

The Department of Energy (“DOE”) is [seeking public comment](#) on whether it was appropriate to rely on an estimate of the “social cost of carbon” (“SCC”) in a final rulemaking without undergoing public comment. When DOE published a proposed rule to set energy efficiency standards for [microwave ovens](#) in February 2012, it sought public comment on its analysis of the regulation’s contribution toward reducing climate change, using an SCC of \$25.6/metric ton. However, in June 2013, DOE defended its final rule with a much higher SCC value of \$41.1/metric ton, increasing the anticipated net benefits of the rule by \$438 million. An [Interagency Working Group on the Social Cost of Carbon](#) had developed this new SCC, and presented it in a “Technical Support Document” (SCC-TSD) as a fait accompli to the public in May.

Our [comment to DOE](#) agrees that the SCC is conceptually the right way for agencies to organize their analyses of climate impacts and coordinate across different agencies engaged in climate policy. However, the influential nature of the SCC value for a variety of future policies, as well as the difficulties and uncertainties of calculating the SCC, demand conscientious attention—including public comment and peer review—to the task of getting it right.

Both the Interagency Working Group’s SCC-TSD, and DOE’s decision to incorporate this highly influential scientific finding into its final microwave rule without the benefit of public comment, lacked the transparency urged by the President and procedures required by statute. In our comment, we encourage the agencies that developed the updated SCC to solicit public comment and peer review on this information before incorporating it into a rulemaking.

The process of scientific inquiry revels in debate, discussion, and discourse. Public comment and peer review of how the government selected, weighed, and combined the integrated assessment climate models, what those models mean, and the appropriateness of the various assumptions and inferences made to deal with economic and scientific uncertainty will not only add credibility to future government climate policies, but encourage advances in scientific understanding of these complex issues.

In a [memorandum](#) to agency heads on January 21, 2009, President Obama said, “my Administration is committed to creating an unprecedented level of openness in Government,” and called on the Director of OMB to issue an Open Government Directive to further that commitment.



That [Directive](#) identified three principles essential to an open government – transparency, participation, and collaboration, stating:

Transparency promotes accountability by providing the public with information about what the Government is doing. Participation allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society. Collaboration improves the effectiveness of Government by encouraging partnerships and cooperation within the Federal Government, across levels of government, and between the Government and private institutions.

By releasing the SCC as a final decision in a “technical support document,” and incorporating it in a final rulemaking without the opportunity for comment, the Administration has not only disregarded these principles and undermined the President’s commitment to open government, but has violated the [Administrative Procedure Act](#) and [established administrative policies](#).

Our comment encourages the following steps to address these failings:

- The Administration should seek peer review of the Interagency Working Group’s [Technical Support Document on the Social Cost of Carbon](#).
- The Administration should provide the public an opportunity to engage in the peer review process, and also to comment directly on the SCC Technical Support Document.
- DOE should rescind the rule and either wait to issue it until after a government-wide SCC is established that comports with established principles for transparency, participation, and collaboration, or reissue it based on the evidence that had been available to the public in the rulemaking record.
- If DOE determines that the microwave oven standard would not be altered, regardless of which SCC was used in the analysis, it nonetheless should pursue peer review and public comment on the SCC so that future rulemakings—where it will influence the outcome—can rely on it.

