two economic concepts useful for framing the discussion and comparing [policies].” However, distributional equity is another concept useful for framing the discussion and comparing policies. Standard economic tools, such as the Gini Coefficient, exist to evaluate the distribution of an economic feature (such as income, benefits, or costs). The *Guidelines* should go further to emphasize equity and distributional burden as an economic concept useful for “framing the discussion and comparing [policies]”—not just in Chapter 10, but upfront in Chapter 4, and throughout.

Co-Benefits in Economic Efficiency: At page 4-2, line 4, the *Guidelines* state that “The socially optimal level of pollution is determined by reducing emissions until the benefit of abating one more unit (i.e., the marginal abatement benefit)—measured as a reduction in damages—is equal to the cost of abating one more unit (i.e., the marginal abatement cost).” The phrase “one more unit” could be read to refer to a unit of a particular pollutant. This formulation, however, is only true if there are no other market failures. In the case of positively correlated externalities (for example, how particulate matter emissions are often correlated with carbon dioxide emissions), it is possible that the socially optimal level of pollution occurs when the marginal abatement cost exceeds the marginal abatement benefits of a particular targeted pollutant. Especially given EPA’s attempts to distinguish between target pollutants versus other contaminants (though note the comments above and below for critiques of that distinction), this point should be further clarified in a footnote.

Certainty Benefits in Prescriptive Regulations: One potential benefit of prescriptive policies is increased certainty over the quantity of emissions reductions. This increased certainty can be important when

⁹ *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007).

¹⁰ *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 127 (D.C. Cir. 2012).

there is uncertainty over the marginal abatement costs or marginal abatement benefits, and when the “slope” of the marginal abatement benefits is large. For example, the certainty benefits can be large when regulating pollutants that are toxic in low dose. The discussion of prescriptive regulations, which starts at page 4-2, should consider discussing this possible advantage.

Grandfathering: The *Guidelines* appear to mention grandfathering only on page 4-3, in the context of discussing prescriptive regulations. Grandfathering is an important issue to consider when designing environmental policies, but its consideration is not reserved to prescriptive policies. It is possible for a market-based policy to “grandfather” older units in the sense of treating them differently than new units: for example, in the context of a cap-and-trade program, by freely allocating emissions credits based on historical emissions of existing units. Though this type of grandfathering raises different issues of inefficiency and inequity than the more classic case of grandfathering in prescriptive regulations—with a free allocation of marketable permits, the concerns are inefficiencies and barriers to entry caused by market power wielded by the existing sources, as well as distributional concerns from granting existing sources a windfall of free, valuable permits¹¹—the concerns with grandfathering in this context are no less real.

The inefficiencies of grandfathering should be discussed more generally throughout the *Guidelines*. A broader discussion of grandfathering could be framed together with additional discussion of “incomplete” policies and “regulatory variances”—neither of which is given attention in Chapter 4.

Effects Not Unique to Market-Based Approaches: On page 4-4, at line 35, the *Guidelines* suggest that illegal dumping is a unique possible disadvantage of market-based regulatory approaches. In fact, this type of noncompliance could occur under any type of regulatory approach, whether market-based or prescriptive. Similarly for the comment, in line 36 on page 4-4 and continuing onto page 4-5, that a market-based approach requires special consideration of the distribution of costs, political incentives, and distribution of economic rents: these are important consideration for any regulatory approach, and are not unique market-based approaches. The collection of revenues, mentioned at the top of page 4-5, may be a more salient issue in market-based approaches, though the collection of penalties, registration fees, and the like can also be an issue in prescriptive approaches. The *Guidelines* should not single out market-based approaches as having special considerations when these issues in fact occur in any regulatory context.

Price-Based versus Quantity-Based Approaches: On page 4-5, at lines 8-9, the *Guidelines* suggest that while taxes and other price-based approaches “operat[e] different[ly]” than quantity-based trading systems, the two categories of market-based instruments “put similar incentives in place.” In fact, as the *Guidelines* do later explore in section 4.6.4, uncertainty over marginal abatement costs, or marginal abatement benefits, can influence the outcome of different market-based approaches (as well as in comparing between a market-based approach versus a prescriptive approach). A price-based approach may deliver greater certainty about per-unit compliance costs, but at the expense of certainty about the environmental outcome; a quantity-based approach will achieve a target environmental outcome with greater certainty, but with less certainty about total compliance costs.¹² The *Guidelines* should explain in a footnote, at page 4-5 line 10, that “emissions taxes and cap-and-trade systems” may only “achieve the same goal at equivalent cost” if there is no uncertainty over the marginal abatement costs and marginal abatement benefits.

¹¹ See Jason A. Schwartz, *Report to the Administrative Conference of the United States, Marketable Permits: Recommendations on Applications and Management* at 38-40 (2017), <https://www.acus.gov/sites/default/files/documents/Marketable%20Permits%20Report-final.pdf>.

¹² See Schwartz, *Marketable Permits*, *supra* at 4.

Problem of Initial Over-Allocation: Somewhere in section 4.3.1.1—perhaps on page 4-5 at line 28 where the efficient level for the cap is discussed, or on page 4-6 at line 25 in the discussion of banking, or at page 4-7 at line 8 in discussing how a cap’s initially chosen level can become inefficient over time—the *Guidelines* should add a discussion of initial over-allocation. Many cap-and-trade markets have experienced challenges with setting an initial cap too high or allowing too many banked allowances, leading to persistently low allowance price, little trading, and lower than expected environmental gains.¹³ Because it is a recurring problem in policy design and analysis, it deserves special attention in the *Guidelines*.

Role of Price Floors and Collars: Recent research suggests that, given the inelastic nature of supply in a cap-and-trade system, the market price is very likely to be determined by an administratively-set price floor or ceiling.¹⁴ Therefore, some of the discussion about safety-valve systems from section 4.4.1.3 should be subsumed into section 4.3.1.1 on cap-and-trade systems.

Comments on Chapter 5

Standing—Domestic versus International: The discussion of standing at pages 5-1 to 5-2 is insufficient, particularly with respect to climate change effects. As our prior written comments detail, the question of counting domestic-only versus global effects takes on particular importance in the context of climate change. And yet, the section on “standing” in the draft *Guidelines* does not mention climate change. This omission is particularly noticeable when the *Guidelines* insist that “for domestic policy making standing is typically limited to the national level *in order to maximize the welfare of residents*” (page 5-1, emphasis added). However, in the context of climate regulations, ignoring climate effects that occur outside the geographic borders of the United States will *fail to maximize U.S. welfare*. As Policy Integrity has explained in multiple comments to EPA, not only does a domestic-only estimate of the social cost of greenhouse gases fail to consider how international effects will spill over to directly affect U.S. welfare through our globally interconnected economies, health systems, and security, and not only does a domestic-only estimate fail to consider the multiple extraterritorial interests of U.S. citizens and residents, but it also fails to consider the repercussions from foreign reciprocal actions. If all other countries were to likewise consider only their own domestic climate effects and ignore the damages its emissions cause to the United States, U.S. welfare would suffer. Indeed, economic models have shown that for such reasons, the “strategic” social cost of carbon should always be higher than the domestic-only social cost of carbon.¹⁵ The SAB should remind EPA that how the United States treats other countries will directly affect U.S. welfare—especially when it comes to climate change.

The draft *Guidelines* do appropriately note that just because a regulated entity’s facilities are located in the United States does not necessarily mean that regulatory effects are limited to domestic citizens if those firms have foreign shareholders, and the *Guidelines* rightly call for a balanced approach to standing between costs and benefits.¹⁶ However, the *Guidelines* never go so far as to suggest that an economic analysis should not count impacts to foreign shareholders, even while they counsel that other

¹³ See, e.g., Lesley K. McAllister, *The Overallocation Problem in Cap-and-Trade: Moving Toward Stringency*, 34 Colum. J. Envtl. L. 395 (2009).

¹⁴ Severin Borenstein et al., *Expecting the Unexpected: Emissions Uncertainty and Environmental Market Design*, 109 Am. Econ. Rev. 3953 (2019).

¹⁵ See, e.g., Policy Integrity et al., Comments on Quantifying and Monetizing Greenhouse Gas Emissions in the Safer Affordable Fuel-Efficient Vehicles Proposed Rule at 6-13 (Oct. 26, 2018), https://policyintegrity.org/documents/Emissions_Standards_PRIA_SCC_Comments_Oct2018.pdf.

¹⁶ Compare *id.* at 14-15 with 2020 Draft *Guidelines* at 5-2.

international effects, like climate effects, should either not be counted or only “report[ed] separately” (page 5-2). Yet it would not be balanced treatment of costs and benefits to relegate certain climate effects to a separate reporting while continuing to group all cost effects together regardless of the shares held by foreign entities. Nor is it clear, in the context of climate change, what it means to report certain effects “separately” from a domestic-only accounting when the existing models cannot produce any accurate estimate of a “domestic-only” social cost of carbon.¹⁷

The SAB should encourage EPA to take a different, and more balanced, approach to “standing” in the context of climate change.

Indirect Impacts: While the *Guidelines* do appropriately counsel that “all welfare effects” should be counted toward net benefits, much of the terminology, phrasing, and methodologies suggested by the *Guidelines* risk casting unwarranted doubt on important indirect benefits, or risk suggesting that EPA disfavors regulations with large indirect benefits. All important indirect effects should be counted with the same methodological rigor as direct effects, and there is nothing inherently suspect about rules with large indirect benefits.

The draft *Guidelines* avoid using the terms “co-benefits” or “ancillary benefits” because they can be misinterpreted “as having legal or policy meaning that is unintended” (page 5-18, n.129). Instead, the *Guidelines* use phrases like “other environmental contaminants” or “contaminants” that are not “the primary statutory objective” (pages 5-18 to 5-19). While EPA is certainly correct that terms like “co-benefits” have at times led to inappropriately relegating such effects to second-class status, and while the draft *Guidelines* do appropriately reaffirm that all important effects should be calculated in totaling net social benefits, it is not clear that the new terminology adopted by the *Guidelines* will fare much better. In particular, distinguishing between pollutants that are the “statutory objective” and those that are “other” could lead to a similarly inappropriate belittlement of certain key effects.

The *Guidelines* call at page 5-3 to “clearly distinguish between benefits that arise from the statutory objective of the regulation and other welfare effects of the regulation, when it is possible to do so.” In theory some distinction could perhaps be discussed in the text of a preamble or regulatory impact analysis. However, drawing such distinctions in a summary table, without providing sufficient context, could lead to the “other welfare effects” being discounted relative to the “benefits from statutory objective.” Such a result would be inconsistent with the *Guidelines* policy that “when calculating net benefits all welfare effects should be included, as it is the total willingness to pay for all changes induced by a regulation that determinates economic efficiency.” (page 5-3). Moreover, in practice, distinguishing between an effect that meets the “statutory objective” and one that does not is challenging. Take, for example, the benefits that come from reducing particulate matter when regulating mercury and other toxic pollutants: some components of particular matter also meet the definition of hazardous air pollutants.

The SAB should reassess whether language about “other” welfare effects will prevent in inappropriate belittlement of key effects, and the SAB should advise EPA on how to ensure full and balanced treatment of all key effects without making subjective and problematic determinations about which effects meet a “statutory objective” and which do not.

The draft *Guidelines* also include some language that (though the wording is somewhat unclear) seems to suggest that when analysts expect a rule to have large co-benefits, they should consider alternative

¹⁷ See Policy Integrity Comments on Monetizing Greenhouse Gas Emissions, *supra*, at 16-20.

ways of “obtaining these unrelated benefits”—presumably referring to options that use other authorities to conduct separate rulemakings to achieve those co-benefits more directly.¹⁸ This suggestion first requires clarification as to what exactly is meant, and then once clarified the suggestion must be carefully reviewed by the SAB and the public. For starters—as already noted above in these comments on similar language in Chapter 3—undertaking multiple regulations, each focused on individual pollutants rather than a unified, multi-pollutant regulatory strategy, may carry additional costs: administrative costs from designing and issuing multiple regulations; paperwork costs from implementing and complying with multiple regulations; and any lost efficiencies that a multi-pollutant compliance strategy may achieve that distinct pollutant-specific rulemakings might preclude. Additionally, any analysis of a regulatory alternative that requires a separate rulemaking would have to consider the realistic probability of whether such alternate or separate rulemakings could actually occur, as well as the forgone benefits during any delay in waiting for the additional rulemakings. Such an analysis could prove vexing if not impossible for an administration, especially when different authorities span across different agencies or different offices within an agency, each with their own rulemaking and enforcement capacities. Indeed, the *Guidelines* generally do not permit EPA to consider separate rules that have not yet even been proposed let alone finalized in either the baseline or policy scenarios of a cost-benefit analysis (see page 5-10). Moreover, as courts have repeatedly reminded agencies, the existence of overlapping authorities does not excuse an agency from rationally implementing all of its statutory mandates: “The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations”¹⁹; “Just as EPA lack authority to refuse to regulate on the grounds of [the existence of another] statutory authority, EPA cannot defer regulation on that basis.”²⁰ As the *Guidelines* already acknowledge, the rational implementation of rulemaking authorities requires the consideration of net social benefits including from reductions of other environmental contaminants. The SAB should ask EPA first to clarify its suggestion on considering other “ways of obtaining these unrelated benefits,” and then should carefully review that proposal.

Baselines and Future Regulations: The *Guidelines* seems somewhat inconsistent in their advice for handling other regulatory proposals in setting the baseline for analysis. The *Guidelines* first say that future regulations should not be included in the baseline unless they are “certain” to occur (page 5-6), before indicating that proposed regulations may be included in the baseline if they “are under consideration or nearing completion” (page 5-8), or else that a single baseline should include “only final rules and, in some cases, imminent rules that are expected with a high degree of certainty” (page 5-10). As a further complication, the *Guidelines* counsel the use of multiple baselines “if the impact of other rules currently under consideration fundamentally affects the analysis of the rule being analyzed” (page 5-8); however, “[p]roposed rules should not be in the primary baseline” (page 5-10).

More clarity here would help. In all cases, a degree of certainty and reasonableness should be required before including other rules in any baseline. The *Guidelines* should make those standards clearer, and should help define how well-developed and certain a separate regulatory proposal must be to merit inclusion in a baseline.

¹⁸ 2020 Draft *Guidelines* at 5-19 (“[I]f the regulation is expected to induce large benefits from changes in environmental contaminant(s) beyond those arising from the primary statutory objective of the regulation, an analysis of a policy option where those contaminant(s) are regulated, either separately or simultaneously with the contaminants that are the primary statutory objective of the regulation, it may be useful [sic] to determine whether there are more economically efficient or appropriate ways of obtaining these unrelated benefits.”).

¹⁹ *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007).

²⁰ *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 127 (D.C. Cir. 2012).

Additionally, the *Guidelines* should not hold up the 2019 repeal of the Waters of the United States rule as an exemplar of the use of multiple baselines. That repeal adjusted its baselines by alleging “uncertain[ty]” on “the degree to which states would continue to regulate their waters at the 2015 standard.” In fact, not only was *any* state action following the repeal extremely uncertain to ever take place, but the assumptions made in the baselines for the analysis of the Waters of the United States repeal were eminently *unreasonable*—including the assumption that the very same states that were vigorously litigating to repeal the Clean Water Rule would turn around and immediately enact similar protections on their own.²¹

Time Horizon: The draft *Guidelines* provide that “the time horizon should be chosen to capture all of the benefits and cost for the policy alternatives analyzed, subject to available resources,” but do not specify any recommended ranges (page 5-12). Given that in recent years, some EPA analyses have selected an arbitrarily short time horizon—such as looking at costs and benefits for just 7 years in a rule rolling back standards for methane emissions²²—the *Guidelines* should offer more concrete advice about appropriate time horizons. For example, a regulatory analysis’s time horizon should not end when the annual cost estimates, annual benefit estimates, or annual affected sources are still changing significantly from year to year in ways that could affect the sign of the net benefits calculation.²³

Rules with Private Cost Savings: While the *Guidelines* clearly acknowledge that the existence of market failures or irrational behaviors (like the externalities discussed above) can result in regulations generating otherwise-unrealized private cost savings, the *Guidelines* set a very high bar for justifying such private cost savings: “empirical evidence specific to the affected market” (page 5-14). That is a needlessly high bar. For example, EPA has (until recently) long cited theoretical and empirical evidence for why consumers of passenger cars and light-duty trucks will fail to achieve valuable energy savings in the marketplace without regulations on vehicle efficiency and emissions. If EPA believes it is justified to also regulate motorcycle emissions and efficiency for similar reasons, would the agency really need motorcycle-specific empirical evidence on top of the broader economic literature? The Science Advisory Board should encourage EPA to be less skeptical of the potential for regulations to help achieve private cost savings, and EPA should be able to base cost-saving regulations on a reasonable theory of market failures informed by relevant literature and evidence, even if no quantitative evidence specific to an individual market yet exists.

Consumer Valuation of Fuel Savings: The *Guidelines* correctly note that analysts should make consistent assumptions about firm and consumer behavior in both the baseline and policy scenarios “unless there is reason to believe the regulation will change underlying behavioral patterns” (page 5-15). Unfortunately, the *Guidelines* then use consumers’ under-valuation of fuel economy as an example, saying “if such behavior occurs in the baseline, it is likely to persist regardless of regulatory requirements” (page 5-16). In fact, there are multiple reasons why the best available empirical evidence may detect an undervaluation of fuel economy pre-regulation even though consumers will benefit from fuel savings achieved by regulation. Multiple market failures, including loss aversion, information asymmetries, myopia, supply-side market failures, and the positional nature of competing vehicle

²¹ See Policy Integrity, Comments to the SAB on Commentary on the Proposed Rule Defining the Scope of Waters Federally Regulated Under the Clean Water Act at 6-7 (Jan. 10, 2020), https://policyintegrity.org/documents/Policy_Integrity_Comments_to_Chartered_Science_Advisory_Board_on_Clean_Water_Rule_%28signed%29.pdf.

²² See Policy Integrity et al., Comments on Flawed Monetization of Forgone Benefits in the Proposed Rule, Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review (Nov. 25, 2019), https://policyintegrity.org/documents/Methane_Rule_Joint_SCC_Comments.pdf.

²³ See *id.* at 2-4.

attributes, mean that consumers' upfront willingness to pay for future fuel savings does not reflect what they would be willing to pay once efficient regulation has addressed those market failures.²⁴ Other market failures, like manufacturers' market power or their misjudging of consumer preferences, may lead to the undersupply of fuel-efficient vehicle options, leaving consumers unable to actualize their willingness to pay for fuel economy improvements in the market.²⁵ More generally, the information and experiences that consumers gain from regulations can sometimes change their willingness to pay for goods.²⁶ Finally, in the particular case of fuel economy, it is important for agency analysts to bear in mind the distinction between *ex ante* measures of consumers' *private* willingness to pay for fuel economy improvements versus the *ex post* economic value of *societal* benefits from fuel savings: regardless of the value consumers appear to place on fuel savings when making vehicle purchasing decisions, when they operate vehicles made more efficiency by regulation, the consumer fewer real economic resources (e.g., barrels of oil, extraction costs, refining, transportation, etc.), and those savings have real benefits to society.²⁷

Comments on Chapter 6

Failure to Discuss that the Social Opportunity Cost of Capital Is Biased Upwards: EPA's *Guidelines* on discount rates fail to emphasize that the current social opportunity cost of capital estimate of 7% is likely an overestimate.²⁸ Despite discussing why social discount rates are appropriate in U.S. government cost-benefit analysis instead private discounting,²⁹ EPA fails to acknowledge that it is approximating the marginal social return to capital by using the average private return to capital.³⁰

By focusing on tax distortions exclusively, EPA fails to sufficiently discuss other reasons why the appropriate discount rate to use in regulatory analysis may diverge from private rates of return. The *Guidelines* thoroughly discuss the impact of taxation on the appropriate discount rate by explaining the difference between the consumption and capital rates (*see* Section 6.2 of the *Guidelines*). However, despite acknowledging additional reasons for private rates of return to differ from social rates of returns—such as imperfect capital markets and differences in private and social risk—the *Guidelines* fail to give such additional reasons adequate consideration. Moreover, the *Guidelines* ignore altogether how environmental externalities can drive a wedge between private and social returns on capital.³¹ While

²⁴ Policy Integrity, Supplemental Comments on the Safer Affordable Fuel-Efficient Vehicles Rule at 4 (Dec. 21, 2018), https://policyintegrity.org/documents/Policy_Integrity_Supplemental_Comments_NHTSA_2018.12.21.pdf.

²⁵ *Id.*

²⁶ See Cass Sunstein, *Rear Visibility and Some Unresolved Problems for Economic Analysis (with Notes on Experience Goods)* (2019); LA Paul & Cass Sunstein, *'As Judged by Themselves': Transformative Experiences and Endogenous Preferences* (2019).

²⁷ Policy Integrity, Supplemental Comments on the SAFE Rule, *supra*, at 4-5.

²⁸ Council of Econ. Advisers, *Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate* at 1 (CEA Issue Brief, 2017).

²⁹ *Draft Guidelines* at 6-22 ("Private discount rates should not be used to estimate the NPV of the social net benefits of policies and projects because the intertemporal preferences of society as a whole (as measured by the social rate of time preference) are not likely to be equal to private market lending rates or individual or firm preferences.").

³⁰ Compare *id.* with CEA, *supra*, at 10-12.

³¹ See CEA, *supra*, at 2: "There are no regular private forecasts of the economywide rate of return. In addition, even if we did have a precise measure or forecast of the economywide rate of return it could differ from the true value of the social opportunity cost of capital—the concept underlying benefit-cost analysis—because of unpriced externalities, market power that leads to supernormal returns, the incorporation of market risk, and taxation."

See also *id.* at 11: "Moreover, even to the degree it was measured and projected accurately the market return on capital such as that based on the NIPA calculations could differ from the social return for a variety of reasons. For example, some element of profit could reflect unpriced externalities (positive or negative). Dasgupta, Mäler, and Barrett (1999) give an example of a negative externality, in which the profit rate earned by polluting firms exceeds the social rate in the absence of an appropriate

taxation acts to increase the social return on capital relative to the private return, these other forces (imperfect capital markets, differences in risk, and externalities) move to decrease the social return on capital relative to the private return of capital.³² Thus, these omissions act to overestimate the social opportunity cost of capital—an important issue that should be addressed in the *Guidelines*.

Similarly, the *Guidelines* fail to sufficiently discuss the underlying methods for estimating the capital discount rates and their corresponding shortcomings. In Section 6.2, EPA provides a range of estimates of the “social opportunity cost of capital” of 4.5% to 8%, with a central rate of 7% from OMB’s *Circular A-4*.³³ Earlier in Section 6.2.3, EPA acknowledges that many of these underlying estimates represent the *average* return to “reproducible” capital (estimated using National Accounts data) instead of the lower *marginal* return to capital.³⁴ However, EPA fails to discuss the similar consequences of using the pre-tax market return on private investments that includes private risk premiums, monopoly markups, and economic rents.³⁵ By using the term “social opportunity cost of capital” instead of acknowledging that it is using a private approximation, the *Guidelines* potentially mislead the reader and obscure that these estimates in fact may be overestimates. Additionally, despite citing the Council of Economic Advisers’ 2017 brief on *Discounting for Public Policy* (at page 6-16, n.156), the *Guidelines* fail to discuss the potential for mis-measuring the private return to capital using National Accounts data as applied by OMB and many of the cited studies.³⁶ These issues should be discussed to make clear that the current range of estimates provided by the *Guidelines* actually represent an upper bound.

Given these systemic upward biases, the current *Circular A-4* estimate of 7% based on National Accounts data overestimates the social opportunity cost of capital. As such, EPA should discuss this potential bias in a depth comparable to *Guidelines*’ current focus on the taxation bias. This upward bias also provides yet another reason to favor the consumption discount rate—in addition to other reasons to favor the

pollution tax. If some firms exercise market power, setting prices above marginal cost, then market rates of return include some monopoly rents and thus exceed the true market rate of return to capital, at least in cases where those rents are not related to fixed costs such as for innovation. Harberger and Jenkins (2015) note that the divergence from competitive rates of return due to monopoly rents should be considered in choosing the social discount rate. . . . However, CEA analysis finds that several indicators suggest that competition has declined in recent decades, and that rents may have increased. Third, market rates of return may also diverge from the SOC because private returns include both the pure time value of money and a risk premium, and some or all of that risk premium may not be relevant to government decisions.”

³² *See id.*

³³ While these estimates fail to account for private risk premiums, monopoly markups, and environmental rents in general, Harberger and Jenkins accounts for monopoly markups. *See* Harberger, Arnold C., and Glenn P. Jenkins. “Musings on the Social Discount Rate,” 6 *Journal of Benefit-Cost Analysis* 6 (2015).

³⁴ *Draft Guidelines* at 6-13: “In practice, average returns that are likely to be higher than the marginal returns are typically observed, given that firms will make the most profitable investments first. In fact, it is not clear how to estimate marginal returns.”

³⁵ “Improvements to land” are included in the national accounts, Harberger and Jenkins, *supra*, while “income from land” is removed from returns to capital when approximating the opportunity cost of capital. Technically, the environment is land in economic theory and, as such, pollution and environmental externalities (i.e., degradation of land) should be removed in the same way from the return to capital.

³⁶ CEA, *supra*, at 11: “A notable feature of figure 5 is that while the NIPA based calculation (in red) has been oscillating around 7 percent, the real rate of return on Treasuries has been falling, suggesting a growing divergence between the real safe return based on financial market data and the return based on the NIPA calculations. One possibility for this divergence is simply that the NIPA measures of the rate of return on capital are mis-measured. Many experts believe that equity premiums and other measures of the return to more risky investments in capital, while cyclical, have not systematically risen over time (Graham and Harvey 2016, Duarte and Rosa 2015). Then to the degree that the long term interest rate is well measured it is more plausible that at least part of the divergence between this and the estimated return to capital could reflect mismeasurement of the return to capital.”

consumption discount rate, such as the small cost-share of EPA policies, an open-economy assumption,³⁷ and intergenerational concerns.³⁸

The Guidelines Correctly Recognize That the Consumption Discount Rate Is More Appropriate in Many Cases, Though They Fail to Recognize Additional Evidence from the Literature: As the *Guidelines* note, there are many reasons to favor consumption discount rates over capital discount rates. As estimating the shadow price of capital is difficult, such that the amount of private investment is uncertain,³⁹ OMB *Circular A-4* recommends applying a consumption and a capital discount rate in cost-benefit analysis. However, the true discount rate may be somewhere between the consumption and capital rates. As the United States is likely to be better represented by an open-economy, and as the cost of EPA policies are small relative to the overall debt, it is unlikely that EPA regulations will significantly crowd out U.S. private investment instead crowding out foreign direct investment.⁴⁰ In intergeneration settings, the *Guidelines* (page 6-24) further support using the consumption discount rate—which is consistent with recommendation by the National Academies of Sciences 2017 report on the social cost of carbon.⁴¹

Due to the uncertainty over the magnitude of crowding out (i.e., whether capital investment or consumption is impacted by the policy) and over the magnitude of the shadow price of capital, recent work by Li and Pizer (2019) further support this preference for the consumption discount rate. Using *Circular A-4*'s “analytically preferred method,”⁴² Li and Pizer (2019) demonstrate that the investment rate (i.e., the 7% rate) is inappropriate in long-horizon planning problems, including intergenerational problems like climate change.⁴³ *Circular A-4*'s recommendation of bounding the social discount rate for a government project using the consumption and capital discount rates is based on economics literature from the 1960s and 1970s, which had focused on the appropriate discount rate when “we are uncertain about whether costs and benefits [from government investment/projects] affect capital investment or household consumption (and, to a lesser extent, the appropriate shadow price to convert between the

³⁷ In the 1980s, there was growing evidence that the United States was moving ever more towards an open economy, Richard N. Cooper, *The United States as an Open Economy* (1985), and this has continued with increased connectedness and trade from globalization and U.S. free trade agreements. See *Draft Guidelines* at 6-16: “The literature does not provide clear guidance on the likelihood of this displacement, but it has been suggested that if a policy is relatively small and capital markets fit an “open economy” model, there is probably little displaced investment. Changes in yearly U.S. government borrowing during the past several decades have been in the many billions of dollars. It may be reasonable to conclude that EPA programs and policies costing a fraction of these amounts are not likely to result in significant crowding out of U.S. private investments. Primarily for these reasons, some argue that for most environmental regulations it is sufficient to discount costs and benefits with an estimate of the consumption rate of interest with some sensitivity analysis.”

³⁸ *Draft Guidelines* at 6-24: “If the policy has a long time horizon where net benefits vary substantially over time (e.g., most benefits accrue to one generation and most costs accrue to another), then the analysis should use the consumption rate of interest as well as additional approaches.”

³⁹ *Id.* at 6-15: “The literature is not conclusive on the degree of crowding out.”

⁴⁰ Compare *id.* at 6-16 with CEA, *supra*, at 10.

⁴¹ National Academies of Sciences, Engineering, and Medicine. *Valuing climate damages: Updating estimation of the social cost of carbon dioxide* (2017).

⁴² *Circular A-4* at 33 (“OMB’s basic guidance on the discount rate is provided in OMB Circular A-94 (<http://obamawhitehouse.archives.gov/omb/circulars/index.html>). This Circular points out that the analytically preferred method of handling temporal differences between benefits and costs is to adjust all the benefits and costs to reflect their value in equivalent units of consumption and to discount them at the rate consumers and savers would normally use in discounting future consumption benefits. This is sometimes called the “shadow price” approach to discounting because doing such calculations requires you to value benefits and costs using shadow prices, especially for capital goods, to correct for market distortions. These shadow prices are not well established for the United States. Furthermore, the distribution of impacts from regulations on capital and consumption are not always well known. Consequently, any agency that wishes to tackle this challenging analytical task should check with OMB before proceeding.”)

⁴³ Li, Qingran, and William A. Pizer, *Discounting for Public Cost–Benefit Analysis*, (2019).

two).⁴⁴ However, that older literature only proves that the social discount rate falls between these two rates under restrictive assumptions. Under general conditions (that nest the previous results), Li and Pizer (2019) demonstrate that the social discount rate collapses to the consumption rate over time, and that the rate of convergence is relatively quick (i.e., several decades) given their best estimate of the shadow price of capital. As the exact rate of convergence depends on the pattern of benefits from a project, they estimate that the appropriate discount rate range for the social cost of carbon is between 2.6% and 3.4% (based on consumption and capital discount rates of 3% and 7%, respectively). Thus, the logic that led OMB to recommend a range of social discount rates of 3% and 7% implies a much narrower range of 2.6% to 3.4% for inter-generational problems like climate change. Similarly, intra-generational projects covering several decades should also apply consumption rates, as “the social discount rate for benefits several decades in the future has already converged to roughly the consumer rate.”⁴⁵

Additional research on expert consensus shows a strong consensus among economists that it is theoretically correct to use consumption discount rates in the intergenerational setting, such as in the calculation of the social cost of carbon. Similarly, there is a strong consensus that a capital discount rate is inappropriate according to “good economics.”⁴⁶ This consensus holds across panels of experts on the social cost of carbon;⁴⁷ surveys of experts on climate change and discount rates;⁴⁸ the three most commonly cited integrated assessment models employed in calculating the federal social cost of carbon; and the government’s own analysis of the social cost of carbon from 2009 through 2016.⁴⁹ For more analysis of this issue, see the following section.

The Guidelines Do Not Discuss Empirical Estimates of Consumption Discount Rates in Sufficient Depth:

The *Guidelines* present the demand-side and supply-side approach to discounting. With respect to the demand-side, they introduce and explain the concept of the simple Ramsey equation. In the context of intergenerational discounting, the *Guidelines* (Section 6.3.3.2) introduce the extended Ramsey rule (i.e., including the precautionary term) and the potential for a declining social discount rate over time. On the supply-side, the *Guidelines* introduce the shadow price of capital as a means of weighting the

⁴⁴ *Id.* The cost to consumers and private investors is displaced consumption and investment, respectively.

⁴⁵ Li and Pizer, *supra*, at 4.

⁴⁶ The former co-chair of the National Academy of Sciences’ Committee on Assessing Approaches to Updating the Social Cost of Carbon—Richard Newell—states that “[t]hrough the addition of an estimate calculated using a 7 percent discount rate is consistent with past regulatory guidance under OMB Circular A-4, there are good reasons to think that such a high discount rate is inappropriate for use in estimating the SCC. . . . It is clearly inappropriate, therefore, to use such modeling results with OMB’s 7 percent discount rate, which is intended to represent the historical before-tax return on private capital. . . . This is a case where unconsidered adherence to the letter of OMB’s simplified discounting approach yields results that are inconsistent with and ungrounded from good economics.” Richard Newell, *Unpacking the Administration’s Revised Social Cost of Carbon* (Oct. 10, 2017), <http://www.rff.org/blog/2017/unpacking-administration-s-revised-social-cost-carbon>.

⁴⁷ See generally NAS *supra* note 41.

⁴⁸ See Martin L. Weitzman, *Gamma Discounting*, 91 AM. ECON. REV. 260, 270 (2001); Peter Howard & Derek Sylvan, *The Economic Climate: Establishing Expert Consensus on the Economics of Climate Change* (Inst. Policy Integrity Working Paper 2015/1); Drupp, Moritz A., et al. “Discounting disentangled.” *American Economic Journal: Economic Policy* 10.4 (2018): 109-34; Pindyck, Robert S. “The social cost of carbon revisited.” *Journal of Environmental Economics and Management* 94 (2019): 140-160.

⁴⁹ See Interagency Working Group on the Social Cost of Carbon, Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis (2010), <https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf>; Interagency Working Group on the Social Cost of Greenhouse Gases, *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis* (2016), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf.

consumption discount rate and the social opportunity cost of capital. In both cases, there is insufficient discussion of the empirical challenges and results.

With respect to the demand-side approach, the *Guidelines* fail to address the difficulty of estimating the elasticity of the marginal utility of consumption in the simple Ramsey equation. At page 6-11, EPA argues that this elasticity can be estimated (i.e., a positive approach), despite recognizing its normative interpretation in the intergenerational setting (see page 6-17). However, this normative interpretation of this parameter, which has strong support within the economics literature,⁵⁰ makes empirical estimation difficult. Additionally, this is compounded by the multiple interpretations of the elasticity parameter in the simple Ramsey framework. Specifically, in the simple Ramsey formula, the parameter “captures the intertemporal elasticity of substitution between consumption today and consumption in the future, the coefficient of relative risk aversion, and inequality aversion.”⁵¹ As empirical evidence does not support this equality,⁵² and given that the superiority of positive or normative approaches is unclear,⁵³ the federal Interagency Working Group on the Social Cost of Carbon (2010) found a range of 0.5 to 3.0 for the elasticity of the marginal utility of consumption (though some estimates reach up to 4.0 even); Drupp et al. (2018) finds a similar range in a survey of experts. Thus, the *Guidelines* should extend their discussion of the elasticity of the marginal utility of consumption and make clear the difficulty in estimating this underlying preference parameter.

As isoelastic utility function asks too much of the elasticity parameter,⁵⁴ there has been movement towards adopting Epstein-Zin preferences that disentangle risk aversion and time preferences.⁵⁵ Recent research has shown that accurate estimation of decisions under uncertainty crucially depend on distinguishing between risk and time preferences.⁵⁶ For example, adopting this type of preferences

⁵⁰ Moritz A. Drupp, et al. *Discounting disentangled*, 10 Am. Econ. J.: Econ. Pol’y 109 (2018); IWG, 2010 Technical Support Document, *supra*, at 20.

⁵¹ Kenneth J. Arrow et al., *Should Governments Use a Declining Discount Rate in Project Analysis?*, 8 REV ENVIRON ECON POLICY 145, 148 (2014).

⁵² Peter H. Howard, “The social cost of carbon: capturing the costs of future climate impacts in US policy.” in *Managing Global Warming* (2019) (“The current welfare function is selected for empirical ease, despite known shortcomings of the isoelastic utility function. First, as currently applied in IAMs, the isoelastic utility function implies that the elasticity of intertemporal substitution (i.e., the determinant of intertemporal consumption smoothing) equals the inversion of relative risk aversion. As a consequence, society’s preference for the intragenerational distribution of consumption, society’s preference for the intergenerational distribution of consumption (see interpretation in the Ramsey equation), and risk aversion hold a fixed relationship. Modelers are asking too much from the η parameter in that they force these equalities despite evidence that they do not hold in the real world.”).

⁵³ See Drupp et al., *supra*.

⁵⁴ Howard (2019), *supra*.

⁵⁵ See Arrow et al., *supra*, at 148; see also Cai, Y., Lenton, T. M., & Lontzek, T. S. (2016). Risk of multiple interacting tipping points should encourage rapid CO₂ emission reduction. *Nature Climate Change*, 6(5), 520-525; Derek Lemoine & Ivan Rudik, *Managing Climate Change Under Uncertainty: Recursive Integrated Assessment at an Inflection Point*, 9 *Annual Review of Resource Economics* 18.1-18.26 (2017). The standard utility function adopted in IAMs with constant relative risk aversion implies that the elasticity of substitution equals the inversion of relative risk aversion. As a consequence, society’s preferences for the intra-generational distribution of consumption, the intergenerational distribution of consumption, and risk aversion hold a fixed relationship. For purposes of stochastic dynamic programming, this is problematic because this assumption conflates intertemporal consumption smoothing and risk aversion. See WJ Wouter Botzen & Jeroen CJM van den Bergh, *Specifications of social welfare in economic studies of climate policy: overview of criteria and related policy insights*, 58 *Environmental and Resource Economics* 1-33 (2014). By adopting the Epstein-Zin utility function which separates these two parameters, modelers can calibrate them according to empirical evidence. For example, Cai et al. (2016), *supra*, replace the DICE risk aversion of 1.45 and elasticity parameter of 1/1.45 with values of 3.066 and 1.5, respectively.

⁵⁶ James Andreoni & Charles Sprenger, *Risk Preferences Are Not Time Preferences*, 102 AM.ECON.REV.3357–3376 (2012).

allows economists to solve the equity-premium puzzle underlying isoelastic preferences.⁵⁷ By conflating risk and time preferences, current models substantially understate the degree of risk aversion exhibited by most individuals.⁵⁸ Again, the adoption of more realistic preference structures and their implications for the discount rate parameter should be discussed in the *Guidelines*, particularly given the increased uncertainty faced in the intergenerational context.

Beyond discussing the difficulties in estimating the Ramsey approach, the *Guidelines* discussion at pages 6-15 to 6-16 fails to present a range of valid estimates for the consumption discount rate from the literature. Despite providing a range of social opportunity cost of capital estimates from 4.5% to 8%, the *Guidelines* only provides a single estimate of the consumption discount rate of 3.5% based on Ramsey specifications in Moore et al. (2013a) and Boardman et al. (2006). However, recent normative and prescriptive evidence points to a lower consumption discount rate than even the 3% currently recommended in *Circular A-4*. On the normative side, recent expert elicitations—a technique supported by both the *Guidelines* and *Circular A-4* for filling in gaps in knowledge—indicate that a growing consensus among experts in climate economics and discounting support a discount rate between 2% and 3%, particularly in inter-generational problems.⁵⁹ Using a voting procedure, as recommended by recent work by Millner and Heal in the normative context,⁶⁰ recent findings support a median rate of 2% for the consumption discount rate. On the prescriptive side, *Circular A-4* is out-of-date as long-term interest rates have fallen significantly; a more up-to-date estimate of the consumption rate of interest based on real ten-year Treasury yields “should be at most 2 percent.”⁶¹ The latest OMB updates to *Circular A-94*, the document on which *Circular A-4* based its discount rates,⁶² also show that more up-to-date long-run discount rates are historically low. In the December 2019 update to *Circular A-94*'s discount rates, the OMB found that the real, 30-year discount rate is 0.4 percent,⁶³ the lowest rate since the OMB began tracking the number.⁶⁴ Notably, the OMB also shows that the current real interest rate is negative for maturities less than 10 years.⁶⁵

Similarly, it is stated multiple times in the *Guidelines* that inter-generational discount rates are not observable in the market (e.g., at page 6-16).⁶⁶ This is generally true, though there are several papers on

⁵⁷ Gollier, C., & Mahul, O. Term structure of discount rates: an international perspective, *Toulouse School of Economics*, at 3 (2017).

