



July 13, 2022

To: Environmental Protection Agency

Subject: Use of the Social Cost of Greenhouse Gases in “Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA),” 87 Fed. Reg. Reg. 21,706 (proposed Apr. 12, 2022)

The Institute for Policy Integrity at New York University School of Law¹ (“Policy Integrity”) respectfully submits the following additional comments on the Environmental Protection Agency’s (“EPA”) proposed rule for chrysotile asbestos. Policy Integrity, together with Professor Rachel Rothschild of the University of Michigan Law School, is filing a separate comment letter to this docket that addresses a broad set of issues with this regulation and the accompanying economic analysis. This additional, second submission specifically addresses the agency’s application of the social cost of greenhouse gases in its proposed rulemaking for asbestos risk management (“Proposed Rule”)² and in the accompanying economic analysis (“Economic Analysis”).³

Even though EPA does not rely on its monetization of climate effects to justify the Proposed Rule,⁴ it appropriately applies the social cost estimates developed by the Interagency Working Group on the Social Cost of Greenhouse Gases (“Working Group”) in a sensitivity analysis that monetizes the greenhouse gas emission-reduction benefits resulting from the proposal.⁵ The Working Group developed its social cost estimates through a rigorous and transparent process incorporating the best available science. Those values—though widely agreed to underestimate the full social costs of greenhouse gas emissions⁶—are appropriate to

¹ This document does not purport to represent the views, if any, of New York University School of Law.

² Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA), 87 Fed. Reg. 21,706 (proposed Apr. 12, 2022) (“Proposed Rule”).

³ Env’t Prot. Agency, Economic Analysis of the TSCA Section 6 P5proposed Rule for Asbestos Risk Management, Part 1 (Apr. 2022) (“Economic Analysis”).

⁴ Proposed Rule, 87 Fed. Reg. at 21,730 (“EPA does not rely on the interim estimates of the social cost of greenhouse gases as a record basis for this Agency action, and the Agency would propose the same conclusion regarding the requirements of this proposed rule even in the absence of the social cost of greenhouse gases.”).

⁵ Economic Analysis, *supra* note **Error! Bookmark not defined.**, at ES-11 to -12; *id.* at 4-4 to -11.

⁶ *See, e.g.*, Interagency Working Grp. on the Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide – Interim Estimates Under Executive Order 13,990*, at 4 (2021) [hereinafter *2021 TSD*] (recognizing that current social cost valuations “likely underestimate societal damages from [greenhouse gas] emissions”); Richard L. Revesz et al., *Global Warming: Improve Economic Models of Climate Change*, 508 NATURE 173 (2014) (explaining that the Working Group’s values, though methodically rigorous and highly useful, are very likely underestimates) (co-authored with Nobel laureate economist Kenneth Arrow).

use as conservative estimates and have been applied in dozens of previous rulemakings⁷ and upheld in federal court.⁸

EPA provides compelling justifications for readopting the Working Group’s estimates that it abandoned under the Trump administration (but has since applied in numerous regulation and proposals since 2021).⁹ As detailed in the attached June 21 comments on EPA’s proposed regulation to eliminate significant cross-state contributions to nonattainment of the 2015 ozone National Ambient Air Quality Standards, **there are many additional legal, economic, and policy justifications that further support EPA’s adoption of those valuations.** These additional explanations offer EPA an opportunity to expand upon its rationale for adopting a global damages valuation and for the range of discount rates it applies to climate effects. EPA should also consider supplementing its sensitivity analysis to assess the Proposed Rule’s climate benefits at lower discount rates, per the recommendation of the Working Group.

The attached comment letter makes three broad recommendations. First, it suggests **additional support for adopting a global framework for valuing climate impacts.** These include legal justifications based on the National Environmental Policy Act’s broad government-wide policy mandates, the Administrative Procedure Act’s requirement to consider all important factors, and executive orders and international agreements.¹⁰ It then offers **additional theoretical and empirical support for assessing climate impacts on a global scale, including evidence of international reciprocity and climate spillover effects.** The attached comments also recommend that EPA modify its discussion of domestic-only estimates. The Economic Analysis currently uses, in a footnote, the flawed domestic-only values developed under the now-revoked Executive Order 13,783.¹¹ While EPA correctly judges those values to be underestimates, they are, in fact, fatally incomplete¹² and should not be used, even as a complement to global estimates. EPA should instead consider conducting additional sensitivity analysis using a sounder domestic-only estimate, and, as further discussed in the attached comments, can look to the Working Group’s technical support documents and the economics literature to inform such a valuation.

