

Opportunity for Industry to Weigh In on Social Cost of Carbon

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The U.S. Department of Energy (DOE) is providing industry and other interested parties with an opportunity to comment on the social cost of carbon (SCC) used for evaluating potential environmental rules. DOE's deadline for comments is September 16. There are also several bills pending in Congress that would restrict use of SCC.

How the issue is resolved has important implications for industry, since higher SCC values will tend to make imposition of environmental rules appear more attractive.

The issue stems from DOE's increasing the values for SCC for evaluating potential appliance efficiency standards. DOE did so in a standards rule published on June 17 for microwave ovens. 78 Fed. Reg. 36316, 36349-51. DOE based its action on a 2013 interagency report that increased SCC values over those in a 2010 interagency report. The increased values made the imposition of the standards, with purported resulting reductions in CO₂ emissions, seem more beneficial than would have been the case under the prior values.

DOE has received a petition asking it to reconsider the microwave oven rule because of the increased SCC values. 78 Fed. Reg. 49975. Landmark Legal Foundation's petition says that, because the final rule used different SCC values than those in DOE's supplemental notice of proposed rulemaking, the different values were not subject to public comment. DOE has asked for comment on whether to undertake the reconsideration. DOE wants comments by September 16.

Reaction from congressional critics to the increased values has been strong. In addition to expressing skepticism about the science, critics blast DOE's using the increased values without providing for public comment.

Speaking for the Administration, Howard Shelanski, Administrator for the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA), defended the increased values in a July 18 hearing before the House Oversight and Government Reform Subcommittee on Energy Policy, Health Care & Entitlements. Mr. Shelanski also indicated that the Administration expected to have public comments on the increased values in future rulemakings. This seems to be an effort to defuse the issue of lack of opportunity for public comment.

Not persuaded, congressional critics have fired back with several anti-SCC bills. In one of its last acts before recessing in August, the House passed HR 1582, which would prohibit the EPA from using SCC in any cost-benefit analysis related to an energy-related rule that is estimated to cost more than \$1 billion unless and until a federal law is enacted authorizing such use.

Rep. Tim Murphy (R-PA) has introduced an even broader bill (HR 3042) to prohibit the use of SCC by any federal agency in any regulatory impact analysis unless and until a federal law is enacted authorizing such use.

Reps. Duncan Hunter (R-CA) and John Culberson (R-TX) have introduced HR 2886 to prohibit an agency from using an estimate for SCC “until completion of notice and receipt of public comment with regard to such estimate.” The bill would also require an agency to submit a report to relevant congressional committees on the result of and methods (including SCC) used to calculate the cost-benefit or regulatory impact analysis, and to provide for public comment thereon. Rep. Hunter and Rep. Nick Rahall (D-WV) previously submitted a similar bill (HR 2593).

Six Republican members of the Senate Environment and Public Works Committee—Sens. David Vitter (R-LA), Jeff Sessions (R-AL), John Barrasso (R-WY), James Inhofe (R-OK), Roger Wicker (R-MS), and John Boozman (R-AR)—along with Sen. Roy Blunt (R-MO), also have sent a letter to DOE, EPA, and OMB raising questions about the increased SCC. These concern the substance of the revision and the manner in which it was adopted.