⁵⁸ Gollier and Mahul, *id.* at 11, assume a relative risk aversion parameter of 10 and a relative aversion to intertemporal inequality of 0.66. Cai et al., *supra*, at 523, assumes a relative risk aversion parameter of 10 and a relative aversion to intertemporal inequality of 1.5. Alternatively, Lemoine and Rudnick, *supra*, at S-2, apply a range: “The left panels keep relative risk aversion at its DICE value of 2 but increase the elasticity of intertemporal substitution to 2/3, and the right panels keep the elasticity of intertemporal substitution at its DICE value of 1/2 but increase relative risk aversion to 3. These changes are in the same direction as changes suggested by some recent asset pricing models.”

⁵⁹ Howard and Sylvan, *supra*, at 33-34; Drupp, et al., *supra* (finding consensus on social discount rates between 1-3%). Pindyck, in a survey of 534 experts on climate change, finds a mean discount rate of 2.9% in the climate change context and this rate drops to 2.6% when he drops individuals that lack confidence in their knowledge. Pindyck, Robert S, *The social cost of carbon revisited*, *Journal of Environmental Economics and Management* 94 (2019). Unlike Howard and Sylvan (2015), Pindyck (2019) combines economists and natural scientists in his survey, though the mean constant discount rate drops to 2.7% when including only economists. Again, this further supports the finding that the appropriate discount rate is between 2% and 3%.

⁶⁰ Millner, Antony, and Geoffrey Heal, *Discounting by Committee*. 167 *J. Public Econ.* 91 (2018).

⁶¹ CEA, *supra*, at 1.

⁶² *Circular A-4* at 33

⁶³ OMB, *Circular A-94* Appendix C (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/12/Appendix-C.pdf>

⁶⁴ <https://www.whitehouse.gov/wp-content/uploads/2019/12/discount-history.pdf>

⁶⁵ *Circular A-94* Appendix C, *supra*.

⁶⁶ “Intergenerational discounting is complicated by at least three factors: (1) the “investment horizon” is longer than what is reflected in observed market interest rates representative of intertemporal consumption tradeoffs made by the current generation; (2) intergenerational investment horizons involve greater uncertainty than intragenerational time horizons; and (3)

housing markets in the United Kingdom and Singapore that provide some revealed preference data for long-run market discount rates. Like recent work on consumption discount rates, this work supports long-run discount rates below 3% and declining discount rates.⁶⁷

The Guidelines Mention Heterogeneity as a Reason for Declining Discount Rates, but Fail to Discuss the Underlying Literature: Under the normative framework, a significant literature on the selection of an efficient, time-consistent discount rate schedules under heterogeneity (i.e., uncertainty over ethical parameters with no true answer that is testable ex post⁶⁸) goes relatively unmentioned. The *Guidelines* briefly mention heterogeneity as a potential reason for declining discount rates⁶⁹ and mention two key theoretical papers on this issue in footnotes: Gollier and Zeckhauser (2005) and Heal and Millner (2014). More recent work discusses the potential trade off of efficiency and time-consistency of preferences under heterogeneity and argues for the potential efficiency improvement from majority voting (i.e., selection of the median social discount rate / ethical parameters).⁷⁰ More recently, Millner (2020) demonstrates that under non-dogmatic preferences (i.e., preferences over which individuals recognize their willingness to change their current opinion in the future) that disagreements over the social discount rate decline over time and the rate converges in the long-run to a rate between 2% to 3%.⁷¹

future generations without a voice in the current policy process are affected. These complications limit the utility of using observed market rates to evaluate long-term public investments.” (EPA Guidelines, 6-16)

⁶⁷ Giglio, S., Maggiori, M., & Stroebel, J. (2015). Very long-run discount rates. *The Quarterly Journal of Economics*, 130(1), 1-53; Fesselmeyer, E., Liu, H., & Salvo, A. (2019). Declining Discount Rates in Singapore's Market for Privately Developed Apartments. Available at SSRN 2754429.

⁶⁸ Mark C. Freeman, & Ben Groom, *How certain are we about the certainty-equivalent long term social discount rate?*, 79 J. ENVIRON. ECON. MANAGE. 152-168 (2016).

⁶⁹ *Draft Guidelines* at page 6-20 to 6-21: “Some modelers and government bodies have used fixed step functions for the discount rate term structure to approximate more rigorously derived declining discount rate schedules and to reflect non-constant economic growth, intergeneration equity concerns, and/or heterogeneity in future preferences.”

⁷⁰ Specifically, Millner and Heal (2018a) corrects a misunderstanding in the literature demonstrating that non-dictatorial social preferences can be time-consistent (though, they must be time-consistent or time-invariant). Millner, Antony, and Geoffrey Heal. “Time consistency and time invariance in collective intertemporal choice.” *Journal of Economic Theory* 176 (2018a): 158-169. Millner and Heal (2018b) focuses on discounting by committee with dogmatic preferences, i.e., committee members do not expect their beliefs about correct discounting practices to change. Millner, Antony, and Geoffrey Heal, *Discounting by Committee*. 167 J. Public Econ. 91 (2018b). However, committee members in each period recognize that future committees’ pure rate of time preference may differ (though, all committee members over time have the identical elasticity of marginal utility of consumption). Millner and Heal (2018b), following the work on time-inconsistency in Millner and Heal (2018a), demonstrates that a utilitarian approach to aggregating preferences is often time-inconsistent, unless the committee in each period rationally treats their problem like a dynamic game. However, in doing so, the utilitarian approach is not efficient and does not maximize total welfare. An alternative approach whereby committee members vote is both time consistent, self-reinforcing (i.e., preferred by a major of committee members), and can welfare dominate the utilitarian approach. For the parameter space observed in Drupp et al. (2018), the voter approach dominates the utilitarian approach (see Figure 3). In fact, Millner and Heal (2018b) state that “our conclusion is that the voting on the PRSTP is likely to have advantages over utility aggregate in practice. Our simple empirical analysis suggests that a consensus value of $\delta \approx 0.5\%/yr$ could emerge from such a vote.”

⁷¹ Millner (2020) focuses on the convergence of preferences over time under non-dogmatic preferences. Millner, Antony. *Non-dogmatic Social Discounting*, 110 Am. Econ. Rev. 760 (2020). Unlike Gollier and Zeckhauser (2005), Heal and Millner (2014) and Millner and Heal (2018b), this paper does not describe “the recommendations of ‘experts’ on social discounting.” Instead, it demonstrates that, if all individuals were non-dogmatic such that they accepted that they may change their view on discounting in the future, they would agree on the same long-run discount rate (in contrast, earlier papers focus on dogmatic preferences and/or making decisions within committees whose composition changes over time). Convergence can happen more quickly depending on the *assumed* annual probability that an individual expert maintains their current discount theory. Thus, this methodology does not produce a discount rate schedule, but instead produces a 95th percentile for individual social discount rates over time, which can be narrow or wide depending on the unknown probability of an individual changing their belief on the appropriate theory. According to the authors, the choice of non-dogmatic preferences is also a normative choice.

Given the importance of the normative framework to discounting, particularly in intergenerational settings, the *Guidelines* should include some more in depth discussion of these issues.

Similarly, the *Guidelines* mention on several occasions Weitzman 2001's paper as support for declining discount rates. In Weitzman (2001), the author calibrates a declining gamma discount rate schedule using his own survey of respondents on the appropriate discount rate. However, Freeman and Groom (2016)⁷² note that respondents may have interpreted the Weitzman (2001) survey as eliciting a positive discount rate, such that they actually provided their individual expectation of the average social discount rate, instead of the implicit normative interpretation imposed by Weitzman. Because responses are then appropriately interpreted as forecasts, the central limit theorem applies under reasonable assumptions such that the certainty equivalent discount rate declines much slower over time than gamma discounting. However, as discussed earlier, Drupp et al. (2018) finds a strong use of mixed normative-positive perspectives in a similar survey undermining the Freeman and Groom (2016) interpretation. However, Appendix E of Freeman and Groom (2016), demonstrates that a mixed positive/normative interpretation of elicited discount rates, such as in Drupp et al. (2018), implies a flattened discount rate schedule compared to the gamma discount rate schedule estimated in Weitzman (2001) (though not as flat as in a purely positive interpretation). Again, this discussion should be added to any discussion of Weitzman (2001) to provide a more nuanced and complete interpretation of normative discounting.

The Guidelines Should More Explicitly Recommend a Declining Discount Rate, as a Significant Consensus Exists that They Are Justified Under Uncertainty: A strong consensus has developed in economics that the appropriate way to discount intergenerational benefits is through a declining discount rate.⁷³ Not only are declining discount rates theoretically correct, they are actionable (i.e., doable given our current knowledge) and consistent with OMB's *Circular A-4*. Perhaps the best reason to adopt a declining discount rate is the simple fact that there is considerable uncertainty around which discount rate to use. The uncertainty in the rate points directly to the need to use a declining rate, as the impact of the uncertainty grows exponentially over time such that the correct discount rate is not an arithmetic average of possible discount rates.⁷⁴ Uncertainty about future discount rates could stem from a number of sources particularly salient in the intergenerational context, such as climate change, including uncertainty about future economic growth, consumption, the consumption rate of interest,

⁷² Mark C. Freeman, & Ben Groom, *How certain are we about the certainty-equivalent long term social discount rate?*, 79 J. ENVIRON. ECON. MANAGE. 152-168 (2016).

⁷³ Kenneth J. Arrow et al., *Determining Benefits and Costs for Future Generations*, 341 SCIENCE 349 (2013); Kenneth J. Arrow et al., *Should Governments Use a Declining Discount Rate in Project Analysis?*, REV ENVIRON ECON POLICY 8 (2014); Maureen L. Cropper et al., *Declining Discount Rates*, AMERICAN ECONOMIC REVIEW: PAPERS AND PROCEEDINGS (2014); Christian Gollier & Martin L. Weitzman, *How Should the Distant Future Be Discounted When Discount Rates Are Uncertain?* 107 ECONOMICS LETTERS 3 (2010). Arrow et al. (2014) at 160-161 states that "We have argued that theory provides compelling arguments for using a declining certainty-equivalent discount rate," and concludes the paper by stating "Establishing a procedure for estimating a [declining discount rate] for project analysis would be an improvement over the OMB's current practice of recommending fixed discount rates that are rarely updated."

⁷⁴ Larry Karp, *Global warming and hyperbolic discounting*, 89 Journal of Public Economics 261-282 (2005) (The mathematical "intuition for this result is that as [time] increases, smaller values of r in the support of the distribution are relatively more important in determining the expectation of e^{-rt} " where r is the constant discount rate.") Or as Cameron Hepburn, *Hyperbolic Discounting And Resource Collapse*, 103 Royal Economic Society Annual Conference 2004 (2004) puts it: "The intuition behind this idea is that scenarios with a higher discount rate are given less weight as time passes, precisely because their discount factor is falling more rapidly" over time.

and preferences. Additionally, economic theory shows that if there is debate or disagreement over which discount rate to use, this can lead to the use of a declining discount rate.⁷⁵

There is a consensus that declining discount rates are appropriate for intergenerational discounting: Over the last decade, a large and growing majority of leading economists⁷⁶ have come out in favor of using a declining discount rate to reflect long-term uncertainty in interest rates. This consensus view is held whether economists favor descriptive (i.e., market) or prescriptive (i.e., normative) approaches to discounting.⁷⁷ Several key papers⁷⁸ outline this consensus and present the arguments that strongly support the use of declining discount rates for long-term benefit-cost analysis in both the normative and positive contexts. Finally, in a recent survey of experts on the economics of climate change, Howard and Sylvan (2015),⁷⁹ found that experts support using a declining discount rate relative to a constant discount rate at a ratio of approximately 2 to 1.

Economists have recently highlighted two main motivations for using a declining discount rate. First, if the discount rate for a project is fixed but uncertain, then the certainty-equivalent discount rate will decline over time, meaning that benefits should be discounted using a declining rate.⁸⁰ Second, uncertainty about the growth rate of consumption or output also implies that a declining discount rate should be used, so long as shocks to consumption are positively correlated over time.⁸¹ In addition to these two arguments, other motivations for declining discount rates have long been recognized: if the growth rate of consumption declines over time, the Ramsey rule⁸² for discounting will lead to a declining discount rate,⁸³ and normative uncertainty (i.e., heterogeneity) over the pure rate of time preference

⁷⁵ Martin L Weitzman, Gamma discounting, 91 AM. ECON. REV. 260-271 (2001). Geoffrey M. Heal, & Antony Millner, Agreeing to disagree on climate policy, 111 PROC. NATL. ACAD. SCI. 3695-3698 (2014)

⁷⁶ See generally Arrow et al. (2013), *supra*.

⁷⁷ Mark C. Freeman, Ben Groom, Ekaterini Panopoulou, & Theologos Pantelidis, Declining discount rates and the Fisher Effect: Inflated past, discounted future?, 73 J. ENVIRON. ECON. MANAGE. 32-49 (2015).

⁷⁸ See generally Arrow et al., 2013; Arrow et al., 2014; Cropper et al., 2014, *supra* note 73; see also Christian Gollier, & James K. Hammitt, The long-run discount rate controversy, 6 ANNU. REV. RESOUR. ECON. 273-295 (2014).

⁷⁹ Peter Howard & Derek Sylvan, *The Economic Climate: Establishing Expert Consensus on the Economics of Climate Change*, INST. POLICY INTEGRITY WORKING PAPER (2015).

⁸⁰ This argument was first developed in Martin L Weitzman, Why the Far-Distant Future Should Be Discounted at Its Lowest Possible Rate, 36 J. ENVIRON. ECON. MANAGE. 201-208 (1998), and in Martin L Weitzman, Gamma discounting, 91 AM. ECON. REV. 260-271 (2001).

⁸¹ See Christian Gollier, Should we discount the far-distant future at its lowest possible rate?, 3 *Economics: The Open-Access, Open-Assessment E-Journal* 1-14 (2009).

⁸² The Ramsey discount rate equation for the social discount rate is $r = \delta + \eta * g$ where r is the social discount rate, δ is the pure rate of time preference, η is the aversion to inter-generational inequality, and g is the growth rate of per capita consumption. For the original development, see, Frank Plumpton Ramsey, *A mathematical theory of saving*, 38 *The Economic Journal* 543-559 (1928).

⁸³ Higher growth rates lead to higher discounting of the future in the Ramsey model because growth will make future generations wealthier. If marginal utility of consumption declines in consumption, then, one should more heavily discount consumption gains by wealthier generations. Thus, if growth rates decline over time, then the rate at which the future is discounted should also decline. See, e.g., Arrow et al. (2014), *supra* note 73, at 148. It is standard in IAMs to assume that the growth rate of consumption will fall over time. See, e.g., William D. Nordhaus, *Revisiting the social cost of carbon*, 114 PROC. NATL. ACAD. SCI. 1518-1523 (2017) at 1519 ("Growth in global per capita output over the 1980-2015 period was 2.2% per year. Growth in global per capita output from 2015 to 2050 is projected at 2.1% per year, whereas that to 2100 is projected at 1.9% per year.") Similarly, Chris Hope, *The social cost of CO2 from the PAGE09 model*, Economics The Open-Access, Open-Assessment E-Journal Discussion Paper No. 2011-39 (2011) at 22, assumes that growth will decline. For instance, in the U.S., growth is 1.9% per year in 2008 and declines to 1.7% per year by 2040. Using data provided by Dr. David Anthoff (one of the founders of FUND), FUND assumes that the global growth rate was 1.8% per year from 1980-2015 period, 1.4% per year from 2015 to 2050 and 2015 to 2100, and then dropping to 1.0% from 2100 to 2200 and then 0.7% from 2200 to 2300. See David Anthoff, & Richard SJ Tol, *The Climate Framework for Uncertainty, Negotiation and Distribution (FUND): Technical description, Version 3.8.*, Discussion paper, <http://www.fund-model.org>.

(δ)—a measure of impatience— in the simple Ramsey rule can also lead to a declining social discount rate.⁸⁴ More recently, research demonstrates that (very) long-run leases in Singapore employ declining discount rate schedules.⁸⁵

In the descriptive setting,⁸⁶ economists have demonstrated that calculating the expected net present value of a project is equivalent to discounting at a declining certainty-equivalent discount rate when (1) discount rates are uncertain, and (2) discount rates are positively correlated.⁸⁷ Real consumption interest rates are uncertain given that there are no multi-generation assets to reflect long-term discount rates and the real returns to all assets—including government bonds—are risky due to inflation and default risk (though as noted above, the limited evidence of observable long-run discount rates in the UK and Singapore real estate market also exhibit declining rates)⁸⁸ Furthermore, recent empirical work analyzing U.S. government bonds demonstrates that they are positively correlated over time; this empirical work has estimated several declining discount rate schedules usable by practitioners within EPA.⁸⁹

In representative agent context, economists have demonstrated that an extended Ramsey rule⁹⁰ implies a declining discount rate when (1) the growth rate of per capita consumption is stochastic,⁹¹ and (2) consumption shocks are positively correlated over time (or their mean or variances are uncertain).⁹²

⁸⁴ Christian Gollier, & Richard Zeckhauser, Aggregation of heterogeneous time preferences, 113 J. Pol. 878-896 (2005); Geoffrey M. Heal, & Antony Millner, Agreeing to disagree on climate policy, 111 PROC. NATL. ACAD. SCI. 3695-3698 (2014).

⁸⁵ Christian Gollier, & James K. Hammitt, The long-run discount rate controversy, 6 ANNU. REV. RESOUR. ECON. 273-295 (2014); Fesselmeier, E., Liu, H., & Salvo, A. (2019). Declining Discount Rates in Singapore's Market for Privately Developed Apartments. Available at SSRN 2754429.

⁸⁶ See Interagency Working Group, 2010 Technical Support Document, *supra*.

⁸⁷ See Arrow et al. (2014) *supra* note 73, at 157.

⁸⁸ See generally Gollier and Hammitt 2014, *supra*.

⁸⁹ See generally Arrow et al., 2013; Arrow et al., 2014; Cropper et al., 2014, *supra* note 73. See also Mark C. Freeman, Ben Groom, Ekaterini Panopoulou, & Theologos Pantelidis, Declining discount rates and the Fisher Effect: Inflated past, discounted future?, 73 J. ENVIRON. ECON. MANAGE. 32-49 (2015). Finally, see Elyès Jouini, & Clotilde Napp, *How to aggregate experts' discount rates: An equilibrium approach*, 36 ECON. MODELLING 235-243 (2014).

⁹⁰ If the future growth of consumption is uncertainty with mean μ and variance σ^2 , an extended Ramsey equation $r = \delta + \eta * \mu - 0.5\eta^2\sigma^2$ applies where r is the social discount rate, δ is the pure rate of time preference, η is the aversion to inter-generational inequality, and g is the growth rate of per capita consumption. Gollier (2012) shows that we can rewrite the extended discount rate as $r = \delta + \eta * g - 0.5\eta(\eta + 1)\sigma^2$ where g is the growth rate of expected consumption and $\eta + 1$ is prudence. Christian Gollier, *Pricing the Planet's Future: The Economics of Discounting in an Uncertain World*, Princeton University Press (2012) at Chapter 3.

⁹¹ The IWG assumption of five possible socio-economic scenarios implies an uncertain growth path.

⁹² See generally Arrow et al., 2013; Arrow et al., 2014; Gollier & Hammitt, 2014; Cropper et al., 2014, *supra* note 73. The intuition of this result requires us to recognize that the social planner is prudent in these models (i.e., saves more when faces riskier income). When there is a positive correlation between growth rates in per capita consumption, the representative agent faces more cumulative risk over time with respect to the "duration of the time spent in the bad state." Christian Gollier, *Discounting with fat-tailed economic growth*, 37 *Journal of Risk and Uncertainty* 171-186 (2008). In other words, "the existence of a positive correlation in the changes in consumption tends to magnify the long-term risk compared to short-term risks. This induces the prudent representative agent to purchase more zero-coupon bonds with a long maturity, thereby reducing the equilibrium long-term rate." Christian Gollier, *The consumption-based determinants of the term structure of discount rates*, 1 *Mathematics and Financial Economics* 81-101 (2007). Mathematically, the intuition is that under prudence, the third term in the extended Ramsey equation (see footnote 323) is negative, and a "positive [first-degree stochastic] correlation in changes in consumption raises the riskiness of consumption at date T, without changing its expected value. Under prudence, this reduces the interest rate associated to maturity T" (Gollier et al., 2007) by "increasing the strength of the precautionary effect" in the extended Ramsey equation (Arrow et al., 2014; Cropper et al., 2014 *supra* note 73).

While a constant adjustment downwards (known as the precautionary effect⁹³) can be theoretically correct when growth rates are independent and identically distributed,⁹⁴ empirical evidence supports the two above assumptions for the United States, thus implying a declining discount rate.⁹⁵

Several papers have estimated declining discount rate schedules for specific values of the pure rate of time preference and elasticity of marginal utility of consumption⁹⁶, though recent work demonstrates that the precautionary effect increases and discount rates decrease further when catastrophic economic risks (such as the Great Depression and the 2008 housing crisis) are modeled.⁹⁷ It should be noted that this decline in discount rates due to uncertainty in the global growth path is in addition to that resulting from a declining central growth path over time.⁹⁸

Additionally, a related literature has developed over the last decade demonstrating that normative uncertainty (i.e., heterogeneity) over the pure rate of time preference (δ)—a measure of impatience—also leads to a declining social discount rate.⁹⁹ Despite individuals differing in their pure rate of time preference,¹⁰⁰ an equilibrium (consumption) discount exists in the economy. In the context of integrated assessment models, modelers aggregate social preferences (often measured using surveyed experts) by calibrating the preferences of a representative agent to this equilibrium.¹⁰¹ The literature generally finds a declining social discount rate due to a declining collective pure rate of time preference.¹⁰² The heterogeneity of preferences and the uncertainty surrounding economic growth hold simultaneously,¹⁰³ leading to potentially two sources of declining discount rates in the normative context.

⁹³ The precautionary effect measures aversion to future “wiggles” in consumption (i.e., preference for consumption smoothing); see Christian P Traeger, *On option values in environmental and resource economics*, 37 *Resource and Energy Economics* 242-252 (2014).

⁹⁴ See Cropper et al 2014 *supra* note 73.

⁹⁵ Arrow et al., 2014; Cropper et al., *Declining Discount Rates*, AMERICAN ECONOMIC REVIEW: PAPERS AND PROCEEDINGS (2014); Intergovernmental Panel on Climate Change, *Climate Change 2014—Impacts, Adaptation and Vulnerability: Regional Aspects*, Cambridge University Press, 2014. Essentially, the precautionary effect increases over time when shocks to the growth rate are positively correlated, implying that future societies require higher returns to face the additional uncertainty.

⁹⁶ For example, Arrow et al. (2014) *supra* note 73.

⁹⁷ See Gollier and Hammitt 2014 *supra*; Arrow et al. (2014) *supra* note 73.

⁹⁸ A common assumption in IAMs is that global growth will slow over time, leading to a declining discount rate schedule over time. Uncertainty over future consumption growth and heterogeneous preferences would lead to a more rapid decline in the social discount rate. See also Alex L. Marten, Elizabeth A. Kopits, Charles W. Griffiths, Stephen C. Newbold, & Ann Wolverton, Incremental CH4 and N2O mitigation benefits consistent with the US Government’s SC-CO2 estimates, 15 *CLIMATE POL’Y* 272-298 (2015); William D. Nordhaus, *Estimates of the Social Cost of Carbon: Concepts and Results from the DICE-2013R Model and Alternative Approaches*, 1 *J. ASSOC. ENVIRON. RESOUR. ECON.* 1 (2014).

⁹⁹ See Arrow et al 2014 and Cropper et al 2014 *supra* note 73. See also Mark C. Freeman, & Ben Groom, How certain are we about the certainty-equivalent long term social discount rate?, 79 *J. ENVIRON. ECON. MANAGE.* 152-168 (2016).

¹⁰⁰ See Christian Gollier, & Richard Zeckhauser, Aggregation of heterogeneous time preferences, 113 *J. POL.* 878-896 (2005).

¹⁰¹ See Antony Millner & Geoffrey Heal, *Collective intertemporal choice: time consistency vs. time invariance*, Grantham Research Institute on Climate Change and the Environment No. 220 (2015). See also Freeman and Groom 2016 *supra* 346.

¹⁰² See Elyès Jouini, & Clotilde Napp, *How to aggregate experts’ discount rates: An equilibrium approach*, 36 *ECON. MODELLING* 235-243 (2014); Freeman and Groom (2016) *supra*; and Gollier & Zeckhauser (2005) *supra*. See also Elyès Jouini, Jean-Michel Marin, & Clotilde Napp, Discounting and divergence of opinion, 145 *J. ECON. THEORY* 830-859 (2010). The intuition for declining discount rates due to heterogeneous pure rates of time preference is laid out in Gollier and Zeckhauser (2005). In equilibrium, the least patient individuals trade future consumption to the most patient individuals for current consumption, subject to the relative value of their tolerance for consumption fluctuations. Thus, while public policies in the near term mostly impact the most impatient individuals (i.e., the individuals with the most consumption in the near term), long-run public policies in the distant future are mostly going to impact the most patient individuals (i.e., the individuals with the most consumption in the long-run).

¹⁰³ See Jouini and Napp (2014) *supra* note 102; Jouini et al. (2010) *supra* note 102.

Declining Rates are Actionable and Time-Consistent: There are multiple declining discount rate schedules from which the EPA *Guidelines* can choose: several options are provided in Arrow et al. (2014) and Cropper et al. (2014).¹⁰⁴ One possible declining interest rate schedule for consideration by the *Guidelines* is the one proposed by Weitzman (2001).¹⁰⁵ It is derived from a broad survey of top economists in context of climate change, and explicitly incorporates arguments around interest rate uncertainty.¹⁰⁶ Other declining discount rate schedule include Newell and Pizer (2003); Groom et al. (2007); Freeman et al. (2015).¹⁰⁷ Many leading economists support the United States government adopting a declining discount rate schedule.¹⁰⁸ Moreover, the United States would not be alone in using a declining discount rate. It is standard practice for the United Kingdom and French governments, among others.¹⁰⁹ The U.K. schedule explicitly subtracts out an estimated time preference.¹¹⁰ France’s schedule is roughly similar to the United Kingdom’s. Importantly, all of these discount rate schedules yield lower present values than the constant 2.5% discount rate employed by federal Interagency Working Group (IWG) in 2010 as a proxy for the average certainty-equivalent rate using the mean-reverting and random walk approaches to reflect that interest rates are highly uncertain over time (2010),¹¹¹ suggesting that even the lowest discount rate evaluated by the IWG is too high.¹¹² The consensus of leading economists is that a declining discount rate schedule should be used, harmonious with the approach of other countries like the United Kingdom.

A declining discount rate motivated by discount rate- or growth rate-uncertainty avoids the time inconsistency problem that can arise if a declining pure rate of time preference (δ) is used. *Circular A-4* cautions that “[u]sing the same discount rate across generations has the advantage of preventing time-inconsistency problems.”¹¹³ A time-inconsistent decision is one where a decision maker changes plans over time solely because time has passed. For instance, consider a decision maker choosing whether to make an investment that involves an up-front payment followed by future benefits. A time-consistent

¹⁰⁴ See Arrow et al 2014 and Cropper et al 2014 *supra* note 73.

¹⁰⁵ Weitzman (2001)’s schedule is as follows: 4% for 1-5 years; 3% for 6-25 years; 2% for 26-75 years; 1% for 76-300 years; and 0% for 300+ years. Martin L. Weitzman, *Gamma discounting*, 91 AM. ECON. REV. 260-271 (2001).

¹⁰⁶ Freeman and Groom (2016) demonstrate that this schedule only holds if the heterogeneous responses to the survey were due to differing ethical interpretations of the corresponding discount rate question; see Mark C. Freeman, & Ben Groom, *Positively gamma discounting: combining the opinions of experts on the social discount rate*, 125 ECON. J. 1015-1024 (2015). A recent survey by Drupp et al. (2015)—which includes Freeman and Groom as co-authors—supports the Weitzman (2001) assumption; see Moritz A. Drupp, Mark Freeman, Ben Groom, & Frikk Nesje, *Discounting disentangled, Memorandum*, Department of Economics, University of Oslo, No. 20/2015 (2015).

¹⁰⁷ See Richard G. Newell & William A. Pizer, *Discounting the distant future: how much do uncertain rates increase valuations?*, 46 J. ENVIRON. ECON. MANAGE. 52-71 (2003). See also Ben Groom, Phoebe Koundouri, Ekaterini Panopoulou, & Theologos Pantelidis, *Discounting the distant future: how much does model selection affect the certainty equivalent rate?*, 22 J. APPL. ECONOMETRICS 641-656 (2007). Finally, see Mark C. Freeman, Ben Groom, Ekaterini Panopoulou, & Theologos Pantelidis, *Declining discount rates and the Fisher Effect: Inflated past, discounted future?*, 73 J. ENVIRON. ECON. MANAGE. 32-49 (2015).

¹⁰⁸ See Arrow et al 2014 and Cropper et al 2014 *supra* note 73.

¹⁰⁹ See Gollier and Hammitt 2014 *supra*; and Cropper et al 2014 *supra* note 73.

¹¹⁰ The U.K. declining discount rate schedule that subtracts out a time preference value is as follows: 3.00% for 0-30 years; 2.57% for 31-75 years; 2.14% for 76-125 years; 1.71% for 126- 200 years; 1.29% for 201- 300 years; and 0.86% for 301+ years. Joseph Lowe, *Intergenerational wealth transfers and social discounting: Supplementary Green Book guidance*, HM Treasury (2008).

¹¹¹ See IWG, 2010 Technical Support Document.

¹¹² Using the IWG’s 2010 SCC model, Johnson and Hope (2012) find that the U.K. and Weitzman schedules yield SCCs of \$55 and \$175 per ton of CO₂, respectively, compared to \$35 at a 2.5% discount rate. Laurie T. Johnson, & Chris Hope, *The social cost of carbon in US regulatory impact analyses: an introduction and critique*, 3 J. ENVTL. STUD. & SCI 205-221 (2012). Because the 2.5% discount rate was included by the IWG (2010) to proxy for a declining discount rate, this result indicates that constant discount rate equivalents may be insufficient to address declining discount rates. See IWG 2010 Technical Support Document.

¹¹³ *Circular A-4* at 35.

decision maker would invest in the project if it had a positive net-present value, and that decision would be the same whether it was made 10 years before investment or 1 year before investment. A time-inconsistent decision maker might change their mind as the date of the investment arrived, despite no new information becoming available. Consider a decision maker who has a declining pure rate of time preference (δ) trying to decide whether to invest in a project that has large up-front costs followed by future benefits. Ten years prior to the date of investment, the decision maker will believe that this project is a relatively unattractive investment because both the benefits and costs would be discounted at a low rate. Closer to the date of investment, however, the costs would be relatively highly discounted, possibly leading to a reversal of the individual's decision. Again, the discount rate schedule is time consistent as long as δ is constant.

The arguments provided here for using a declining consumption discount rate are not subject to this time-inconsistency critique. First, time inconsistency occurs if the decision maker has a declining pure rate of time preference, not due to a decreasing discount rate term structure.¹¹⁴ Second, uncertainty about growth or the discount rate avoids time inconsistency because uncertainty is only resolved in the future, after investment decisions have already been made. As the NAS (2017) notes, "One objection frequently made to the use of a declining discount rate is that it may lead to problems of time inconsistency. . . . This apparent inconsistency is not in fact inconsistent. . . . At present, no one knows what the distribution of future growth rates . . . will be; it may be different or the same as the distribution in 2015. Even if it turns out to be the same as the distribution in 2015, that realization is new information that was not available in 2015."¹¹⁵

Time-inconsistency is not a reason to ignore heterogeneity (i.e., normative uncertainty) over the pure rate of time preference (δ). If the efficient declining discount rate schedule is time-inconsistent, the appropriate solution is to select the best time-consistent policy. Millner and Heal (2018b)¹¹⁶ do just this by demonstrating that a voting procedure—whereby the median voter determines the collective preference—is: (1) time consistent, (2) welfare enhancing relative to the non-commitment, time-inconsistent approach, and (3) preferred by a majority of agents relative to all other time-consistent plans. Due to the right-skewed distribution of the pure rate of time preference and the social discount rate as shown in all previous surveys,¹¹⁷ the median is less than the mean social discount rate (and pure rate of time preference); the mean social discount rate is what holds in the very short-run under various aggregation methods, such as Weitzman (2001) and Freeman and Groom (2016).¹¹⁸ Combining an uncertain growth rate and heterogeneous preference together implies a declining discount rate starting at a lower value in the short-run.

The Guidelines Should Make Clear that a Decreasing Discount Rate Schedule Is Actionable and Can Be Time-Consistent if Designed Correctly: As noted in the previous sub-section, a declining discount rate schedule is actionable, as several countries have already adopted declining discount rate schedules and evidence indicates that long-run leases in U.K. and Singapore already apply them implicitly. Despite concerns over time-consistency, the above discussion demonstrates that a well-designed schedule can be time-consistent. However, the current discussion of time-consistency in Sections 6.3.3 and Box 6.6 of

¹¹⁴ Gollier (2012) ("It is often suggested in the literature that economic agents are time inconsistent if the term structure of the discount rate is decreasing. This is not the case. What is crucial for time consistency is the constancy of the rate of impatience, which is a cornerstone of the classic analysis presented in this book. We have seen that this assumption is compatible with a declining monetary discount rate.")

¹¹⁵ National Academies of Sciences, Engineering, and Medicine, *Valuing climate damages: Updating estimation of the social cost of carbon dioxide* at 53 (2017).

¹¹⁶ Millner, Antony, and Geoffrey Heal. "Discounting by committee." *Journal of Public Economics* 167 (2018b): 91-104.

¹¹⁷ See Weitzman (2001); Howard and Sylvan (2015); Drupp et al (2015) *supra*.

¹¹⁸ See Weitzman (2001); Freeman et al. (2015) *supra*.

the *Guidelines* do not make this actionability clear. To avoid any confusion over the appropriateness of declining discount rates, the *Guidelines* should make clear when declining discount rate schedules are and are not time-consistent and fully summarize the literature on declining discount rates under normative and positive uncertainty. Most importantly, the *Guidelines* should provide a peer-reviewed schedule of discount rates that are declining and time-consistent for practitioners to use, and EPA should update these schedules in subsequent revisions to the *Guidelines*.

As currently written, the *Guidelines* in Sections 6.3.3.3 and 6.3.3.4 make clear that time-inconsistency is possible and emphasizes the potential subsequent challenges of calibrating a declining discount rate schedule despite the consensus in the literature. However, while the *Guidelines* cite Arrow et al. (2014) to note that changes to discount rate resulting from new information is not time-inconsistent (similar to receiving new information over benefits and costs in a cost-benefit analysis), the *Guidelines* currently ignore discussion of sufficient and necessary conditions in Arrow et al. (2014, pp. 159-160).¹¹⁹ By failing to discuss these conditions, the section incorrectly reads as if the field is not yet capable of constructing time-consistent declining discount rate schedules. Similarly, textbox 6-6 is misleading as it applies a numerical example of time-inconsistency but does not provide a numerical example of time-consistency. Instead, the *Guidelines* should review existing declining schedules used by nations and proposed in the literature based on normative and positive frameworks. If EPA clarifies its intention to update these schedules in subsequent revisions to the *Guidelines*, this would avoid the problem of time-consistency arising from new information.

If EPA determines that specific declining discount rate schedules cannot be provided, the *Guidelines* should propose alternatives to declining discount rate schedules. In the descriptive case, the *Guidelines* at page 6-21 currently propose that a “possible response to such challenges is to select a constant but slightly lower discount rate when discounting costs and benefits that are expected to occur far out in the time horizon, reflecting a certainty equivalent discount rate.” In the descriptive context, this is a sensible adjustment as it has both theoretical support (i.e., the precautionary effect is constant when the growth rate of consumption is not positively correlated over time (Arrow et al., 2014, p. 149)) and there is historical precedent in federal regulatory analyses. Specifically, the IWG (2010; 2013; 2016) adjusted downwards a consumption discount rate of 3% to 2.5% to account for long-run uncertainty. In the normative case (i.e., heterogeneity), Millner and Heal (2018b) demonstrate that selecting the median preference parameters / discount rates is time consistent. Following this approach, the median social discount rate in recent surveys of discount rate and climate economic experts is 2%. Based on these two adjustments, constant approximations of between 2% and 2.5% are justifiable in the intergenerational context.

Discount Rate Issues Come Up Beyond the Climate Context: As a final reminder to the SAB panel, important discount rate issues come up in many EPA regulations, not just in the context of climate change. For example, EPA’s recent analysis of its water quality standards for lead and copper, which had monetized net benefits exceeding costs at a 3% discount rate but not at a 7% discount rate, also

¹¹⁹ Arrow et al. 2014, pp. 159-160: “However, it is also well known (Gollier et al. 2008) that a policy chosen by a decision maker who maximizes a time-separable expected utility function will be time consistent if expected utility is discounted at a constant exponential rate. this means that if a social planner discounts the utility of future generations at a constant exponential rate, the DDR that results from utility maximization will not lead to time-inconsistent decisions...Constant exponential discounting is a sufficient but not necessary condition for time consistency. See Heal (2005) for other conditions that will yield time-consistent decisions. However, it is necessary for an optimal policy to be both time consistent and stationary.”

highlighted the need for more agency guidance on discount rates, including on clarifying the use of private versus social discount rates.¹²⁰

Comments on Chapter 7

Many Valuation Methods Depend on Assumptions about Rationality: At page 7-4, lines 5-6, the *Guidelines* offer as an example that, instead of monetizing individual health endpoints, a hedonic property method could be used to estimate the total value to residents of, for instance, a change in the presence of hazardous waste sites. While subsequently reminding analysts to consider whether any benefit endpoints are not reflected in such a reduced form valuation estimate (page 7-5 at line 1), the *Guidelines* fail to make clear at this point on page 7-4 that forgoing a monetization of individual health endpoints in favor a hedonic property method is only appropriate if analysts can reasonably assume that residents have accurate information about health endpoints; otherwise, the property value will not reflect all health effects.

