

117TH CONGRESS
2D SESSION

S. 4596

To prohibit the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Secretary of Transportation, the Chair of the Council on Environmental Quality, and the Federal Energy Regulatory Commission from considering, in taking any action, the social cost of carbon, the social cost of methane, the social cost of nitrous oxide, or the social cost of any other greenhouse gas, unless compliant with Office of Management and Budget guidance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21, 2022

Mr. LANKFORD (for himself, Mrs. CAPITO, Mr. INHOFE, Mr. CORNYN, Mr. BARRASSO, Mr. BLUNT, Mr. COTTON, Mr. HOEVEN, Mr. RISCH, Mr. CRAMER, Mr. DAINES, Mr. MARSHALL, and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To prohibit the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Secretary of Transportation, the Chair of the Council on Environmental Quality, and the Federal Energy Regulatory Commission from considering, in taking any action, the social cost of carbon, the social cost of methane, the social cost of nitrous oxide, or the social cost of any other greenhouse gas, unless compliant with Office of Management and Budget guidance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparency and
5 Honesty in Energy Regulations Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) as a tool to justify Federal actions by the
9 Secretary of Energy, the Administrator, the Sec-
10 retary of the Interior, the Secretary of Transpor-
11 tation, the Chair of the Council on Environmental
12 Quality, and the Chair of the Federal Energy Regu-
13 latory Commission to address greenhouse gas emis-
14 sions, including the regulation or prohibition of the
15 exploration, mining, production, and use of coal and
16 other fossil fuels as energy sources, the social cost
17 of greenhouse gases, specifically the social cost of
18 carbon, the social cost of methane, and the social
19 cost of nitrous oxide, represents the hypothetical
20 cost of 1 incremental ton of carbon dioxide, meth-
21 ane, or nitrous oxide emissions in a given year;

22 (2) the document of the Office of Management
23 and Budget entitled “Circular A–4” and dated Sep-
24 tember 17, 2003—

1 (A) guides Federal agencies on the devel-
2 opment of regulatory impact analysis required
3 under Executive Order 12866 (5 U.S.C. 601
4 note; relating to regulatory planning and re-
5 view) and other authorities; and

6 (B) instructs Federal agencies to include
7 discount rates of 3 and 7 percent and evaluate
8 the costs and benefits of the regulatory action
9 that accrue to citizens and residents of the
10 United States;

11 (3) first developed in 2009 by an interagency
12 working group that included the Department of En-
13 ergy, the Environmental Protection Agency, the De-
14 partment of Transportation, and the Council on En-
15 vironmental Quality, the estimates for the social cost
16 of carbon and the subsequently developed social cost
17 of methane and social cost of nitrous oxide fail to
18 comply with the 3- and 7-percent discount rates pre-
19 scribed by the document of the Office of Manage-
20 ment and Budget entitled “Circular A–4” and dated
21 September 17, 2003;

22 (4) while the document of the Office of Man-
23 agement and Budget entitled “Circular A–4” and
24 dated September 17, 2003, specifies that, in car-
25 rying out an evaluation of the global effects of a

1 rule, regulation, or action, the evaluation shall be re-
2 ported separately from domestic costs and benefits
3 of that rule, regulation, or action, the social cost of
4 carbon, the social cost of methane, and the social
5 cost of nitrous oxide instead calculates the global
6 benefits in lieu of, not in addition to, the domestic
7 costs of a rule, regulation, or action;

8 (5) the use of the estimates of the social cost
9 of greenhouse gases, including the estimates for the
10 social cost of carbon, the social cost of methane, and
11 the social cost of nitrous oxide, in the rulemakings
12 and other actions of the Department of Energy, the
13 Environmental Protection Agency, the Department
14 of the Interior, the Department of Transportation,
15 and the Council on Environmental Quality was with-
16 out—

17 (A) an adequate opportunity for public no-
18 tice and comment; and

19 (B) rigorous scientific peer review;

20 (6) by Executive order, the interagency working
21 group described in paragraph (3) was disbanded in
22 March 2017, and the related estimates were with-
23 drawn;

