



May 15, 2024

To: Office of Fossil Energy and Carbon Management, Department of Energy

Re: Notice of Intent Regarding Launching a Voluntary Carbon Dioxide Removal Purchasing Challenge; DOE Carbon Dioxide Removal Purchasing (CO₂RP) Challenge, 89 Fed. Reg. 18,626 (proposed March 14, 2024)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)¹ respectfully submits the following comments on the Notice of Intent Regarding Launching a Voluntary Carbon Dioxide Removal Purchasing Challenge; DOE Carbon Dioxide Removal Purchasing (CO₂RP) Challenge (Purchasing Challenge). Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

The Purchasing Challenge may scale up the market for carbon dioxide removal (CDR) credits while promoting transparency about these credits. To the extent that carbon credits form any part of efforts to reach net-zero targets,² such transparency is crucial.

The Notice requires that organizations that wish to join the Purchasing Challenge disclose to the Department of Energy (Department) several details about each associated CDR credit purchase, including the purchaser, supplier, underlying project, and crediting methodology. The Department will maintain a public inventory of these details—a laudable step towards improving transparency. Missing from the public inventory will be the price paid per tonne of CDR, which participating organizations must privately disclose to the Department only.³

There may be valid reasons to keep CDR credit prices private. **But barring any outside access to price data (even in anonymized or aggregated form) could inhibit research and analysis, as well as price discovery, that would further the Department’s goals.** Price data from the Purchasing Challenge could help Policy Integrity (and other research institutions) conduct more robust analysis related to market failures in voluntary carbon markets. This research could improve future market outcomes and aid efforts to promote a market for high-quality carbon

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

² “[R]educing emissions directly (*i.e.*, without carbon credit purchases) is the primary long-term strategy for climate mitigation.” 89 Fed. Reg. 18,626, 18,627 (proposed Mar. 14, 2024) [hereinafter Notice].

³ *Id.* at 18,628.

credits.⁴ Making information about CDR credit prices more widely available would also be consistent with existing efforts by the Department and other agencies and executive offices to promote data transparency.⁵

In addition, price transparency generally promotes price discovery, which facilitates the overall efficiency and integrity of the market.⁶ Price transparency remains a challenge in carbon credit markets.⁷ If price disclosures in the Purchasing Challenge could contribute to broader price discovery, the Department should weigh that benefit of disclosure against any potential confidentiality concerns.

⁴ See, e.g., *id.* at 18,628 (“[H]igh-integrity VCMs represent potentially important channels for unlocking significant capital for climate-impactful investments that can help limit the increase in the global average temperature to 1.5°C.”).

⁵ For example, while acknowledging the need to consider “the associated cost and administrative burden,” the Department’s 2023 Public Access Plan further states that digital data should be made available to researchers, industry, and the public “[t]o the greatest extent” and “with the fewest constraints” possible. U.S. Dep’t of Energy, *Public Access Plan* 11 (June 2023), <https://perma.cc/X79Z-AEMG>. See also Off. of Sci. and Tech. Pol’y, *Ensuring Free, Immediate, and Equitable Access to Federally Funded Research* (Aug. 25, 2022), <https://perma.cc/3G3T-CABR>; White House, *Fifth U.S. Open Government National Action Plan* 3, 5–6 (Dec. 2022), <https://perma.cc/Y97G-DLFA>.

⁶ See, e.g., Admin. Conf. of the U.S., *Administrative Conference Recommendation 2017-4: Marketable Permits* 11–12 (Dec. 14, 2017), <https://perma.cc/4X3C-PTAX> (recommending price disclosure in marketable permitting programs to “help the public gauge a market’s policy effectiveness and to help parties make efficient decisions in the market,” balancing these benefits with confidentiality concerns); Jason A. Schwartz, *Marketable Permits: Recommendations on Applications and Management* 86–88 (Dec. 11, 2017), <https://perma.cc/E9QS-QZYM> (“Without revealing proprietary information or too much confidential business information, regulators should act as information brokers, collecting information on trade prices and volumes across secondary and derivative markets, to facilitate price discovery.”); Interagency Working Grp. for the Study on Oversight of Carbon Mkts., *Report on the Oversight of Existing and Prospective Carbon Markets* 22 (Jan. 18, 2011), <https://perma.cc/W9DN-PWGT>.