On page 7-10, at line 4, the *Guidelines* emphasize the “principle of consumer sovereignty, in which values used for benefit-cost analysis respect the preferences individuals have for these goods and services.” Though that principle is an appropriate starting point, there are many exceptions that must be considered. If consumers are systematically irrational about their preferences, perhaps due to loss aversion or some behavioral market failure; if consumers systematically lack important information in ways that changes their valuations or preferences; if consumers are not able to express their actual preferences in the market due to a supply-side market failure like market power, or due to a market failure caused by the positionality of goods; if consumers preferences can shift due to a regulation, as in the case of experiential goods, regulatory disclosures, or certain regulations affecting certain positional or bandwagon goods; or due to a host of other potential market failures or deviations from assumptions about rationality, consumers’ preferences as measured by various valuation techniques may not be accurate or may not be stable.¹²¹

As *Circular A-4* says, market prices are only a good source of willingness-to-pay data if the goods and services “are traded in a well-functioning competitive market.”¹²² Revealed preference valuation methods only work “If the market participant is well informed and confronted with a real choice,” if the market is competitive, if there is not a significant information gap or asymmetric information problem, and if the market does not exhibit an externality.¹²³ Stated preference valuation methods similarly depend on a clear, complete, and objective explanation of the thing being valued, and a variety of other assumptions and conditions.¹²⁴ Though the *Guidelines* do acknowledge such caveats in various places (such as at page 7-21), such caveats should also be mentioned earlier and throughout chapter 7, including in the statement about consumer sovereignty. A footnote should be added on page 7-10, at line 6, following the word “policy maker”: **footnote: Respecting the preferences of individuals also requires considering how market failures, information gaps, and the potential for regulatory action to shift preferences may necessitate an appropriate adjustment from the valuations of goods and services suggested by various revealed preference or stated preference valuation methods.**

Similarly, on page 7-10, line 15 should be adjusted as follows: Economic theory suggests that when goods and services are bought and sold in competitive markets **that are free of externalities and other**

¹²⁰ See Policy Integrity, Comments on National Primary Drinking Water Regulations: Lead and Copper Rule Revisions (Feb. 12, 2020), https://policyintegrity.org/documents/EPA_Lead_Copper_Rule_Comments_2020.02.11.pdf.

¹²¹ See *supra* notes 24-27 and accompanying text.

¹²² *Circular A-4* at 19.

¹²³ *Id.* at 20.

¹²⁴ *Id.* at 23.

market failures, optimizing and well-informed consumers maximize their level of utility subject to constraints on their budget....

And again on page 7-21, line 2 should be adjusted: For goods bought and sold in undistorted markets by well-informed and rational consumers, the market price indicates the marginal social value of an extra unit of the good.

Dread May Be an Important Health Outcome: On page 7-16, in discussing the cost-of-illness (COI) approach to valuation, the *Guidelines* recognize that “dread” can be an important consideration, and a consideration that COI approaches typically ignore. For a longer discussion of dread, see Revesz and Livermore’s *Retaking Rationality* at 96, 103-106 (2008). Unfortunately, the *Guidelines* fail to consistently recognize dread. On page 7-12, at line 21, in the discussion “the effects of latency,” the *Guidelines* should add at the end of that line: including any welfare losses from dread during the period of latency. Similarly, on page 7-14, at line 25, the *Guidelines* should add: The second step should consider any quantifiable welfare losses from dread during any period of latency.

Replacement Costs: The example given in the text box on replacement costs (page 7-16) requires some caveats. The *Guidelines* suggest that the replacement costs of restocking a pond after pollution has killed all the fish may not be a good estimate of the value of those fish, because a cheaper substitute may be available, in the form of monetary payments to allow fishers to purchase other market goods. However, such monetary payments would only compensate for the lost fish if there were no ecosystem services, aesthetic values, or any other benefits associated with having a healthy pond stocked with a population of healthy fish. If there were such ecosystem services, aesthetic values, or other lost benefits, then it is possible that the costs of dredging and restocking the pond may provide some reasonable point estimate of the lost benefits—especially if there is no other suitable valuation method available. If the options are either assigning lost ecosystem services and other benefits no monetized value—when EPA knows the value is “certainly not zero”¹²⁵—or else using a reasonable replacement cost estimate to approximate the lost value, case law and best economic practices would both favor a reasonable estimate over treating ecosystem service benefits as if they were worthless.

Carbon Offset Markets: On page 7-21, footnote 194 explains why markets for environmental permits, like the acid rain market, do not necessarily provide data on the actual valuation of the underlying environmental good, since the market value is instead determined by the regulation-induced scarcity of the permits. The footnote may also want to distinguish markets for greenhouse gas offsets, which may reflect the cost of abatement or compliance, but do not necessarily reflect the full social cost of greenhouse gases.

Cost of Time: The *Guidelines* include recommendations on valuing the opportunity cost of time that may be both internally inconsistent and inconsistent with other agencies’ practices.

On page 7-25, lines 39-40, EPA recommends that, when using a travel cost approach to valuing environmental benefits, “analysts should generally rely on the standard one third of the wage rate opportunity cost assumption when estimating recreation travel.”¹²⁶ This recommendation comes immediately after noting that the Department of Transportation’s 2016 guidance instead recommends valuing recreation travel at 50% of hourly median household income for local travel and 70% for intercity travel. The *Guidelines* do not explain what justifies the deviation from the Department of

¹²⁵ *Center for Biological Diversity v. NHTSA*, 538 F. 1172, 1200 (9th Cir. 2008).

¹²⁶ Note that on page 7-35, at lines 18-21, the *Guidelines* indicate generally that costs to lost home productivity and the value of leisure should be included in a cost-of-illness valuation approach, but does not make any recommendation on how to value such costs.

Transportation’s methodology. Nor do the *Guidelines* mention that the Department of Health and Human Service’s 2016 guidelines on regulatory impact analysis recommend a default assumption “that the opportunity cost of unpaid time can be best approximated by post-tax wages.”¹²⁷

However, later on page 8-16, when discussing how to value time in calculating regulatory costs, the *Guidelines* take the same position as the HHS guidelines, that “[a]s a proxy for the opportunity cost of nonwork time, analysts should add the value of voluntary fringe benefits to the the [sic] wage net of any taxes paid by workers to federal, state, and local governments on earned income” (lines 8-9).

The *Guidelines* do not explain why the full post-tax wage is an appropriate proxy for the opportunity cost of nonwork time when calculating regulatory costs, but to calculate environmental benefits the default opportunity cost of nonwork time is only one-third the wage rate. It is possible that some explanation is contained in EPA’s 2020 document on *Valuing Time Use Changes Induced by Regulatory Requirements and Other EPA Actions*, but despite the request made in Policy Integrity’s prior comments on these *Guidelines*, that document still does not seem to be available anywhere online.

There is also some inconsistency in the treatment of children’s time. On page 7-26, the *Guidelines* seem to leave to each individual analyst’s “professional judgment” whether opportunity cost of time estimates “are assumed to accrue to adults and children or only to adults” (lines 9-11). The *Guidelines* do not explain why all adults, regardless of their employment status, are automatically included, while individual analysts can decide whether and which minors to value. This position seems inconsistent with the statement on page 7-36, lines 26-27, that “students’ time in school [will] directly or indirectly contribute to the productivity of society.” Notably, HHS’s guidelines apply its post-tax wage figure to children’s time costs as well as seniors and other adults who may not be employed.¹²⁸

The SAB should ask EPA to explain the internal inconsistencies and inconsistencies with other agencies’ approaches on the valuation of time. If the inconsistent positions on the cost of time cannot be explained, EPA should revise the *Guidelines* to adopt a consistent position on valuing the opportunity cost of nonwork time.

Weighing Studies by Their Merits Is Preferred to Outright Removal from Benefit Transfers: On page 7-46, at line 18, the *Guidelines* recommend that “[s]tudies based on inappropriate methods or reporting obsolete results should be removed from consideration” in a benefit-transfer approach. The terms “inappropriate methods” and “obsolete results” are not defined. While some reasonable selection criteria may be required in a benefit-transfer methodology, allowing the outright removal of studies from meta-analysis or other benefit-transfer approaches for vague reasons, left entirely to individual analysts, risks inviting bias into the methodology and may not be recommended when studies can otherwise be weighted by their merits. The *Guidelines* should offer more details on these points.

As *Circular A-4* explains, “there is no mechanical formula that can be used to determine whether a particular study is of sufficient quality to justify use in regulatory analysis.”¹²⁹ Instead, evidence should be weighed on its merits, and analysts should use all studies that include potentially valuable information to inform the calculation of costs or benefits.¹³⁰ It may be appropriate to conclude that different studies have different evidentiary weight, and some studies may have features that make them

¹²⁷ HHS, *Guidelines for Regulatory Impact Analysis* at 27-28 (2016), https://aspe.hhs.gov/system/files/pdf/242926/HHS_RIAGuidance.pdf; see also *id.* at 30.

¹²⁸ HHS, *Guidelines*, *supra*, at 30 n.70.

¹²⁹ *Circular A-4* at 23.

¹³⁰ See L.J. Savage, *The Foundations of Statistics* (2d ed., 1972); Larry Hedges & Ingram Olkin, *Statistical Methods for Meta-Analysis*, ch.14 (1985).

less useful than other studies. But as explained by the editors-in-chief of five leading scientific journals, “[i]t does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them.”¹³¹ As a leading textbook on meta-analysis explains, improperly excluding studies can result in bias; consequently, to avoid such bias, all research that meets the study selection criteria should be included in the analysis.¹³² Furthermore, any criteria or rules on whether to include and how to weight various studies should be determined *a priori*.¹³³

Rather than exclude studies outright, analysts can instead place different weight on each study in proportion to that study’s evidentiary value.¹³⁴ EPA has historically taken that approach, for example in its 2015 economic analysis of the Clean Water Rule; more recently, in the rollback and replacement of the Clean Water Rule, EPA (together with the Army Corps of Engineers) made questionable decisions to exclude certain studies from its benefit-transfer analyses, without adequate justification and in contravention of best economic practices.¹³⁵ The SAB should advise EPA to provide more details in the *Guidelines* on the appropriate inclusion, weighting, or exclusion of studies from benefit-transfer approaches, to prevent EPA from repeating the mistakes made in the unit transfer analysis and meta-analysis of the recent repeal and replacement of the Clean Water Rule.¹³⁶

Respectfully,

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¹³¹ Berg, J., Campbell, P., Kiermer, V., Raikhel, N., & Sweet, D., Joint statement on EPA proposed rule and public availability of data, 360 Science 6388 (2018), <http://science.sciencemag.org/content/360/6388/eaau0116>.

¹³² Michael Borenstein et al., *Introduction to Meta-Analysis* 280 (2009).

¹³³ See Peter H. Howard & Thomas Sterner, *Few and not So Far Between: A Meta-Analysis of Climate Damage Estimates*, 68, *Envtl. & Res. Econ.* 197 (2017).

¹³⁴ For example, a study that has been successfully replicated could be assigned a higher evidentiary value.

¹³⁵ See Peter Howard & Jeffrey Shrader, *Expert Report: An Evaluation of the Revised Definition of “Waters of the United States”* at 2-7 (2019), https://policyintegrity.org/documents/Shrader_Howard_Expert_Report_FINAL.pdf.

¹³⁶ See *id.*



October 26, 2018

Dockets: EPA-HQ-OAR-2018-0283 & NHTSA-2018-0067

Subject: Comments on Quantifying and Monetizing Greenhouse Gas Emissions in the Safer Affordable Fuel-Efficient Vehicles Proposed Rule and Preliminary Regulatory Impact Analysis

Submitted by: Environmental Defense Fund, Institute for Policy Integrity at New York University School of Law, Natural Resources Defense Council, Sierra Club, and Union of Concerned Scientists¹

The following comments focus on EPA and NHTSA's (the agencies') inaccurate quantification of greenhouse gas emissions and their failure to accurately and fully monetize the climate damages from those emissions using the social cost of greenhouse gases in the proposed SAFE rule and preliminary regulatory impact analysis (PRIA). The agency's so-called "interim" metrics have manipulated and decimated the estimates of the full costs of climate damages in ways at odds with the best available science, the best practices for economic analysis, and the legal standards for rational decisionmaking. The "interim" values ignore the real costs of climate change by arbitrarily attempting to limit the valuation to purportedly domestic-only effects; by arbitrarily discounting future climate effects at a 7% discount rate that is inappropriate for long-term climate effects; and by arbitrarily failing to address uncertainty over catastrophic damages, tipping points, option value, and risk aversion.

As per the agencies' instructions for submitting comments, these comments are submitted to the EPA's docket, but should be considered in NHTSA's docket as well. We have separately submitted similar comments on NHTSA's Draft Environmental Impact Statement (DEIS)

I. The Agencies Inaccurately and Incompletely Quantifies Emissions

It is impossible to provide decision-makers and the public with the necessary context to understand the difference in climate, public health, and welfare impacts between the proposed rollback and the 2012 baseline standards if emissions have not been fully and accurately quantified. They have not.

Note that while these comments focus on greenhouse gas emissions, many of the critiques apply equally to the estimates and presentation of criteria and toxic pollutants as well.

Problems with the Rebound, Scrapage, and Sales Modules—Plus Other Problematic Modeling Choices—Infect the Agencies' Estimates of Emissions

The estimates of both upstream and downstream emissions derive from the Volpe model's predictions about miles driven and fuel consumed. Various separate comments submitted by our groups on the PRIA and proposed rule detail the numerous serious problems with the economic theory, methodology, and data that the agencies used to build the Volpe model's rebound, scrapage, and sales modules. To give just one example, in the vehicle sales module, the analysis assumes that consumers care about vehicle cost but place zero value on fuel savings. This unrealistic assumption lets the agencies miscalculate sales of new vehicles versus retention of older, dirtier vehicles under the standards. As a

¹ Our organizations may separately and independently submit other comments on other issues raised by the proposed rollback and the preliminary regulatory impact analysis.

result, the agencies grossly underestimate the net emission reductions achieved by the 2012 baseline standards. Such serious problems indicate that the agencies are likely severely underestimating the increase in emissions resulting from the proposed action as compared to the no-action alternative. The agencies must reexamine their estimates of all emissions—greenhouse gases, criteria pollutants, and toxic pollutants—to correct any and all problems with the Volpe model that have resulted in undercounting the increase in pollution under the proposed rollback.

The Agencies Ignore Entire Categories of Significant Upstream Emissions

Section 10.2.3 of the PRIA clarifies that it is only quantifying “the resulting increases in domestic emissions” from upstream fuel production and distribution.² In particular, the PRIA’s methodology for quantifying upstream effects counts emissions only if the fuel extraction, refining, distribution, and storage activities happened within U.S. borders. The PRIA assumes that 50% of the increased fuel consumption that results from lowering CAFE standards will be satisfied by imported finished gasoline products:³ it therefore ignores all emissions from extracting, refining, and transporting the crude oil to supply that 50% of finished gasoline products. The other 50% of increased fuel consumption is estimated to come from increased domestic refining, but the PRIA further assumes that 90% of the crude oil feeding into that increased domestic refining will come from imported crude petroleum:⁴ the PRIA therefore further ignores all emissions from extracting that imported crude, and likely some portion of emissions from transporting that crude before it was imported. Altogether, the PRIA ignores 95% of upstream emissions from fuel extraction,⁵ 50% of upstream emissions from refining, at least 50% of upstream emissions from distribution of crude, and some unclear portion of upstream emissions from distribution of finished gasoline.⁶

These same assumptions—50% imported finished gasoline, 90% imported crude—also appear in the proposed rule,⁷ as well as in the spreadsheet on parameters for the reference case in the agencies’ sensitivity analysis files. The reference case parameters file also confirms that these “fuel import assumptions” are held constant from 2015 through 2050.

There are several significant problems with ignoring upstream emissions just because they originate outside U.S. borders.

First, as further detailed *infra* in the section on the global social cost of greenhouse gases, the Clean Air Act requires a more global perspective on greenhouse gas emissions and climate change.

Second, emissions that originate abroad can still have direct impacts on the United States. This is especially true of greenhouse gases, which are global pollutants that readily mix in the atmosphere and affect global climate. All greenhouse gases, regardless of their point of origin anywhere on the planet, will cause the same climate damages for the United States. Though criteria and toxic pollutants are usually thought of as local pollution, even some criteria and toxic pollutants emitted abroad can directly impact the United States. For example, in 2017, Canada supplied 43% of all crude imported into the

² EPA & NHTSA. Preliminary Regulatory Impact Analysis. The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021 – 2026 Passenger Cars and Light Trucks (Jul. 2018, updated Aug. 23, 2018, Oct. 16, 2018) [Hereinafter PRIA] at 1291.

³ PRIA at 1299 (“Using NEMS, it was estimated that 50% of increased gasoline consumption would be supplied by increased domestic refining.”).

⁴ PRIA at 1291 (“90% of this additional [domestic] refining would use imported crude petroleum.”).

⁵ 50% * 90% = 45%. 45% + 50% = 95%.

⁶ It is not immediately clear which distribution, transportation, and storage activities were counted. For example, crude may be extracted in Country A, transported to Country B for refining, transported again to Country C for storage, until finally imported to the United States. It is not clear which portion of emissions during the transportation between Countries A, B, and C—if any—is counted.

⁷ 83 Fed. Reg. at 43,335.

United States, 45% of imported finished motor gasoline, and 30% of imported gasoline blending components; Mexico further supplied another 8% of crude imported into the United States.⁸ EPA has in the past recognized that U.S. emissions of criteria and toxic pollution can affect health and welfare in our neighboring countries;⁹ similarly, depending on the location of Canada and Mexico's fuel production and distribution facilities and on prevailing winds, their emissions can affect health and welfare in the United States. None of these upstream emissions—and especially the global greenhouse gas pollutants—should be completely ignored.

Third, as detailed further *infra* on the global social cost of greenhouse gases, through international spill-over effects, foreign reciprocity, the extraterritorial interest of the U.S. government and its citizens, and altruism, worldwide climate effects also affect U.S. welfare and matter to U.S. decisionmakers and the public.

Fourth, the assumptions are also questionable, especially over the long term. Much of the proposed rollback explicitly relies on the assumption that the United States will very soon become a net exporter of petroleum products. Indeed, the PRIA uses that assumption as a justification for not counting other potential social costs of the proposed rollback, such as military and security costs.¹⁰ It is unclear why the agencies think that, solely for the purposes of quantifying upstream emissions, the United States will continue to import 50% of its gasoline and 90% of its crude *through the year 2050* to satisfy increased fuel consumption. By failing to adjust these assumptions over time, the agencies are not only undercounting all upstream emissions, but in particular they are undercounting *future* upstream emissions. Because the climate systems will continue to become even more stressed over time, future emissions are increasingly damaging,¹¹ and it is precisely these emissions that the agencies are ignoring.

Other Quantification Issues

Overestimating EV Emissions: The proposed rollback may be overestimating upstream emissions from electric vehicle use, and so underestimating the net greenhouse gas increases of the proposed action to roll back CAFE standards. After acknowledging that upstream emissions would vary “across the country,” the agencies instead assume “that the future EV fleet would charge from a grid whose mix is uniform across the country.”¹² This assumption ignores the fact that EV usage may be clustered in states

⁸ In 2017, US imported from all countries: 2.9 billion barrels of crude, 11 million barrels of finished motor gasoline, 220 million barrels of motor gasoline blending components. Of that, Canada supplied 1.25 billion barrels of crude (43%), 5 million barrels of finished motor gasoline (45%), and 66 million barrels of motor gasoline blending components (30%). Mexico supplied 222 million barrels of crude (8%), 1.5 million barrels of blending components (<1%). EIA, Petroleum & Other Liquids, https://www.eia.gov/dnav/pet/pet_move_impcus_d_nus_Z00_mbbbl_a.htm

⁹ In the analysis of the Cross-State Air Pollution Rule, EPA noted— though could not quantify—the “substantial health and environmental benefits that are likely to occur for Canadians” as U.S. states reduce their emissions of particulate matter and ozone—pollutants that can drift long distances across geographic borders. Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 75 Fed. Reg. 45,210, 45,351 (proposed Aug. 2, 2010). Similarly, in the Mercury and Air Toxics Standards, EPA concluded that a reduction of mercury emissions from U.S. power plants would generate health benefits for foreign consumers of fish, both from U.S. exports and from fish sourced in foreign countries. EPA did not quantify these foreign health benefits, however, due to complexities in the scientific modeling. U.S. ENVTL. PROT. AGENCY, REGULATORY IMPACT ANALYSIS FOR THE FINAL MERCURY AND AIR TOXICS STANDARDS 65 (2011) (“Reductions in domestic fish tissue concentrations can also impact the health of foreign consumers . . . [and] reductions in U.S. power plant emissions will result in a lowering of the global burden of elemental mercury.”).

¹⁰ PRIA at 1068.

¹¹ For example, the social cost of greenhouse gases increases over time because an additional ton of emissions will inflict greater damages in the future when total atmospheric concentrations of greenhouse gases are already much higher. As emissions accumulate in the atmosphere, each additional ton becomes that much more damaging. See *e.g.*, IWG, Technical Update of the Social Cost of Carbon (2016, hereinafter 2016 TSD), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf.

¹² DEIS at 2-23; see also PRIA at 1304.

with cleaner electricity fuel mixes. Notably, about half of EV sales in 2016 and 2017 occurred in California,¹³ and California has a significantly cleaner current and planned electricity system than the national average.¹⁴

Unclear Treatment of Refueling Emissions: The proposed rule notes that greenhouse gas savings under the standards from not have to drive as often to refuel are “implicitly accounted for elsewhere” in the model,¹⁵ though the rule does not clearly explain where or how those emissions are quantified. The proposed rule admits that, while the related fuel savings from not having to drive as often to refuel (which it also assumes are “implicitly captured” elsewhere) may seem to be a small benefit per individual consumer, the effect “is much more significant at the macro level.”¹⁶ It is not clear if or how the agencies actually quantify the similarly “significant” greenhouse gas emissions from refueling trips.

Unexplained Inconsistency between the DEIS and PRIA: The cumulative tallies of direct and indirect carbon dioxide emissions that appear in the DEIS (a difference of 4500 MMTCO₂ from passenger cars between the no-action alternative and alternative 1; and a difference of 2900 MMTCO₂ from light trucks between the no-action alternative and alternative 1)¹⁷ are markedly different than the quantifications that appear in the PRIA and proposed rule (a difference of 329 MMTCO₂ from passenger cars between the no-action alternative and alternative 1; and a difference of 480 MMTCO₂ from light trucks between the no-action alternative and alternative 1).¹⁸ Not just the magnitude of the numbers but also the relative share of responsibility between cars and trucks seems to be different between the DEIS estimates and the PRIA estimates. Given that the DEIS and PRIA both rely on the same models,¹⁹ it is possible that the different cumulative estimates are explained by different timescales²⁰ and by the DEIS’s reliance on GCAM to estimate emissions from cars and trucks over the years 2061-2100 by applying a projected rate of change.²¹ Yet neither the DEIS nor the PRIA fully explains the different estimates in the two interrelated documents.

II. The Agencies’ Description of Their Methodology for Monetizing Climate Damages Is Incomplete or Inapplicable

The PRIA’s description of the methodology for estimating the social cost of greenhouse gases is incomplete or inapplicable in several ways. For example, when discussing a sensitivity analysis using a 2.5% discount rate, the PRIA starts reporting different estimates of monetized climate damages “under the rate-based and mass-based scenarios, respectively.”²² There are no rate-based versus mass-based alternatives under the proposed CAFE standards. Evidently, this language and the monetized estimate of climate damages (\$3.8 to \$3.9 billion) were copied and pasted directly from a different rulemaking (namely, from the stay, repeal, or replacement of the Clean Power Plan). It is unclear how much of the PRIA’s description of its methodology or its monetized values using the social cost of greenhouse gases are also copied from a different rulemaking and so inapplicable to this rulemaking.

¹³ EVAdoption, 2017 EV Sales and Market Share by US State, <http://evadoption.com/ev-market-share/ev-market-share-state/>; see also Dept. of Energy, Registered Electric Vehicles by State, <https://www.afdc.energy.gov/data/10961>.

¹⁴ EIA, Energy-Related Carbon Dioxide Emissions by State, 2000-2015, <https://www.eia.gov/environment/emissions/state/analysis/>.

¹⁵ 83 Fed. Reg. at 43,088.

¹⁶ *Id.*

¹⁷ DEIS Appendix at page D-13.

¹⁸ PRIA at 92, table 1-77.

¹⁹ DEIS at 2-17 (discussing reliance on Volpe, GREET, MOVES, NEMS, and so forth).

²⁰ Compare PRIA at 123 (calculating emissions over the lifetime of the vehicles) with DEIS at D-13 (calculating emissions over the years 2021-2100).

²¹ DEIS at 5-21.

²² PRIA at 1102.

In addition, the PRIA promises several critical documents to enable the public to understand the derivation of the social cost of greenhouse gas estimates—documents which are, in fact, not currently in the rulemaking dockets. Specifically, the PRIA promises, on page 1101, that “the full set of SC-CO2 results through 2050 is available in the docket.” Page 1100 further promises that “to better understand how the results” for estimates of the social cost of carbon “vary across scenarios, results of each model run are available in the docket.” Additionally, on page 1534, footnote 910 says that “a detailed description of the methods used to construct these alternative values” for the social cost of methane and nitrous oxide “is available in the docket for this rule.” None of that promised information is available in either docket for this rulemaking, at least according to our best searches of the docket. The promised but missing information is essential to allow the public to fully understand, among other things, how the discount rates and socioeconomic scenarios affect the estimates. The frequency distribution chart on page 1101, for example, provides insufficiently fine-grained information on how negative estimates of the social cost of carbon may be skewing the overall result. As the PRIA itself states, the full “results of each model run” are needed to “better understand how the results vary across scenarios.” The frequency distribution chart also gives no information on the runs conducted at a 2.5% discount rate, and dockets contain none of the promised information on the methodology for calculating the social cost of methane and nitrous oxide.

These errors and omissions in the agencies’ description of their methodology frustrate any meaningful opportunity to comment on the use of the social cost of greenhouse gases. Nevertheless, even with the incomplete and partially inapplicable description provided, it is clear that the agencies are not using the best available estimates based on the most recent science and economic literature. The values of the social cost of greenhouse gases currently used in the PRIA fall well short of that standard. In particular, the agencies’ approaches to the issues of global versus domestic climate damages, discount rates, and treatment of uncertainty are inconsistent with best practices and the most recent science and economic literature, and result in severely undercounting the social cost of greenhouse gases. The agencies instead should use the 2016 estimates from the Interagency Working Group (IWG) for the social cost of carbon, methane, and nitrous oxide. The next several sections explain why.

III. Executive Order 13,783 Does Not Bar Agencies from Following the IWG’s Best Practices

The PRIA concludes that a new “interim” social cost of carbon estimate became necessary following Executive Order 13,783.²³ President Trump’s Executive Order 13,783, issued March 28, 2017, officially disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) and withdrew the technical support documents that underpinned their range of estimates.²⁴ Nevertheless, Executive Order 13,783 assumes that federal agencies will continue to “monetiz[e] the value of changes in greenhouse gas emissions” and instructs agencies to ensure such estimates are “consistent with the guidance contained in OMB Circular A-4.”²⁵ Consequently, while NHTSA, EPA, and other federal agencies no longer have technical guidance directing them to exclusively rely on the IWG’s estimates to monetize climate effects, by no means does the new Executive Order imply that agencies should not monetize important effects in their regulatory analyses or environmental impact statements. In fact, Circular A-4 instructs agencies to monetize costs and benefits whenever feasible.²⁶

The Executive Order does not prohibit agencies from relying on the same choice of models as the IWG, the same inputs and assumptions as the IWG, the same statistical methodologies as the IWG, or the same ultimate values as derived by the IWG. To the contrary, because the Executive Order requires

²³ PRIA at 1062.

²⁴ Exec. Order. No. 13,783 § 5(b), 82 Fed. Reg. 16,093 (Mar. 28, 2017).

²⁵ *Id.* § 5(c).

²⁶ OMB, Circular A-4 at 27 (2003) (“You should monetize quantitative estimates whenever possible.”).

consistency with Circular A-4, as agencies follow the Circular's standards for using the best available data and methodologies, they will necessarily choose similar data, methodologies, and estimates as the IWG, since the IWG's work continues to represent the best available estimates.²⁷ The new Executive Order does not preclude agencies from using the same range of estimates as developed by the IWG, so long as the agency explains that the data and methodology that produced those estimates are consistent with Circular A-4 and, more broadly, with standards for rational decisionmaking.

As explained throughout these comments, the IWG's estimates of the social cost of greenhouse gases are, in fact, already consistent with the Circular A-4 and represent the best existing estimates of the lower bound of the range for the social cost of greenhouse gases. Therefore, the IWG estimates or those of a similar or higher value²⁸ should be used in regulatory analyses and environmental impact statements.

IV. The Agencies Must Rely on a Global Estimate of the Social Cost of Greenhouse Gases

The proposed rule claims that "both domestic and global perspectives were considered" on "the cost of CO₂ emissions and resulting climate damages," and refers the reader to "Chapter 9 of the Regulatory Impact Analysis."²⁹ That statement is false. While Chapter 9 does not mention the social cost of carbon, Chapter 8 and its Appendix make clear that the PRIA focuses exclusively on a domestic-only value of the social cost of carbon, claiming that such a perspective is required by Executive Order 13,783 and Circular A-4.³⁰ To the contrary, not only is it inconsistent with Circular A-4 and best economic practices to fail to estimate the global damages of U.S. greenhouse gas emissions in regulatory analyses, but existing methods for estimating a "domestic-only" value—including the agencies' approach—are unreliable, incomplete, and inconsistent with Circular A-4. The agencies' domestic-only estimate fails to use models built for the purpose of calculating regional damages, ignores recent literature on significant U.S. climate damages, and fails to reflect international spillovers to the United States, U.S. benefits from foreign reciprocal actions, and the extraterritorial interests of U.S. citizens including financial interests and altruism.

The agencies never explain why the proposed rule claims that the "global perspective" was considered when in fact the PRIA never uses a global estimate. Notably, an e-mail included in EPA's rulemaking docket entitled "SCC Language for Light Duty" refers to "on-going discussions regarding the global estimate," and EPA transmitted to the Office of Management and Budget a spreadsheet listing global estimates.³¹ Nevertheless, neither the proposed rollback nor the PRIA explains why the agencies failed to use the global numbers.

²⁷ Richard L. Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 SCIENCE 6352 (2017) (explaining that, even after Trump's Executive Order, the social cost of greenhouse gas estimate of around \$50 per ton of carbon dioxide is still the best estimate).

²⁸ See, e.g., Richard L. Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 NATURE 173 (2014) (explaining that current estimates omit key damage categories and, therefore, are very likely underestimates). See also Tamma Carleton et al., *Valuing the Global Mortality Consequences of Climate Change Accounting for Adaptation Costs and Benefits* (Becker Friedmand Inst. Working Paper No. 2018-51) (finding substantial willingness to pay to avoid just climate-related mortalities).

²⁹ 83 Fed. Reg. at 43,106.

³⁰ PRIA 1062-63; 1063 ("adopting a domestic perspective in our central analysis"); 1084 (showing "economic damages from future changes in the global climate [that] will be borne throughout the U.S. economy"); 1098 (describing the "methodology used to develop interim domestic SC-CO₂ estimates"); 1101 (describing sensitivity analysis but not mentioning a global SCC sensitivity analysis); 1531 (same).

³¹ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453> (see the PDFs entitled "Social cost of carbon email exchange between EPA and OMB, July 16, 2018" and "Social cost of carbon spreadsheet provided by EPA to OMB, July 16, 2018").

A Global Estimate of Climate Damages Is Required by Statute³²

Section 202 of the Clean Air Act charges EPA with protecting public health and welfare,³³ where “welfare” is defined to include “effects on . . . weather . . . and climate.”³⁴ When interpreting that language, the Supreme Court found “there is nothing counterintuitive to the notion that EPA can curtail the emission of substances that are putting the *global* climate out of kilter.”³⁵ When industry challenged another EPA climate program by arguing that the Clean Air Act “was concerned about local, not global effects,” the U.S. Court of Appeals for the D.C. Circuit had “little trouble disposing of Industry Petitioners’ argument that the [Clean Air Act’s prevention of significant deterioration] program is specifically focused solely on localized air pollution,” finding instead that the statute was “meant to address a much broader range of harms,” including “precisely the types of harms caused by greenhouse gases.”³⁶

To assess the necessary protections of public welfare under Section 202 of the Clean Air Act, EPA must value not only domestic welfare changes from climate effects occurring within U.S. borders, but also other significant U.S. welfare interests affected by climate—including U.S. interests in foreign businesses and property, in global tourism, in global commons like the oceans, and in global existence values and altruism; U.S. benefits from reciprocal foreign actions on climate; and U.S. effects that spill over from foreign climate damages through our interconnected economy, national security, and public health—as well as other significant global effects. As explained below, continued use of the global estimate of climate damages—as opposed to a domestic-only value—is the only defensible way to accurately capture the full costs of climate pollution to public welfare.

Similarly, the statutory instruction for NHTSA to consider “need of the United States to conserve energy” should be read to include at least all those same significant U.S. welfare interests impacted by climate effects occurring outside U.S. borders listed above, including from spillovers, reciprocity, and extraterritorial interests.³⁷

Circular A-4 Requires “Different Emphases . . . Depending on the Nature” of the Regulatory Issue

Since 2010, and including some recent agency actions under the Trump administration,³⁸ federal agencies routinely based their regulatory decision and NEPA reviews on global estimates of the social cost of greenhouse gases. Though agencies often also disclosed a “highly speculative” range that tried to

³² This subsection draws from Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 Columbia J. Envtl. L. 203 (2017). See *id.* for additional discussion of how Section 115 of the Clean Air Act, which explicitly requires the United States to take a global perspective on the effects of its greenhouse gas emissions, interacts with Section 202.

³³ 42 U.S.C. § 7521.

³⁴ 42 U.S.C. § 7602(h); *Massachusetts v. EPA*, 127 S.Ct. 1438, 1447 (2007).

³⁵ *Mass. v. EPA*, 127 S.Ct. at 1461 (emphasis added).

³⁶ *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 138 (D.C. Cir. 2012), *aff’d* in part *Util. Air Regulatory Grp. v. EPA*, 134 S.Ct. 2427 (2014).

³⁷ See Howard & Schwartz, *supra* at 252-53 (explaining how EPCA may require a global perspective on climate effects, and how the Ninth Circuit listed global SCC estimates as reasonable values for NHTSA to have chosen).

³⁸ E.g., Dep’t of Energy, Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems, 82 Fed. Reg. 31,808, 31,812 (July 10, 2017) (“DOE maintains that consideration of global benefits is appropriate because of the global nature of the climate change problem.”); U.S. Dep’t of Interior, Bureau of Ocean Energy Mgmt., Draft Envtl. Impact Statement: Liberty Development Project at 3-129, 4-246 (Aug. 2017) (BOEM, Liberty Development Project), available at <https://cdxnodengn.epa.gov/cdx-enepa-ll/public/action/eis/details?eisId=236901> (calling the global social cost of carbon estimates developed in 2016 by the Interagency Working Group “a useful measure” and applying them to analyze the consequences of offshore oil and gas drilling). Note that the final EIS (August 2018) for the Liberty Development Project does change from the global estimate to the indefensible domestic-only estimate.

capture exclusively U.S. climate costs, emphasis on a global value has been recognized as more accurate given the science and economics of climate change, as more consistent with best economic practices, and as crucial to advancing U.S. strategic goals.³⁹

Opponents of climate regulation have long challenged the global number in court and other forums, and often attempted to use Circular A-4 as support.⁴⁰ Specifically, opponents have seized on Circular A-4's instructions to "focus" on effects to "citizens and residents of the United States," while any significant effects occurring "beyond the borders of the United States . . . should be reported separately."⁴¹ Importantly, despite this language and such challenges, the U.S. Court of Appeals for the Seventh Circuit had no trouble concluding that a global focus for the social cost of greenhouse gases was reasonable:

AHRI and Zero Zone [the industry petitioners] next contend that DOE [the Department of Energy] arbitrarily considered the global benefits to the environment but only considered the national costs. They emphasize that the [statute] only concerns "national energy and water conservation." In the New Standards Rule, DOE did not let this submission go unanswered. It explained that climate change "involves a global externality," meaning that carbon released in the United States affects the climate of the entire world. According to DOE, national energy conservation has global effects, and, therefore, those global effects are an appropriate consideration when looking at a national policy. Further, AHRI and Zero Zone point to no global costs that should have been considered alongside these benefits. Therefore, DOE acted reasonably when it compared global benefits to national costs.⁴²

Circular A-4's reference to effects "beyond the borders" confirms that it is appropriate for agencies to consider the global effects of U.S. greenhouse gas emissions. While Circular A-4 may suggest that most typical decisions should focus on U.S. effects, the Circular cautions agencies that special cases call for different emphases:

[Y]ou cannot conduct a good regulatory analysis according to a formula. Conducting high-quality analysis requires competent professional judgment. ***Different regulations may call for different emphases*** in the analysis, ***depending on the nature and complexity*** of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.⁴³

In fact, Circular A-4 elsewhere assumes that agencies' analyses will not always be conducted from purely the perspective of the United States, as one of its instructions only applies "as long as the analysis is conducted from the United States perspective,"⁴⁴ suggesting that in some circumstances it is appropriate for the analysis to be global. For example, in the past NHTSA also sometimes adopted a global perspective on the analysis of potential monopsony benefits to U.S. consumers resulting from the reduced price of foreign oil imports following energy efficiency increases.⁴⁵

³⁹ See generally Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 Columbia J. Envtl. L. 203 (2017).

⁴⁰ Ted Gayer & W. Kip Viscusi, *Determining the Proper Scope of Climate Change Policy Benefits in U.S. Regulatory Analyses: Domestic versus Global Approaches*, 10 Rev. Envtl. Econ. & Pol'y 245 (2016) (citing Circular A-4 to argue against a global perspective on the social cost of carbon); see also, e.g., Petitioners Brief on Procedural and Record-Based Issues at 70, in *West Virginia v. EPA*, case 15-1363, D.C. Cir. (filed February 19, 2016) (challenging EPA's use of the global social cost of carbon).

⁴¹ Circular A-4 at 15. Note that A-4 slightly conflates "accrue to citizens" with "borders of the United States": U.S. citizens have financial and other interests tied to effects beyond the borders of the United States, as discussed further below.

⁴² *Zero Zone v. Dept. of Energy*, 832 F.3d 654, 679 (7th Cir., 2016).

⁴³ Circular A-4 at 3.

⁴⁴ *Id.* at 38 (counting international transfers as costs and benefits "as long as the analysis is conducted from the United States perspective").

⁴⁵ See Howard & Schwartz, *supra* note 39, at 268-69.

Perhaps more than any other issue, the nature of the issue of climate change requires precisely such a “different emphasis” from the default domestic-only assumption. To avoid a global “tragedy of the commons” that could irreparably damage all countries, including the United States, every nation should ideally set policy according to the global social cost of greenhouse gases.⁴⁶ Climate and clean air are global common resources, meaning they are freely available to all countries, but any one country’s use—i.e., pollution—imposes harms on the polluting country as well as the rest of the world. Because greenhouse pollution does not stay within geographic borders but rather mixes in the atmosphere and affects climate worldwide, each ton emitted by the United States not only creates domestic harms, but also imposes large externalities on the rest of the world. Conversely, each ton of greenhouse gases abated in another country benefits the United States along with the rest of the world.