24 (7) the Environmental Protection Agency devel-
25 oped new estimates in line with the document de-

scribed in paragraph (4) in EPA-452/R-18-006,
dated August 2018, and entitled “Regulatory Im-
pact Analysis for the Proposed Emissions Guidelines
for Greenhouse Gas Emissions from Existing Elec-
tric Utility Generating Units; Revisions to Emission
Guideline Implementing Regulations; Revisions to
New Source Review Program”;

(8) Executive Order 13990 (86 Fed. Reg. 7037;
relating to protecting public health and the environ-
ment and restoring science to tackle the climate cri-
sis), issued on January 20, 2021—

(A) reconvened the interagency working
group described in paragraph (3);

(B) directed the head of each Federal
agency to include an interim figure for the so-
cial cost of carbon, the social cost of methane,
and the social cost of nitrous oxide in any con-
sideration of the effect of greenhouse gas emis-
sions in any regulations and other relevant
agency actions; and

(C) directed the reconvened interagency
working group to review and update the meth-
odology and estimates for the social cost of car-
bon, the social cost of methane, and the social
cost of nitrous oxide;

1 (9) despite nearly a decade of investigation, the
2 interagency working group described in paragraph
3 (3) has lacked transparency and failed to sufficiently
4 provide Congress and the public with information re-
5 garding how often the interagency working group
6 met, the discussions of the interagency working
7 group, and how the interagency working group ar-
8 rived at its estimates;

9 (10)(A) the use of the interim social cost of
10 greenhouse gas figures was challenged in court and
11 a preliminary injunction was granted by the United
12 States District Court for the Western District of
13 Louisiana on February 11, 2022; and

14 (B) the Fifth Circuit Court of Appeals stayed
15 the preliminary injunction on March 16, 2022;

16 (11) the Environmental Protection Agency re-
17 lied on the interagency working group interim esti-
18 mate of the social cost of methane, without appro-
19 priate peer review or opportunity for public notice
20 and comment, in attempting to justify the costs and
21 benefits of the proposed rule entitled “Standards of
22 Performance for New, Reconstructed, and Modified
23 Sources and Emissions Guidelines for Existing
24 Sources: Oil and Natural Gas Sector Climate Re-
25 view” (86 Fed. Reg. 63110 (November 15, 2021));

1 (12) prior to the 2017 disbandment of the
2 interagency working group described in paragraph
3 (3), the Department of the Interior used the social
4 cost of methane estimate to justify the costs and
5 benefits of the final rule entitled “Waste Prevention,
6 Production Subject to Royalties, and Resource Con-
7 servation” (81 Fed. Reg. 83008 (November 18,
8 2016));

9 (13) court filings note that various agencies
10 have 38 pending regulatory actions that rely on the
11 interim social cost of greenhouse gases figures; and

12 (14) continued use of the social cost of green-
13 house gases, including the social cost of carbon, the
14 social cost of methane, and the social cost of nitrous
15 oxide by the Department of Energy, the Environ-
16 mental Protection Agency, the Department of the
17 Interior, the Department of Transportation, the
18 Council on Environmental Quality, and the Federal
19 Energy Regulatory Commission ignores sound
20 science.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) ADMINISTRATOR.—The term “Adminis-
24 trator” means the Administrator of the Environ-
25 mental Protection Agency.

1 (2) SOCIAL COST OF CARBON.—The term “so-
2 cial cost of carbon” means—

3 (A) the estimate of the social cost of car-
4 bon described in—

5 (i) the document entitled “Technical
6 Support Document: Social Cost of Carbon
7 for Regulatory Impact Analysis Under Ex-
8 ecutive Order 12866”, published by the
9 Interagency Working Group on Social Cost
10 of Carbon, United States Government, in
11 February 2010;

12 (ii) the document entitled “Technical
13 Support Document: Social Cost of Carbon,
14 Methane, and Nitrous Oxide Interim Esti-
15 mates under Executive Order 13990”,
16 published by the Interagency Working
17 Group on Social Cost of Greenhouse
18 Gases, United States Government, in Feb-
19 ruary 2021;

