EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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MEMORANDUM FOR: REGULATORY POLICY OFFICERS AT DEPARTMENTS AND AGENCIES AND MANAGING AND EXECUTIVE DIRECTORS OF COMMISSIONS AND BOARDS

FROM: Jeffrey Bossert Clark, Sr., Acting Administrator
Office of Information and Regulatory Affairs

SUBJECT: Guidance Implementing Section 6 of Executive Order 14154, Entitled "Unleashing American Energy"

Summary

This guidance is being issued in consultation with the Environmental Protection Agency (EPA), and fulfills the President's directive to issue guidance under Section 6 of Executive Order 14154, "Unleashing American Energy."

It is the policy of this Administration that, pursuant to the conclusions stated in Executive Order 14154, the calculation of the social cost of carbon "is marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation." Agencies should review their various statutory, regulatory, and other policy requirements that govern regulatory and permitting decisions, and limit their analysis and consideration of greenhouse gas emissions only to that plainly required in their governing statutes subject to an exception detailed below related to consultation with the Department of Justice.

Executive Order 14154 Overview

Executive Order (EO) 14154, "Unleashing American Energy," explicitly charges the Administration to unleash America's affordable and reliable energy. It is incumbent upon executive departments and agencies (collectively, agencies) to remove any barriers put in place by previous Administrations that unduly restrict the ability of the United States to maximize the benefits Americans enjoy from our abundant natural resources. EO 14154 also charges agencies to ensure that all regulatory requirements related to energy are grounded in clearly applicable law. That charge requires limiting the use of considerations not required by an agency's governing statutes.

Specifically, EO 14154 states that, among other things, "[t]he calculation of the 'social cost of carbon' is marked by logical deficiencies, a poor basis in empirical science, politicization, and

the absence of a foundation in legislation." It also charges the EPA with issuing guidance to address the inadequacies of social cost of carbon analyses and to consider eliminating the social cost of carbon calculation from any Federal regulatory and permitting decisions.

EO 14154 accordingly disbanded the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG), which was established pursuant to EO 13990, and withdrew any guidance, instruction, recommendation, or document issued by the IWG. As such, it is no longer Federal government policy to maintain a uniform estimate of the monetized impacts of greenhouse gas emissions.

The Office of Information and Regulatory Affairs (OIRA) has now consulted with the EPA and the two agencies have collaborated to produce the guidance required by Section 6 of EO 14154. Agencies charged with implementing regulations and issuing permits where greenhouse gas emissions have in the past been a factor (erroneously, in many instances) should consider this guidance when engaging in their regulatory activities.

Under this guidance, the circumstances where agencies will need to engage in monetized greenhouse gas emission analysis will be few to none. In those limited circumstances, Section 6(d) of EO 14154 charges the agencies to "ensure estimates to assess the value of changes in greenhouse gas emissions resulting from agency actions, including with respect to the consideration of domestic versus international effects and evaluating appropriate discount rates, are, to the extent permitted by law, consistent with the guidance contained in OMB Circular A-4 of September 17, 2003."

The following additional guidance pursuant to Section 6 of EO 14154 is also provided:

Guidance for Agencies

1. Agencies should review their existing policies, guidance, regulations, and governing statutes to determine whether the consideration of greenhouse gas emissions is required, and in what manner, in agency regulatory and permitting decisionmaking.

2. If the consideration of greenhouse gas emissions is not required by statute, but has been established as a decisionmaking factor in agency guidance or regulations governing either regulatory or permitting decisions (or both), agencies should, consistent with the policy of EO 14154, modify their regulations (or rescind/modify their guidance), as appropriate, to reestablish the proper, limited role of such emissions in agency decisionmaking. Such regulations or changes to guidance should be issued as quickly as feasible, consistent with law.

3. If the consideration of greenhouse gas emissions is required by statute, agencies should limit their analysis to the minimum consideration required to meet such a statutory requirement. Agencies may consult with the EPA on how to conduct such an analysis.

Notwithstanding such analysis, it is the policy of this Administration as set forth in EO 14154 that any consideration of greenhouse gas emissions should be limited to domestic effects, unless an analysis of extraterritorial impacts is required, "in order to promote sound regulatory decision making and prioritize the interests of the American people."

4. Agencies should ensure that any permitting decisions issued are consistent with the conclusions of this agency review, and provide the minimal greenhouse gas analysis and consideration necessary for agencies to comply with statutory requirements.

5. Agencies should ensure that any regulations, including any significant regulations submitted to OIRA under Executive Order 12866, "Regulatory Review," as amended, are consistent with the conclusions of this agency review, and provide the minimal greenhouse gas analysis and consideration necessary for agencies to comply with statutory requirements.

6. No Supreme Court case law of which OIRA or the EPA is aware provides that greenhouse gas emissions must be quantified or that agencies must monetize the impact of such quantifications in connection with any particular statutory regime or as a general matter. Should precedents of Federal Courts of Appeals (the Circuits) conclude that such quantifications/monetized impact calculations are required by a statute, then the agencies affected by such a decision should consult with the Department of Justice to consider the agency's options under the nonacquiescence doctrine.

7. Agencies engaging in quantification of greenhouse gas emissions consistent with case law issued by the Circuits, respectively, should not monetize the impacts from such emissions. This is because the uncertainties in performing monetized impacts quantifications are too great. Use of monetized impact quantifications would simply mislead the American public, reduce confidence in the Federal government, and result in flawed decisionmaking due to overreliance on balancing highly uncertain dollar figures against more concrete costs and benefits that can be appropriately quantified. Numerous uncertainties afflicting attempts to monetize impacts of greenhouse gas emissions include, but are not limited, to the following:

    a. Whether and to what degree any supposed changes in the climate are actually occurring as a consequence of anthropogenic greenhouse gas emissions;

    b. How to assess the relationship between verified anthropogenic changes in climate and the resulting environmental and economic impacts;

    c. How to assess climate-economic interactions;

    d. How to predict future economic growth across all countries of the world;

    e. How to predict future world population growth;

f. How to account for technological advancements that may either mitigate greenhouse gas emissions or facilitate human adaptation;

g. How to account for the impact of emissions on the regulated entities in the United States; and

h. What appropriate discount rates to use.

8. This Memorandum should be implemented consistent with applicable law, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.