If all countries set their greenhouse emission levels based on only domestic costs and benefits, ignoring the large global externalities, the aggregate result would be substantially sub-optimal climate protections and significantly increased risks of severe harms to all nations, including the United States. Thus, basic economic principles demonstrate that the United States stands to benefit greatly if all countries apply global social cost of greenhouse gas values in their regulatory decisions and project reviews. Indeed, the United States stands to gain hundreds of billions or even trillions of dollars in direct benefits from efficient foreign action on climate change.⁴⁷ Moreover, if all countries reverted to a domestic-only SCC, U.S. industry would be placed at a competitive disadvantage internationally, since a GDP-based SCC would be higher in the U.S. than in other countries; only a global SCC puts U.S. industry on a level playing field with the rest of the world.⁴⁸

In order to ensure that other nations continue to use global social cost of greenhouse gas values, it is important that the United States itself continue to do so.⁴⁹ The United States is engaged in a repeated strategic dynamic with several significant players—including the United Kingdom, Germany, Sweden, and others—that have already adopted a global framework for valuing the social cost of greenhouse gases.⁵⁰ For example, until recently Canada and Mexico had explicitly borrowed the U.S. estimates of a global social cost of carbon to set their own fuel efficiency standards.⁵¹ For the United States to now depart from this collaborative dynamic by reverting to a domestic-only estimate would undermine the country’s long-term interests and could jeopardize emissions reductions underway in other countries, which are already benefiting the United States. Indeed, there is some circumstantial evidence that tit-for-tat defections may be underway. Until September 2017, Mexico explicitly borrowed the IWG’s estimates of the social cost of carbon for use in its own regulatory impact analyses;⁵² by October 2017,

⁴⁶ See Garrett Hardin, *The Tragedy of the Commons*, 162 *Science* 1243 (1968) (“[E]ach pursuing [only its] own best interest . . . in a commons brings ruin to all.”).

⁴⁷ Policy Integrity, *Foreign Action, Domestic Windfall: The U.S. Economy Stands to Gain Trillions from Foreign Climate Action* (2015), <http://policyintegrity.org/files/publications/ForeignActionDomesticWindfall.pdf>

⁴⁸ Other flawed methods for calculating domestic-only SCCs, like proportion of worldwide shoreline, would also result in a higher domestic SCC for the U.S. than for most other countries.

⁴⁹ See Robert Axelrod, *The Evolution of Cooperation* 10-11 (1984) (on repeated prisoner’s dilemma games).

⁵⁰ See Howard & Schwartz, *supra* note 39, at Appendix B.

⁵¹ See Heavy-Duty Vehicle and Engine Greenhouse Gas Emission Regulations, SOR/2013-24, 147 *Can. Gazette* pt. II, 450, 544 (Can.), available at <http://canadagazette.gc.ca/rp-pr/p2/2013/2013-03-13/html/sor-dors24-eng.html> (“The values used by Environment Canada are based on the extensive work of the U.S. Interagency Working Group on the Social Cost of Carbon.”); Jason Furman & Brian Deese, *The Economic Benefits of a 50 Percent Target for Clean Energy Generation by 2025*, White House Blog, June 29, 2016 (summarizing the North American Leader’s Summit announcement that U.S., Canada, and Mexico would “align” their SCC estimates).

⁵² www.cofemersimir.gob.mx/expediente/20708/mir/43430/anexo/3805458 (“Para monetizar esta reducción de emisiones, se utilizó como base el concepto de costo social del carbón (CSC), publicado para su uso en los análisis de impacto normativo realizado por las agencias del gobierno de los Estados Unidos¹⁰. [Fn10: Véase el documento “Social Cost of Carbon for

the U.S. Bureau of Land Management and EPA had begun using an interim domestic-only estimate of the social cost of carbon,⁵³ in a July 2018 regulatory impact analysis for a rule reducing methane emissions from the oil and gas sector, Mexico seems to abandon the IWG numbers in favor of its own valuation based solely on the cost of Mexican climate-related weather disasters.⁵⁴ If other countries follow the lead of the United States and base their climate policies without weighing the full global externalities of their emissions, the United States will suffer.

For these and other reasons, reliance on a domestic-only valuation is inappropriate. In the past, some agencies have, in addition to the global estimate, also disclosed a “highly speculative” estimate of the domestic-only effects of climate change. In particular, the Department of Energy always includes a chapter on a domestic-only value of carbon emissions in the economic analyses supporting its energy efficiency standards; EPA has also often disclosed similar estimates.⁵⁵ Such an approach is consistent with Circular A-4’s suggestion that agencies should usually disclose domestic effects separately from global effects. However, as we have discussed, reliance on a domestic-only methodology would be inconsistent with both the inherent nature of climate change and the standards of Circular A-4. Consequently, under Circular A-4, the agencies should have estimated, and used in their primary analysis, the global social cost of greenhouse gases.

Benefits and Costs that “Accrue to U.S. Citizens” Are Much Broader Than Effects “within U.S. Borders”

To follow Circular A-4’s instruction to analyze all significant effects that “accrue[s] to U.S. citizens,” agencies must look beyond “U.S. borders” to a much broader range of climate effects. Circular A-4 instructs to estimate *all* important “opportunity costs,” meaning “what individuals are willing to forgo to enjoy a particular benefit.”⁵⁶ U.S. individuals are willing to forgo money to enjoy benefits or avoid costs from climate effects that occur beyond U.S. borders, and all such significant effects must be captured.⁵⁷

International Spillovers: First, agencies may not ignore significant, indirect costs to trade, human health, and security likely to “spill over” to the United States as other regions experience climate change damages.⁵⁸ Due to its unique place among countries—both as the largest economy with trade- and investment-dependent links throughout the world, and as a military superpower—the United States is particularly vulnerable to effects that will spill over from other regions of the world. Spillover scenarios could entail a variety of serious costs to the United States as unchecked climate change devastates other countries. Correspondingly, mitigation or adaptation efforts that avoid climate damages to foreign countries will radiate benefits back to the United States as well.⁵⁹ While the current IAMs provide

Regulatory Impact Analysis”. Interagency Working Group on Social Cost of Carbon (IWGSCC), United States Government. 2011.]”).

⁵³ <https://www.regulations.gov/document?D=BLM-2017-0002-0002>; https://www.epa.gov/sites/production/files/2017-11/documents/oilgas_memo_proposed-stay_2017-10.pdf

⁵⁴ <http://www.cofemersimir.gob.mx/mirs/45614>.

⁵⁵ Howard & Schwartz, *supra* note 39, at 220-21.

⁵⁶ Circular A-4 at 18.

⁵⁷ This section draws heavily from Howard & Schwartz (2017), *supra* note 39, and includes passages taken directly from that article (which was written by co-authors of these comments).

⁵⁸ Indeed, the integrated assessment models used to develop the global SCC estimates largely ignore inter-regional costs entirely. See Howard 2014, *supra* note **Error! Bookmark not defined.** Though some positive spillover effects are also possible, such as technology spillovers that reduce the cost of mitigation or adaptation, see S. Rao et al., *Importance of Technological Change and Spillovers in Long-Term Climate Policy*, 27 ENERGY J. 123-39 (2006), overall spillovers likely mean that the U.S. share of the global SCC is underestimated, see Jody Freeman & Andrew Guzman, *Climate Change and U.S. Interests*, 109 COLUMBIA L. REV. 1531 (2009).

⁵⁹ See Freeman & Guzman, *supra* note 58, at 1563-93.

reliable but conservative estimates of global damages, they currently cannot calculate reliable region-specific estimates, in part because they do not model such spillovers.

As climate change disrupts the economies of other countries, decreased availability of imported inputs, intermediary goods, and consumption goods may cause supply shocks to the U.S. economy. Shocks to the supply of energy, technological, and agricultural goods could be especially damaging. For example, when Thailand—the world’s second-largest producer of hard-drives—experienced flooding in 2011, U.S. consumers faced higher prices for many electronic goods, from computers to cameras.⁶⁰ A recent economic study explored how heat stress-induced reductions in productivity worldwide will ripple through the interconnected global supply network.⁶¹ Similarly, the U.S. economy could experience demand shocks as climate-affected countries decrease their demand for U.S. goods. Financial markets may also suffer as foreign countries become less able to loan money to the United States and as the value of U.S. firms declines with shrinking foreign profits. As seen historically, economic disruptions in one country can cause financial crises that reverberate globally at a breakneck pace.⁶²

The human dimension of climate spillovers includes migration and health effects. Water and food scarcity, flooding or extreme weather events, violent conflicts, economic collapses, and a number of other climate damages could precipitate mass migration to the United States from regions worldwide, especially, perhaps, from Latin America. For example, a 10% decline in crop yields could trigger the emigration of 2% of the entire Mexican population to other regions, mostly to the United States.⁶³ Such an influx could strain the U.S. economy and will likely lead to increased U.S. expenditures on migration prevention. Infectious disease could also spill across the U.S. borders, exacerbated by ecological collapses, the breakdown of public infrastructure in poorer nations, declining resources available for prevention, shifting habitats for disease vectors, and mass migration.

Finally, climate change is predicted to exacerbate existing security threats—and possibly catalyze new security threats—to the United States.⁶⁴ Besides threats to U.S. military installations and operations at home and abroad from flooding, storms, extreme heat, and wildfires,⁶⁵ Secretary of Defense Mattis has explained that “Climate change is impacting stability in areas of the world where our troops are operating today.”⁶⁶ The National Defense Authorization Act for Fiscal Year 2018 found that “climate change is a direct threat to the national security of the United States” and that “[a]s global temperature rise, droughts and famines can lead to more failed states, which are breeding grounds of extremist and terrorist organizations.”⁶⁷ The Department of Defense’s 2014 Defense Review declared that climate effects “are threat multipliers that will aggravate stressors abroad such as poverty, environmental degradation, political instability, and social tensions—conditions that can enable terrorist activity and other forms of violence,” and as a result “climate change may increase the frequency, scale, and complexity of future missions, including defense support to civil authorities, while at the same time

⁶⁰ See Charles Arthur, *Thailand’s Devastating Floods Are Hitting PC Hard Drive Supplies*, THE GUARDIAN, Oct. 25, 2011.

⁶¹ Leonie Wenz & Anders Levermann, *Enhanced Economic Connectivity to Foster Heat Stress-Related Losses*, SCIENCE ADVANCES (June 10, 2016).

⁶² See Steven L. Schwarcz, *Systemic Risk*, 97 GEO. L.J. 193, 249 (2008) (observing that financial collapse in one country is inevitably felt beyond that country’s borders).

⁶³ Shuaizhang Feng, Alan B. Krueger & Michael Oppenheimer, *Linkages Among Climate Change, Crop Yields and Mexico-U.S. Cross-Border Migration*, 107 PROC. NAT’L ACAD. SCI. 14,257 (2010).

⁶⁴ See CNA Military Advisory Board, *National Security and the Accelerating Risks of Climate Change* (2014).

⁶⁵ U.S. Gov’t Accountability Office, GAO-14-446 *Climate Change Adaptation: DOD Can Improve Infrastructure Planning and Processes to Better Account for Potential Impacts* (2014); Union of Concerned Scientists, *The U.S. Military on the Front Lines of Rising Seas* (2016).

⁶⁶ Andrew Revkin, *Trump’s Defense Secretary Cites Climate Change as National Security Challenge*, ProPublica, Mar. 14, 2017.

⁶⁷ H.R. 2810-75, § 335(a)(9), (b)(1).

undermining the capacity of our domestic installations to support training activities.”⁶⁸ As an example of the climate-security-migration nexus, prolonged drought in Syria likely exacerbated the social and political tensions that erupted into an ongoing civil war,⁶⁹ which has triggered an international migration and humanitarian crisis.⁷⁰

Because of these interconnections, attempts to artificially segregate a U.S.-only portion of climate damages will inevitably result in misleading underestimates. Some experts on the social cost of carbon have concluded that, given that integrated assessment models currently do not capture many of these key inter-regional costs, use of the global SCC may be further justified as a proxy to capturing all spillover effects.⁷¹ Though surely not all climate damages will spill back to affect the United States, many will, and together with other justifications, the likelihood of significant spillovers makes a global valuation the better, more transparent accounting of the full range of costs and benefits that matter to U.S. policymakers and the public.

Reciprocal Foreign Actions: Second, an indirect consequence of the United States using a global social cost of greenhouse gas to justify actions that protect against climate damages is that foreign countries take reciprocal actions that benefit the United States. Circular A-4 requires that the “same standards of information and analysis quality that apply to direct benefits and costs should be applied to ancillary benefits and countervailing risks.”⁷² Consequently, any attempt to estimate a domestic-only value of the social cost of greenhouse gas must include indirect effects from reciprocal foreign actions.

As detailed more in Howard & Schwartz (2017), because the world’s climate is a single interconnected system, the United States benefits greatly when foreign countries consider the global externalities of their greenhouse gas pollution and cut emissions accordingly. Game theory predicts that one viable strategy for the United States to encourage other countries to think globally in setting their climate policies is for the United States to do the same, in a tit-for-tat, lead-by-example, or coalition-building dynamic. In fact, most other countries with climate policies already use a global social cost of carbon or set their carbon taxes or allowances at prices above their domestic-only costs, consistent with the global perspective used to date by U.S. agencies to value the cost of greenhouse gases. Both Republican and Democratic administrations have recognized that the analytical and regulatory choices of U.S. agencies can affect the actions of foreign countries, which in turn affect U.S. citizens.⁷³

⁶⁸ U.S. Dep’t of Defense, *Quadrennial Defense Review 2014* vi, 8 (2014).; see also U.S. Dep’t of Defense, *Report to Congress: National Security Implications of Climate-Related Risks and a Changing Climate* (2015), available at <http://archive.defense.gov/pubs/150724-congressional-report-on-national-implications-of-climate-change.pdf?source=govdelivery> (“Global climate change will have wide-ranging implications for U.S. national security interests over the foreseeable future because it will aggravate existing problems—such as poverty, social tensions, environmental degradation, ineffectual leadership, and weak political institutions—that threaten domestic stability in a number of countries.”)

⁶⁹ See Center for American Progress et al., *The Arab Spring and Climate Change: A Climate and Security Correlations Series* (2013); Colin P. Kelley et al., *Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought*, 112 *PROC. NAT’L ACAD. SCI.* 3241 (2014); Peter H. Gleick, *Water, Drought, Climate Change, and Conflict in Syria*, 6 *WEATHER, CLIMATE & SOCIETY*, 331 (2014).

⁷⁰ See, e.g., *Ending Syria War Key to Migrant Crisis, Says U.S. General*, *BBC.COM* (Sept. 14, 2015).

⁷¹ See Robert E. Kopp & Bryan K. Mignone, *Circumspection, Reciprocity, and Optimal Carbon Prices*, 120 *CLIMATE CHANGE* 831, 833 (2013).

⁷² Circular A-4 at 26.

⁷³ Howard & Schwartz, *supra* note 39, at 232-37 (citing acknowledgement of this phenomenon by both the Bush administration and the Obama administration).

According to one study, over the next fifteen years, direct U.S. benefits from global climate policies already in effect could reach over \$2 trillion.⁷⁴ Any attempt to estimate a domestic-only value of the social cost of greenhouse gases must include such indirect effects from reciprocal foreign actions.⁷⁵

Accounting for U.S. benefits from global reciprocal action still understates the potential loss from failing to account for reciprocity. As noted above, other countries may select a domestic SCC in response to the U.S. selecting a domestic number. Since a GDP-based SCC would be higher for the U.S. than other nations, U.S. industry would be placed at a competitive disadvantage internationally if all countries reverted to their own domestic-only SCCs. Thus, not only should the United States account for reciprocity, but it should do so in a general equilibrium context.

Extraterritorial Interests: Circular A-4 requires agencies to count all significant costs and benefits, and specifically explains the importance of including “non-use” values like “bequest and existence values”: “ignoring these values in your regulatory analysis may significantly understate the benefits and/or costs of regulatory action.”⁷⁶ Similarly, while Circular A-4 distinguishes altruism from non-use values, the guidance instructs agencies that “if there is evidence of selective altruism, it needs to be considered specifically in both benefits and costs.”⁷⁷ Many costs and benefits accrue to U.S. citizens from use values, non-use values, and altruism attached to climate effects occurring outside the U.S. borders.

U.S. citizens have economic and other interests abroad that are not fully reflected in the U.S. share of global GDP. As explained above, GDP does not reflect significant U.S. ownership interests in foreign businesses, properties, and other assets, as well as consumption abroad including tourism, or even the 8 million Americans living abroad.

The United States also has a willingness to pay—as well as a legal obligation—to protect the global commons of the oceans and Antarctica from climate damages. For example, the Madrid Protocol on Environmental Protection to the Antarctic Treaty commits the United States and other parties to the “comprehensive protection of the Antarctic environment,” including “regular and effective monitoring” of “effects of activities carried on both within and outside the Antarctic Treaty area on the Antarctic environment.”⁷⁸ The share of climate damages for which the United States is responsible is not limited to our geographic borders.

Similarly, U.S. citizens value natural resources and plant and animal lives abroad, even if they never use those resources or see those plants or animals. For example, the “existence value” of restoring the Prince William Sound after the 1989 Exxon Valdez oil tanker disaster—that is, the benefits derived by Americans who would never visit Alaska but nevertheless felt strongly about preserving the existence of this pristine environment—was estimated in the billions of dollars.⁷⁹ Though the methodologies for calculating existence value remain controversial,⁸⁰ U.S. citizens certainly have a non-zero willingness to pay to protect rainforests, charismatic megafauna like pandas, and other life and environments existing in foreign countries. U.S. citizens also have an altruistic willingness to pay to protect foreign citizens’

⁷⁴ Policy Integrity, *Foreign Action, Domestic Windfall: The U.S. Economy Stands to Gain Trillions from Foreign Climate Action* 11 (2015), <http://policyintegrity.org/files/publications/ForeignActionDomesticWindfall.pdf>

⁷⁵ Kotchen shows that the optimally strategic social cost of greenhouse gas value will be strictly higher than the domestic value for all countries. Matthew J. Kotchen, *Which Social Cost of Carbon? A Theoretical Perspective* (NBER Working Paper, 2016).

⁷⁶ Circular A-4 at 22.

⁷⁷ *Id.*

⁷⁸ Madrid Protocol on Environmental Protection to the Antarctic Treaty (1991), http://www.ats.aq/documents/recatt/Att006_e.pdf

⁷⁹ RICHARD REVESZ & MICHAEL LIVERMORE, *RETAKING RATIONALITY* 121 (2008).

⁸⁰ *Id.* at 129.

health and welfare.⁸¹ This altruism is “selective altruism,” consistent with Circular A-4, because the United States is directly responsible for most of the historic emissions contributing to climate change.⁸²

The Agencies Implicitly Count Global Cost Savings While Ignoring Global Climate Effects: The inextricable interconnectedness of global economic interests is apparent from the fact that the agencies never attempt to separate out cost savings to foreign interests. Yet because all industry compliance costs ultimately fall on the owners, employees, or customers of regulated and affected firms, a significant portion of the proposed action’s alleged cost savings would ultimately accrue to foreign owners and foreign customers of manufacturers. The agencies never distinguish between those cost savings that would accrue to foreign entities as opposed to U.S. citizens or U.S. entities, and so their calculations of cost savings implicitly include all global effects.

For example, the agencies’ calculations of compliance costs for the CAFE standards make the simplifying assumption that manufacturers will be able to pass through all technology costs to U.S. consumers. In reality, the agencies acknowledge that manufacturers will not always be able to pass costs directly to the buyer of the specific car associated with those costs. Instead, either the manufacturer’s profits will decline to the detriment of its investors, or else the manufacturer will recover those extra costs by charging higher prices for its other models.⁸³ In particular, the agencies assume that the buyers of electric vehicles are not willing to pay the full additional technology costs, and the difference must be borne by investors or other customers. There is no reason to think that when a manufacturer tries to recover lost profits by increasing the price of other models, it will only affect prices of vehicles sold to U.S. citizens as opposed to also affecting the prices of vehicles either sold abroad in foreign markets or sold domestically to foreign-owned businesses that operate fleets in the United States. Putting aside any problems with the agencies’ assumptions about EV buyers’ willingness to pay, it is clear that when the agencies report that the proposed rollback will save U.S. purchasers of new cars \$255.6 billion,⁸⁴ some significant but undefined portion of that amount will actually accrue to: foreign shareholders of manufacturers, foreign customers of vehicles sold abroad, and foreign entities purchasing vehicles in the United States, including investors of businesses that operate fleets in the United States. Nevertheless, the agencies fully count all these global cost savings and lumps them together with domestic cost savings.

The agencies do not, for instance, distinguish between savings that might accrue to the investors of Japan-headquartered Toyota Motors as compared to savings that might accrue to the investors of U.S.-headquartered General Motors. And of course, both manufacturers are publicly traded companies with significant non-U.S. investors. Economy-wide, between 20-30% of U.S. stocks and 35% of U.S. corporate debt are held by foreigners.⁸⁵ Similarly, both manufacturers have customers not just in the United States, but across the world. Finally, foreign entities may purchase cars and light trucks within the U.S. marketplace. For instance, Agrium’s retail agricultural supply business operates one of the largest

⁸¹ See Arden Rowell, *Foreign Impacts and Climate Change*, 39 *Harvard Environmental Law Rev.* 371 (2015); David A. Dana, *Valuing Foreign Lives and Civilizations in Cost-Benefit Analysis: The Case of the United States and Climate Change Policy* (Northwestern Faculty Working Paper 196, 2009), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1195&context=facultyworkingpapers> (discussing U.S. charitable giving abroad and foreign aid, and how those metrics likely severely underestimate true U.S. willingness to pay to protect foreign welfare).

⁸² Datablog, *A History of CO₂ Emissions*, *THE GUARDIAN* (Sept. 2, 2009) (from 1900-2004, the United States emitted 314,772.1 million metric tons of carbon dioxide; Russia and China follow, with only around 89,000 million metric tons each).

⁸³ 83 Fed. Reg. at 43,085.

⁸⁴ 83 Fed. Reg. 43,062. Using this figure in no way endorses the agencies’ calculations of cost savings as accurate.

⁸⁵ Heather Long, *Foreign Investors Can’t Get Enough of the U.S.*, *CNN*, Oct. 1, 2015, <http://money.cnn.com/2015/10/01/investing/foreign-investors-buy-us-stocks-bonds/index.html>.

corporate fleets of pickup trucks and cargo vans operating in the United States;⁸⁶ Agrium is a privately-owned company based in Canada.⁸⁷ In sum, a significant portion of the regulatory effects passing through regulated companies would ultimately be experienced by foreign owners or foreign customers. Yet despite counting compliance costs in full regardless of whether they are accrued inside or outside of the United States, the agencies ignore legitimate effects of climate change occurring outside U.S. borders. This inconsistent treatment of costs and benefits is patently arbitrary and capricious.

The agencies also take a global perspective on the monopsony effect even while insisting it must take a domestic perspective on climate change. The agencies argue that even though relaxing the CAFE standards will increase U.S. fuel demand, the resulting increase in the global fuel price will not result in a monopsony cost effect for U.S. consumers. The agencies' reason is that the United States is increasingly self-sufficient with respect to its supply of gasoline and will become a net exporter within the decade.⁸⁸ As a result, the agencies conclude that any increase in global fuel price resulting from the proposed action will result in a transfer from U.S. consumers to domestic producers, and not to foreign producers, resulting in \$0 in monopsony costs from the domestic perspective.

This assumption on monopsony is wrong for several reasons, and is inconsistent with the approach the agencies take on climate damages. Even assuming that the United States will soon become a net exporter of petroleum, there are still foreign suppliers in the meantime, and there would continue to be foreign suppliers even after the United States achieves net-export status. Petroleum prices are set in a global market. The assumption that all U.S. consumers purchase their fuel from domestic producers also runs counter to the agencies' wildly different assumptions regarding upstream emissions, where the analysis imagined that 95% of increased fuel consumption through the year 2050 would come either from imported gasoline or imported crude.⁸⁹ If the assumptions from the upstream analysis were applied to the monopsony analysis, the price increase resulting from the CAFE rollbacks would result in a hefty transfer from U.S. consumers to foreign producers. Regardless, there are significant foreign shareholders of even "domestic" producers. The Government Pension Fund of Norway, for instance, owned over seven million shares in ConocoPhillips as of 2017,⁹⁰ and in general there is significant foreign direct investment in U.S. fossil fuel extraction.⁹¹ Even within a transfer from a U.S. consumer to a nominally domestic producer, some of the distributional benefits accrue outside the United States.

Yet the agencies ignore all this and instead assume \$0 in monopsony costs. Essentially, the agencies are taking a global perspective on the monopsony effect, counting any financial transfers from a U.S. consumer to a foreign entity as a wash. Despite this global approach to monopsony costs, the agencies

⁸⁶ FleetTrax, The Largest Fleets in America, <https://fleettrax.net/largest-fleets-america/> ("Agrium also owns and operates a staggering 7,627 pickup trucks and cargo vans—a record number for this list."); reporting on "the largest private fleets operating in the United States"); see also Transport Topics, 2017 Essential Financial and Operating Information for the 100 Largest Private Carriers in North America https://www.ttnews.com/top100/private/2017?order=field_pickups_cargo_vans&sort=desc. Presumably Agrium purchases at least some of its new light trucks from manufacturers in the U.S. market subject to CAFE standards.

⁸⁷ Yahoo Finance, Agrium, <https://finance.yahoo.com/company/agrium?h=eyJlIjoiYWdyaXVtIiwibil6IkFncml1bSJ9&.tsrc=fin-srch>. Agrium's parent company is the Canadian-based Nutrien.

⁸⁸ PRIA at 114; 83 Fed. Reg. 43,067.

⁸⁹ See *supra* on upstream emissions; see also PRIA at 1073, which assumes for the purposes of calculating energy shock costs that 75% of increased consumption will come from increased imports—again, that number is very different from 0%.

⁹⁰ See Morningstar, ConocoPhillips Major Shareholders (last visited Dec. 12, 2017), <http://investors.morningstar.com/ownership/shareholders-major.html?t=COP®ion=usa&culture=en-US&ownerCountry=USA>.

⁹¹ Dept. of Treasury, *U.S. Portfolio Holdings of Foreign Securities*, exhibit 19 (2017) https://www.treasury.gov/press-center/press-releases/Documents/shl2016_final_20170421.pdf (market value of foreign holdings of U.S. securities, by industry).

inconsistently insist on taking a domestic-only perspective on climate damages. Again, this inconsistent treatment of effects is patently arbitrary and capricious.

Standards of Rational Decisionmaking Require Consideration of Important, Globally Interconnected Climate Costs

The Administrative Procedure Act, as interpreted by the Supreme Court in *State Farm*, requires agencies to consider all “important aspect[s] of the problem” and articulate a rational connection between the facts and the choice made.⁹²

Two courts of appeals have already applied arbitrary and capricious review to support the use of a global social cost of carbon in setting regulatory standards. In *Center for Biological Diversity v. NHTSA*, the U.S. Court of Appeals for the Ninth Circuit not only held that it was arbitrary not to monetize the greenhouse gas benefits of vehicle efficiency standards, but also approvingly cited a partial consensus among experts around an estimate of “\$50 per ton of carbon (or \$13.60 per ton CO₂),”⁹³ which, in the year 2006 when the rule was issued, would have been consistent with estimates of a global social cost of carbon.⁹⁴ More recently, in *Zero Zone v. Department of Energy*, the Court of Appeals for the Seventh Circuit found, in response to petitioners’ challenge that the agency’s consideration of the global social cost of carbon was arbitrary, that the agency had acted reasonably in considering the global climate effects.⁹⁵

For more details on the justification for a global value of the social cost of greenhouse gases, including the applicable standards of rational decisionmaking, please see Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 Columbia J. Envtl. L. 203 (2017). Another strong defense of the global valuation as consistent with best economic practices appears in a letter published in a recent issue of *The Review of Environmental Economics and Policy*, co-authored by Nobel laureate Kenneth Arrow.⁹⁶

No Current Methodology for Estimating a “Domestic-Only” Value Is Consistent with Circular A-4

OMB, the National Academies of Sciences, and the economic literature all agree that existing methodologies for calculating a “domestic-only” value of the social cost of greenhouse gases are deeply flawed and result in severe and misleading underestimates.

In developing the social cost of carbon, the IWG did offer some such domestic estimates. Using the results of one economic model (FUND) as well as the U.S. share of global gross domestic product (“GDP”), the group generated an “approximate, provisional, and **highly speculative**” range of 7–23% of the global social cost of carbon as an estimate of the purely direct climate effects to the United States.⁹⁷ Yet, as the IWG itself acknowledged, this range is almost certainly an underestimate because it ignores

⁹² 5 U.S.C. § 706; see *Motor Vehicle Manufacturers Assoc. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983) (applying the standards of review to deregulatory action and concluding that when “rescinding a rule” an agency “is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance”).

⁹³ 538 F.3d at 1199, 1201.

⁹⁴ See *Average Fuel Economy Standards, Passenger Cars and Light Trucks; Model Years 2011-2015*, 73 Fed. Reg. 24,352, 24,414 (May 2, 2008) (the National Highway Traffic Safety Administration estimated that \$14 per ton of carbon dioxide approximated global benefits).

⁹⁵ 832 F.3d at 679.

⁹⁶ Richard Revesz, Kenneth Arrow et al., *The Social Cost of Carbon: A Global Imperative*, 11 REEP 172 (2017).

⁹⁷ INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 at 11 (2010).

significant, indirect costs to trade, human health, and security that are likely to “spill over” into the United States as other regions experience climate change damages, among other effects.⁹⁸

Neither the existing IAMs nor a share of global GDP are appropriate bases for calculating a domestic-only estimate. The IAMs were never designed to calculate a domestic SCC, since a global SCC is the economic efficient value. FUND, like other IAMs, includes some simplifying assumptions: of relevance, FUND and the other IAMs are not able to capture the adverse effects that the impacts of climate change in other countries will have on the United States through trade linkages, national security, migration, and other forces.⁹⁹ This is why the IWG characterized the domestic-only estimate from FUND as a “highly speculative” underestimate. Similarly, a domestic-only estimate based on some rigid conception of geographic borders or U.S. share of world GDP will fail to capture all the climate-related costs and benefits that matter to U.S. citizens.¹⁰⁰ U.S. citizens have economic and other interests abroad that are not fully reflected in the U.S. share of global GDP. GDP is a “monetary value of final goods and services—that is, those that are bought by the final user—produced in a country in a given period of time.”¹⁰¹ GDP therefore does not reflect significant U.S. ownership interests in foreign businesses, properties, and other assets, as well as consumption abroad including tourism,¹⁰² or even the 8 million Americans living abroad.¹⁰³ At the same time, GDP is also over-inclusive, counting productive operations in the United States that are owned by foreigners. Gross National Income (“GNI”), by contrast, defines its scope not by location but by ownership interests.¹⁰⁴ However, not only has GNI fallen out of favor as a metric used in international economic policy,¹⁰⁵ but using a domestic-only SCC based on GNI would make the SCC metrics incommensurable with other costs in regulatory impact analyses, since most regulatory costs are calculated by U.S. agencies regardless of whether they fall to U.S.-owned entities or to foreign-owned entities operating in the United States.¹⁰⁶ Furthermore, both GDP and GNI are dependent on what happens in other countries, due to trade and the international flow of capital. The artificial constraints of both metrics counsel against a rigid split based on either U.S. GDP or U.S. GNI.¹⁰⁷

⁹⁸ *Id.* (explaining that the IAMs, like FUND, do “not account for how damages in other regions could affect the United States (e.g., global migration, economic and political destabilization”).

⁹⁹ See, e.g., Dept. of Defense, *National Security Implications of Climate-Related Risks and a Changing Climate* (2015), available at <http://archive.defense.gov/pubs/150724-congressional-report-on-national-implications-of-climate-change.pdf?source=govdelivery>.

¹⁰⁰ A domestic-only SCC would fail to “provide to the public and to OMB a careful and transparent analysis of the anticipated consequences of economically significant regulatory actions.” Office of Information and Regulatory Affairs, *Regulatory Impact Analysis: A Primer 2* (2011).

¹⁰¹ Tim Callen, *Gross Domestic Product: An Economy’s All*, IMF, <http://www.imf.org/external/pubs/ft/fandd/basics/gdp.htm> (last updated Mar. 28, 2012).

¹⁰² “U.S. residents spend millions each year on foreign travel, including travel to places that are at substantial risk from climate change, such as European cities like Venice and tropical destinations like the Caribbean islands.” David A. Dana, *Valuing Foreign Lives and Civilizations in Cost-Benefit Analysis: The Case of the United States and Climate Change Policy* (Northwestern Faculty Working Paper 196, 2009), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1195&context=facultyworkingpapers>.

¹⁰³ Assoc. of Americans Resident Overseas, <https://www.aaro.org/about-aaro/6m-americans-abroad>. Admittedly 8 million is only 0.1% of the total population living outside the United States.

¹⁰⁴ *GNI, Atlas Method (Current US\$)*, THE WORLD BANK, <http://data.worldbank.org/indicator/NY.GNP.ATLS.CD>.

¹⁰⁵ *Id.*

¹⁰⁶ U.S. Office of Management and Budget & Secretariat General of the European Commission, *Review of Application of EU and US Regulatory Impact Assessment Guidelines on the Analysis of Impacts on International Trade and Development 13* (2008).

¹⁰⁷ Advanced Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44,354, 44,415 (July 30, 2008) (“Furthermore, international effects of climate change may also affect domestic benefits directly and indirectly to the extent U.S. citizens value international impacts (e.g., for tourism reasons, concerns for the existence of ecosystems, and/or concern for others); U.S. international interests are affected (e.g., risks to U.S. national security, or the U.S. economy from potential disruptions in other nations).”).

As a result, in 2015, OMB concluded, along with several other agencies, that “good methodologies for estimating domestic damages do not currently exist.”¹⁰⁸ Similarly, the NAS recently concluded that current IAMs cannot accurately estimate the domestic social cost of greenhouse gases, and that estimates based on U.S. share of global GDP would be likewise insufficient.¹⁰⁹ The agencies even quote the NAS report’s warnings that current IAMs do not model international spillovers or reciprocity¹¹⁰—and yet, the agencies take no action as a result of that caution against domestic-only estimates. William Nordhaus, the developer of the DICE model who recently won the Nobel Prize in Economics for his work on modeling climate effects,¹¹¹ recently cautioned that “regional damage estimates are both incomplete and poorly understood,” and “there is little agreement on the distribution of the SCC by region.”¹¹² In short, any domestic-only estimate will be inaccurate, misleading, and out of step with the best available economic literature, in violation of Circular A-4’s standards for information quality.

The Agencies Rely on Sources that Cannot Accurately Calculate a Domestic-Only Estimate and that Explicitly Caution Against Using Domestic-Only Estimates

The agencies report that their domestic-only estimates are “calculated directly” from the models FUND and PAGE; for the model DICE, the agencies simply assume that U.S. damages are 10% of global damages.¹¹³ The agencies thus use these models in ways they were never designed for—indeed, in ways their designers specifically cautioned against. The agencies furthermore fail to assess the most up-to-date literature on U.S. damages and fails to take steps to reflect spillover effects, reciprocal benefits, or U.S. interests beyond our borders. The agencies’ methodology is deeply flawed.

The integrated assessment models used by the agencies to calculate the social cost of greenhouse gases were designed to create global estimates and are best suited for those purposes. The models are limited in how accurately and fully they can estimate domestic values of the social cost of greenhouse gases. For example, the models make simplifying assumptions about the extent of heterogeneity in crucial parameters like relative prices and discount rates.¹¹⁴ The models also simplify or ignore completely global spillovers from trade, migration, and other sources.¹¹⁵ These types of spillovers will not, in many cases, affect the global estimate of climate change damages, but they will change (perhaps dramatically so) the domestic estimates, as detailed below. For example, trade effects will net to zero globally. A decrease in exports by one country must correspond to a decrease in imports for another country.¹¹⁶

¹⁰⁸ In November 2013, OMB requested public comments on the social cost of carbon. In 2015, OMB along with the rest of the Interagency Working Group issued a formal response to those comments. Interagency Working Group on the Social Cost of Carbon, *Response to Comments: Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12,866* at 36 (July 2015) [hereinafter, OMB 2015 Response to Comments].

¹⁰⁹ National Academies of Sciences, Engineering, and Medicine, *Valuing climate damages: Updating estimation of the social cost of carbon dioxide* at 53 (2017) [hereinafter NAS Second Report].

¹¹⁰ PRIA at 1065 (“The Academies’ report also discussed the challenges in developing domestic SC-CO2 estimates, noting that current IAMs do not model all relevant regional interactions – i.e., how climate change impacts in other regions of the world could affect the United States, through pathways such as global migration, economic destabilization, and political destabilization. The Academies concluded that it ‘is important to consider what constitutes a domestic impact in the case of a global pollutant that could have international implications that impact the United States. More thoroughly estimating a domestic SC-CO2 would therefore need to consider the potential implications of climate impacts on, and actions by, other countries, which also have impacts on the United States.’”).

¹¹¹ <https://www.nobelprize.org/prizes/economic-sciences/2018/nordhaus/facts/>

¹¹² William Nordhaus, *Revisiting the Social Cost of Carbon*, 114 PNAS 1518, 1522 (2017).

¹¹³ PRIA at 1098.

¹¹⁴ Christian Gollier & James K. Hammitt, *The Long-Run Discount Rate Controversy*, 6 ANNU. REV. RESOUR. ECON. 273–295 (2014) at 287–289.

¹¹⁵ See generally Howard & Schwartz (2017), *supra* note 39.

¹¹⁶ See, e.g. PAUL R. KRUGMAN, MAURICE OBSTFELD & MARC J. MELTZ, *INTERNATIONAL ECONOMICS: THEORY AND POLICY* (10 ed. 2015). Such changes could have an effect on overall levels of trade, in turn effecting global damage estimates.

Global estimates will also generally be more accurate than domestic estimates because aggregation of multiple values reduces the error of the overall estimate.¹¹⁷

Examining the individual models used by the agencies to calculate the domestic social cost of greenhouse gases highlights the current limitations facing calculation of a domestic value of the social cost of greenhouse gases. The agency uses three models: FUND 3.8, PAGE09, and DICE 2010.¹¹⁸ The FUND model generally estimates domestic damages from climate change by scaling estimates according to gross domestic product or population. For instance, forestry damages are “mapped to the FUND regions assuming that the impact is uniform [relative] to GDP.”¹¹⁹ Similarly, domestic energy consumption changes are a function of gross domestic product, and the authors note that “heating demand is linear in the number of people” in a FUND region.¹²⁰ Scaling damages by gross domestic product and population will fail to capture important differences between countries like pre-existing climate, interconnectedness of trade relationships, climate change preparedness, and preferences.

These issues are readily apparent in the case of agricultural damage estimates in FUND. Agriculture is one of the most important sectors driving the relatively low damages in the FUND model. Yet, recent evidence on this sector that incorporates cutting-edge estimates of crop yield changes finds that the FUND model substantially understates the agricultural damages from climate change.¹²¹ Particularly for domestic damages, new research shows that FUND dramatically understates the effect of warming on agricultural outcomes globally and for individual countries like the United States.¹²² These higher damage estimates come from updates to the relationship between warming and crop yield but also from a more thorough modeling of international trade in agricultural products.

The PAGE09 model scales global damages estimates according to regional coastline length, with the IWG noting that, “The [domestic] scaling factor in PAGE09 is based on the length of a region’s coastline relative to the EU...Because of the long coastline in the EU, other regions are, on average, less vulnerable than the EU for the same sea level and temperature increase.”¹²³ The model also uses GDP scaling, stating that “other regions lose more or less [output] depending upon their GDP per capita and weights factors.”¹²⁴ Coast-line length provides a reasonable scaling factor for damages from flooding, coastal storms, and other sea-level rise issues, but it likely understates damages to the United States, where increases in mortality, agricultural losses, and other effects will likely also occur in inland, warm areas of the country.¹²⁵ Scaling by gross domestic product has the same limitations noted above in the context of the FUND model.