20 (iii) the document entitled “Technical
21 Support Document: Technical Update of
22 the Social Cost of Carbon for Regulatory
23 Impact Analysis Under Executive Order
24 12866”, published by the Interagency
25 Working Group on Social Cost of Carbon,

1 United States Government, in May 2013
2 and revised in November 2013 and July
3 2015, and published and revised by the
4 Interagency Working Group on the Social
5 Cost of Greenhouse Gases, United States
6 Government, in August 2016; or

7 (iv) any successor or substantially re-
8 lated document; and

9 (B) any other estimate of the monetized
10 damages associated with an incremental in-
11 crease in carbon dioxide emissions in a given
12 year.

13 (3) SOCIAL COST OF GREENHOUSE GAS.—The
14 term “social cost of greenhouse gas” means—

15 (A) the estimate of the social cost of any
16 greenhouse gas that is described in any suc-
17 cessor document to—

18 (i) the document entitled “Technical
19 Support Document: Social Cost of Carbon
20 for Regulatory Impact Analysis Under Ex-
21 ecutive Order 12866”, published by the
22 Interagency Working Group on Social Cost
23 of Carbon, United States Government, in
24 February 2010;

1 (ii) the document entitled “Technical
2 Support Document: Technical Update of
3 the Social Cost of Carbon for Regulatory
4 Impact Analysis Under Executive Order
5 12866”, published by the Interagency
6 Working Group on Social Cost of Carbon,
7 United States Government, in May 2013
8 and revised in November 2013 and July
9 2015, and published and revised by the
10 Interagency Working Group on the Social
11 Cost of Greenhouse Gases, United States
12 Government, in August 2016;

13 (iii) the document entitled “Adden-
14 dum to Technical Support Document on
15 Social Cost of Carbon for Regulatory Im-
16 pact Analysis under Executive Order
17 12866: Application of the Methodology to
18 Estimate the Social Cost of Methane and
19 the Social Cost of Nitrous Oxide”, pub-
20 lished by the Interagency Working Group
21 on Social Cost of Greenhouse Gases,
22 United States Government, in August
23 2016;

24 (iv) the document entitled “Technical
25 Support Document: Social Cost of Carbon,

1 Methane, and Nitrous Oxide Interim Esti-
2 mates under Executive Order 13990”,
3 published by the Interagency Working
4 Group on Social Cost of Greenhouse
5 Gases, United States Government, in Feb-
6 ruary 2021; or

7 (v) any successor or substantially re-
8 lated document; and

9 (B) any other estimate of the monetized
10 damages associated with an incremental in-
11 crease in greenhouse gas emissions in a given
12 year.

13 (4) SOCIAL COST OF METHANE.—The term “so-
14 cial cost of methane” means—

15 (A) the estimate of the social cost of meth-
16 ane described in—

17 (i) the proposed rule entitled “Oil and
18 Natural Gas Sector: Emission Standards
19 for New and Modified Sources” (80 Fed.
20 Reg. 56593 (September 18, 2015));

21 (ii) the final rule entitled “Oil and
22 Natural Gas Sector: Emission Standards
23 for New, Reconstructed, and Modified
24 Sources” (81 Fed. Reg. 35824 (June 3,
25 2016));

1 (iii) the regulatory impact analysis en-
2 titled “Regulatory Impact Analysis of the
3 Final Oil and Natural Gas Sector: Emis-
4 sion Standards for New, Reconstructed,
5 and Modified Sources”, prepared by the
6 Environmental Protection Agency, Office
7 of Air and Radiation, in May 2016 and
8 identified by docket ID number EPA–HQ–
9 OAR–2010–0505–7630;

10 (iv) the document entitled “Addendum
11 to Technical Support Document on Social
12 Cost of Carbon for Regulatory Impact
13 Analysis under Executive Order 12866:
14 Application of the Methodology to Esti-
15 mate the Social Cost of Methane and the
16 Social Cost of Nitrous Oxide”, published
17 by the Interagency Working Group on So-
18 cial Cost of Greenhouse Gases, United
19 States Government, in August 2016;

20 (v) the document entitled “Technical
21 Support Document: Social Cost of Carbon,
22 Methane, and Nitrous Oxide Interim Esti-
23 mates under Executive Order 13990”,
24 published by the Interagency Working
25 Group on Social Cost of Greenhouse

1 Gases, United States Government, in Feb-
2 ruary 2021; or

3 (vi) any successor or substantially re-
4 lated document; and

5 (B) any other estimate of the monetized
6 damages associated with an incremental in-
7 crease in methane emissions in a given year.

