

United States Senate
WASHINGTON, DC 20510

April 13, 2016

The Honorable Shaun Donovan
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Donovan:

We write today with questions about your office's role in the review of the Environmental Protection Agency's (EPA) estimate of the social cost of methane (SCM)¹ as applied in the Oil and Gas New Source Performance Standards (NSPS) proposed rule² and its Regulatory Impact Analysis (RIA).³ The Senate Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management (RAFM) conducts oversight of federal agencies' regulatory processes to ensure that federal regulations are promulgated in an efficient manner and produce the best regulatory outcomes for all stakeholders and the American people, and the Senate Committee on Environment and Public Works (EPW) is the principal Senate committee with jurisdiction over the EPA and U.S. environmental policy. Accordingly, we appreciate the important role the Office of Management and Budget and its subagency, the Office of Information and Regulatory Affairs (OIRA), play in ensuring regulatory fitness and efficiency.

Drawing on your expertise in these affairs, we have a number of questions regarding OMB's role in reviewing EPA's proposed rule for methane emissions from the oil and gas sector; of particular concern is the SCM input used and the scrutiny it received. We request you answer the following questions by noon on April 27, 2016.

1. Beginning in 2009, OMB and the Council of Economic Advisors convened an interagency working group (IWG) to estimate the social cost of carbon (SCC) for use in the regulatory process. The group's participants included the Council on Environmental Quality, EPA, the National Economic Council, the Office of Science and Technology Policy, and the Departments of Agriculture, Commerce, Energy, Transportation, and Treasury.

- a. When did OMB first learn of EPA's plans to develop the SCM?

¹ U.S. Env'tl. Protection Agency, *Whitepaper on Valuing Methane Emissions Changes in Regulatory Benefit-Cost Analysis, Peer Review Charge Questions, and Responses*, available at <https://www3.epa.gov/climatechange/pdfs/social%20cost%20methane%20white%20paper%20application%20and%20peer%20review.pdf>.

² U.S. Env'tl. Protection Agency, *Oil and Natural Gas Sector: Emission Standards for New and Modified Sources*, Proposed Rule, 80 Fed. Reg. 56593 (Sept. 18, 2015).

³ U.S. Env'tl. Protection Agency, *Regulatory Impact Analysis of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector*, EPA-452/R-15-002 (Aug. 2015).

- b. Did OMB consider convening a similar working group to develop the SCM? If so, what led to OMB's ultimate decision to not convene a working group?
 - c. The Government Accountability Office (GAO) cites disparate estimates developed individually by agencies as a motivating reason for OMB's decision to convene the SCC IWG. According to GAO, estimates ranged from \$0 to \$159 per metric ton of carbon dioxide, so "in part to improve consistency in agencies' use of social cost of carbon estimates for regulatory impact analysis, OMB's Office of Information and Regulatory Affairs and the Council of Economic Advisers convened the Interagency Working Group on Social Cost of Carbon."⁴ Has OMB considered that its failure to convene a similar group to estimate the SCM poses similar risks?
 - d. The IWG committed to regularly update SCC estimates as research evolves.⁵ What measures, if any, will OMB take to assure Congress, the stakeholders, and the public be assured that SCM estimates will be similarly updated?
2. Executive Orders 12866 and 13563 require RIAs for all major rulemakings, and OMB calls for peer review of studies informing RIAs.⁶ Yet, EPA's SCM estimates rely heavily on a single study,⁷ while other reputable studies arrive at significantly different estimates. For example, while EPA estimates the SCM to total \$1,309 per metric ton, others in the scientific community estimate the total cost as low as \$307 per metric ton.⁸
- a. OMB's Information Quality Guidelines state that "the need for rigorous peer review is greater when the information contains precedent-setting methods or models, presents conclusions that are likely to change prevailing practices, or is likely to affect policy decisions that have a significant impact."⁹ Does OMB consider the SCM "precedent-setting" or "likely to change prevailing practices"? If so, does OMB maintain that it applied this rigorous standard in its initial review of EPA's SCM estimate?

⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, REGULATORY IMPACT ANALYSIS: DEVELOPMENT OF SOCIAL COST OF CARBON ESTIMATES, GAO-14-663 6 (July 2014).

⁵ *Id.* at 7.

⁶ Office of Mgmt. & Budget, *Circular A-4: Regulatory Analysis*, M-03-21 3 (Sept. 17, 2003); Office of Mgmt. & Budget, *Final Information Quality Bulletin for Peer Review*, M-05-03 (Dec. 16, 2004).

⁷ Marten et al., *Incremental CH₄ and N₂O Mitigation Benefits Consistent with the US Government's SC-CO₂ Estimates*, CLIMATE POL'Y (2014).

⁸ A review of the SCM conducted by the National Economic Research Associations (NERA) cites to a 2011 Waldhoff et al. study estimating SCM at \$307/metric ton; a 2012 Marten and Newbold study estimating SCM at \$877/metric ton; and a 2014 Waldhoff et al. study estimating SCM at \$469/metric ton. NERA ECONOMIC CONSULTING, TECHNICAL COMMENTS ON THE SOCIAL COST OF METHANE AS USED IN THE REGULATORY IMPACT ANALYSIS FOR THE PROPOSED EMISSIONS STANDARDS FOR NEW AND MODIFIED SOURCES IN THE OIL AND NATURAL GAS SECTOR 13-14 (Dec. 3, 2015), http://www.nera.com/content/dam/nera/publications/2015/NERA_TechnicalComments_ProposedMethaneRegs_Dec3_FinalReport.pdf [hereinafter NERA Technical Comments].