Finally, the author of DICE 2010 has explicitly warned against using a domestic-only value. In a recent article, William Nordhaus states that, “The regional estimates [of the social cost of greenhouse gases] are poorly understood, often varying by a factor of 2 across the three models. Moreover, regional damage estimates are highly correlated with output shares.” He later reiterates that “the regional

¹¹⁷ See, e.g. SIDNEY I RESNICK, *A PROBABILITY PATH* (2013) at 203.

¹¹⁸ PRIA at 1098.

¹¹⁹ DAVID ANTHOFF & RICHARD S. J. TOL, *THE CLIMATE FRAMEWORK FOR UNCERTAINTY, NEGOTIATION, AND DISTRIBUTION (FUND)*, TECHNICAL DESCRIPTION, VERSION 3.8 (2014) at 8.

¹²⁰ *Id.* at 10.

¹²¹ Frances C Francis C Moore, Uris Lantz C Baldos & Thomas Hertel, *Economic impacts of climate change on agriculture: a comparison of process-based and statistical yield models*, 12 *ENVIRON. RES. LETT.* 65008 (2017).

¹²² F. C. Moore et al., *New Science of Climate Change Impacts on Agriculture Implies Higher Social Cost of Carbon*, 1–43 (2017).

¹²³ IWG, 2013 Technical Update to the Social Cost of Carbon, at 10.

¹²⁴ Chris Hope, *Critical issues for the calculation of the social cost of CO₂: why the estimates from PAGE09 are higher than those from PAGE2002*, 117 *CLIM. CHANGE* 531–543 (2013) at 539.

¹²⁵ Solomon Hsiang et al., *Economic Damage from Climate Change in the United States*, 1369 *SCIENCE*. 1362–1369 (2017).

damage estimates are both incomplete and poorly understood.”¹²⁶ These statements reinforce the conclusion of OMB that “good methodologies for estimating domestic damages do not currently exist.”¹²⁷

In conclusion, the agencies’ estimation of the domestic-only social cost of greenhouse gases ignores “important aspect[s] of the problem” and fails to articulate a rational connection between the data and the choice made, and is therefore arbitrary and capricious in violation of the Administrative Procedure Act.¹²⁸

V. The Agencies Must Rely on a 3% or Lower Discount Rate for Intergenerational Effects—or a Declining Discount Rate

Because of the long lifespan of greenhouse gases and the long-term or irreversible consequences of climate change, the effects of today’s emissions changes will stretch out over the next several centuries. The time horizon for an agency’s analysis of climate effects, as well as the discount rate applied to future costs and benefits, determines how an agency treats future generations. Previously, federal agencies had focused on a central estimate of the social cost of greenhouse gases calculated at a 3% discount rate. The agencies now propose to give equal consideration to estimates calculated at a 7% discount rate, alleging that this is required by Circular A-4.¹²⁹ The agencies are wrong. Not only does use of a 7% discount rate violate statutorily required consideration of impacts on future generations, but a 7% rate for intergenerational climate effects is inconsistent with best economic practices, including under Circular A-4. In 2015, OMB explained that “Circular A-4 is a living document. . . . [T]he use of **7 percent is not considered appropriate** for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A-4 itself.”¹³⁰ While Circular A-4 tells agencies generally to use a 7% discount rate in addition to lower rates for typical rules,¹³¹ the guidance does not intend for default assumptions to produce analyses inconsistent with best economic practices. Circular A-4 clearly supports using lower rates to the exclusion of a 7% rate for the costs and benefits occurring over the extremely long, 300-year time horizon of climate effects.

Statutory Authority Requires Protecting the Needs of Future Generations; a 7% Discount Rate Ignores Those Future Needs

Section 202 of the Clean Air Act requires EPA to regulate a source category that “causes, or contributes to, air pollution which may reasonably be anticipate[d] to endanger public health or welfare.”¹³² The Clean Air Act explicitly defines “welfare” to include “effects on . . . climate.”¹³³ The terms “endanger” and “reasonably anticipate” are not defined, but their plain dictionary definitions include a temporal element, and legislative history confirms that this language was chosen deliberately to ensure that harms need not be imminent before EPA must act.

¹²⁶ William D Nordhaus, *Revisiting the social cost of carbon*, 114 PROC. NATL. ACAD. SCI. U. S. A. 1518–1523 (2017) at 1522.

¹²⁷ OMB 2015 Response to Comments, *supra* 108.

¹²⁸ 5 U.S.C. § 706; *see* Motor Vehicle Manufacturers Assoc. v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 41-42 (1983) (applying the standards of review to deregulatory action and concluding that when “rescinding a rule” an agency “is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance”).

¹²⁹ PRIA 1078.

¹³⁰ OMB 2015 Response to Comments, *supra* note 108, at 36.

¹³¹ Circular A-4 at 36 (“For regulatory analysis, you should provide estimates of net benefits using both 3 percent and 7 percent....If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.”).

¹³² 42 U.S.C. § 7411(b)(1)(A).

¹³³ 42 U.S.C. § 7602(h).

In the 1970 Clean Air Act amendments, EPA’s authority to regulate air pollution dangers was substantially strengthened, and Congress was motivated partly by the desire to protect future generations. For example, Senator Baker said about Section 202’s standards for motor vehicle emissions: “I personally have great faith that the automobile industry...can meet these requirements, and that in any event we must meet them, if we are to protect the *health and welfare of this and future generations*.”¹³⁴ More generally, Senator Muskie—a subcommittee chair who was instrumental in passing the Clean Air Act—explained the amendments were designed to “*deal with the long-term aspects* as well as the short term,”¹³⁵ and minority leader Senator Scott spoke specifically about the legislation’s importance for protecting future generations from climate change: “Unless this outpouring of contaminants is controlled, scientists tell us we may very well experience *irreversible atmospheric and climatic changes* capable of producing a snowballing adverse effect to the health and safety of our citizens....*To guarantee that future generations of Americans can live without fear* of the destruction of the very air they breathe, I urge immediate passage.”¹³⁶ When he signed the Clean Air Act Amendments of 1970 into law, President Nixon pronounced that “1970 will be known as the year of the beginning, in which we really began to move on the problems of *clean air* and clean water and open spaces *for the future generations of America*.”¹³⁷

The U.S. Court of Appeals for the District of Columbia Circuit confirmed the future-looking nature of EPA’s authority when it ruled, in *Ethyl Corp v. EPA*, that the word “endanger” in the Clean Air Act made that statute “precautionary,” and EPA need not wait for certain evidence of imminent harm before acting to prevent dangerous pollution.¹³⁸ Years later, that same Court of Appeals also upheld EPA’s 2009 endangerment finding on greenhouse gas emissions from motor vehicles under Section 202. The endangerment finding spoke of the need to protect future generations in its very first sentence,¹³⁹ and the D.C. Circuit upheld¹⁴⁰ the finding as based on “evidence of current and future effects.” Industry petitioners questioned the judgment on the grounds that there was “too much uncertainty” in the evidence. The Court recalled that the Act was meant to be “precautionary in nature” and warned that “[a]waiting certainty will often allow for only reactive, not preventive, regulation.” The Court concluded that the language “may reasonably be anticipated to endanger” required “a precautionary, forward-looking scientific judgment.”¹⁴¹

In summary, the use of the phrase “may reasonably be anticipated to endanger public health or welfare” requires EPA to consider the effects of climate change to future generations. Applying a 7% discount rate to the social cost of greenhouse gases means that, after a generation or two, future climate damages are insignificant. The use of such a rate thus effectively ignores the needs of future

¹³⁴ Clean Air Act Amendments of 1970 Legislative History vol. 1, 268, Senate Debate on S. 4358, Sept. 21, 1970.

¹³⁵ *Id.* at 144.

¹³⁶ *Id.* at 349 (statement of Senator Scott).

¹³⁷ *Id.* at 106; President’s Remarks upon Signing the Clean Air Amendments of 1970 Into Law, Dec. 31, 1970

<https://babel.hathitrust.org/cgi/pt?id=mdp.39015077941642;view=1up;seq=245> (continuing, “We can look back and say, in the Roosevelt room on the last day of 1970, we signed a historic piece of legislation that put us far down the road toward a goal that Theodore Roosevelt, 70 years ago, spoke eloquently about, a goal of clean air, clean water, and open spaces for the future generations of America.”).

¹³⁸ 541 F.2d 1, 13 (D.C. Cir. 1975).

¹³⁹ Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 18886-01 (2009).

¹⁴⁰ *Coal. for Responsible Regulation, Inc. v. E.P.A.*, 684 F.3d 102, 121–22 (D.C. Cir. 2012), *aff’d in part, rev’d in part sub nom. Util. Air Regulatory Grp. v. E.P.A.*, 134 S. Ct. 2427, (2014), and amended sub nom. *Coal. for Responsible Regulation, Inc. v. Evtl. Prot. Agency*, 606 F. App’x 6 (D.C. Cir. 2015).

¹⁴¹ *Id.*

generations. Doing so would arbitrarily fail to consider an important statutory factor that Congress wrote into the Clean Air Act requirements.

NHTSA's statutory obligations are similarly future-looking. While the "need" to conserve energy is never strictly defined by the statutory text alone,¹⁴² the language was originally added by the National Energy Conservation Policy Act of 1978, as a criterion for determining "economically justified."¹⁴³ The codified congressional findings for that Act reveal a concern for future needs, with a focus on the energy needs of future generations: "unless effective measures are promptly taken . . . to reduce the rate of growth of demand for energy, the United States will become . . . unable to provide the energy to meet future needs."¹⁴⁴ Upon signing the National Energy Conservation Policy Act into law in November 1978, President Carter concluded that "Today we can rightfully claim that we have a conscious national policy for dealing with the energy problems of the present and also to help us deal with them in the future."¹⁴⁵ Again, using a discount rate that effectively ignores the needs of future generations would arbitrarily fail to consider an important statutory factor.

A 7% Discount Rate Is Not "Sound and Defensible" or "Appropriate" for Climate Effects

Circular A-4 clearly requires agency analysts to do more than rigidly apply default assumptions: "You cannot conduct a good regulatory analysis according to a formula. Conducting high-quality analysis requires competent professional judgment."¹⁴⁶ As such, analysis must be "based on the best reasonably obtainable scientific, technical, and economic information available,"¹⁴⁷ and agencies must "***[u]se sound and defensible values*** or procedures to monetize benefits and costs, and ensure that key analytical assumptions are defensible."¹⁴⁸ Rather than assume a 7% discount rate should be applied automatically to every analysis, Circular A-4 requires agencies to justify the choice of discount rates for each analysis: "[S]tate in your report what assumptions were used, *such as . . . the discount rates* applied to future benefits and costs," and explain "clearly how you arrived at your estimates."¹⁴⁹ Based on Circular A-4's criteria, there are numerous reasons why applying a 7% discount rate to climate effects that occur over a 300-year time horizon would be unjustifiable.

First, basing the discount rate on the **consumption rate of interest** is the correct framework for analysis of climate effects; a discount rate based on the private return to capital is inappropriate. Circular A-4 does suggest that 7% should be a "default position" that reflects regulations that primarily displace capital investments; however, the Circular explains that "[w]hen regulation primarily and directly affects private consumption . . . a lower discount rate is appropriate."¹⁵⁰ The 7% discount rate is based on a private sector rate of return on capital, but private market participants typically have short time horizons. By contrast, climate change concerns the public well-being broadly. Rather than evaluating an optimal outcome from the narrow perspective of investors alone, economic theory requires analysts to make the optimal choices based on societal preferences and social discount rates. Moreover, because

¹⁴² See 42 U.S.C. § 6291

¹⁴³ Language added by Pub. L. 95-619 (1978), subsection 325(d) of the National Energy Conservation Policy Act, amending 42 USC 6295(l) to include the "need of the nation to conserve energy." The "economically justified" phrase dates back to original EPCA, Pub. L. 94-163 (1975).

¹⁴⁴ Pub. L. 95-619 § 102; subsequently amended to read "effective measures must continue to be taken" so the United States is "more able to provide energy to meet future needs." 42 U.S.C. § 8201.

¹⁴⁵ GAO Legislative History PL 95-619 pt 7, Remarks on Signing HR 4018, 5263, 5037, 5146, and 5289 (Nov. 9, 1978).

¹⁴⁶ Circular A-4 at 3.

¹⁴⁷ *Id.* at 17.

¹⁴⁸ *Id.* at 27.

¹⁴⁹ *Id.* at 3.

¹⁵⁰ *Id.* at 33.

climate change is expected to largely affect large-scale consumption, as opposed to capital investment,¹⁵¹ a 7% rate is inappropriate.

The agencies themselves also indicated that, because the main effect of CAFE and greenhouse gas standards is to change the price of cars—a consumer good—a 3% discount rate is most appropriate. The agencies indicate that the 7% discount rate is only used in the regulatory impact analysis because there is some uncertainty over whether the compliance costs can completely be passed through to buyers instead of affecting manufacturers' investments.¹⁵² Yet, much of the PRIA's conclusions hinges on the assumption that all costs will be passed through from manufacturers to consumers.¹⁵³ The agencies never explain why some uncertainty about the completeness of cost pass-through is so much more important than the considerable uncertainty about long-term discount rates such that they are willing to entertain an inappropriately high discount rate like 7% but fail to consider a declining discount rate framework.

In 2013, OMB called for public comments on the social cost of greenhouse gases. In its 2015 Response to Comment document,¹⁵⁴ OMB (together with the other agencies from the IWG) explained that

the consumption rate of interest is the correct concept to use . . . as the impacts of climate change are measured in consumption-equivalent units in the three IAMs used to estimate the SCC. This is consistent with OMB guidance in Circular A-4, which states that when a regulation is expected to primarily affect private consumption—for instance, via higher prices for goods and services—it is appropriate to use the consumption rate of interest to reflect how private individuals trade-off current and future consumption.¹⁵⁵

The Council of Economic Advisers similarly interprets Circular A-4 as requiring agencies to choose the appropriate discount rate based on the nature of the regulation: “[I]n Circular A-4 by the Office of Management and Budget (OMB) the appropriate discount rate to use in evaluating the net costs or benefits of a regulation depends on whether the regulation primarily and directly affects private consumption or private capital.”¹⁵⁶ The NAS also explained that a consumption rate of interest is the

¹⁵¹ “There are two rationales for discounting future benefits—one based on consumption and the other on investment. The consumption rate of discount reflects the rate at which society is willing to trade consumption in the future for consumption today. Basically, we discount the consumption of future generations because we assume future generations will be wealthier than we are and that the utility people receive from consumption declines as their level of consumption increases. . . . The investment approach says that, as long as the rate of return to investment is positive, we need to invest less than a dollar today to obtain a dollar of benefits in the future. Under the investment approach, the discount rate is the rate of return on investment. If there were no distortions or inefficiencies in markets, the consumption rate of discount would equal the rate of return on investment. There are, however, many reasons why the two may differ. As a result, using a consumption rather than investment approach will often lead to very different discount rates.” Maureen Cropper, *How Should Benefits and Costs Be Discounted in an Intergenerational Context?*, 183 *RESOURCES* 30, 33.

¹⁵² PRIA at 1078.

¹⁵³ See *supra* on global costs.

¹⁵⁴ Note that this document was not withdrawn by Executive Order 13,783.

¹⁵⁵ OMB 2015 Response to Comments, *supra* note 108, at 22.

¹⁵⁶ Council of Econ. Advisers, *Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate* at 1 (CEA Issue Brief, 2017), available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/201701_cea_discounting_issue_brief.pdf. In theory, the two rates would be the same, but “given distortions in the economy from taxation, imperfect capital markets, externalities, and other sources, the SRTTP and the marginal product of capital need not coincide, and analysts face a choice between the appropriate opportunity cost of a project and the appropriate discount rate for its benefits.” *Id.* at 9. The correct discount rate for climate change is the social return to capital (i.e., returns minus the costs of externalities), not the private return to capital (which measures solely the returns).

appropriate basis for a discount rate for climate effects.¹⁵⁷ There is also strong consensus through the economic literature that a capital discount rate like 7% is inappropriate for climate change.¹⁵⁸ Finally, each of the three integrated assessment models upon which the agencies bases their analysis—DICE, FUND, and PAGE—uses consumption discount rates; a capital discount rate is thus inconsistent with the underlying models. (See the technical appendix on discounting attached to these comments for more details.) For these reason, 7% is an inappropriate choice of discount rate for the impacts of climate change.

Second, **uncertainty over the long time horizon** of climate effects should drive analysts to select a lower discount rate. As an example of when a 7% discount rate is appropriate, Circular A-4 identifies an EPA rule with a 30-year timeframe of costs and benefits.¹⁵⁹ By contrast, greenhouse gas emissions generate effects stretching out across 300 years. As Circular A-4 notes, while “[p]rivate market rates provide a reliable reference for determining how society values time within a generation, but for extremely long time periods no comparable private rates exist.”¹⁶⁰

Circular A-4 discusses how uncertainty over long time horizons drives the discount rate lower: “the longer the horizon for the analysis,” the greater the “uncertainty about the appropriate value of the discount rate,” which supports a lower rate.¹⁶¹ Circular A-4 cites the work of renowned economist Martin Weitzman and concludes that the “certainty-equivalent discount factor corresponds to **the minimum discount rate having any substantial positive probability**.”¹⁶² The NAS makes the same point about discount rates and uncertainty.¹⁶³ In fact, as discussed more below and in the technical appendix on discounting, uncertainty over the discount rate is best addressed by adopting a declining discount rate framework.

Third, a 7% discount rate **ignores catastrophic risks and the welfare of future generations**. As demonstrated in the graph of the frequency distribution of social cost of carbon estimates, the 7% rate truncates the long right-hand tail of social costs relative to the 3% rate’s distribution. The long right-hand tail represents the possibility of catastrophic damages. As Pindyck explains “the possibility of a catastrophic outcome is an essential driver of the [social cost of greenhouse gases].”¹⁶⁴ The 7% discount rate effectively assumes that present-day Americans are barely willing to pay anything at all to prevent

¹⁵⁷ NAS Second Report, *supra* note 109, at 28; *see also* Kenneth Arrow et al., Is There a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation?, 272 *Science* 221 (1996) (explaining that a consumption-based discount rate is appropriate for climate change).

¹⁵⁸ In addition to the CEA and NAS reports, *see*, for example, this article by the former chair of the NAS panel on the social cost of greenhouse gases: Richard Newell (2017, October 10). Unpacking the Administration’s Revised Social Cost of Carbon. Available at <http://www.rff.org/blog/2017/unpacking-administration-s-revised-social-cost-carbon>. *See also* Comments from Robert Pindyck, to BLM, on the Social Cost of Methane in the Proposed Suspension of the Waste Prevention Rule (submitted Nov. 5, 2017, <https://www.regulations.gov/document?D=BLM-2017-0002-16107>).

¹⁵⁹ Circular A-4 at 34. *See also* OMB 2015 Response to Comments, *supra* note 108, at 21 (“While most regulatory impact analysis is conducted over a time frame in the range of 20 to 50 years”).

¹⁶⁰ Circular A-4 at 36.

¹⁶¹ *Id.*

¹⁶² *Id.*; *see also* CEA, *supra* note 156, at 9: “Weitzman (1998, 2001) showed theoretically and Newell and Pizer (2003) and Groom et al. (2007) confirm empirically that discount rate uncertainty can have a large effect on net present values. A main result from these studies is that if there is a persistent element to the uncertainty in the discount rate (e.g., the rate follows a random walk), then it will result in an effective (or certainty-equivalent) discount rate that declines over time. Consequently, lower discount rates tend to dominate over the very long term, regardless of whether the estimated investment effects are predominantly measured in private capital or consumption terms (see Weitzman 1998, 2001; Newell and Pizer 2003; Groom et al. 2005, 2007; Gollier 2008; Summers and Zeckhauser 2008; and Gollier and Weitzman 2010).”

¹⁶³ NAS Second Report, *supra* note 109, at 27.

¹⁶⁴ Pindyck, Robert. 2013. “Climate change policy: What do the models tell us?” *Journal of Economic Literature*, 51(3), 860-872.

medium- to long-term catastrophes. This assumption violates the agencies' statutory duty to protect the future needs of Americans. At the same time, the 7% distribution also misleadingly exaggerates the possibility of negative estimates of the social cost of greenhouse gases.¹⁶⁵ A negative social cost of greenhouse gases implies a discount rate so high that society is willing to sacrifice serious impacts to future generations for the sake of small, short-term benefits (such as slightly and temporarily improved fertilization for agriculture). Again, this assumption contravenes the agencies' statutory responsibilities to protect the welfare of future Americans.

Fourth, a 7% discount rate would be inappropriate for climate change because it is based on **outdated data and diverges from the current economic consensus**. Circular A-4 requires that assumptions—including discount rate choices—are “based on the best reasonably obtainable scientific, technical, and economic information available.”¹⁶⁶ Yet Circular A-4's own default assumption of a 7% discount rate was published 14 years ago and was based on data from decades ago.¹⁶⁷ Circular A-4's guidance on discount rates is in need of an update, as the Council of Economic Advisers detailed earlier this year after reviewing the best available economic data and theory:

The discount rate guidance for Federal policies and projects was last revised in 2003. Since then a general reduction in interest rates along with a reduction in the forecast of long-run interest rates, warrants serious consideration for a reduction in the discount rates used for benefit-cost analysis.¹⁶⁸

In addition to recommending a value below 7% as the discount factor based on private capital returns, the Council of Economic Advisers further explains that, because long-term interest rates have fallen, a discount rate based on the consumption rate of interest “should be at most 2 percent.”¹⁶⁹ The latest OMB updates to Circular A-94, the document on which Circular A-4 based its discount rates,¹⁷⁰ also show that more up-to-date long-run discount rates are historically low. In the February 2018 update to Circular A-94's discount rates, the OMB found that the real, 30-year discount rate is 0.6 percent,¹⁷¹ the lowest rate since the OMB began tracking the number.¹⁷² Notably, the OMB also shows that the current real interest rate is negative for maturities less than 10 years.¹⁷³

These low interest rates further confirm that applying a 7% rate to a context like climate change would be wildly out of step with the latest data and theory. Similarly, recent expert elicitations—a technique supported by Circular A-4 for filling in gaps in knowledge¹⁷⁴—indicate that a growing consensus among experts in climate economics for a discount rate between 2% and 3%; 5% represents the upper range of

¹⁶⁵ In the Monte Carlo simulation data, the 7% discount rate doubles the frequency of negative estimates compared to the 3% discount rate simulations, from a frequency of 4% to 8%.

¹⁶⁶ CEQ regulations implementing NEPA similarly require that information in NEPA documents be “of high quality” and states that “[a]ccurate scientific analysis . . . [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

¹⁶⁷ The 7% rate was based on a 1992 report; the 3% rate was based on data from the thirty years preceding the publication of Circular A-4 in 2003. Circular A-4 at 33.

¹⁶⁸ CEA, *supra* note 156, at 1; *id.* at 3 (“In general the evidence supports lowering these discount rates, with a plausible best guess based on the available information being that the lower discount rate should be at most 2 percent while the upper discount rate should also likely be reduced.”); *id.* at 6 (“The Congressional Budget Office, the Blue Chip consensus forecasts, and the Administration forecasts all place the ten year treasury yield at less than 4 percent in the future, while at the same time forecasting CPI inflation of 2.3 or 2.4 percent per year. The implied real ten year Treasury yield is thus below 2 percent in all these forecasts.”).

¹⁶⁹ *Id.* at 1.

¹⁷⁰ Circular A-4 at 33.

¹⁷¹ OMB Circular A-94 Appendix C (2018).

¹⁷² <https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/a94/dischist-2017.pdf>

¹⁷³ Circular A-94 Appendix C, *supra* note 171.

¹⁷⁴ Circular A-4 at 41.

values recommended by experts, and few to no experts support discount rates greater than 5% being applied to the costs and benefits of climate change.¹⁷⁵ Based on current economic data and theory, the most appropriate discount rate for climate change is 3% or lower.

Fifth, Circular A-4 requires more of analysts than giving all possible assumptions and scenarios equal attention in a sensitivity analysis; if alternate assumptions would fundamentally change the decision, Circular A-4 requires analysts to select the **most appropriate assumptions from the sensitivity analysis**.

Circular A-4 indicates that significant intergenerational effects will warrant a special sensitivity analysis focused on discount rates even lower than 3%:

Special ethical considerations arise when comparing benefits and costs across generations. . . It may not be appropriate for society to demonstrate a similar preference when deciding between the well-being of current and future generations. . . If your rule will have important intergenerational benefits or costs you might consider a further sensitivity analysis using a lower but positive discount rate in addition to calculating net benefits using discount rates of 3 and 7 percent.¹⁷⁶

Elsewhere in Circular A-4, OMB clarifies that sensitivity analysis should not result in a rigid application of all available assumptions regardless of plausibility. Circular A-4 instructs agencies to depart from default assumptions when special issues “call for different emphases” depending on “the sensitivity of the benefit and cost estimates to the key assumptions.”¹⁷⁷ More specifically:

If benefit or cost estimates depend heavily on certain assumptions, you should make those assumptions explicit and carry out *sensitivity analyses using plausible alternative assumptions*. If the value of net benefits changes from positive to negative (or vice versa) or if the relative ranking of regulatory options changes with alternative plausible assumptions, you should conduct further analysis to determine ***which of the alternative assumptions is more appropriate***.¹⁷⁸

In other words, if using a 7% discount rate would fundamentally change the agency’s decision compared to using a 3% or lower discount rate, the agency must evaluate which assumption is most appropriate. Since OMB, the Council of Economic Advisers, the National Academies of Sciences, and the economic literature all conclude that a 7% rate is inappropriate for climate change, agencies should select a 3% or lower rate. The agencies’ selection of a 7% discount rate cannot be justified as “based on the best reasonably obtainable scientific, technical, and economic information available” and so is inconsistent with best practices for cost-benefit analysis under Circular A-4.

¹⁷⁵ Howard and Sylvan (2015) at 33-34; M.A. Drupp, et al., *Discounting Disentangled: An Expert Survey on the Determinants of the Long-Term Social Discount Rate* (London School of Economics and Political Science Working Paper, May 2015) (finding consensus on social discount rates between 1-3%). Pindyck, in a survey of 534 experts on climate change, finds a mean discount rate of 2.9% in the climate change context and this rate drops to 2.6% when he drops individuals that lack confidence in their knowledge. Pindyck, R. S. (2016). *The social cost of carbon revisited* (No. w22807). National Bureau of Economic Research. Unlike Howard and Sylvan (2016), Pindyck (2016) combines economists and natural scientists in his survey, though the mean constant discount rate drops to 2.7% when including only economists. Again, this further supports the finding that the appropriate discount rate is between 2% and 3%.

¹⁷⁶ Circular A-4 at 35-36.

¹⁷⁷ *Id.* at 3.

¹⁷⁸ *Id.* at 42.

Application of a Declining Discount Rate Is Actionable Under the Current Economic Literature

Circular A-4 contemplates the use of declining discount rates in its reference to the work of Weitzman.¹⁷⁹ As the Council of Economic Advisers explained earlier this year, Weitzman and others developed the foundation for a declining discount rate approach, wherein rates start relatively higher for near-term costs and benefits but steadily decline over time according to a predetermined schedule until, in the very long-term, very low rates dominate due to uncertainty.¹⁸⁰ The National Academies of Sciences’ report also strongly endorses a declining discount rate approach.¹⁸¹ Notably, Marten et al., which developed the methodology for the social cost of methane, also note the “agreement that the use of a constant discount rate over long time horizons with uncertain changes in the consumption per capita growth is not theoretically consistent.”¹⁸²

One possible schedule of declining discount rates was proposed by Weitzman.¹⁸³ It is derived from a broad survey of top economists and other climate experts and explicitly incorporates arguments around interest rate uncertainty. Work by Arrow *et al*, Cropper *et al*, and Gollier and Weitzman, among others, similarly argue for a declining interest rate schedule and lay out the fundamental logic.¹⁸⁴ Another schedule of declining discount rates has been adopted by the United Kingdom.¹⁸⁵

The technical appendix on discounting attached to these comments more thoroughly reviews the various schedules of declining discount rates available for agencies to select and explains why agencies not only can but should adopt a declining discount framework to address uncertainty. The agencies are wrong in stating that “additional research and analysis is still needed to develop a methodology for implementing a declining discount rate.”¹⁸⁶

¹⁷⁹ Circular A-4, at page 36, cites to Weitzman’s chapter in Portney & Weyant, eds. (1999); that chapter, at page 29, recommends a declining discount rate approach: “a sliding-scale social discounting strategy” with the rate at 3-4% through year 25; then around 2% until year 75; then around 1% until year 300; and then 0% after year 300.

¹⁸⁰ CEA, *supra* note 156, at 9 (“[A]nother way to incorporate uncertainty when discounting the benefits and costs of policies and projects that accrue in the far future—applying discount rates that decline over time. This approach uses a higher discount rate initially, but then applies a graduated schedule of lower discount rates further out in time. The first argument is based on the application of the Ramsey framework in a stochastic setting (Gollier 2013), and the second is based on Weitzman’s ‘expected net present value’ approach (Weitzman 1998, Gollier and Weitzman 2010). In light of these arguments, the governments of the United Kingdom and France apply declining discount rates to their official public project evaluations.”).

¹⁸¹ NAS Second Report, *supra* note 109.

¹⁸² Marten, A.L., Kopits, E.A., Griffiths, C.W., Newbold, S.C., and A. Wolverton. 2015. Incremental CH4 and N2O Mitigation Benefits Consistent with the U.S. Government’s SC-CO2 Estimates. *Climate Policy*. 15(2): 272-298.

¹⁸³ Martin L. Weitzman, *Gamma Discounting*, 91 AM. ECON. REV. 260, 270 (2001). Weitzman’s schedule is as follows:

1-5 years	6-25 years	26-75 years	76-300 years	300+ years
4%	3%	2%	1%	0%

¹⁸⁴ Kenneth J. Arrow et al., *Determining Benefits and Costs for Future Generations*, 341 SCIENCE 349 (2013); Kenneth J. Arrow et al., *Should Governments Use a Declining Discount Rate in Project Analysis?*, REV ENVIRON ECON POLICY 8 (2014); Maureen L. Cropper et al., *Declining Discount Rates*, AMERICAN ECONOMIC REVIEW: PAPERS AND PROCEEDINGS (2014); Christian Gollier & Martin L. Weitzman, *How Should the Distant Future Be Discounted When Discount Rates Are Uncertain?* 107 ECONOMICS LETTERS 3 (2010).

¹⁸⁵ Joseph Lowe, H.M. Treasury, U.K., *Intergenerational Wealth Transfers and Social Discounting: Supplementary Green Book Guidance 5* (2008), available at [http://www.hm-treasury.gov.uk/d/4\(5\).pdf](http://www.hm-treasury.gov.uk/d/4(5).pdf). The U.K. declining discount rate schedule that subtracts out a time preference value is as follows:

0-30 years	31-75 years	76-125 years	126-200 years	201-300 years	301+ years
3.00%	2.57%	2.14%	1.71%	1.29%	0.86%

¹⁸⁶ PRIA 1102.

Problems with the Agencies' Use of a 2.5% Discount Rate in a Sensitivity Analysis

The PRIA suggests that a 2.5% discount rate should be used as a sensitivity analysis.¹⁸⁷ Unfortunately, as already discussed above, the description of the 2.5% discount rate sensitivity run is incomplete and inapplicable to this proceeding. The description references different estimates of forgone climate benefits “under the rate-based and mass-based scenarios, respectively.”¹⁸⁸ There are no rate-based versus mass-based scenarios for the CAFE standards. This language, and likely the associated numbers, was evidentially taken from a different regulatory analysis. It is impossible for the reader to know what portion of the PRIA’s description of the 2.5% sensitivity run, if any, is actually applicable to this rulemaking. The impossibility for the reader to understand is compounded by the agencies’ failure to include in the regulatory docket the complete “full set of SC-CO₂ results” as promised.¹⁸⁹

A 300-Year Time Horizon Is Required

Related to the choice of discount rate, a 300-year time horizon for analysis of climate effects is required by best economic practices. In 2017, the National Academies of Sciences issued a report stressing the importance of a longer time horizon for calculating the social cost of greenhouse gases. The report states that, “[i]n the context of the socioeconomic, damage, and discounting assumptions, the time horizon needs to be long enough to capture the vast majority of the present value of damages.”¹⁹⁰ The report goes on to note that the length of the time horizon is dependent “on the rate at which undiscounted damages grow over time and on the rate at which they are discounted. Longer time horizons allow for representation and evaluation of longer-run geophysical system dynamics, such as sea level change and the carbon cycle.”¹⁹¹ In other words, after selecting the appropriate discount rate based on theory and data (in this case, 3% or below), analysts should determine the time horizon necessary to capture all costs and benefits that will have important net present values at the discount rate. Therefore, a 3% or lower discount rate for climate change implies the need for a 300-year horizon to capture all significant values. NAS reviewed the best available, peer-reviewed scientific literature and concluded that the effects of greenhouse gas emissions over a 300-year period are sufficiently well established and reliable as to merit consideration in estimates of the social cost of greenhouse gases.¹⁹²

VI. The Agencies Arbitrarily Fail to Follow Prescribed Practices for Dealing with Uncertainty

The agencies note that several important factors are incompletely or inadequately represented in the integrated assessment models, including uncertainty over catastrophic damages and extrapolation of damages to high temperatures.¹⁹³ That mere mention of significant uncertainty that could lead to much higher social cost of greenhouse gas estimates hardly satisfies *Circular A-4*’s requirements for quantitative treatment of uncertainty. The IWG highlighted a 95th percentile estimate to address uncertainty over catastrophic damages, tipping points, option value, and risk aversion. The agencies should have done the same, but failed to do so. The agencies admit that the distributions “have long right tails”¹⁹⁴ and depicts a range of estimates from the 5th to 95th percentiles,¹⁹⁵ but by giving a 5th percentile estimate equal standing with the 95th percentile estimate, the agencies obscure the

¹⁸⁷ PRIA 1102.

¹⁸⁸ PRIA 1102.

¹⁸⁹ PRIA 1101 (promising materials available in the docket); see *supra* on their unavailability.

¹⁹⁰ NAS Second Report, *supra* note 109, at 78.

¹⁹¹ *Id.*

¹⁹² Nat’l Acad. Of Sci., *Assessment of Approaches to Updating the Social Cost of Carbon* 49 (2016), at 32.

¹⁹³ PRIA 1064.

¹⁹⁴ PRIA at 1101.

¹⁹⁵ *Id.*

significance of low-probability, high-catastrophe outcomes.¹⁹⁶ By failing to give serious treatment to such sensitivity analyses, the agencies overlook how different (and more plausible) assumptions would change its cost-benefit calculation.

(Uncertainty in general, as well as uncertainty over the discount rate in particular, are discussed in greater detail in the technical appendices attached to these comments.)

Circular A-4's Prescriptions for Uncertainty

Circular A-4 requires thorough treatment of uncertainty around both values and outcomes,¹⁹⁷ and for especially large or complex matters it recommends a formal probabilistic analysis.¹⁹⁸ Generally, Circular A-4 encourages agencies to disclose the full probability distribution of potential consequences, including both upper and lower bound estimates in addition to central estimates.¹⁹⁹

However, this guidance comes with some caveats. First, this approach to central estimates and the probability distribution “is appropriate as long as society is ‘risk neutral’ with respect to the regulatory alternatives.”²⁰⁰ But if society is risk averse—as is the case with climate change²⁰¹—different considerations need to be taken into account. Second, in 2011, the Office of Information and Regulatory Affairs interpreted Circular A-4’s goal as “not to characterize the full range of *possible* outcomes . . . but rather the range of *plausible* outcomes.”²⁰² Agency analysts must exercise judgment. Finally, as with all elements of agencies’ economic analyses, Circular A-4 stresses that “Your analysis should be credible, objective, realistic, and scientifically balanced.”²⁰³

Consequently, while it may be appropriate to disclose the full probability distribution of an uncertainty analysis, it is not appropriate under Circular A-4 to give a low-percentile estimate of the social cost of greenhouse gases equal weight in decision-making with the central and upper-percentile estimates. Giving equal attention to a low-percentile estimate is not “credible, objective, realistic, and scientifically balanced,” does not reflect “plausible” scenarios, and would undermine consideration of risk aversion. Instead, a proper and plausible treatment of uncertainty in the context of climate change will support higher estimates of the social cost of greenhouse gases.

A 95th Percentile Value as a Treatment of Uncertainty over Damages

The IWG accounted for uncertainty in numerous rigorous ways. The group modeled the uncertainty over the value of the equilibrium climate sensitivity parameter using the Roe and Baker distribution calibrated to the IPCC reports. Additionally, using well-established analytic tools to capture and reflect

¹⁹⁶ The presentation of results further obscures the importance of these low-probability events by exploiting a well-documented mental heuristic called “probability neglect” that causes people to irrationally reduce small probability risks entirely down to zero. A reader of the analysis might be misled to believe that these low-probability events are not important, when in fact, they would lead to substantial economic losses. See Cass R. Sunstein, *Probability Neglect: Emotions, Worst Cases, and Law*, 112 Yale L. J. 61, 63, 72 (2002); Valerie F. Reyna & Charles J. Brainerd, *Numeracy, ratio bias, and denominator neglect in judgments of risk and probability*, 18 LEARN. INDIVID. DIFFER. 89 (2008).

¹⁹⁷ Circular A-4, at 42, requires probability distributions for “values as well for each of the outcomes”; the social cost of greenhouse gases is a value with a probability distribution.

¹⁹⁸ *Id.* at 41.

¹⁹⁹ Circular A-4 at 18, 40; *id.* at 45 (“When you provide only upper and lower bounds (in addition to best estimates), you should, if possible, use the 95 and 5 percent confidence bounds.”).

²⁰⁰ *Id.* at 42.

²⁰¹ See INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 at 11 (2010).

²⁰² Office of Information and Regulatory Affairs, *Regulatory Impact Analysis: A Primer 2* (2011). This is best understood as drawing the line at insignificant or scientifically unsupported outcomes. By contrast, the low-probability but catastrophic potential outcomes of climate change are highly significant and the scientific literature demands giving them due attention.

²⁰³ Circular A-4 at 39.

uncertainty, including a Monte Carlo simulation to randomly select the equilibrium climate sensitivity parameter and other uncertainty parameters selected by the model developers, the IWG quantitatively modeled the uncertainty underlying how greenhouse gas emissions affect temperature.

To further deal with uncertainty, the IWG recommended to agencies a range of four estimates: three central or mean-average estimates at a 2.5%, 3%, and 5% discount rate respectively, and a 95th percentile value at the 3% discount rate. While the IWG's technical support documents disclosed fuller probabilities distributions, these four estimates were chosen by agencies to be the focus for decisionmaking. In particular, application of the 95th percentile value was not part of an effort to show the probability distribution around the 3% discount rate; rather, the 95th percentile value serves as a methodological shortcut to approximate the uncertainties around low-probability but high-damage, catastrophic, or irreversible outcomes that are currently omitted or undercounted in the economic models.

The shape of the distribution of climate risks and damages includes a long tail of lower-probability, high-damage, irreversible outcomes due to "tipping points" in planetary systems, inter-sectoral interactions, and other deep uncertainties. Climate damages are not normally distributed around a central estimate, but rather feature a significant right skew toward catastrophic outcomes. In fact, a 2015 survey of economic experts concludes that catastrophic outcomes are increasingly likely to occur.²⁰⁴ Because the three integrated assessment models that the IWG's methodology relied on are unable to systematically account for these potential catastrophic outcomes, a 95th percentile value was selected instead to account for such uncertainty. There are no similarly systematic biases pointing in the other direction which might warrant giving weight to a low-percentile estimate.