8 (5) SOCIAL COST OF NITROUS OXIDE.—The
9 term “social cost of nitrous oxide” means—

10 (A) the estimate of the social cost of ni-
11 trous oxide described in—

12 (i) the document entitled “Addendum
13 to Technical Support Document on Social
14 Cost of Carbon for Regulatory Impact
15 Analysis under Executive Order 12866:
16 Application of the Methodology to Esti-
17 mate the Social Cost of Methane and the
18 Social Cost of Nitrous Oxide”, published
19 by the Interagency Working Group on So-
20 cial Cost of Greenhouse Gases, United
21 States Government, in August 2016;

22 (ii) the document entitled “Technical
23 Support Document: Social Cost of Carbon,
24 Methane, and Nitrous Oxide Interim Esti-
25 mates under Executive Order 13990”,

published by the Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, in February 2021; or

(iii) any other successor or substantially related document; and

(B) any other estimate of the monetized damages associated with an incremental increase in nitrous oxide emissions in a given year.

SEC. 4. PROHIBITION ON CONSIDERING THE SOCIAL COST OF GREENHOUSE GAS, INCLUDING THE SOCIAL COST OF CARBON, THE SOCIAL COST OF METHANE, AND THE SOCIAL COST OF NITROUS OXIDE.

The Secretary of Energy, under any authority, the Administrator, under any authority, the Secretary of the Interior, under any authority, the Secretary of Transportation, under any authority, the Chair of the Council on Environmental Quality, under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Chair of the Federal Energy Regulatory Commission, under any authority, the Secretary of the Treasury, under any authority, the Secretary of Agriculture, under any authority, the Secretary of Commerce, under any authority,

1 and the Secretary of Health and Human Services, under
 2 any authority, may not consider the social cost of carbon,
 3 social cost of methane, social cost of nitrous oxide, or so-
 4 cial cost of greenhouse gas—

5 (1) as part of any cost-benefit analysis required
 6 under—

7 (A) any law;

8 (B) Executive Order 12866 (5 U.S.C. 601
 9 note; relating to regulatory planning and re-
 10 view); or

11 (C) Executive Order 13563 (5 U.S.C. 601
 12 note; relating to improving regulation and regu-
 13 latory review);

14 (2) in any rulemaking;

15 (3) in the issuance of any guidance;

16 (4) in taking any other agency action; or

17 (5) as a justification for any rulemaking, guid-
 18 ance document, or agency action.

19 **SEC. 5. REPORT OF THE ADMINISTRATOR.**

20 Not later than 120 days after the date of enactment
 21 of this Act, the Administrator, in coordination and con-
 22 sultation with the Secretary of Energy, the Secretary of
 23 the Interior, the Secretary of Transportation, the Chair
 24 of the Council on Environmental Quality, and the Chair
 25 of the Federal Energy Regulatory Commission shall sub-

1 mit to the Committees on Environment and Public Works
2 and Energy and Natural Resources of the Senate and the
3 Committees on Energy and Commerce and Natural Re-
4 sources of the House of Representatives a report describ-
5 ing the number of proposed and final rulemakings, guid-
6 ance documents, and agency actions that, since January
7 2009, have used the social cost of carbon, the social cost
8 of greenhouse gases, the social cost of methane, or the
9 social cost of nitrous oxide, including the use of the social
10 cost of carbon, the social cost of greenhouse gases, the
11 social cost of methane, or the social cost of nitrous oxide
12 as part of any cost-benefit analysis required under Exec-
13 utive Order 12866 (5 U.S.C. 601 note; relating to regu-
14 latory planning and review) or other relevant authority.

○