Section II of the attached comment letter offers additional rationale for adopting the range of discount rates endorsed by the Working Group and for appropriately deciding not to apply a 7% capital-based discount rate to climate impacts. In particular, **this section offers further support for combining climate effects discounted at an appropriate consumption-based rate with other costs and benefits discounted at a capital-based rate.** Besides climate

⁷ See Peter Howard & Jason A. Schwartz, *Think Global: International Reciprocity as Justification for a Global Social Cost of Carbon*, 42 COLUM. J. ENV’T L. 203, 270–84 (2017) (listing all uses through mid-2016).

⁸ *Zero Zone v. Dept. of Energy*, 832 F.3d 654, 679 (7th Cir. 2016).

⁹ Economic Analysis, *supra* note **Error! Bookmark not defined.**, at 4-4 to -7.

¹⁰ The attached comments also identify support under the Clean Air Act for EPA’s approach to assessing climate impacts, because the Transport Rule was issued under the Clean Air Act. Because the Proposed Rule is not issued under the Clean Air Act, statutory arguments based specifically on the Clean Air Act are not directly applicable here. Arguments made in the attached comments under other legal provisions, including NEPA, remain applicable to the Proposed Rule.

¹¹ *Id.* at 4-9 n.25.

¹² *California v. Bernhardt*, 472 F. Supp. 3d 573, 613 (N.D. Cal. 2020) (recognizing that the Trump-era estimates of domestic climate damages “ignores impacts on 8 million United States citizens living abroad, including thousands of United States military personnel; billions of dollars of physical assets owned by United States companies abroad; United States companies impacted by their trading partners and suppliers abroad; and global migration and geopolitical security”).

effects presenting special legal, economic, and policy considerations for the discount rate, it is appropriate generally for EPA to focus its analysis of this rule on consumption-based rates given that most costs and benefits are projected to fall to consumption rather than to capital investments. EPA should also consider providing additional sensitivity analysis using discount rates of 2% or lower for climate impacts, as the Working Group recently endorsed.¹³

Section III of the attached comment letter offers further reasoning for relying on the Working Group’s other methodological choices, including the fact that the Working Group applied a transparent and rigorous process that applied the best-available and most widely cited models for monetizing climate damages. This section also provides detailed **rebuttals to criticisms of the Working Group’s methodology** from opponents of sensible environmental and climate regulation.¹⁴

For these reasons—which are further set out in the attached comments—it is **appropriate for EPA to continue applying the Working Group’s valuations of the social cost of greenhouse gases as conservative estimates of climate benefits in its sensitivity analysis** when it finalizes the Proposed Rule.

Sincerely,

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Attachment: Ctr. for Biological Diversity et al., Comments on Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard (June 22, 2022)

¹³ Interagency Working Grp. on the Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide – Interim Estimates Under Executive Order 13,990*, at 4 (2021) (“Consistent with the guidance in E.O. 13990 for the IWG to ensure that the SC-GHG reflect the interests of future generations, the latest scientific and economic understanding of discount rates discussed in this TSD, and the recommendation from OMB’s Circular A-4 to include sensitivity analysis with lower discount rates when a rule has important intergenerational benefits or costs, agencies may consider conducting additional sensitivity analysis using discount rates below 2.5 percent.”).

¹⁴ The attached comment letter includes a brief fourth section that advised EPA to clearly state that any criticisms of the social cost of greenhouse gases were moot in Transport Rule because that regulation was cost-justified without any climate benefits. The same recommendation applies here insofar as EPA concludes that the Proposed Rule is also cost-justified without any climate benefits. In any event, EPA has already stated that it “does not rely on the interim estimates of the social cost of greenhouse gases as a record basis for this Agency action, and . . . would propose the same conclusion regarding the requirements of this proposed rule even in the absence of the social cost of greenhouse gases.” Proposed Rule, 87 Fed. Reg. at 21,730.