Additionally, the 95th percentile value addresses the strong possibility of widespread risk aversion with respect to climate change. The integrated assessment models do not reflect that individuals likely have a higher willingness to pay to reduce low-probability, high-impact damages than they do to reduce the likelihood of higher-probability but lower impact damages with the same expected cost. Beyond individual members of society, governments also have reasons to exercise some degree of risk aversion to irreversible outcomes like climate change.

In short, the 95th percentile estimate attempts to capture risk aversion and uncertainties around lower-probability, high-damage, irreversible outcomes that are currently omitted or undercounted by the models. There is no need to balance out this estimate with a low-percentile value, because the reverse assumptions are not reasonable:

- There is no reason to believe the public or the government will be systematically risk seeking with respect to climate change.²⁰⁵
- The consequences of overestimating the risk of climate damages (i.e., spending more than we need to on mitigation and adaptation) are not nearly as irreversible as the consequences of underestimating the risk of climate damage (i.e., failing to prevent catastrophic outcomes).

²⁰⁴ Policy Integrity, *Expert Consensus on the Economics of Climate Change 2* (2015), available at <http://policyintegrity.org/files/publications/ExpertConsensusReport.pdf> [hereinafter *Expert Consensus*] ("Experts believe that there is greater than a 20% likelihood that this same climate scenario would lead to a 'catastrophic' economic impact (defined as a global GDP loss of 25% or more)."). See also Robert Pindyck, *The Social Cost of Carbon Revisited* (National Bureau of Economic Research, No. w22807, 2016).

²⁰⁵ As a 2009 survey revealed, the vast majority of economic experts support the idea that "uncertainty associated with the environmental and economic effects of greenhouse gas emissions increases the value of emission controls, assuming some level of risk-aversion." See *Expert Consensus, supra* note 204, at 3 (citing 2009 survey).

- Though some uncertainties might point in the direction of lower social cost of greenhouse gas values, such as those related to the development of breakthrough adaptation technologies, the models already account for such uncertainties around adaptation; on balance, most uncertainties strongly point toward higher, not lower, social cost of greenhouse gas estimates.²⁰⁶
- There is no empirical basis for any “long tail” of potential benefits that would counteract the potential for extreme harm associated with climate change.

Moreover, even the best existing estimates of the social cost of greenhouse gases are likely underestimated because the models currently omit many significant categories of damages—such as depressed economic growth, pests, pathogens, erosion, air pollution, fire, dwindling energy supply, health costs, political conflict, and ocean acidification—and because of other methodological choices.²⁰⁷ There is little to no support among economic experts to give weight to any estimate lower than the 5% discount rate estimate.²⁰⁸ Rather, even a discount rate at 3% or below likely continues to underestimate the true social cost of greenhouse gases.

The National Academies of Sciences did recommend that the IWG document its full treatment of uncertainty in an appendix and disclose low-probability as well as high-probability estimates of the social cost of greenhouse gases.²⁰⁹ However, that does not mean it would be appropriate for individual agencies to rely on low-percentile estimates to justify decisions. While disclosing low-percentile estimates as a sensitivity analysis may promote transparency, relying on such an estimate for decisionmaking—in the face of contrary guidance from the best available science and economics on uncertainty and risk—would not be a “credible, objective, realistic, and scientifically balanced” approach to uncertainty.

By giving only a scant graphical presentation of the 95th percentile value, and by misleadingly placing that value on equal footing with a 5th percentile estimate, the agencies have failed to address uncertainties over catastrophic outcomes, tipping points, risk aversion, and option value, and so has violated the prescriptions of Circular A-4. The IWG emphasized the 95th percentile (not the 5th percentile) to address this systematic downward bias in the social cost of greenhouse gases. By giving equal weight to the 5th and 95th percentiles, the agencies are ignoring this systematic bias and failing to

²⁰⁶ See Richard L. Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 NATURE 173 (2014). R. Tol, *The Social Cost of Carbon*, 3 Annual Rev. Res. Econ. 419 (2011) (“[U]ndesirable surprises seem more likely than desirable surprises. Although it is relatively easy to imagine a disaster scenario for climate change—for example, involving massive sea level rise or monsoon failure that could even lead to mass migration and violent conflict—it is not at all easy to imagine that climate change will be a huge boost to human welfare.”).

²⁰⁷ See Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, *supra* note 28; Howard 2014, *supra* note **Error! Bookmark not defined.**; Frances C. Moore & Delavane B. Diaz, *Temperature Impacts on Economic Growth Warrant Stringent Mitigation Policy*, 5 NATURE CLIMATE CHANGE 127 (2015) (demonstrating SCC may be biased downward by more than a factor of six by failing to include the climate’s effect on economic growth).

²⁰⁸ The existing estimates based on the 5% discount rate already provides a lower-bound; indeed, if anything the 5% discount rate is already far too conservative as a lower-bound. A recent survey of 365 experts on the economics of climate change found that 90% of experts believe a 3% discount rate or lower is appropriate for climate change; a 5% discount rate falls on the extremely high end of what experts would recommend. *Expert Consensus*, *supra* note 204, at 21; see also Drupp, M.A., et al. *Discounting Disentangled: An Expert Survey on the Determinants of the Long-Term Social Discount Rate* (London School of Economics and Political Science Working Paper, May 2015) (finding consensus on social discount rates between 1-3%). Only 8% of the experts surveyed believe that the central estimate of the social cost of carbon is below \$40, and 69% of experts believed the value should be at or above the central estimate of \$40. *Expert Consensus*, *supra* note 204, at 18.

²⁰⁹ Nat’l Acad. Of Sci., *Assessment of Approaches to Updating the Social Cost of Carbon* 49 (2016) (“[T]he IWG could identify a high percentile (e.g., 90th, 95th) and corresponding low percentile (e.g., 10th, 5th) of the SCC frequency distributions on each graph.”).

consider the accepted logic that climate change is likely to bring with it more bad surprises than good surprises.

Tellingly, the agencies' sensitivity analysis files include a spreadsheet that details the reference scenario. That spreadsheet's "emissions cost" tab shows the social cost of carbon numbers that the agencies used in their analysis from the 2012 rulemaking, with columns for the low estimates (calculated at a 5% discount rate), average estimate (3% discount rate), high estimate (2.5% discount rate) and "very high" (the 95th percentile of the 3% distribution). Those same column headings were copied to list the social cost of carbon estimates used in this proposed action. Under the "very high" column, which had previously served as a placeholder for the 95th percentile estimate treatment of uncertainty, the agencies' files now simply list the value as \$0.

Uncertainty over Climate Damages Points Toward a Higher Social Cost of Greenhouse Gases

The agencies attempt to call into question the validity of the social cost of greenhouse gas estimates by highlighting the "uncertainty" around climate change. The proposed rule says that greenhouse gases only "theoretically" contribute to climate change,²¹⁰ when in fact the causal relationship is very well established.²¹¹ The proposed rule belittles the climate damages that will be directly experienced in the United States—"albeit uncertain"²¹²—despite the assessment of the U.S. Global Change Research Program that the United States is already experiencing significant climate impacts.²¹³ The implication is that climate impacts are somehow more uncertain and so should be treated with more skepticism than other costs and benefits, despite the fact that the U.S. Court of Appeals for the Ninth Circuit has already cautioned NHTSA about that sort of logic.²¹⁴

The PRIA also insists that "uncertainties do not all work in the same direction in terms of their influence on the SC-CO₂ estimates."²¹⁵ While that may be technically true, overall uncertainty about the full effects of climate change actually *raises* the social cost of greenhouse gases and warrants *more* stringent climate policy.²¹⁶ The integrated assessment models (IAMs) currently used to calculate the social cost of greenhouse gases show that the net effect of uncertainty about economic damage resulting from climate change, costs of mitigation, future economic development, and many other parameters raises the social cost of greenhouse gases compared to the case where models simply use our current best guesses of these parameters.²¹⁷ Even so, IAMs still underestimate the impact of uncertainty by not

²¹⁰ 83 Fed. Reg. 43,067.

²¹¹ See e.g., 74 Fed. Reg. 66,496 (Dec. 15, 2009) ("Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act").

²¹² 83 Fed. Reg. at 43,067.

²¹³ <https://science2017.globalchange.gov/chapter/executive-summary/> ("Global sea level rise has already affected the United States; the incidence of daily tidal flooding is accelerating in more than 25 Atlantic and Gulf Coast cities. . . . Annual trends toward earlier spring melt and reduced snowpack are already affecting water resources in the western United States and these trends are expected to continue.")

²¹⁴ *Center for Biological Diversity v. NHTSA*, 538 F.2d 1172, 1199 (9th Cir. 2008) (holding that NHTSA could not fail to quantify and monetize the most important regulatory effect—climate change—when it had quantified other uncertain effects like congestion).

²¹⁵ PRIA at 1064.

²¹⁶ Peterson (2006) states "Most modeling results show (as can be expected) that there is optimally more emission abatement if uncertainties in parameters or the possibility of catastrophic events are considered." Peterson, S. (2006). Uncertainty and economic analysis of climate change: A survey of approaches and findings. *Environmental Modeling & Assessment*, 11(1), 1-17.

²¹⁷ Tol, R. S. (1999). Safe policies in an uncertain climate: an application of FUND. *Global Environmental Change*, 9(3), 221-232; Peterson, S. (2006). Uncertainty and economic analysis of climate change: A survey of approaches and findings. *Environmental Modeling & Assessment*, 11(1), 1-17; IWG, Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (2016).

accounting for a host of fundamental features of the climate problem: the irreversibility of climate change, society's aversion to risk and other social preferences, option value, and many catastrophic impacts.²¹⁸ Rather than being a reason not to take action, uncertainty increases the social cost of greenhouse gases and should lead to more stringent policy to address climate change.

A technical appendix attached to these comments more fully details how uncertainty on the whole points toward an even higher social cost of greenhouse gases. The appendix covers such topics as insufficient modeling of catastrophic outcomes (including unlucky states of the world, deep uncertainty over the probability distributions for specific climate parameters, and tipping points), failure to include a risk premium, exclusion of the real option value of preventing irreversible greenhouse gas emissions, and how the social cost of greenhouse gases would increase with improved modeling of uncertainty.

VII. The Agencies Have Cherry-Picked Methodological Revisions to Advance a Predetermined Goal, without Engaging in a Holistic Update

The agencies explain that their estimates of the social cost of carbon are simply “interim values” until an improved estimate can be developed.²¹⁹ The revisions to the Interagency Working Group's 2016 estimates that the agencies made to produce these interim values are all methodologically unsound: ignoring the global values in favor of an inaccurate and incomplete domestic-only estimate; applying the inappropriate 7% discount rate alongside the 3% discount rate in the central analysis; and failing to disclose a 95th percentile estimate. What links these select revisions together is a common, predetermined goal: artificially lowering the social cost of carbon to support deregulation.

This is an arbitrary approach to updating the social cost of carbon. The agencies do not engage with any of the most recent literature on damages (see the technical appendix attached to these comments on damage literature), does not update the underlying models (the agencies continue to use DICE-2010, even though DICE-2016R has been published²²⁰), does not move toward a declining discount rate, and does not implement any of the recommendations for improving the social cost of greenhouse gas methodology as articulated by the National Academies of Sciences. The agencies note, but then do nothing about, the National Academies of Sciences' warning that domestic-only numbers fail to account for spillovers and reciprocity.²²¹ Agencies should pursue a holistic update of the social cost of greenhouse gas methodology, but the “interim value” revisions all appear cherry-picked to lower the valuation. As such, the interim values are biased and should not be used in analysis.

To ensure that the agencies are using the best available data and methodologies to monetize the full social cost of greenhouse gases, a thorough review of the relevant economics and scientific literature is critical. Specifically, the agencies should consider the data, assumptions, and methods applied in the latest peer-reviewed publications with special attention applied to consensus-type documents, such as the Intergovernmental Panel on Climate Change. The agencies should adopt such consensus findings as their central assumptions; alternative views with significant support should be considered through sensitivity analysis. An agency should undergo such a thorough review at frequent intervals—such as every three years (as undertaken by the IWG) or every five years (as recommended by the NAS panel).

²¹⁸ Pindyck, R. S. (2007). Uncertainty in environmental economics. *Review of environmental economics and policy*, 1(1), 45-65; Golub, A., Narita, D., & Schmidt, M. G. (2014). Uncertainty in integrated assessment models of climate change: Alternative analytical approaches. *Environmental Modeling & Assessment*, 19(2), 99-109; Lemoine, D., & Rudik, I. (2017). Managing Climate Change Under Uncertainty: Recursive Integrated Assessment at an Inflection Point. *Annual Review of Resource Economics* 9:18.1-18.26.

²¹⁹ PRIA 1062.

²²⁰ William D Nordhaus, *Revisiting the social cost of carbon*, 114 PROC. NATL. ACAD. SCI. U. S. A. 1518–1523 (2017).

²²¹ PRIA 1065.

The now-disbanded Interagency Working Group undertook such a process of regular and systematic revisions. In 2010—and again in the 2013 and 2016 updates—the IWG’s analytic process was science-based, open, and transparent. The IWG hosted a thorough public comment period in 2013.²²² The 2010 Technical Support Document (TSD) set out in detail the IWG’s decision-making process with respect to how it assessed and employed the models.²²³ The Government Accountability Office (GAO) found that “the working group’s processes and methods reflected the following three principles: Used consensus-based decision making, Relied on existing academic literature and models, and Took steps to disclose limitations and incorporate new information.”²²⁴

To ensure social cost of greenhouse gases reflect the best available science, agencies should not cherry pick modeling-assumptions. Instead, any update of the social cost of greenhouse gases requires a thorough review of peer-reviewed research to develop consensus-based modeling assumptions. In particular, the review process allows for the development of pre-specified frameworks and criteria upon which assumptions can be assessed. In fact, the NAS recently conducted such a review—and developed these frameworks and criteria—to enable a thorough near-term update of social cost of greenhouse gas estimates by agencies. The National Academies of Sciences’ reports are attached to these comments, so that the agencies might review their recommendations for a holistic update to the methodology.

VIII. The Agencies Fails to Appropriately Consider Unquantified Benefits

The PRIA repeatedly talks about its proposed action’s “total net benefits,”²²⁵ without acknowledging that the proposal may entail significant unquantified forgone benefits. In fact, over the course of 1621 pages, the PRIA has only a single section, passingly a mere paragraph, that includes the word “unquantified” in the heading.²²⁶ Though the DEIS does contain some scattered additional discussion of some qualitative effects, by incorporating the PRIA into the DEIS and referring readers to the PRIA’s monetization of costs and benefits to understand “the full context of the potential impacts of GHG emissions and climate change,” the DEIS implies that the PRIA’s presentation of the social cost of greenhouse gases fully captures all relevant climate impacts from the rule. It does not, since the PRIA gives no serious weight to the unquantified forgone benefits to climate, as well as other unquantified forgone benefits, such as the unquantified public health consequences of various criteria and toxic pollution. Even putting aside the agencies’ severely manipulated underestimates of the monetized forgone climate benefits, the PRIA fails to explain why the proposed action’s estimated cost savings justify the sum of both the monetized and unmonetized forgone benefits.

Experts widely acknowledge that even the best existing estimates of the social cost of greenhouse gases are almost certainly underestimates of true global damages—perhaps severe underestimates.²²⁷ Using different discount rates; selecting different models; applying different treatments to uncertainty, climate sensitivity, and the potential for catastrophic damages; and making other reasonable

²²² Notice of Availability and Request for Comments: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order No. 12866, 78 Fed. Reg. 70,586 (Nov. 26, 2013); IWG, *Response to Comments: Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866* (July 2015), <https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/scc-response-to-comments-final-july-2015.pdf>.

²²³ See generally 2010 TSD, *supra* note **Error! Bookmark not defined.**

²²⁴ GAO, REGULATORY IMPACT ANALYSIS: Development of Social Cost of Carbon Estimates, GAO-14-663 (2014).

²²⁵ PRIA at 14, 107 (“the preferred alternative . . . maximizes net benefits”), 537 (“Net Benefits—Total benefits minus total costs”), 1080.

²²⁶ PRIA 1327 (“Other Unquantified Health and Environmental Effects”).

²²⁷ See Richard L. Revesz, Peter H. Howard, Kenneth Arrow, Lawrence H. Goulder, Robert E. Kopp, Michael A. Livermore, Michael Oppenheimer & Thomas Sterner, *Global Warming: Improve Economic Models of Climate Change*, 508 NATURE 173 (2014).

assumptions could yield very different, and much larger estimates.²²⁸ For example, a 2014 report found current social cost of carbon estimates omit or poorly quantify damages to the following sectors:

agriculture, forestry, and fisheries (including pests, pathogens, and weeds, erosion, fires, and ocean acidification); ecosystem services (including biodiversity and habitat loss); health impacts (including Lyme disease and respiratory illness from increased ozone pollution, pollen, and wildfire smoke); inter-regional damages (including migration of human and economic capital); inter-sector damages (including the combined surge effects of stronger storms and rising sea levels); exacerbation of existing non-climate stresses (including the combined effect of the over pumping of groundwater and climate-driven reductions in regional water supplies); socially contingent damages (including increases in violence and other social conflict); decreasing growth rates (including decreases in labor productivity and increases in capital depreciation); weather variability (including increased drought and inland flooding); and catastrophic impacts (including unknown unknowns on the scale of the rapid melting of Arctic permafrost or ice sheets).²²⁹

Circular A-4 requires that “When there are important non-monetary values at stake, you should also identify them in your analysis.”²³⁰ Specifically, agencies must “Include a summary table that lists all the unquantified benefits and costs, and use your professional judgment to highlight (e.g., with categories or rank ordering) those that you believe are most important.”²³¹ The Circular cautions that “the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate.”²³² The agencies must therefore fully disclose the limitations of their social cost of greenhouse gas estimates and include detailed charts of all important, unquantified climate effects. The PRIA’s cursory reference to “the incomplete way in which the integrated assessment models capture catastrophic and non-catastrophic impacts”²³³ is insufficient. The PRIA must then explain why, after giving appropriate weight to all the unquantified climate effects and all the unquantified forgone benefits from other emissions, the proposed action’s cost savings justify its forgone benefits.

IX. The Agencies Appropriately Give Equal Weight to the Three Most Peer-Reviewed Models, but Should Use the Updated Models

The agencies explain that they have relied on “the same ensemble of three integrated assessment models (IAMs) that were used to develop the IWG global SC-CO2 estimates.”²³⁴ Indeed, because the Interagency Working Group used the best available data and methodology, it is appropriate for agencies to continue to rely on its methodology and its 2016 estimates. In fact, the agencies should have relied more consistently on the Interagency Working Group’s inputs and assumptions, and so focused on a global valuation calculation at a 3% or lower discount rate.

The agencies also explain the virtues of equally weighting the results of the three most peer-reviewed integrated assessment models in order to balance out the limitations and omissions of any one model.²³⁵ In any future applications of the social cost of greenhouse gases, the agencies should continue

²²⁸ *Id.*; see also Joint Comments from Institute for Policy Integrity et al., to Office of Information and Regulatory Affairs, on the Technical Update of the Social Cost of Carbon, OMB-2013-0007-0085, Feb. 26, 2014.

²²⁹ Peter Howard, *Omitted Damages: What’s Missing from the Social Cost of Carbon 5* (Cost of Carbon Project Report, 2014), <http://costofcarbon.org/>.

²³⁰ Circular A-4 at 3.

²³¹ *Id.* at 27.

²³² *Id.* at 2.

²³³ PRIA 1064.

²³⁴ PRIA 1100.

²³⁵ PRIA at 1101.

to rely on the Interagency Working Group's methodology and use multiple peer-reviewed models. That said, the agencies have failed to use the most up-to-date versions of those models, and should use the updated models in future calculations.

Agencies Should Continue to Rely on the Interagency Working Group's Methodology and Estimates

In 2016, IWG published updated central estimates for the social cost of greenhouse gases: \$50 per ton of carbon dioxide, \$1440 per ton of methane, and \$18,000 per ton of nitrous oxide (in 2017 dollars for year 2020 emissions).²³⁶ Notwithstanding the recent Executive Order disbanding the IWG, the estimates updated by that group in 2016 are still the best estimates of the lower bound of the social cost of greenhouse gases, reflecting current best practices and best scientific and economic literature. Agencies should continue to use estimates of a similar or higher value²³⁷ in their regulatory analyses and environmental impact statements. In particular, when estimating the social cost of greenhouse gases, agencies should use multiple peer-reviewed models, a global estimate of climate damages, and a 3% or lower discount rate for the central estimate.

Any departure from IWG's most recent estimates would require agencies to engage with the complex integrated assessment models and ensure consistency with the most current scientific and economic literature, which overwhelmingly supports a global estimate based on a 3% or lower discount rate. Indeed, since the IWG's estimates omit important damage categories and so are best treated as a lower bound, if anything the social cost of greenhouse gas values used by agencies should be even higher.

Agencies Must Not Rely on a Single Model, but Must Use Multiple, Peer-Reviewed Models

Circular A-4 requires agencies to use "the best reasonably obtainable scientific, technical, and economic information available. To achieve this, you should rely on peer-reviewed literature, where available."²³⁸

Since the IWG first issued the federal social cost of carbon protocol in 2010, this methodology has relied on the three most cited, most peer-reviewed integrated assessment models (IAMs). These three IAMs—called DICE (the Dynamic Integrated Model of Climate and the Economy²³⁹), FUND (the Climate Framework for Uncertainty, Negotiation, and Distribution²⁴⁰), and PAGE (Policy Analysis of the Greenhouse Effect²⁴¹)—draw on the best available scientific and economic data to link physical impacts to the economic damages of each marginal ton of greenhouse gas emissions. As noted previously, each model translates emissions into changes in atmospheric greenhouse gas concentrations, atmospheric concentrations into temperature changes, and temperature changes into economic damages, which can then be adjusted according to a discount rate. These three models have been combined with inputs derived from peer-reviewed literature on climate sensitivity, socio-economic and emissions trajectories, and discount rates. The results of the three models have been given equal weight in federal agencies' estimates and have been run through statistical techniques like Monte Carlo analysis to account for uncertainty.

²³⁶ U.S. Interagency Working Group on the Social Cost of Greenhouse Gases (IWG), "Technical support document: Technical update of the social cost of carbon for regulatory impact analysis under executive order 12866 & Addendum: Application of the methodology to estimate the social cost of methane and the social cost of nitrous oxide" (2016; <https://obamawhitehouse.archives.gov/omb/oira/social-cost-of-carbon>).

²³⁷ See *supra* note 28.

²³⁸ OMB, Circular A-4, at 17.

²³⁹ William D. Nordhaus, *Estimates of the social cost of carbon: concepts and results from the DICE-2013R model and alternative approaches*, 1 JOURNAL OF THE ASSOCIATION OF ENVIRONMENTAL AND RESOURCE ECONOMISTS 1 (2014).

²⁴⁰ David Anthoff & Richard S.J. Tol, THE CLIMATE FRAMEWORK FOR UNCERTAINTY, NEGOTIATION AND DISTRIBUTION (FUND), TECHNICAL DESCRIPTION, VERSION 3.6 (2012), available at <http://www.fund-model.org/versions>.

²⁴¹ Chris Hope, *The Marginal Impact of CO₂ from PAGE2002: An Integrated Assessment Model Incorporating the IPCC's Five Reasons for Concern*, 6 INTEGRATED ASSESSMENT J. 19 (2006).

In a 2017 report, the National Academies of Sciences (NAS) recommended future improvements to this methodology. Specifically, over the next five years the NAS recommends unbundling the four essential steps in the IAMs into four separate “modules”: a socio-economic and emissions scenario module, a climate change module, an economic damage module, and a discount rate module.²⁴² Unbundling these four steps into separate modules could allow for easier, more transparent updates to each individual component in order to better reflect the best available science and capture the full range of uncertainty in the literature. These four modules could be built from scratch or drawn from the existing IAMs. Either way, the integrated modular framework envisioned by NAS for the future will require significant time and resource commitments from federal agencies.

In the meantime, the NAS has supported the continued near-term use of the existing social cost of greenhouse gas estimates based on the DICE, FUND, and PAGE models, as used by federal agencies to date.²⁴³ In short, DICE, FUND, and PAGE continue to represent the state-of-the-art models. The Government Accountability Office found in 2014 that the estimates derived from these models and used by federal agencies are consensus-based, rely on peer-reviewed academic literature, disclose relevant limitations, and are designed to incorporate new information via public comments and updated research.²⁴⁴ In fact, the social cost of greenhouse gas estimates used in federal regulatory proposals and EISs have been subject to over 80 distinct public comment periods.²⁴⁵ The economics literature confirms that estimates based on these three IAMs remain the best available estimates.²⁴⁶ In 2016, the U.S. Court of Appeals for the Seventh Circuit held the estimates used to date by agencies are reasonable.²⁴⁷ Just last month, the District of Montana rejected an agency’s Environmental Assessment for failure to incorporate the federal social cost of carbon estimates into its cost-benefit analysis of a proposed mine expansion.²⁴⁸

Regardless of Executive Order 13,783’s withdrawal of the guidance requiring federal agencies to rely on IWG’s technical support documents to estimate the social cost of greenhouse gases, IWG’s choice of DICE, FUND, and PAGE, its use of inputs and assumptions, and its statistical analysis still represent the state-of-the-art approach based on the best available, peer-reviewed literature. This approach satisfies Circular A-4’s requirements for information quality and transparency. Therefore, in complying with the Executive Order’s instructions to ensure that social cost of greenhouse gas estimates are consistent with Circular A-4, agencies will necessarily have to rely on models like DICE, FUND, and PAGE, to use the same or similar inputs and assumptions as the IWG, and to apply statistical analyses like Monte Carlo.

²⁴² Nat’l Acad. Sci., Eng. & Medicine, *Valuing Climate Damages: Updating Estimates of the Social Cost of Carbon Dioxide 3* (2017) [hereinafter “NAS, Second Report”] (recommending an “integrated modular approach”).

²⁴³ Specifically, NAS concluded that a near-term update was not necessary or appropriate and the current estimates should continue to be used while future improvements are developed over time. Nat’l Acad. Sci., Eng. & Medicine, *Assessment of Approaches to Updating the Social Cost of Carbon: Phase 1 Report on a Near-Term Update 1* (2016) [hereinafter “NAS, First Report”].

²⁴⁴ Gov’t Accountability Office, *Regulatory Impact Analysis: Development of Social Cost of Carbon Estimates* (2014).

²⁴⁵ Howard & Schwartz, *supra* note 39, at Appendix A.

²⁴⁶ *E.g.*, Richard G. Newell et al., *Carbon Market Lessons and Global Policy Outlook*, 343 *SCIENCE* 1316 (2014); Bonnie L. Keeler et al., *The Social Costs of Nitrogen*, 2 *SCIENCE ADVANCES* e1600219 (2016); Richard L. Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 *NATURE* 173 (2014) (co-authored with Nobel Laureate Kenneth Arrow, among others).

²⁴⁷ *Zero Zone*, 832 F.3d at 678-79 (7th Cir. 2016) (finding that the agency “acted reasonably” in using global estimates of the social cost of carbon, and that the estimates chosen were not arbitrary or capricious).

²⁴⁸ *Montana Environmental Information Center*, 2017 WL 3480262, at *12-15, 19.

The unavoidable fact is that DICE, FUND, and PAGE are still the dominant, most peer-reviewed models,²⁴⁹ and most estimates in the literature continue to rely on those models.²⁵⁰ Each of these models has been developed over decades of research, and has been subject to rigorous peer review, documented in the published literature. While other models exist, they lack DICE's, FUND's, and PAGE's long history of peer review or exhibit other limitations. For example, the World Bank has created ENVISAGE, which models a more detailed breakdown of market sectors,²⁵¹ but unfortunately does not account for non-market impacts and so would omit a large portion of significant climate effects. Models like ENVISAGE are therefore not currently appropriate choices under the criteria of Circular A-4.²⁵²

An approach based on multiple, peer-reviewed models (like DICE, FUND, and PAGE) is more rigorous and more consistent with Circular A-4 than reliance on a single model or estimate. DICE, FUND, and PAGE each include many of the most significant climate effects, use appropriate discount rates and other assumptions, address uncertainty, are based on peer-reviewed data, and are transparent.²⁵³ However, each IAM also has its own limitations and is sensitive to its own assumptions. No model fully captures all the significant climate effects.²⁵⁴ By giving weight to multiple models—as the IWG did—agencies can balance out some of these limitations and produce more robust estimates.²⁵⁵

Finally, while agencies should be careful not to cherry-pick a single estimate from the literature, it is noteworthy that various estimates in the literature are consistent with the numbers derived from a weighted average of DICE, FUND, and PAGE—namely, with a central estimate of about \$40 per ton of carbon dioxide, and a high-percentile estimate of about \$120, for year 2015 emissions (in 2016 dollars, at a 3% discount rate). The latest central estimate from DICE's developers is \$87 (at a 3% discount rate);²⁵⁶ from FUND's developers, \$12;²⁵⁷ and from PAGE's developers, \$123, with a high-percentile estimate of \$332.²⁵⁸

In fact, much of the literature suggests that a central estimate of \$40 per ton is a very conservative underestimate. A 2013 meta-analysis of the broader literature found a mean estimate of \$59 per ton of

²⁴⁹ See Interagency Working Group on the Social Cost of Carbon, *Response to Comments: Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12,866* at 7 (July 2015) (“DICE, FUND, and PAGE are the most widely used and widely cited models in the economic literature that link physical impacts to economic damages for the purposes of estimating the SCC.”), citing Nat'l Acad. Sci., Eng. & Medicine, *Hidden Cost of Energy: Unpriced Consequences of Energy Production and Use* (2010) (“the most widely used impact assessment models”).

²⁵⁰ R.S. Tol, *The Social Cost of Carbon*, 3 Annual Rev. Res. Econ. 419 (2011); T. Havranek et al., *Selective Reporting and the Social Cost of Carbon*, 51 Energy Econ. 394 (2015).

²⁵¹ World Bank, *The Environmental Impact and Sustainability Applied General Equilibrium (ENVISAGE) Model* (2008), available at <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1193838209522/Envisage7b.pdf>.

²⁵² Similarly, Intertemporal Computable Equilibrium System (ICES) does not account for non-market impacts. See <https://www.cmcc.it/models/ices-intertemporal-computable-equilibrium-system>. Other models include CRED, which is worthy of further study for future use. Frank Ackerman, Elizabeth A. Stanton & Ramón Bueno, *CRED: A New Model of Climate and Development*, 85 ECOLOGICAL ECONOMICS 166 (2013). Accounting for omitted impacts more generally, E.A. Stanton, F. Ackerman, R. Bueno, *Reason, Empathy, and Fair Play: The Climate Policy Gap*, (Stockholm Environment Inst. Working Paper 2012-02), find a doubling of the SCC using the CRED model.

²⁵³ While sensitivity analysis can address parametric uncertainty within a model, using multiple models helps address structural uncertainty.

²⁵⁴ See Howard 2014, *supra* note **Error! Bookmark not defined.**

²⁵⁵ Moore, F., Baldos, U., & Hertel, T. (2017). Economic impacts of climate change on agriculture: a comparison of process-based and statistical yield models. *Environmental Research Letters*.

²⁵⁶ William Nordhaus, *Revisiting the Social Cost of Carbon*, Proc. Nat'l Acad. Sci. (2017) (estimate a range of \$21 to \$141).

²⁵⁷ D. Anthoff & R. Tol, *The Uncertainty about the Social Cost of Carbon: A Decomposition Analysis Using FUND*, 177 Climatic Change 515 (2013).

²⁵⁸ C. Hope, *The social cost of CO2 from the PAGE09 model*, 39 Economics (2011); C. Hope, *Critical issues for the calculation of the social cost of CO2*, 117 Climatic Change, 531 (2013).

carbon dioxide,²⁵⁹ and a soon-to-be-published update by the same author finds a mean estimate of \$108 (at a 1% discount rate).²⁶⁰ A 2015 meta-analysis—which sought out estimates besides just those based on DICE, FUND, and PAGE—found a mean estimate of \$83 per ton of carbon dioxide.²⁶¹ Various studies relying on expert elicitation²⁶² from a large body of climate economists and scientists have found mean estimates of \$50 per ton of carbon dioxide,²⁶³ \$96-\$144 per ton of carbon dioxide,²⁶⁴ and \$80-\$100 per ton of carbon dioxide.²⁶⁵ There is a growing consensus in the literature that even the best existing estimates of the social cost of greenhouse gases may severely underestimate the true marginal cost of climate damages.²⁶⁶ Overall, a central estimate of \$40 per ton of carbon dioxide at a 3% discount rate, with a high-percentile estimate of about \$120 for year 2015 emissions, is consistent with the best available literature; if anything, the best available literature supports considerably higher estimates.²⁶⁷

Similarly, a comparison of international estimates of the social cost of greenhouse gases suggests that a central estimate of \$40 per ton of carbon dioxide is a very conservative value. Sweden places the long-term valuation of carbon dioxide at \$168 per ton; Germany calculates a “climate cost” of \$167 per ton of carbon dioxide in the year 2030; the United Kingdom’s “shadow price of carbon” has a central value of \$115 by 2030; Norway’s social cost of carbon is valued at \$104 per ton for year 2030 emissions; and various corporations have adopted internal shadow prices as high as \$80 per ton of carbon dioxide.²⁶⁸

Indeed, a number of our organizations have previously commented on ways in which the IWG’s approach could be improved to more accurately reflect the true social cost of greenhouse gases. As discussed in our Technical Appendix on Uncertainty, the IWG’s SCC estimates represents a lower bound by, for example, failing to include a risk premium and only partially modeling tipping points. We strongly encourage further efforts to address these omissions, as well as omitted climate damages more generally. Nevertheless, the IWG’s approach represents the best and most rigorous effort that the U.S. government has engaged in thus far to realistically estimate the social cost of greenhouse gases. We therefore strongly urge the agencies to adopt the IWG’s approach for estimating the social cost of

²⁵⁹ R. Tol, *Targets for Global Climate Policy: An Overview*, 37 J. Econ. Dynamics & Control 911 (2013).

²⁶⁰ R. Tol, *Economic Impacts of Climate Change* (Univ. Sussex Working Paper No. 75-2015, 2015).

²⁶¹ S. Nocera et al., *The Economic Impact of Greenhouse Gas Abatement through a Meta-Analysis: Valuation, Consequences and Implications in terms of Transport Policy*, 37 Transport Policy 31 (2015).

²⁶² Circular A-4, at 41, supports use of expert elicitation as a valuable tool to fill gaps in knowledge.

²⁶³ Scott Holladay & Jason Schwartz, *Economists and Climate Change* 43 (Inst. Policy Integrity Brief, 2009 (directly surveying experts about the SCC)).

²⁶⁴ Peter Howard & Derek Sylvan, *The Economic Climate: Establishing Expert Consensus on the Economics of Climate Change* (Inst. Policy Integrity Working Paper 2015/1) (using survey results to calibrate the DICE-2013R damage function).

²⁶⁵ R. Pindyck, *The Social Cost of Carbon Revisited* (Nat’l Bureau of Econ. Res. No. w22807, 2016) (\$80-\$100 is the trimmed range of estimates at a 4% discount rate; without trimming of outlier responses, the estimate is \$200).

²⁶⁶ E.g., Howard & Sylvan, *supra* note 264; Pindyck, *supra* note 265. The underestimation results from a variety of factors, including omitted and outdated climate impacts (including ignoring impacts to economic growth and tipping points), simplified utility functions (including ignoring relative prices), and applying constant instead of a declining discount rate. See Howard, *supra* note 254; Revesz et al., *supra* note 2466; J.C. Van Den Bergh & W.J. Botzen, A Lower Bound to the Social Cost of CO₂ Emissions, 4 Nature Climate Change 253 (2014) (proposing \$125 per metric ton of carbon dioxide in 1995 dollars, or about \$200 in today’s dollars, as the lower bound estimate). See also F.C. Moore & D.B. Diaz, *Temperature Impacts on Economic Growth Warrant Stringent Mitigation Policy*, 5 Nature Climate Change 127 (2015) (concluding the SCC may be six times higher after accounting for potential growth impacts of climate change). Accounting for both potential impacts of climate change on economic growth and other omitted impacts, S. Dietz and N. Stern find a two- to seven-fold increase in the SCC. *Endogenous growth, convexity of damage and climate risk: how Nordhaus’ framework supports deep cuts in carbon emissions*, 125 *The Economic Journal* 574 (2015).

²⁶⁷ Note that the various estimates cited in the paragraph have not all been converted to standard 2017\$, and may not all reflect the same year emissions. Nevertheless, the magnitude of this range suggests that \$40 per ton of year 2015 emissions is a conservative estimate.

²⁶⁸ See Howard & Schwartz, *supra* note 39, at Appendix B. All these estimates are in 2016\$.

carbon, with the understanding that such estimates should be seen as a conservative lower-bound estimate of the true impacts of this pollutant.

The Agencies Should Use the Most Updated Models

The agencies explain that they use DICE 2010, FUND 3.8, and PAGE 2009.²⁶⁹ However, not only is DICE 2010 not considered to be a major update of the DICE model,²⁷⁰ but two major updates have occurred more recently: DICE-2013R²⁷¹ and DICE-2016R.²⁷² In using the outdated DICE 2010, the agencies have failed to use the “best available science and economics” as required by Executive Order 13,783, and failed to follow the recommendations of the National Academies of Sciences on updating the integrated assessment models.²⁷³ Updating from DICE 2010 to the most recent model would increase the social cost of greenhouse gases and enable a Monte Carlo simulation (as in FUND and PAGE) to better specify uncertainty.²⁷⁴

X. The Agencies Must Use the Social Cost of Methane and Social Cost of Nitrous Oxide

It is only in a sensitivity analysis that the agencies give any non-zero value to the climate damages associated with methane and nitrous oxide emissions.²⁷⁵ In the PRIA’s main analysis, all methane and nitrous oxide emissions, and consequently the vast majority of upstream greenhouse gas emissions, are not monetized at all. That is a blatantly arbitrary omission, because, as the U.S. Court of Appeals for the Ninth Circuit has ruled, the social cost of greenhouse gases is certainly not zero.²⁷⁶ The approach also misunderstands the role of sensitivity analysis, which is to test “how the results of your analysis vary with plausible changes in assumptions.”²⁷⁷ The non-zero value of methane and nitrous oxide emissions is a fact, not an assumption, and it was not plausible in the first place to assume the social cost of methane and nitrous oxide to be zero in the main analysis.

The sensitivity analysis first proposes to value the social cost of methane and nitrous oxide by converting emissions into carbon dioxide-equivalent units using the relative global warming potentials. There are several problems with such an approach. First, conversion using relative global warming potential is less accurate than direct modeling. Scientists have long argued that the full social costs of specific, non-carbon dioxide gases like methane and nitrous oxide should be assessed through separate models and methodologies, which would more accurately account for varying atmospheric life spans, among other

²⁶⁹ PRIA 1098.

²⁷⁰ See Nordhaus, W., & Sztorc, P. (2013). DICE 2013R: Introduction and user’s manual.

²⁷¹ Nordhaus, W. (2014). Estimates of the social cost of carbon: concepts and results from the DICE-2013R model and alternative approaches. *Journal of the Association of Environmental and Resource Economists*, 1(1/2), 273-312.

²⁷² Nordhaus, W. D. (2017). Revisiting the social cost of carbon. *Proceedings of the National Academy of Sciences*, 201609244.