⁹ OMB *Final Information Quality Bulletin for Peer Review*, *supra* note 6, at 12.

- b. SCM is extremely sensitive to a few key assumptions, which the National Economic Research Associates (NERA) notes “lack [] full scientific peer review.” NERA’s technical comments show that, when adjusting for four faulty assumptions (including the exclusion of the 2.5% discount rate), “the range of net benefits estimates becomes entirely negative—by more than negative \$100 million per year even at the ranges’ upper bounds.”¹⁰ Does this described sensitivity satisfy OMB’s analytical requirements to ensure that regulations applying SCM are the “most efficient, least burdensome, and most cost-effective”?¹¹
 - c. Does OMB intend to ask EPA to gather additional empirical support for its SCM estimates? If not, please explain how and why OMB arrived at this decision.
3. OMB Circular A-4 directs federal agencies to use 3 and 7 percent discount rates in developing RIAs.¹² However, the SCM applies discount rates of 2.5, 3, and 5 percent. Does OMB plan to scrutinize EPA’s decision to not comply with Circular A-4? Why or why not?
4. Circular A-4 directs agencies to “focus on benefits and costs that accrue to citizens and residents of the United States. Where you choose to evaluate a regulation that is likely to have effects beyond the borders of the United States, *these effects should be reported separately.*”¹³ Instead, EPA calculated only global benefits accruing from a reduction in methane emissions, omitting estimations of domestic benefits. Given that modeling exists to capture U.S.-specific effects of methane reduction, and given that this modeling will likely yield significantly smaller estimates for the SCM, will OMB require EPA to re-calculate the SCM to account for only domestic benefits, consistent with its guidance? If OMB will not require EPA to re-calculate the SCM to account for only domestic benefits, please explain how and why you arrived at this decision.
5. OMB concluded review of the proposed rule August 17, 2015. Did OMB consider, during the course of this initial review:
 - a. EPA’s reliance on a single study inconsonant with the larger body of literature, as outlined in Question 2?
 - b. SCM’s sensitivity to a few key assumptions, as outlined in Question 2(b)?
 - c. EPA’s failure to comply with Circular A-4’s prescribed discount rates, as outlined in question 3?
 - d. EPA’s conflation of global and domestic benefits, in contravention of OMB Circular A-4, as outlined in Question 4?

¹⁰ NERA Technical Comments, *supra* note 8, at 5.

¹¹ OMB Circular A-4, *supra* note 6, at 2.

¹² *Id.* at 11-12.

¹³ *Id.* at 15.

6. OMB received the final version of EPA's updated NSPS rule on April 4, 2016. Does OMB plan to rigorously review the final rule's RIA, including renewed scrutiny of the SCM?
7. On July 2, 2015, OMB requested the National Academies of Sciences, Engineering, and Medicine (NAS) to improve the SCC estimates.¹⁴ On January 26, 2016, NAS released an initial report on the SCC that recommended the IWG increase transparency and provide agencies further guidance on the SCC.¹⁵ The NAS plans to issue a final report in early 2017. Since EPA has explained "any limitations that apply to inputs and modelling assumptions underlying the [SCC] . . . also apply to the [SCM],"¹⁶ has OMB considered halting the application of the SCM until the NAS completes its review of the SCC? If not, how does OMB expect the NAS final SCC review will impact the SCM?

Circular A-4 states that rigorous "[r]egulatory analysis [] has an important democratic function; it promotes accountability and transparency and is a central part of open government."¹⁷ We trust that OMB will capitalize on its unique position in maximizing these objectives in the regulatory space, because both the process used to arrive at the current SCM estimate and its use going forward are anything but clear. If you have any questions about this request, please contact Elizabeth Gorman with RAFM at (202) 224-2862. Thank you for your attention to this matter.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and
Public Works



James Lankford
Chairman
Subcommittee on Regulatory Affairs
and Federal Management,
Committee on Homeland Security and
Governmental Affairs

¹⁴ Howard Shelanski & Maurice Obstfeld, *Estimating the Benefits from Carbon Dioxide Emissions Reductions*, WHITE HOUSE BLOG (July 2, 2015), <https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions>.

¹⁵ NAT'L ACADEMIES OF SCIENCE, ASSESSMENT OF APPROACHES TO UPDATING THE SOCIAL COST OF CARBON: PHASE 1 REPORT ON A NEAR-TERM UPDATE (2016) http://sites.nationalacademies.org/DBASSE/BECS/Social_Cost_of_Carbon_Near_Term_Update/index.htm.

¹⁶ Whitepaper, *supra* note 1.

¹⁷ OMB *Circular A-4*, *supra* note 6, at 2.

The Honorable Shaun Donovan
April 13, 2016
Page 5

cc: The Honorable Heidi Heitkamp
Ranking Democratic Member
Subcommittee on Regulatory Affairs and Federal Management