⁷ Various commentators confirm that price transparency remains a problem in carbon credit markets. See, e.g., Carbon Mkt. Watch, *Climate profiteering: Are intermediaries exploiting carbon markets for their own ends?* (Feb. 2, 2023), <https://carbonmarketwatch.org/2023/02/02/climate-profiteering-are-intermediaries-exploiting-carbon-markets-for-their-own-ends/>; Ctr. for Strategic & Int’l Stud., *What’s Plaguing Voluntary Carbon Markets* (Feb. 2, 2024), <https://perma.cc/XNS2-2KK5> (calling for alignment of carbon accounting and crediting principles to facilitate “transparent price discovery allowing buyers to differentiate between credits of higher or lower quality”); Christopher Blaufelder et al., *A blueprint for scaling voluntary carbon markets to meet the climate challenge*, McKinsey & Co. 2, 7 (Jan. 2021), <https://perma.cc/R34Y-5M7H> (“Limited pricing data make it challenging for buyers to know whether they are paying a fair price, and for suppliers to manage the risk they take on by financing and working on carbon-reduction projects without knowing how much buyers will ultimately pay for carbon credits... The market’s lack of price transparency also creates the potential for money laundering.”). U.S. government officials have similarly stressed the importance of promoting price discovery in voluntary carbon markets. See, e.g., U.S. Dep’t of the Treasury, *Statement by Secretary of the Treasury Janet L. Yellen on Commodity Futures Trading Commission’s (CFTC) Proposed Guidance on Voluntary Carbon Markets* (Dec. 4, 2023), <https://perma.cc/83QV-R37E>; Commodity Futures Trading Comm’n, [*Statement by CFTC Chair Rostin Behnam,*] CFTC Issues Proposed Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts (Dec. 4, 2023), <https://perma.cc/3UWN-89FN> (“Our goal all along has been to help shape standards in support of integrity, which will lead to transparency, liquidity, and ultimately price discovery—all established hallmarks of CFTC regulated markets.”).

The Department could better balance concerns about the disclosure of commercially sensitive information with the benefits of allowing researchers and market actors to access price data.⁸ For example, the Department could:

- **Make price data public in anonymized form**, as the Department has done in other contexts.⁹ The National Strategy to Advance Privacy-Preserving Data Sharing and Analytics recommends anonymization, among other methods, for making data widely available without disclosing commercially sensitive information, such as company identity and other details related to company operations.¹⁰
- **Allow tiered access to Purchasing Challenge price data.** The Office of Management and Budget has encouraged the use of tiered access (the creation of “multiple versions of a single dataset with varying levels of specificity and protection”).¹¹
- **Limit access to this price information to researchers only**, and require such researchers to sign non-disclosure agreements.

Should the Department implement any of these recommendations, it may wish to amend the Notice to make clear that instead of being “kept private,”¹² price data may be disclosed, for example in anonymized form, via tiered access, or to researchers who sign non-disclosure agreements. The Department could then also request that participating organizations flag any concerns with the proposed form(s) of price data disclosure in their submissions.

Respectfully,

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⁸ The Department may already be well-positioned to operationalize this suggestion. *See, e.g.*, Dep’t of Energy, *Office of Science PuRe Data Resources*, <https://perma.cc/E62J-8LB6> (“The Department of Energy Office of Science (SC) is committed to supporting high-value community data resources through the SC Public Reusable Research (PuRe) Data Resources program.”).

⁹ *See, e.g.*, U.S. Energy and Info. Admin., *Commercial Buildings Energy Consumption Survey (CBECS)*, <https://perma.cc/VMF2-L4S4> (using masking procedures to avoid disclosing individual building identities when making publicly available a microdata file with untabulated records about individual buildings).

¹⁰ *See* Nat’l Sci. and Tech. Council, *National Strategy to Advance Privacy-Preserving Data Sharing and Analytics 3*, 15–16 (Mar. 2023), <https://perma.cc/4S68-G4RP>.

¹¹ Off. of Mgmt. and Budget, *Memorandum for the Heads of Executive Departments and Agencies (M-19-15)* 9 (Apr. 24, 2019), <https://perma.cc/RX7Z-TZ5E>. *See also* Off. of Mgmt. and Budget, *Improving Implementation of the Information Quality Act: Frequently Asked Questions* (Dec. 2023), <https://perma.cc/68CW-PRJ4>.

¹² *See* Notice at 18,628.