²⁷³ See National Academies of Sciences, Engineering, and Medicine. (2017). *Valuing climate damages: Updating estimation of the social cost of carbon dioxide*. National Academies Press. Note that the Interagency Working Group was incorrect in 2016 in failing to update the DICE model from DICE-2010 to DICE-2013R, which was available at the time. Cf. IWG, 2013 Technical Update (updating the models). See also Marten, A.L., Kopits, E.A., Griffiths, C.W., Newbold, S.C., and A. Wolverton. 2015. Incremental CH₄ and N₂O Mitigation Benefits Consistent with the U.S. Government’s SC-CO₂ Estimates. *Climate Policy*. 15(2): 272-298 (anticipating that the models will be continually updated).

²⁷⁴ The update would also increase the agencies’ calculation of the domestic-only share from 10% to 15%, see Nordhaus, W. D. (2017). Revisiting the social cost of carbon. *Proceedings of the National Academy of Sciences*, 201609244. But, as explained *supra* in these comments, a domestic-only value is the wrong framework and is inaccurate.

²⁷⁵ PRIA 1062 fn 604.

²⁷⁶ 538 F.3d at 1200.

²⁷⁷ Circular A-4 at 41.

differences.²⁷⁸ The Interagency Working Group did precisely that in 2016,²⁷⁹ endorsing estimates developed in the peer-reviewed work by Marten *et al.*²⁸⁰ The IWG's estimates of the social cost of methane and social cost of nitrous oxide are based on the same transparent, consensus-driven, publically reviewed, conservative approach as the social cost of carbon's thoroughly vetted methodology. Under Executive Order 13,783's call to base estimates on the best available science and economics, the agencies should use the more accurate direct estimates of the social cost of methane and nitrous oxide.

Second, even if the agencies were to stick with the less accurate approach of converting using relative global warming potentials, the agencies have chosen at best an outdated and at worst an incorrect estimate of GWP. The PRIA claims that its sensitivity analysis uses the GWP values of 25 for methane and 298 for nitrous oxide, citing the Intergovernmental Panel on Climate Change's 2007 work.²⁸¹ However, there is some confusion even about this: in the sensitivity analysis files, the "emission damage costs \$/metric-ton" for methane is set at "\$25," not at 25 times the value of the social cost of carbon. It is therefore unclear which value the sensitivity analysis actually used. Regardless, a GWP of 25 for methane is out of date. EPA currently lists methane's global warming potential as 28-36 over 100 years, and 84-87 over 20 years.²⁸² Meanwhile, the IPCC updated its estimates in 2013, and now recommends using a GWP for methane of 85 to 87 times greater than carbon dioxide after 20 years and 30 to 36 times greater than carbon dioxide after 100 years (after making the recommended adjustment for fossil methane).²⁸³ The agencies' use of 25 for methane's GWP is below even the low end of the new ranges, and is severely below the range that captures methane's relative impacts over a shorter 20-year period. While the best option remains directly calculating the social cost of methane and nitrous oxide, minimally the agencies should update their GWP values and should conduct sensitivity analysis over the entire global warming potential range, instead of merely utilizing the low estimate from an outdated 100-year timescale range.

Sincerely,

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Tomás Carbonell, Senior Attorney and Director of Regulatory Policy, Environmental Defense Fund
Rachel Cleetus, Ph.D., Lead Economist and Climate Policy Manager, Union of Concerned Scientists
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²⁷⁸ See Disa Thureson & Chris Hope, *Is Weitzman Right? The Social Cost of Greenhouse Gases in an IAM World* 21 (Örebro University-Swedish Business School Working Paper 3/2012).

²⁷⁹ 2016 Addendum, *supra* note 236.

²⁸⁰ Alex L. Marten et al., *Incremental CH₄ and N₂O Mitigation Benefits Consistent With the US Government's SC-CO₂ Estimates*, Climate Policy (2014).

²⁸¹ PRIA 1534, fn 910.

²⁸² <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>

²⁸³ IPCC Working Group I, Fifth Assessment Report, Climate Change 2013: The Physical Science Basis, Chapter 8: Anthropogenic and Natural Radiative Forcing (2014) at 633, 711-712, 714 (Table 8.7), available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf (see the adjustment identified in note B for fossil methane).

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* No part of this document purports to present New York University School of Law's views, if any.

Attached:

- Technical Appendix on Uncertainty
- Technical Appendix on Discounting
- Technical Appendix on Damage Literature
- Interagency Working Group on the Social Cost of Greenhouse Gases: 2010 TSD, 2015 Response to Comments, 2016 TSD, 2016 Addendum.
- National Academies of Sciences, *Valuing Climate Damages: Updating Estimates of the Social Cost of Carbon Dioxide* (2017)
- Robert S. Pindyck, Comments on Proposed Rule and Regulatory Impact Analysis on the Delay and Suspension of Certain Requirements for Waste Prevention and Resource Conservation (2017)
- Peter Howard & Jason Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 Columbia J. Envtl. L. 203 (2017)
- Richard L. Revesz et al., *Best Cost Estimate of Greenhouse Gases*, 357 Science 6352 (2017)
- Peter Howard & Thomas Sterner, *Few and Not So Far Between: A Meta-analysis of Climate Damage Estimates*. *Environmental and Resource Economics*, 1-29 (2016).
- Peter Howard & Derek Sylvan, *The Economic Climate: Establishing Expert Consensus on the Economics of Climate Change* (Inst. Policy Integrity Working Paper 2015/1)

Due to copyright limitations, other literature cited in these comments is not attached to our submission. We note, however, that NHTSA already captured many of these citations, drawn from our comments on the NEPA scoping process, and listed them in an appendix to the DEIS. We presume that the agencies will similarly enter into the record all the relevant literature from these comments. We have provided full citations and URLs wherever possible, and the agencies have access to journal articles and so forth.

TECHNICAL APPENDIX: UNCERTAINTY

Contrary to the arguments made by many opposed to strong federal climate action, uncertainty about the full effects of climate change *raises* the social cost of greenhouse gases and warrants *more* stringent climate policy.²⁸⁴ Integrated assessment models (IAMs) currently used to calculate the SCC show that the net effect of uncertainty about economic damage resulting from climate change, costs of mitigation, future economic development, and many other parameters raises the SCC compared to the case where models simply use our current best guesses of these parameters.²⁸⁵ Even so, IAMs still underestimate the impact of uncertainty on the SCC by not accounting for a host of fundamental features of the climate problem: the irreversibility of climate change, society's aversion to risk and other social preferences, option value, and many catastrophic impacts.²⁸⁶ Rather than being a reason not to take action, uncertainty increases the SCC and should lead to more stringent policy to address climate change.²⁸⁷

Types of Uncertainty in the IAMs

IAMs incorporate two types of uncertainty: parametric uncertainty and stochastic uncertainty. Parametric uncertainty covers uncertainty in model design and inputs, including the selected parameters, correct functional forms, appropriate probability distribution functions, and model structure. With learning, these uncertainties should decline over time as more information becomes available.²⁸⁸ Stochastic uncertainty is persistent randomness in the economic-climate system, including various environmental phenomena such as volcanic eruptions and sun spots.²⁸⁹ Uncertainties are present in each component of the IAMs: socio-economic scenarios, the simple climate model, the damage and abatement cost functions, and the social welfare function (including the discount rate).²⁹⁰

When modeling climate change uncertainty, scientists and economists have long emphasized the importance of accounting for the potential of catastrophic climate change.²⁹¹ Catastrophic outcomes combine several overlapping concepts including unlucky states of the world (i.e., bad draws), deep

²⁸⁴ Sonja Peterson, *Uncertainty and economic analysis of climate change: A survey of approaches and findings*, 11 *Environmental Modeling & Assessment* 1-17 (2006) ("Most modeling results show (as can be expected) that there is optimally more emission abatement if uncertainties in parameters or the possibility of catastrophic events are considered.").

²⁸⁵ *Id.*; Richard SJ Tol, Safe policies in an uncertain climate: an application of FUND, 9 *Global Environmental Change* 221-232 (1999).

²⁸⁶ Robert S Pindyck, *Uncertainty in environmental economics*, 1 *Review of environmental economics and policy* 45-65 (2007); Golub et al, *supra* note 218; Lemoine & Rudik, *supra* note 218.

²⁸⁷ See *supra* note 286.

²⁸⁸ Learning comes in multiple forms: passive learning of anticipated information that arrives exogenous to the emission policy (such as academic research), active learning of information that directly stems from the choice of the GHG emission level (via the policy process), and learning of unanticipated information. Antje Kann & John P. Weyant, *Approaches for performing uncertainty analysis in large-scale energy/economic policy models*, 5 *Environmental Modeling & Assessment* 29-46 (2000); Derek Lemoine & Ivan Rudik, *Managing Climate Change Under Uncertainty: Recursive Integrated Assessment at an Inflection Point*, 9 *Annual Review of Resource Economics* 18.1-18.26 (2017).

²⁸⁹ A potential third type of uncertainty arises due to ethical or value judgements: normative uncertainty. Peterson (2006) *supra* note 284; Geoffrey Heal & Antony Millner, *Reflections: Uncertainty and decision making in climate change economics*, 8 *Review of Environmental Economics and Policy* 120-137 (2014). For example, there is some normative debate over the appropriate consumption discount rate to apply in climate economics, though widespread consensus exists that using the social opportunity cost of capital is inappropriate (see earlier discussion). Preference uncertainty should be modeled as a declining discount rate over time (see earlier discussion), not using uncertain parameters. Kann & Weyant, *supra* note 288 and Golub et al. *supra* note 218.

²⁹⁰ Peterson (2006), *supra* note 284; Pindyck (2007), *supra* note 218; Heal & Millner 2014, *supra* note 289.

²⁹¹ William Nordhaus, *A Question of Balance: Weighing the Options on Global Warming Policies* (2008); Robert E. Kopp, Rachael L. Shwom, Gernot Wagner, and Jiacan Yuan, *Tipping elements and climate-economic shocks: Pathways toward integrated assessment*, 4 *Earth's Future* 346-372 (2016).

uncertainty, and climate tipping points and elements.²⁹² Traditionally, IAM developers address uncertainty by specifying probability distributions over various climate and economic parameters. This type of uncertainty implies the possibility of an especially bad draw if multiple uncertain parameters turn out to be lower than we expect, causing actual climate damages to greatly exceed expected damages.

Our understanding of the climate and economic systems is also affected by so-called “deep uncertainty,” which can be thought of as uncertainty over the true probability distributions for specific climate and economic parameters.²⁹³ The mean and variance of many uncertain climate phenomena are unknown due to lack of data, resulting in “fat-tailed distributions”—i.e., the tail of the distributions decline to zero slower than the normal distribution. Fat-tailed distributions result when the best guess of the distribution is derived under learning.²⁹⁴ Given the general opinion that bad surprises are likely to outweigh good surprises in the case of climate change,²⁹⁵ modelers capture deep uncertainty by selecting probability distributions with a fat upper tail which reflects the greater likelihood of extreme events.²⁹⁶ The possibility of fat tails increases the likelihood of a “very” bad draw with high economic costs, and can result in a very high (and potentially infinite) expected cost of climate change (a phenomenon known as the dismal theory).²⁹⁷

Climate tipping elements are environmental thresholds where a small change in climate forcing can lead to large, non-linear shifts in the future state of the climate (over short and long periods of time) through positive feedback (i.e., snowball) effects.²⁹⁸ Tipping points refer to economically relevant thresholds after which change occurs rapidly (i.e., Gladwellian tipping points), such that opportunities for adaptation and intervention are limited.²⁹⁹ Tipping point examples include the reorganization of the Atlantic meridional overturning circulation (AMOC) and a shift to a more persistent El Niño regime in the Pacific Ocean.³⁰⁰ Social tipping points—including climate-induced migration and conflict—also exist. These various tipping points interact, such that triggering one tipping point may affect the probabilities of triggering other tipping points.³⁰¹ There is some overlap between tipping point events and fat tails in

²⁹² Kopp et al. (2016), *supra* note 291.

²⁹³ *Id.*

²⁹⁴ William Nordhaus, *An Analysis of the Dismal Theorem* (Cowles Foundation Discussion Paper No. 1686, 2009); Martin L. Weitzman, *Fat-tailed uncertainty in the economics of catastrophic climate change*, 5 *Review of Environmental Economics and Policy* 275-292 (2011). Robert S Pindyck, *Fat tails, thin tails, and climate change policy*, 5 *Review of Environmental Economics and Policy* 258-274 (2011).

²⁹⁵ Michael D Mastrandrea, *Calculating the benefits of climate policy: examining the assumptions of integrated assessment models* (Pew Center on Global Climate Change Working Paper, 2009); Richard SJ Tol, *On the uncertainty about the total economic impact of climate change*, 53 *Environmental and Resource Economics* 97-116 (2012).

²⁹⁶ Weitzman (2011), *supra* note 294, makes clear that “deep structural uncertainty about the unknown unknowns of what might go very wrong is coupled with essentially unlimited downside liability on possible planetary damages. This is a recipe for producing what are called ‘fat tails’ in the extreme of critical probability distributions.”

²⁹⁷ Martin L Weitzman, *On modeling and interpreting the economics of catastrophic climate change*, 91 *The Review of Economics and Statistics* 1-19 (2009); Nordhaus (2009), *supra* note 294; Weitzman (2011), *supra* note 294.

²⁹⁸ Tipping elements are characterized by: (1) deep uncertainty, (2) absence from climate models, (3) larger resulting changes relative to the initial change crossing the relevant threshold, and (4) irreversibility. Kopp et al. (2016), *supra* note 291.

²⁹⁹ *Id.*

³⁰⁰ *Id.*; Elmar Kriegler, Jim W. Hall, Hermann Held, Richard Dawson, and Hans Joachim Schellnhuber, *Imprecise probability assessment of tipping points in the climate system*, 106 *Proceedings of the national Academy of Sciences* 5041-5046 (2009); Delavane Diaz & Klaus Keller, *A potential disintegration of the West Antarctic Ice Sheet: Implications for economic analyses of climate policy*, 106 *The American Economic Review* 607-611 (2016). See Table 1 of Kopp et al. (2016) *supra* note 291, for a full list of known tipping elements and points.

³⁰¹ Kriegler et al. (2009), *supra* note 300; Cai, Yongyang, Timothy M. Lenton, and Thomas S. Lontzek, *Risk of multiple interacting tipping points should encourage rapid CO2 emission reduction*, 6 *Nature Climate Change* 520-525 (2016); Kopp et al. (2016) *supra* note 291.

that the probability distributions for how likely, how quick, and how damaging tipping points will be are unknown.³⁰² Accounting fully for these most pressing, and potentially most dramatic, uncertainties in the climate-economic system matter because humans are risk averse and tipping points—like many other aspects of climate change—are, by definition, irreversible

How IAMs and the IWG Account for Uncertainty

Currently, IAMs (including all of those used by the IWG) capture uncertainty in two ways: deterministically and through uncertainty propagation. For the deterministic method, the modeler assumes away uncertainty (and thus the possibility of bad draws and fat tails) by setting parameters equal to their most likely (median) value. Using these values, the modeler calculates the median SCC value. Typically, the modeler conducts sensitivity analysis over key parameters—one at a time or jointly—to determine the robustness of the modeling results. This is the approach employed by Nordhaus in the preferred specification of the DICE model³⁰³ used by the IWG.

Uncertainty propagation is most commonly carried out using Monte Carlo simulation. In these simulations, the modeler randomly draws parameter values from each of the model's probability distributions, calculates the SCC for the draw, and then repeats this exercise thousands of times to calculate a mean social cost of carbon.³⁰⁴ Tol, Anthoff, and Hope employ this technique in FUND and PAGE—as did the IWG (2010, 2013, and 2016)³⁰⁵—by specifying probability distributions for the climate and economic parameters in the models. These models are especially helpful for assessing the net effect of different parametric and stochastic uncertainties. For instance, both the costs of mitigation and the damage from climate change are uncertain. Higher costs would warrant less stringent climate policies, while higher damages lead to more stringent policy, so theoretically, the effect of these two factors on climate policy could be ambiguous. Uncertainty propagation in an IAM calibrated to empirically motivated distributions, however, shows that climate damage uncertainty outweighs the effect of cost uncertainty, leading to a stricter policy when uncertainty is taken into account than when it is ignored.³⁰⁶ This can be seen in the resulting right-skewed distribution of the SCC (see Figure 1 in IWG (2016)) where the mean (Monte Carlo) SCC value clearly exceeds the median (deterministic) SCC value.

The IWG was rigorous in addressing uncertainty. First, it conducted Monte Carlo simulations over the above IAMs specifying different possible outcomes for climate sensitivity (represented by a right skewed, fat tailed distribution to capture the potential of higher than expected warming). It also used scenario analysis: five different emissions growth scenarios and three discount rates. Second, the IWG (2016)³⁰⁷ reported the various moments and percentiles—including the 95th percentile—of the resulting

³⁰² Peter Howard, *Omitted Damages: What's Missing from the Social Cost of Carbon 5* (Cost of Carbon Project Report, 2014), <http://costofcarbon.org/>; Kopp et al. (2016) *supra* note 291.

³⁰³ See Nordhaus & Sztorc 2013, *supra* note 270.

³⁰⁴ In alternative calculation method, the modeler “performs optimization of policies for a large number of possible parameter combinations individually and estimates their probability weighted sum.” Golub et al. *supra* note 218. In more recent DICE-2016, Nordhaus conducts a three parameter analysis using this method to determine a SCC confidence interval. Given that PAGE and FUND model hundred(s) of uncertainty parameters, this methodology appears limited in the number of uncertain variables that can be easily specified.

³⁰⁵ INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 (2010). INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 (2013). INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 (2016).

³⁰⁶ Tol (1999), *supra* note 285, in characterizing the FUND model, states, “Uncertainties about climate change impacts are more serious than uncertainties about emission reduction costs, so that welfare-maximizing policies are stricter under uncertainty than under certainty.”

³⁰⁷ IWG (2016) *supra* note 305.

SCC estimates. Third, the IWG put in place an updating process, e.g., the 2013 and 2016 revisions, which updates the models as new information becomes available.³⁰⁸ As such, the IWG used the various tools that economists have developed over time to address the uncertainty inherent in estimating the economic cost of pollution: reporting various measures of uncertainty, using Monte Carlo simulations, and updating estimates as evolving research advances our knowledge of climate change. Even so, the IWG underestimate the SCC by failing to capture key features of the climate problem.

Current IAMs Underestimate the SCC by Failing to Sufficiently Model Uncertainty

Given the current treatment of uncertainty by the IWG (2016) and the three IAMs that they employ, the IWG (2016) estimates represent an underestimate of the SCC. DICE clearly underestimates the true value of the SCC by effectively eliminating the possibility of bad draws and fat tails through a deterministic model that relies on the median SCC value. Even with their calculation of the mean SCC, the FUND and PAGE also underestimate the metric's true value by ignoring key features of the climate-economic problem. Properly addressing the limitations of these models' treatment of uncertainty would further increase the SCC.

First, current IAMs insufficiently model catastrophic impacts. DICE fails to model both the possibility of bad draws and fat tails by applying the deterministic approach. Alternatively, FUND and PAGE ignore deep uncertainty by relying predominately on the thin-tailed triangular and gamma distributions.³⁰⁹ The IWG (2010) only partially addresses this oversight by replacing the ECS parameter in DICE, FUND, and PAGE with a fat-tailed, right-skewed distribution calibrated to the IPCC's assumptions (2007), even though many other economic and climate phenomenon in IAMs are likely characterized by fat tails, including climate damages from high temperature levels, positive climate feedback effects, and tipping points.³¹⁰ Recent work in stochastic dynamic programming tends to better integrate fat tails – particularly with respect to tipping points (see below) – and address additional aversion to this type of uncertainty (also known as ambiguity aversion); doing so can further increase the SCC under uncertainty.³¹¹

In contrast to their approach to fat tails, the IAMs used by the IWG (2010; 2013; 2016) sometimes address climate tipping points, though they do not apply state-of-the-art methods for doing so. In early versions of DICE (DICE-2010 and earlier), Nordhaus implicitly attributes larger portions of the SCC to tipping points by including certainty equivalent damages of catastrophic events - representing two-thirds to three-quarter of damages in DICE – calibrated to an earlier Nordhaus (1994) survey of experts.³¹² In PAGE09, Hope also explicitly models climate tipping points as a singular, discrete event (of a 5% to 25% loss in GDP) that has a probability (which grows as temperature increases) of occurring in

³⁰⁸ IWG (2010) *supra* note 305.

³⁰⁹ Howard (2014), *supra* note 302. While both FUND and PAGE employ thin tailed distributions, the resulting distribution of the SCC is not always thin-tailed. In PAGE09, the ECS parameter is endogenous, such that the distribution of the ECS has a long tail following the IPCC (2007). See Z Chen, M Marquis, KB Averyt, M Tignor, & HL Miller, Contribution of working group I to the fourth assessment report of the intergovernmental panel on climate change (2007). Similarly, while Anthoff and Tol do not explicitly utilize fat-tail distributions, the distribution of net present welfare from a Monte Carlos simulation is fat tailed. DAVID ANTHOFF & RICHARD S. J. TOL, THE CLIMATE FRAMEWORK FOR UNCERTAINTY, NEGOTIATION, AND DISTRIBUTION (FUND), TECHNICAL DESCRIPTION, VERSION 3.8 (2014). Explicitly modeling parameter distributions as fat tailed may further increase the SCC.

³¹⁰ Weitzman (2011), *supra* note 294; Kopp et al. (2016) *supra* note 291.

³¹¹ Derek Lemoine & Christian P. Traeger, *Ambiguous tipping points*, 132 *Journal of Economic Behavior & Organization* 5-18 (2016); Lemoine & Rudik (2017), *supra* note 218. IAM modelers currently assume that society is equally averse to known unknown and known unknowns. Lemoine & Traeger, *id.*

³¹² William Nordhaus & Joseph Boyer, *Warning the World: Economic Models of Global Warming* (2000); Nordhaus (2008) *supra* note 264; Howard (2014), *supra* note 302; Kopp et al. (2016) *supra* note 291.

each time period.³¹³ Though not in the preferred versions of the IAMs employed by the IWG, some research also integrates specific tipping points into these IAMs finding even higher SCC estimates.³¹⁴ Despite the obvious methodological basis for addressing tipping points, the latest versions of DICE³¹⁵ and FUND exclude tipping points in their preferred specifications. Research shows that if these models were to correctly account for the full range of climate impacts—including tipping points—the resulting SCC estimates would increase.³¹⁶

The IWG approach also fails to include a risk premium—that is, the amount of money society would require in order to accept the uncertainty (i.e., variance) over the magnitude of warming and the resulting damages from climate change relative to mean damages (IWG, 2010; IWG, 2015)). The mean of a distribution, which is a measure of a distribution’s central tendency, represents only one descriptor or “moment” of a distribution’s shape. Each IAM parameter and the resulting SCC distributions have differing levels of variance (i.e., spread around the mean), skewness (i.e., a measure of asymmetry), and kurtosis (which, like skewness, is another descriptor of a distribution’s tail) as well as means.³¹⁷ It is generally understood that people are risk averse in that they prefer input parameter distributions and (the resulting) SCC distributions with lower variances, holding the mean constant.³¹⁸ While the IWG assumes a risk-neutral central planner by using a constant discount rate (setting the risk premium to zero), this assumption does not correspond with empirical evidence,³¹⁹ current IAM assumptions,³²⁰ the

³¹³ Hope (2006) also calibrated a discontinuous damage function in PAGE-99 used by IWG (2010); see Chris Hope, *The Marginal Impact of CO₂ from PAGE2002: An Integrated Assessment Model Incorporating the IPCC’s Five Reasons for Concern*, 6 INTEGRATED ASSESSMENT J. 19 (2006). Howard (2014), *supra* note 302.

³¹⁴ Kopp et al. (2016) *supra* note 291.

³¹⁵ For DICE-2013 and DICE-2016, Nordhaus calibrates the DICE damage function using a meta-analysis based on estimates that mostly exclude tipping point damages. Peter H Howard & Thomas Sterner, *Few and Not So Far Between: A Meta-analysis of Climate Damage Estimates*, 68 Environmental and Resource Economics 1-29 (2016).

³¹⁶ Using FUND, Link and Tol (2011) find that a collapse of the AMOC would decrease GDP (and thus increase the SCC) by a small amount. Earlier modeling of this collapse in DICE find a more significance increase. P. Michael Link & Richard SJ Tol, Estimation of the economic impact of temperature changes induced by a shutdown of the thermohaline circulation: an application of FUND, 104 *Climatic Change* 287-304 (2011); Klaus Keller, Kelvin Tan, François MM Morel, & David F. Bradford, *Preserving the Ocean Circulation: Implications for Climate Policy*, 47 *Climatic Change* 17-43 (2000); Michael D Mastrandrea & Stephen H. Schneider, *Integrated assessment of abrupt climatic changes*, 1 *Climate Policy* 433-449 (2001); Klaus Keller, Benjamin M. Bolker, & David F. Bradford, *Uncertain climate thresholds and optimal economic growth*, 48 *Journal of Environmental Economics and management* 723-741 (2004). With respect to thawing of the permafrost, Hope and Schaefer (2016) and Gonzalez-Eguino and Neumann (2016) find increases in damages (and thus an increase in the SCC) when integrating this tipping element into the PAGE09 and DICE-2013R, respectively. Chris Hope & Kevin Schaefer, *Economic impacts of carbon dioxide and methane released from thawing permafrost*, 6 *Nature Climate Change* 56-59 (2016); Mikel González-Eguino & Marc B. Neumann, *Significant implications of permafrost thawing for climate change control*, 136 *Climatic Change* 381-388 (2016). Looking at the collapse of the West Antarctic Ice sheet, Nicholls et al. (2008) find a potential for significant increases in costs (and thus the SCC) in FUND. Robert J Nicholls, Richard SJ Tol, & Athanasios T. Vafeidis, Global estimates of the impact of a collapse of the West Antarctic ice sheet: an application of FUND, 91 *Climatic Change* 171-191 (2008). Ceronsky et al. (2011) model three tipping points (collapse of the Atlantic Ocean Meridional Overturning Circulation, large scale dissociation of oceanic methane hydrates; and a high equilibrium climate sensitivity parameter), and finds a large increase in the SCC in some cases. Megan Ceronsky, David Anthoff, Cameron Hepburn, and Richard SJ Tol, *Checking the price tag on catastrophe: The social cost of carbon under non-linear climate response* (ESRI working paper No. 392, 2011).

³¹⁷ Alexander Golub & Michael Brody, *Uncertainty, climate change, and irreversible environmental effects: application of real options to environmental benefit-cost analysis*, 7 *Journal of Environmental Studies and Sciences* 7 519-526 (2017); see Figure 1 in IWG (2016) *supra* note 305.

³¹⁸ In other words, society prefers a narrow distribution of climate damages around mean level of damages X to a wider distribution of damages also centered on the same mean of X because they avoid the potential for very high damages even at the cost of eliminating the chance of very low damages.

³¹⁹ IWG, 2010 *supra* note 305, at fn 22; Cai et al., 2016, *supra* note 301, at 521.

³²⁰ The developers of each of the three IAMs used by the IWG (2010; 2013; 2016) assume a risk aversion society. Nordhaus and Sztorc 2013 *supra* note 270; Anthoff & Tol (2013) *supra* note 257; DAVID ANTHOFF & RICHARD S. J. TOL, THE CLIMATE FRAMEWORK FOR UNCERTAINTY, NEGOTIATION, AND DISTRIBUTION (FUND), TECHNICAL DESCRIPTION, VERSION 3.5 (2010); Chris Hope, *Critical issues for the*

NAS (2017) recommendations, nor with the IWG’s own discussion (2010) of the possible values of the elasticity of the marginal utility of consumption. Evidence from behavioral experiments indicate that people and society are also averse to other attributes of parameter distributions – specifically to the thickness of the tails of distributions – leading to an additional ambiguity premium (Heal and Millner, 2014).³²¹ Designing IAMs to properly account for the risk and ambiguity premiums from uncertain climate damages would increase the resulting SCC values they generate.

Even under the IWG’s current assumption of risk neutrality, the mean SCC from uncertainty propagation excludes the (real) option value of preventing marginal CO₂ emissions.³²² Option value reflects the value of future flexibility due to uncertainty and irreversibility; in this case, the irreversibility of CO₂ emissions due to their long life in the atmosphere.³²³ If society exercises the option of emitting an additional unit of CO₂ emissions today, “we will lose future flexibility that the [mitigation] option gave” leading to possible “regret and...a desire to ‘undo’” the additional emission because it “constrains future behavior.”³²⁴ Given that the SCC is calculated on the Business as Usual (BAU) emission pathway, option value will undoubtedly be positive for an incremental emission because society will regret this emission in most possible futures.

Though sometimes the social cost of carbon and a carbon tax are thought of as interchangeable ways to value climate damages, agencies should be careful to distinguish two categories of the literature. The first is the economic literature that calculates the optimal carbon tax in a scenario where the world has shifted to an optimal emissions pathway. The second is literature that assesses the social cost of carbon on the business-as-usual (BAU) emissions pathway; the world is currently on the BAU pathway, since optimal climate policies have not been implemented. There are currently no numerical estimates of the risk premium and option value associated with an incremental emission on the BAU emissions path. Although there are stochastic dynamic optimization models that implicitly account for these two values, they analyze *optimal*, sequential decision making under climate uncertainty.³²⁵ By nature of being optimization models (instead of policy models), these complex models focus on calculating the optimal tax and not the social cost of carbon, which differ in that the former is the present value of marginal

calculation of the social cost of CO₂: why the estimates from PAGE09 are higher than those from PAGE2002, 117 CLIM. CHANGE 531–543 (2013) at 539.

³²¹ According to Heal and Millner (2014) *supra* note 289, there is an ongoing debate of whether ambiguity aversion is rational or a behavioral mistake. Given the strong possibility that this debate is unlikely to be resolved, the authors recommend exploring both assumptions.

³²² Kenneth J Arrow & Anthony C. Fisher, *Environmental preservation, uncertainty, and irreversibility*, 88 The Quarterly Journal of Economics 312-319 (1974); Avinash K Dixit and Robert S Pindyck, *Investment under uncertainty* (1994); Christian P Traeger, *On option values in environmental and resource economics*, 37 Resource and Energy Economics 242-252 (2014).

In the discrete emission case, there are two overlapping types of option value: real option value and quasi-option value. Real option value is the full value of future flexibility of maintaining the option to mitigate, and mathematically equals the maximal value that can be derived from the option to [emit] now or later (incorporating learning) less the maximal value that can be derived from the possibility to [emit] now or never. Traeger (2014) *supra* note 322, equation 5. Quasi-option value is the value of future learning conditional on delaying the emission decision, which mathematically equals the value of mitigation to the decision maker who anticipates learning less the value of mitigation to the decision maker who anticipates only the ability to delay his/her decision, and not learning. *Id.* The two values are related, such that real option value can be decomposed into:

$$DPOV = \mathbf{Max}\{QOV + SOV - \mathbf{Max}\{NPV, 0\}, 0\} = \mathbf{Max}\{QOV + SOV - SCC, 0\}$$

where DPOV is the real option value, QOV is quasi-option value, SOV is simple option value (the value of the option to emit in the future condition on mitigating now), and NPV is the expected net present value of emitting the additional unit or the mean SCC in our case. *Id.*

³²³ Even if society drastically reduced CO₂ emissions, CO₂ concentrations would continue to rise in the near future and many impacts would occur regardless due to lags in the climate system. Robert S Pindyck, *Uncertainty in environmental economics*, 1 Review of environmental economics and policy 45-65 (2007).

³²⁴ Pindyck (2007) *supra* note 218.

³²⁵ Kann & Weyant *supra* note 288; Pindyck (2007) *supra* note 218; Golub et al. (2014) *supra* note 218.

damages on the optimal emissions path rather than on the BAU emissions path.³²⁶ While society faces the irreversibility of emissions on the BAU emissions path when abatement is essentially near zero (i.e., far below the optimal level even in the deterministic problem),³²⁷ the stochastic dynamic optimization model must also account for a potential counteracting abatement cost irreversibility – the sunk costs of investing in abatement technology if we learn that climate change is less severe than expected – by the nature of being on the optimal emissions path that balances the cost of emissions and abatement. In the optimal case, uncertainty and irreversibility of abatement *can theoretically* lead to a lower optimal emissions tax, unlike the social cost of carbon. The difference in the implication for the optimal tax and the SCC means that the stochastic dynamic modeling results are less applicable to the SCC.

What can we learn from new literature on stochastic dynamic programming models?

Bearing in mind the limitations of stochastic dynamic modeling, some new research provides valuable insights that are relevant to calculation of the social cost of greenhouse gases. The new and growing stochastic dynamic optimization literature implies that the IWG's SCC estimates are downward biased. The literature is made up of three models – real option, finite horizon, and infinite horizon models – of which the infinite time horizon (i.e., stochastic dynamic programming (SDP)) models are the most comprehensive for analyzing the impact of uncertainty on optimal sequential abatement policies.³²⁸ Recent computational advancements in SDP are helping overcome the need for strong simplifying assumptions in this literature for purpose of tractability. Traditionally, these simplifications led to unrealistically fast rates of learning – leading to incorrect outcomes – and difficulty in comparing results across papers (due to differing uncertain parameters, models of learning, and model types). Even so, newer methods still only allow for a handful of uncertain parameters compared to the hundreds of uncertain parameters in FUND and PAGE. Despite these limitations, the literature supports the above finding that the SCC, if anything, increases under uncertainty.³²⁹

First, uncertainty increases the optimal emissions tax under realistic parameter values and modeling scenarios. While the impact of uncertainty on the optimal emissions tax (relative to the deterministic problem) depends on the uncertain parameters considered, the type of learning, and the model type (real option, finite horizon, and infinite horizon), the optimal tax clearly increases when tipping points or black swan events are included in stochastic optimization problems.³³⁰ For SDP models, uncertainty

³²⁶ Nordhaus (2014) makes this difference clear when he clarifies that “With an optimized climate policy...the SCC will equal the carbon price...In the more realistic case where climate policy is not optimized, it is conventional to measure the SCC as the marginal damage of emissions along the actual path. There is some inconsistency in the literature on the definition of the path along which the SCC should be calculated. This paper will generally define the SCC as the marginal damages along the baseline path of emissions and output and not along the optimized emissions path.” William D. Nordhaus, *Estimates of the Social Cost of Carbon: Concepts and Results from the DICE-2013R Model and Alternative Approaches*, 1 J. ASSOC. ENVIRON. RESOUR. ECON. 1 (2014).

³²⁷ On the BAU path, emissions far exceed their optimal level even without considering uncertainty. As a consequence, society is likely to regret an additional emission of CO₂ in most future states of the world. Alternatively, society is unlikely to regret current abatement levels unless the extremely unlikely scenarios that there is little to no warming and/or damages from climate change.

³²⁸ Kann & Weyant *supra* note 288; Pindyck (2007) *supra* note 218; Golub et al. (2014) *supra* note 218.

³²⁹ Kann & Weyant *supra* note 288; Pindyck (2007) *supra* note 218; Golub et al. (2014) *supra* note 218; Lemoine & Rudik 2017 *supra* note 218. Comparing the optimal tax to the mean SCC is made further difficult by the frequent use of DICE as the base from which most stochastic dynamic optimization models are built. As a consequence, deterministic model runs are frequently the base of comparison for these models (Lemoine & Rudik, *id*).

³³⁰ The real options literature tends to find an increase in the optimal emissions path under uncertainty relative to the deterministic case (Pindyck 2007 *supra* note 218), though the opposite is true when modelers account for the possibility of large damages (i.e., tipping point or black swan events) even with a risk-neutral society (Pindyck 2007 *supra* note 296; Golub et al 2014 *supra* note 259). Solving finite horizon models employing non-recursive methods, modelers find that the results differ depending on the model of learning – the research demonstrates stricter emission paths under uncertainty without learning

tends to strengthen the optimal emissions path relative to the determinist case even without tipping points,³³¹ and these results are strengthened under realistic preference assumptions.³³² Given that there is no counter-balancing tipping abatement cost,³³³ the complete modeling of climate uncertainty – which fully accounts for tipping points and fat tails – increases the optimal tax. Uncertainty leads to a stricter optimal emissions policy even if with irreversible mitigation costs, highlighting that the SCC would also increase when factoring in risk aversion and irreversibility given that abatement costs are very low on the BAU emissions path.

Second, given the importance of catastrophic impacts under uncertainty (as shown in the previous paragraph), the full and accurate modeling of tipping points and unknown knowns is critical when modeling climate change. The most sophisticated climate-economic models of tipping points – which include the possibility of multiple correlated tipping points in stochastic dynamic IAMs – find an increase in the optimal tax by 100%³³⁴ to 800%³³⁵ relative to the deterministic case without them. More realistic modeling of tipping points will also increase the SCC.

Finally, improved modeling of preferences will amplify the impact of uncertainty on the SCC. Adopting Epstein-Zin preferences that disentangle risk aversion and time preferences can significantly increase the SCC under uncertainty.³³⁶ Recent research has shown that accurate estimation of decisions under uncertainty crucially depends on distinguishing between risk and time preferences.³³⁷ By conflating risk and time preferences, current models substantially understate the degree of risk aversion exhibited by most individuals, artificially lowering the SCC. Similarly, adopting ambiguity aversion increase the SCC, but to a much lesser extent than risk aversion.³³⁸ Finally, allowing for the price of non-market goods to increase with their relative scarcity can amplify the positive effect that even small tipping points have on the SCC if the tipping point impacts non-market services.³³⁹ Including more realistic preference assumptions in IAMs would further increase the SCC under uncertainty.

(with emission reductions up to 30% in some cases) and the impact under passive learning has a relatively small impact due the presence of sunken mitigation investment costs - except when tipping thresholds are included (Golub et al 2014 *supra* note 218).

³³¹ Using SDP, modelers find that uncertainty over the equilibrium climate sensitivity parameter generally increases the optimal tax by a small amount, though the magnitude of this impact is unclear (Golub et al. (2014) *supra* note 218; Lemoine & Rudik 2017 *supra* note 218). Similarly, non-catastrophic damages can have opposing effects dependent on the parameters changed, though emissions appear to decline overall when you consider their uncertainty jointly.

³³² Pindyck (2007) *supra* note 218; Golub et al. (2014) *supra* note 218; Lemoine & Rudik 2017 *supra* note 218.

³³³ Pindyck (2007) *supra* note 218.

³³⁴ Derek Lemoine & Christian P. Traeger, *Economics of tipping the climate dominoes*. 6 NAT. CLIM. CHANG. 514-519 (2016).

³³⁵ Cai et al. 2016 *supra* note 301.

³³⁶ Cai et al. 2016 *supra* note 301; Lemoine & Rudik 2017 *supra* note 218. The standard utility function adopted in IAMs with constant relative risk version implies that the elasticity of substitution equals the inversion of relative risk aversion. As a consequence, the society's preferences for the intra-generational distribution of consumption, the intergenerational distribution of consumption, and risk aversion hold a fixed relationship. For purposes of stochastic dynamic programming, this is problematic because this assumption conflates intertemporal consumption smoothing and risk aversion. WJ Wouter Botzen & Jeroen CJM van den Bergh, *Specifications of social welfare in economic studies of climate policy: overview of criteria and related policy insights*, 58 Environmental and Resource Economics 1-33 (2014). By adopting the Epstein-Zinn utility function which separates these two parameters, modelers can calibrate them according to empirical evidence. For example, Cai et al. (2016) *supra* note 301 replace the DICE risk aversion of 1.45 and elasticity parameter of 1/1.45 with values of 3.066 and 1.5, respectively.

³³⁷ James Andreoni & Charles Sprenger, *Risk Preferences Are Not Time Preferences*, 102 AM. ECON. REV. 3357–3376 (2012).

³³⁸ Lemoine & Traeger (2016) *supra* note 311.

³³⁹ Typically, IAMs assume constant relative prices of consumption goods. Reyer Gerlagh & B. C. C. Van der Zwaan, *Long-term substitutability between environmental and man-made goods*, 44 Journal of Environmental Economics and Management 329-345 (2002); Thomas Sterner & U. Martin Persson, *An even sterner review: Introducing relative prices into the discounting debate*, 2 Review of Environmental Economics and Policy 61-76 (2008). By replacing the standard isoelastic utility function in

Introducing stochastic dynamic modeling (which captures option value and risk premiums), updating the representation of tipping points, and including more realistic preference structures in traditional IAMs will – as in the optimal tax – further increase the SCC under uncertainty

Conclusion: Uncertainty Raises the Social Cost of Greenhouse Gases

Overall, the message is clear: climate uncertainty is *never* a rationale for ignoring the SCC or shortening the time horizon of IAMs. Instead, our best estimates suggest that increased variability implies a higher SCC and a need for more stringent emission regulations.³⁴⁰ Current omission of key features of the climate problem under uncertainty (the risk and climate premiums, option value, and fat tailed probability distributions) and incomplete modeling of tipping points imply that the SCC will further increase with the improved modeling of uncertainty in IAMs.

IAMs with a nested CES utility function following Sterner and Persson (2008), Cai et al. (2015) find that even a relatively small tipping point (i.e., a 5% loss) can substantially increase the SCC in the stochastic dynamic setting. Yongyang Cai, Kenneth L. Judd, Timothy M. Lenton, Thomas S. Lontzek, & Daiju Narita, *Environmental tipping points significantly affect the cost–benefit assessment of climate policies*, 112 PROC. NATL. ACAD. SCI. 4606-4611 (2015).

³⁴⁰ Golub et al. (2014) *supra* note 218 states “The most important general policy implication from the literature is that despite a wide variety of analytical approaches addressing different types of climate change uncertainty, none of those studies supports the argument that no action against climate change should be taken until uncertainty is resolved. On the contrary, uncertainty despite its resolution in the future is often found to favor a stricter policy.” See also Comments from Robert Pindyck, to BLM, on the Social Cost of Methane in the Proposed Suspension of the Waste Prevention Rule (submitted Nov. 5, 2017) (“Specifically, my expert opinion about the uncertainty associated with Integrated Assessment Models (IAMs) was used to justify setting the SC-CH₄ to zero until this uncertainty is resolved. That conclusion does not logically follow and I have rejected it in the past, and I reiterate my rejection of that view again here. While at this time we do not know the Social Cost of Carbon (SCC) or the Social Cost of Methane with precision, we do know that the correct values are well above zero...Because of my concerns about the IAMs used by the now-disbanded Interagency Working Group to compute the SCC and SC-CH₄, I have undertaken two lines of research that do not rely on IAMs...[They lead] me to believe that the SCC is larger than the value estimated by the U.S. Government.”

TECHNICAL APPENDIX: DISCOUNTING

1. The Underlying IAMs All Use a Consumption Discount Rate

Employing a consumption discount rate would also ensure that the U.S. government is consistent with the assumptions employed by the underlying IAM models: DICE, FUND, and PAGE. Each of these IAMs employs consumption discount rates calibrated using the standard Ramsey formula.³⁴¹ In DICE-2010, the elasticity of the pure rate of time preference is 1.5 and an elasticity of the marginal utility of consumption (η) of 2.0. Together with its assumed per capita consumption growth path, the average discount rate over the next three hundred years is 2.4%.³⁴² However, more recent versions of DICE (DICE-2013R and DICE-2016) update η to 1.45; this implies an increase of the average discount rate over the timespan of the models to between 3.1% and 3.2% depending on the consumption growth path.³⁴³ In FUND 3.8 and (the mode values in) PAGE09, both model parameters are equal to 1.0. Based on the assumed growth rate of the U.S. economy (without climate damages), the average U.S. discount rate in FUND 3.8 is 2.0% over the timespan of the model (without considering climate damages). Unlike FUND 3.8, PAGE09 specifies triangular distributions for both parameters with a pure rate of time preference of between 0.1 and 2 with a mean of 1.03 and an elasticity of the marginal utility of consumption of between 0.5 and 2 with a mean 1.17. Using the PAGE09's mode values (without accounting for climate damages), the average discount rate over the timespan of the models is approximately 3.3% with a range of 1.2% to 6.5%. Rounding up the annual growth rate over the last 50 years to approximately 2%,³⁴⁴ the range of best estimates of the SDR implied in the short-run by these three models is approximately 3% (PAGE09's mode estimate and FUND 3.8) to 4.4% (DICE-2016), though the PAGE09 model alone implies a range of 1.1% to 6.0% with a central estimate of 3%. The range of potential consumption discount rates in these IAMs is relatively consistent with IWG³⁴⁵ in the short-run, though the discount rates of the IAMs employed by the IWG decline over time (due to declining growth rates over time) implying a potential upward bias to the IWG consumption discount rates.

2. A Declining Discount Rate is Justified to Address Discount Rate Uncertainty

A strong consensus has developed in economics that the appropriate way to discount intergenerational benefits is through a declining discount rate.³⁴⁶ Not only are declining discount rate theoretically

³⁴¹ Richard Newell (2017, October 10). Unpacking the Administration's Revised Social Cost of Carbon. Available at <http://www.rff.org/blog/2017/unpacking-administration-s-revised-social-cost-carbon>.

³⁴² Due to a slowing of global growth, DICE-2010 implies a declining discount rate schedule of 5.1% in 2015, 3.9% from 2015 to 2050; 2.9% from 2055 to 2100; 2.2% from 2105 to 2200, and 1.9% from 2205 to 2300. This would be a steeper decline if Nordhaus accounted for the positive and normative uncertainty underlying the SDR.

³⁴³ Due to a slowing of global growth, DICE-2016 implies a declining discount rate schedule of 5.1% in 2015, 4.7% from 2015 to 2050; 4.1% from 2055 to 2100; 3.1% from 2105 to 2200, and 2.5% from 2205 to 2300.

³⁴⁴ According to the World Bank, the average global and United States per capita growth rates were 1.7% and 1.9%, respectively.

³⁴⁵ INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 (2010). INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 (2013). INTERAGENCY WORKING GROUP ON SOCIAL COST OF CARBON, TECHNICAL SUPPORT DOCUMENT: SOCIAL COST OF CARBON FOR REGULATORY IMPACT ANALYSIS UNDER EXECUTIVE ORDER 12,866 (2016).

³⁴⁶ Kenneth J. Arrow et al., *Determining Benefits and Costs for Future Generations*, 341 SCIENCE 349 (2013); Kenneth J. Arrow et al., *Should Governments Use a Declining Discount Rate in Project Analysis?*, REV ENVIRON ECON POLICY 8 (2014); Maureen L. Cropper et al., *Declining Discount Rates*, AMERICAN ECONOMIC REVIEW: PAPERS AND PROCEEDINGS (2014); Christian Gollier & Martin L. Weitzman, *How Should the Distant Future Be Discounted When Discount Rates Are Uncertain?* 107 ECONOMICS LETTERS 3 (2010). Arrow et al. (2014) at 160-161 states that "We have argued that theory provides compelling arguments for using a declining certainty-equivalent discount rate," and concludes the paper by stating "Establishing a procedure for estimating a [declining discount rate]

correct, they are actionable (i.e., doable given our current knowledge) and consistent with OMB's *Circular A-4*. Perhaps the best reason to adopt a declining discount rate is the simple fact that there is considerable uncertainty around which discount rate to use. The uncertainty in the rate points directly to the need to use a declining rate, as the impact of the uncertainty grows exponentially over time such that the correct discount rate is not an arithmetic average of possible discount rates.³⁴⁷ Uncertainty about future discount rates could stem from a number of sources particularly salient in the context of climate change, including uncertainty about future economic growth, consumption, the consumption rate of interest, and preferences. Additionally, economic theory shows that if there is debate or disagreement over which discount rate to use, this should lead to the use of a declining discount rate.³⁴⁸ Though, the range of potential discount rates is limited by theory to potential consumption discount rates (see earlier discussion), which is certainly less than 7%.

There is a consensus that declining discount rates are appropriate for intergenerational discounting

Since the IWG undertook its initial analysis and before the most recent estimates of the SCC, a large and growing majority of leading climate economists' consensus³⁴⁹ has come out in favor of using a declining discount rate for climate damages to reflect long-term uncertainty in interest rates. This consensus view is held whether economists favor descriptive (i.e., market) or prescriptive (i.e., normative) approaches to discounting.³⁵⁰ Several key papers³⁵¹ outline this consensus and present the arguments that strongly support the use of declining discount rates for long-term benefit-cost analysis in both the normative and positive contexts. Finally, in a recent survey of experts on the economics of climate change, Howard and Sylvan (2015)³⁵², found that experts support using a declining discount rate relative to a constant discount rate at a ratio of approximately 2 to 1.

Economists have recently highlighted two main motivations for using a declining discount rate, which we elaborate on in what follows. First, if the discount rate for a project is fixed but uncertain, then the certainty-equivalent discount rate will decline over time, meaning that benefits should be discounted using a declining rate.³⁵³ Second, uncertainty about the growth rate of consumption or output also implies that a declining discount rate should be used, so long as shocks to consumption are positively correlated over time.³⁵⁴ In addition to these two arguments, other motivations for declining discount

for project analysis would be an improvement over the OMB's current practice of recommending fixed discount rates that are rarely updated."

³⁴⁷ Larry Karp, Global warming and hyperbolic discounting, 89 *Journal of Public Economics* 261-282 (2005) (The mathematical "intuition for this result is that as [time] increases, smaller values of r in the support of the distribution are relatively more important in determining the expectation of e^{-rt} " where r is the constant discount rate.") Or as Cameron Hepburn, *Hyperbolic Discounting And Resource Collapse*, 103 *Royal Economic Society Annual Conference 2004* (2004) puts it, ("The intuition behind this idea is that scenarios with a higher discount rate are given less weight as time passes, precisely because their discount factor is falling more rapidly" over time.)

³⁴⁸ Martin L Weitzman, Gamma discounting, 91 *AM. ECON. REV.* 260-271 (2001). Geoffrey M. Heal, & Antony Millner, Agreeing to disagree on climate policy, 111 *PROC. NATL. ACAD. SCI.* 3695-3698 (2014).

³⁴⁹ See generally Arrow et al. (2013), *supra* note 317.

³⁵⁰ Mark C. Freeman, Ben Groom, Ekaterini Panopoulou, & Theologos Pantelidis, Declining discount rates and the Fisher Effect: Inflated past, discounted future?, 73 *J. ENVIRON. ECON. MANAGE.* 32-49 (2015).

³⁵¹ See generally Arrow et al., 2013; Arrow et al., 2014;; Cropper et al., 2014, *supra* note 317. See also Christian Gollier, & James K. Hammitt, The long-run discount rate controversy, 6 *ANNU. REV. RESOUR. ECON.* 273-295 (2014).

³⁵² Peter Howard & Derek Sylvan, *The Economic Climate: Establishing Expert Consensus on the Economics of Climate Change*, INST. POLICY INTEGRITY WORKING PAPER (2015).

³⁵³ This argument was first developed in Weitzman (1998) and Weitzman (2001). Martin L Weitzman, Why the Far-Distant Future Should Be Discounted at Its Lowest Possible Rate, 36 *J. ENVIRON. ECON. MANAGE.* 201-208 (1998). Martin L Weitzman, Gamma discounting, 91 *AM. ECON. REV.* 260-271 (2001). See Weitzman (2001) *supra* note 319.

³⁵⁴ See Christian Gollier, Should we discount the far-distant future at its lowest possible rate?, 3 *Economics: The Open-Access, Open-Assessment E-Journal* 1-14 (2009).

rates have long been recognized. For instance, if the growth rate of consumption declines over time, the Ramsey rule³⁵⁵ for discounting will lead to a declining discount rate.³⁵⁶

In the descriptive setting adopted by the IWG (2010),³⁵⁷ economists have demonstrated that calculating the expected net present value of a project is equivalent to discounting at a declining certainty equivalent discount rate when (1) discount rates are uncertain, and (2) discount rates are positively correlated.³⁵⁸ Real consumption interest rates are uncertain given that there are no multi-generation assets to reflect long-term discount rates and the real returns to all assets—including government bonds—are risky due to inflation and default risk.³⁵⁹ Furthermore, recent empirical work analyzing U.S. government bonds demonstrates that they are positively correlated over time; this empirical work has estimated several declining discount rate schedules that the IWG can use.³⁶⁰

Currently when evaluating projects, the U.S. government applies the descriptive approach using constant rates of 3% and 7% based on the private rates of return on consumer savings and capital investments. As discussed previously, applying a capital discount rate to climate change costs and benefits is inappropriate. Instead, analysis should focus on the uncertainty underlying the future consumption discount rate.³⁶¹ Past U.S. government analyses³⁶² modeled three consumption discount rates reflecting this uncertainty. If the U.S. government correctly returns its focus on multiple consumption discount rates, then the expected net present value argument given above implies that a declining discount rate is the appropriate way to perform discounting. As an alternative, given that the Ramsey discount rate approach is the appropriate methodology in intergenerational settings, the U.S. government could use a fixed, low discount rate as an approximation of the Ramsey equation following the recommendation of Marten et al. (2015);³⁶³ see our discussion on Martin et al. (2015). This is roughly IWG (2010)³⁶⁴'s goal for using the constant 2.5% discount rate.

³⁵⁵ The Ramsey discount rate equation for the social discount rate is $r = \delta + \eta * g$ where r is the social discount rate, δ is the pure rate of time preference, η is the aversion to inter-generational inequality, and g is the growth rate of per capita consumption. For the original development, see, Frank Plumpton Ramsey, *A mathematical theory of saving*, 38 *The Economic Journal* 543-559 (1928).

³⁵⁶ Higher growth rates lead to higher discounting of the future in the Ramsey model because growth will make future generations wealthier. If marginal utility of consumption declines in consumption, then, one should more heavily discount consumption gains by wealthier generations. Thus, if growth rates decline over time, then the rate at which the future is discounted should also decline. See, e.g., Arrow et al. (2014) *supra* note 317 at 148. It is standard in IAMs to assume that the growth rate of consumption will fall over time. See, e.g., William D. Nordhaus, *Revisiting the social cost of carbon*, 114 *PROC. NATL. ACAD. SCI.* 1518-1523 (2017) at 1519 (“Growth in global per capita output over the 1980–2015 period was 2.2% per year. Growth in global per capita output from 2015 to 2050 is projected at 2.1% per year, whereas that to 2100 is projected at 1.9% per year.”) Similarly, Chris Hope, *The social cost of CO2 from the PAGE09 model*, Economics The Open-Access, Open-Assessment E-Journal Discussion Paper No. 2011-39 (2011) at 22 assumes that growth will decline. For instance, in the U.S., growth is 1.9% per year in 2008 and declines to 1.7% per year by 2040. Using data provided by Dr. David Anthoff (one of the founders of FUND), FUND assumes that the global growth rate was 1.8% per year from 1980–2015 period, 1.4% per year from 2015 to 2050 and 2015 to 2100, and then dropping to 1.0% from 2100 to 2200 and then 0.7% from 2200 to 2300. See David Anthoff, & Richard SJ Tol, *The Climate Framework for Uncertainty, Negotiation and Distribution (FUND): Technical description, Version 3.8.* Discussion paper. URL <http://www.fund-model.org>.

³⁵⁷ ³⁵⁷ See IWG (2010), *supra* note 316.

³⁵⁸ See Arrow et al. (2014) *supra* note 317 at 157.

³⁵⁹ See generally Gollier and Hammitt 2014, *supra* note 322.

³⁶⁰ See generally Arrow et al., 2013; Arrow et al., 2014;; Cropper et al., 2014, *supra* note 317. See also Freeman et al. (2015), *supra* note 321. Finally, see Elyès Jouini, & Clotilde Napp, *How to aggregate experts' discount rates: An equilibrium approach*, 36 *ECON. MODELLING* 235-243 (2014).

³⁶¹ See generally Newell (2017) *supra* note 312.

³⁶² See IWG (2010; 2013; 2016) *supra* note 316.

³⁶³ See Alex L.Marten, Elizabeth A. Kopits, Charles W. Griffiths, Stephen C. Newbold, & Ann Wolverton, *Incremental CH4 and N2O mitigation benefits consistent with the US Government's SC-CO2 estimates*, 15 *CLIMATE POL'Y* 272-298 (2015).

³⁶⁴ See IWG (2010) *supra* note 316.

If the normative approach to discounting is used in the future (i.e., the current approach of IAMs), economists have demonstrated that an extended Ramsey rule³⁶⁵ implies a declining discount rate when (1) the growth rate of per capita consumption is stochastic,³⁶⁶ and (2) consumption shocks are positively correlated over time (or their mean or variances are uncertain).³⁶⁷ While a constant adjustment downwards (known as the precautionary effect³⁶⁸) can be theoretically correct when growth rates are independent and identically distributed,³⁶⁹ empirical evidence supports the two above assumptions for the United States, thus implying a declining discount rate (Cropper et al., 2014; Arrow et al., 2014; IPCC, 2014).³⁷⁰ We should further expect this positive correlation to strengthen over time due to the negative impact of climate change on consumption, as climate change causes an uncertain permanent reduction in consumption (Gollier, 2009).³⁷¹

Several papers have estimated declining discount rate schedules for specific values of the pure rate of time preference and elasticity of marginal utility of consumption³⁷², though recent work demonstrates that the precautionary effect increases and discount rates decrease further when catastrophic economic risks (such as the Great Depression and the 2008 housing crisis) are modeled.³⁷³ It should be noted that

³⁶⁵ If the future growth of consumption is uncertainty with mean μ and variance σ^2 , an extended Ramsey equation $r = \delta + \eta * \mu - 0.5\eta^2\sigma^2$ applies where r is the social discount rate, δ is the pure rate of time preference, η is the aversion to inter-generational inequality, and g is the growth rate of per capita consumption. Gollier (2012, Chapter 3) shows that we can rewrite the extended discount rate as $r = \delta + \eta * g - 0.5\eta(\eta + 1)\sigma^2$ where g is the growth rate of expected consumption and $\eta + 1$ is prudence. Christian Gollier, *Pricing the Planet's Future: The Economics of Discounting in an Uncertain World*, Princeton University Press (2012) at Chapter 3.

³⁶⁶ The IWG assumption of five possible socio-economic scenarios implies an uncertain growth path.

³⁶⁷ See generally Arrow et al., 2013; Arrow et al., 2014; Gollier & Hammitt, 2014; Cropper et al., 2014, *supra* note 317. The intuition of this result requires us to recognize that the social planner is prudent in these models (i.e., saves more when faces riskier income). When there is a positive correlation between growth rates in per capita consumption, the representative agent faces more cumulative risk over time with respect to the “duration of the time spent in the bad state.” Christian Gollier, Discounting with fat-tailed economic growth, *37 Journal of Risk and Uncertainty* 171-186 (2008). In other words, “the existence of a positive correlation in the changes in consumption tends to magnify the long-term risk compared to short-term risks. This induces the prudent representative agent to purchase more zero-coupon bonds with a long maturity, thereby reducing the equilibrium long-term rate.” Christian Gollier, The consumption-based determinants of the term structure of discount rates, *1 Mathematics and Financial Economics* 81-101 (2007). Mathematically, the intuition is that under prudence, the third term in the extended Ramsey equation (see footnote 323) is negative, and a “positive [first-degree stochastic] correlation in changes in consumption raises the riskiness of consumption at date T, without changing its expected value. Under prudence, this reduces the interest rate associated to maturity T” (Gollier et al., 2007) by “increasing the strength of the precautionary effect” in the extended Ramsey equation (Arrow et al., 2014; Cropper et al., 2014 *supra* note 317).

³⁶⁸ The precautionary effect measures aversion to future “wiggles” in consumption (i.e., preference for consumption smoothing); see Christian P Traeger, *On option values in environmental and resource economics*, *37 Resource and Energy Economics* 242-252 (2014).

³⁶⁹ See Cropper et al 2014 *supra* note 317.

³⁷⁰ Cropper et al., 2014; Arrow et al., 2014; IPCC, 2014) Essentially, the precautionary effect increases over time when shocks to the growth rate are positively correlated, implying that future societies require higher returns to face the additional uncertainty. See Cropper et al., 2014 and Arrow et al., 2014 *supra* note 317. See also Intergovernmental Panel on Climate Change, *Climate Change 2014—Impacts, Adaptation and Vulnerability: Regional Aspects*, Cambridge University Press, 2014 [hereinafter, IPCC 2014].

³⁷¹ See Christian Gollier, Should we discount the far-distant future at its lowest possible rate?, *3 Economics: The Open-Access, Open-Assessment E-Journal* 1-14 (2009). Due to the deep uncertainty characterizing future climate damages, some analysts argue that the stochastic processes underlying the long-run consumption growth path cannot be econometrically estimated; see Gollier (2012) *supra* note 336 and Martin L Weitzman, A Review of The Stern Review of the Economics of Climate Change, *45 J. ECON. LIT.* 703 (2007). In other words, economic damages, and thus future economic growth, are ambiguous. Agents must then form subjectivity probabilities, which may be better interpreted as a belief (see Cropper et al., 2014 *Supra* note 317). Again, theory shows that ambiguity leads to a declining discount rate schedule by Jensen’s inequality (see Cropper et al 2014 *supra* note 317).

³⁷² For example, Arrow et al. (2014) *supra* note 317

³⁷³ See Gollier and Hammitt 2014 *supra* note 322 and Arrow et al. (2014) *supra* note 317.

this decline in discount rates due to uncertainty in the global growth path is in addition to that resulting from a declining central growth path over time.³⁷⁴

Additionally, a related literature has developed over the last decade demonstrating that normative uncertainty (i.e., heterogeneity) over the pure rate of time preference (δ)—a measure of impatience—also leads to a declining social discount rate.³⁷⁵ Despite individuals differing in their pure rate of time preference,³⁷⁶ an equilibrium (consumption) discount exists in the economy. In the context of IAMs, modelers aggregate social preferences (often measured using surveyed experts) by calibrating the preferences of a representative agent to this equilibrium.³⁷⁷ The literature generally finds a declining social discount rate due to a declining collective pure rate of time preference.³⁷⁸ The heterogeneity of preferences and the uncertainty surrounding economic growth hold simultaneously,³⁷⁹ leading to potentially two sources of declining discount rates in the normative context.

Declining Rates are Actionable and Time-Consistent

There are multiple declining discount rate schedules from which the U.S. government can choose, of which several are provided in Arrow et al. (2014) and Cropper et al. (2014).³⁸⁰ One possible declining interest rate schedule for consideration by the IWG is the one proposed by Weitzman (2001).³⁸¹ It is derived from a broad survey of top economists in context of climate change, and explicitly incorporates arguments around interest rate uncertainty.³⁸² Other declining discount rate schedule include Newell and Pizer (2003); Groom et al. (2007); Freeman et al. (2015).³⁸³ Many leading economists support the

³⁷⁴ A common assumption in IAMs is that global growth will slow over time leading to a declining discount rate schedule over time; see footnote 7. Uncertainty over future consumption growth and heterogeneous preferences (discussed below) would lead to a more rapid decline in the social discount rate. See also Marten et al 2015 *supra* note 345 and William D. Nordhaus, *Estimates of the Social Cost of Carbon: Concepts and Results from the DICE-2013R Model and Alternative Approaches*, 1 J. Assoc. ENVIRON. RESOUR. ECON. 1 (2014).

³⁷⁵ See Arrow et al 2014 and Cropper et al 2014 *supra* 317. See also Mark C. Freeman, & Ben Groom, How certain are we about the certainty-equivalent long term social discount rate?, 79 J. ENVIRON. ECON. MANAGE. 152-168 (2016).

³⁷⁶ See Christian Gollier, & Richard Zeckhauser, Aggregation of heterogeneous time preferences, 113 J. POL. 878-896 (2005).

³⁷⁷ See Antony Millner & Geoffrey Heal, *Collective intertemporal choice: time consistency vs. time invariance*, Grantham Research Institute on Climate Change and the Environment No. 220 (2015). See also Freeman and Groom 2016 *supra* 346.

³⁷⁸ See Jouini and Napp, 2014 *supra* note 331, Freeman and Groom 2016 *supra* 346, and Gollier & Zeckhauser, 2005 *supra* note 347. See also Elyès Jouini, Jean-Michel Marin, & Clotilde Napp, Discounting and divergence of opinion, 145 J. ECON. THEORY 830-859 (2010). The intuition for declining discount rates due to heterogeneous pure rates of time preference is laid out in Gollier and Zeckhauser (2005). In equilibrium, the least patient individuals trade future consumption to the most patient individuals for current consumption, subject to the relative value of their tolerance for consumption fluctuations. Thus, while public policies in the near term mostly impact the most impatient individuals (i.e., the individuals with the most consumption in the near term), long-run public policies in the distant future are mostly going to impact the most patient individuals (i.e., the individuals with the most consumption in the long-run).

³⁷⁹ See Jouini and Napp 2014 *supra* note 331 and Jouini et al 2010 *supra* note 349.

³⁸⁰ See Arrow et al 2014 and Cropper et al 2014 *supra* note 317.

³⁸¹ Weitzman (2001)'s schedule is as follows: 4% for 1-5 years; 3% for 6-25 years; 2% for 26-75 years; 1% for 76-300 years; and 0% for 300+ years; see Weitzman (2001) *supra* note 319.

³⁸² Freeman and Groom (2015) demonstrate that this schedule only holds if the heterogeneous responses to the survey were due to differing ethical interpretations of the corresponding discount rate question; see Mark C Freeman., & Ben Groom, Positively gamma discounting: combining the opinions of experts on the social discount rate, 125 ECON. J. 1015-1024 (2015). A recent survey by Drupp et al. (2015) – which includes Freeman and Groom as co-authors – supports the Weitzman (2001) assumption; see Moritz A Drupp, Mark Freeman, Ben Groom, & Frikk Nesje, Discounting disentangled, Memorandum, Department of Economics, University of Oslo, No. 20/2015 (2015).

³⁸³ See Richard G. Newell, and William A. Pizer, Discounting the distant future: how much do uncertain rates increase valuations?, 46 J. ENVIRON. ECON. MANAGE. 52-71 (2003). See also Ben Groom, Phoebe Koundouri, Ekaterini Panopoulou, & Theologos Pantelidis, Discounting the distant future: how much does model selection affect the certainty equivalent rate?, 22 J. APPL. ECONOMETRICS 641-656 (2007). Finally, see Freeman et al., 2015 *supra* note 353.

United States government adopting a declining discount rate schedule.³⁸⁴ Moreover, the United States would not be alone in using a declining discount rate. It is standard practice for the United Kingdom and French governments, among others.³⁸⁵ The U.K. schedule explicitly subtracts out an estimated time preference.³⁸⁶ France's schedule is roughly similar to the United Kingdom's. Importantly, all of these discount rate schedules yield lower present values than the constant 2.5% discount rate employed by IWG (2010),³⁸⁷ suggesting that even the lowest discount rate evaluated by the IWG is too high.³⁸⁸ The consensus of leading economists is that a declining discount rate schedule should be used, harmonious with the approach of other countries like the United Kingdom. Adopting such a schedule would likely increase the SCC substantially from the administration's 3% estimate, potentially up to two to three fold (Arrow et al., 2013; Arrow et al., 2014; Freeman et al., 2015).³⁸⁹

A declining discount rate motivated by discount rate or growth rate uncertainty avoids the time inconsistency problem that can arise if a declining pure rate of time preference (δ) is used. Circular A-4 cautions that "[u]sing the same discount rate across generations has the advantage of preventing time-inconsistency problems."³⁹⁰ A time inconsistent decision is one where a decision maker changes his or her plan over time, solely because time has passed. For instance, consider a decision maker choosing whether to make an investment that involves an up-front payment followed by future benefits. A time consistent decision maker would invest in the project if it had a positive net-present value, and that decision would be the same whether it was made 10 years before investment or 1 year before investment. A time inconsistent decision maker might change his or her mind as the date of the investment arrived, despite no new information becoming available. Consider a decision maker who has a declining pure rate of time preference (δ) trying to decide whether to invest in a project that has large up-front costs followed by future benefits. 10 years prior to the date of investment, the decision maker will believe that this project is a relatively unattractive investment because both the benefits and costs would be discounted at a low rate. Closer to the date of investment, however, the costs would be relatively highly discounted, possibly leading to a reversal of the individual's decision. Again, the discount rate schedule is time consistent as long as δ is constant.

The arguments provided here for using a declining consumption discount rate are not subject to this time inconsistency critique. First, time inconsistency occurs if the decision maker has a declining pure rate of time preference, not due to a decreasing discount rate term structure.³⁹¹ Second, uncertainty about growth or the discount rate avoids time inconsistency because uncertainty is only resolved in the future, after investment decisions have already been made. As the NAS (2017) notes, "One objection frequently made to the use of a declining discount rate is that it may lead to problems of time inconsistency....This apparent inconsistency is not in fact inconsistent....At present, no one knows what

³⁸⁴ See Arrow et al 2014 and Cropper et al 2014 *supra* note 317.

³⁸⁵ See Gollier and Hammitt 2014 *supra* note 322 and Cropper et al 2014 *supra* note 317.

³⁸⁶ The U.K. declining discount rate schedule that subtracts out a time preference value is as follows (Lowe, 2008): 3.00% for 0-30 years; 2.57% for 31-75 years; 2.14% for 76-125 years; 1.71% for 126- 200 years; 1.29% for 201- 300 years; and 0.86% for 301+ years.

³⁸⁷ See IWG (2010) *supra* note 316.

³⁸⁸ Using the IWG's 2010 SCC model, Johnson and Hope (2012) find that the U.K. and Weitzman schedules yield SCCs of \$55 and \$175 per ton of CO₂, respectively, compared to \$35 at a 2.5% discount rate. Because the 2.5% discount rate was included by the IWG (2010) to proxy for a declining discount rate, this result indicates that constant discount rate equivalents may be insufficient to address declining discount rates. See IWG (2010) *supra* note 316.

³⁸⁹ See Arrow et al 2013 and Arrow et al 2014 *supra* note 317. See also Freeman et al., 2015 *supra* note 353.

³⁹⁰ Circular A-4 at 35.

³⁹¹ Gollier (2012) *supra* note 336 ("It is often suggested in the literature that economic agents are time inconsistent if the term structure of the discount rate is decreasing. This is not the case. What is crucial for time consistency is the constancy of the rate of impatience, which is a cornerstone of the classic analysis presented in this book. We have seen that this assumption is compatible with a declining monetary discount rate.").

the distribution of future growth rates...will be; it may be different or the same as the distribution in 2015. Even if it turns out to be the same... as the distribution in 2015, that realization is new information that was not available in 2015.”³⁹²

We should note that time-inconsistency is not a reason to ignore heterogeneity (i.e., normative uncertainty) over the pure rate of time preference (δ). If the efficient declining discount rate schedule is time-inconsistent, the appropriate solution is to select the best time-consistent policy. Millner and Heal (2014)³⁹³ do just this by demonstrating that a voting procedure – whereby the median voter determines the collective preference – is: (1) time consistent, (2) welfare enhancing relative to the non-commitment, time-inconsistent approach, and (3) preferred by a majority of agents relative to all other time-consistent plans. Due to the right skewed distribution of the pure rate of time preference and the social discount rate as shown in all previous surveys,³⁹⁴ the median is less than the mean social discount rate (and pure rate of time preference); the mean social discount rate is what holds in the very short-run under various aggregation methods, such as Weitzman (2001) and Freeman and Groom (2015).³⁹⁵ Combining an uncertain growth rate and heterogeneous preference together implies a declining discount rate starting at a lower value in the short-run. In addition to the reasons discussed earlier in the comments, this is another reason to exclude a discount rate as high as 7%.

There is an economic consensus on the appropriateness of employing a consumption discount rate (and the inappropriateness of a capital discount rate) in the context of climate change

There is a strong consensus among economists that it is theoretically correct to use consumption discount rates in the intergenerational setting of climate change, such as in the calculation of the SCC. Similarly, there is a strong consensus that a capital discount rate is inappropriate according to “good economics” (Newell, 2017).³⁹⁶ This consensus holds across panels of experts on the social cost of carbon³⁹⁷; surveys of experts on climate change and discount rates;³⁹⁸ the three most commonly cited IAMs employed in calculating the federal SCC; and the government’s own analysis.³⁹⁹ For more analysis of this issue, see the discussion in the main body our Comments on the inappropriateness using a discount rate premised on the return to capital in intergenerational settings.

³⁹² National Academies of Sciences, Engineering, and Medicine, *Valuing climate damages: Updating estimation of the social cost of carbon dioxide* at 53 (2017) at 182.

³⁹³ Antony Millner, & Geoffrey Heal, *Collective intertemporal choice: time consistency vs. time invariance*, Grantham Research Institute on Climate Change and the Environment No. 220 (2015).

³⁹⁴ See Weitzman (2001) *supra* note 319, Howard and Sylvan 2015 *supra* note 323, and Drupp et al 2015 *supra* note 353.

³⁹⁵ See Weitzman (2001) *supra* note 319 and Freeman et al., 2015 *supra* note 353.

³⁹⁶ The former co-chair of the National Academy of Sciences’ Committee on Assessing Approaches to Updating the Social Cost of Carbon – Richard Newell (2017) *supra* note 312 – states that “[t]hrough the addition of an estimate calculated using a 7 percent discount rate is consistent with past regulatory guidance under OMB Circular A-4, there are good reasons to think that such a high discount rate is inappropriate for use in estimating the SCC...It is clearly inappropriate, therefore, to use such modeling results with OMB’s 7 percent discount rate, which is intended to represent the historical before-tax return on private capital...This is a case where unconsidered adherence to the letter of OMB’s simplified discounting approach yields results that are inconsistent with and ungrounded from good economics.”

³⁹⁷ See generally NAS 2017 *supra* note 363.

³⁹⁸ See Weitzman (2001) *supra* note 319, Howard and Sylvan 2015 *supra* note 323, Drupp et al 2015 *supra* note 353, and Robert Pindyck, *The social cost of carbon revisited*, National Bureau of Economic Research No. w22807(2016).

³⁹⁹ See IWG 2010 *supra* note 316 and Council of Econ. Advisers, *Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate* at 1 (CEA Issue Brief, 2017).

TECHNICAL APPENDIX: DAMAGE LITERATURE

The Fourth National Climate Assessment was recently published by the U.S. Global Change Research Program.⁴⁰⁰ In addition to reviewing that report and the literature on U.S. damages cited therein, the agencies must review the following literature, which contains some of the most up-to-date estimates of U.S. damages from climate change.

Overall Damage Estimates and Review Articles

Solomon Hsiang et al., *Economic Damage from Climate Change in the United States*, 356 *SCIENCE*. 1362–1369 (2017).

Delavane Diaz & Frances Moore, *Quantifying the economic risks of climate change*, 7 *NAT. CLIM. CHANG.* 774–782 (2017).

Roberto Roson & Martina Sartori, *Estimation of Climate Change Damage Functions for 140 Regions in the GTAP 9 Database*, 1 *J. GLOB. ECON. ANAL.* 78–115 (2016).

Derek Lemoine & Sarah Kapnick, *A top-down approach to projecting market impacts of climate change*, *NAT. CLIM. CHANG.* 7 (2015).

Marshall Burke, Solomon M. Hsiang & Edward Miguel, *Global non-linear effect of temperature on economic production*, 527 *NATURE* 235–239 (2015).

Agriculture Damages

Wolfram Schlenker, *Crop Responses to Climate and Weather: Cross-Section and Panel Models*, in *CLIMATE CHANGE AND FOOD SECURITY* 99–108 (David Lobell & Marshall Burke eds., 2010).

David B. Lobell, Wolfram Schlenker & Justin Costa-Roberts, *Climate Trends and Global Crop Production Since 1980*, 333 *SCIENCE* (80). (2011).

Olivier Deschênes & Michael Greenstone, *The Economic Impacts of Climate Change: Evidence from Agricultural Output and Random Fluctuations in Weather: Reply*, 102 *AM. ECON. REV.* 3761–3773 (2012).

Marshall Burke & Kyle Emerick, *Adaptation to Climate Change: Evidence from US Agriculture*, 8 *AM. ECON. J. ECON. POLICY* 106–140 (2016).

Christopher Severen, Christopher Costello & Olivier Deschênes, *A Forward Looking Ricardian Approach: Do Land Markets Capitalize Climate Change Forecasts?*, 22413 *NBER WORK. PAP.* 46 (2016).

Wolfram Schlenker, Michael J. Roberts & David B. Lobell, *US maize adaptability*, 3 *NAT. CLIM. CHANG.* 690–691 (2013).

Wolfram Schlenker & Michael J Roberts, *Nonlinear temperature effects indicate severe damages to U.S. crop yields under climate change.*, 106 *PROC. NATL. ACAD. SCI.* 15594–8 (2009).

Frances C Francis C Moore, Uris Lantz C Baldos & Thomas Hertel, *Economic impacts of climate change on agriculture: a comparison of process-based and statistical yield models*, 12 *ENVIRON. RES. LETT.* 1–9 (2017).

F. C. Moore et al., *New Science of Climate Change Impacts on Agriculture Implies Higher Social Cost of Carbon*, *WORK. PAP.* 1–43 (2017).

Forestry Damages

Christopher Guo & Christopher Costello, *The value of adaption: Climate change and timberland management*, 65 *J. ENVIRON. ECON. MANAGE.* 452–468 (2013).

Effects on Health and Mortality

Alan Barreca et al., *Adapting to climate change: The remarkable decline in the U.S. temperature-mortality relationship over the 20th century*, 124 *NBER WORK. PAP.* 46 (2016).

Garth Heutel, Nolan H Miller & David Molitor, *Adaptation and the mortality effects of temperature across U.S. climate regions*, No. 23271 *NBER WORK. PAP.* 58 (2017).

⁴⁰⁰ <https://science2017.globalchange.gov/>

Jan C. Semenza et al., *Climate change and microbiological water quality at California beaches*, 9 *ECOHEALTH* 293–297 (2012).

Tamma Carleton et al., *Valuing the Global Mortality Consequences of Climate Change Accounting for Adaptation Costs and Benefits* (Becker Friedmand Inst. Working Paper No. 2018-51).

Effects on Labor Productivity and Learning

Joshua Graff Zivin & Matthew MJ Neidell, *Temperature and the allocation of time: Implications for climate change*, 32 *J. LABOR ECON.* 1–26 (2010).

M. Donadelli et al., *Temperature Shocks and Welfare Costs*, *J. ECON. DYN. CONTROL* (2017).

Adam Isen & W Reed Walker, *Heat and Long-Run Human Capital Formation*, 26 (2017).

Geoffrey Heal, Jisung Park & Nan Zhong, *Labor Productivity and Temperature*, 1–33 (2017).

Joshua Graff Zivin, Solomon Hsiang & Matthew Neidell, *Temperature and human capital in the short- and long-run*, *J. ASSOC. ENVIRON. RESOUR. ECON.* 694177 (Forthcoming)

Sea Level Rise

Mathew E. Hauer, Jason M. Evans & Deepak R. Mishra, *Millions projected to be at risk from sea-level rise in the continental United States*, advance on *NAT. CLIM. CHANG.* (2016).