

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:21-cv-00287-AGF
)	
JOSEPH R. BIDEN, JR., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

The State of Missouri and 12 other states¹ brought this suit against President Joseph R. Biden, Jr. and several other executive branch departments and officials, challenging the President’s Executive Order 13990 (“EO 13990”), which, in relevant part, establishes an Interagency Working Group on the Social Cost of Greenhouse Gases (the “Working Group”) and directs the Working Group to publish interim—and, by January of 2022, final—values for the “social costs” of greenhouse gas emissions. The Executive Order further provides that agencies “shall use [the Interim Estimates] when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions until final values are published.” 86 Fed. Reg. 7037.

The matter is now before the Court on two motions: (1) Plaintiffs’ motion (ECF No. 17) for a “preliminary injunction prohibiting Defendants (excluding the President) from using the social cost of greenhouse gases promulgated in the February 26, 2021

¹ These are the States of Alaska, Arizona, Arkansas, Indiana, Kansas, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, and Utah.

Technical Support Document, [ECF No. 6-2], in any rule making or federal action where there is a statutory command to consider costs or costs are permitted by statute until this case is resolved on appeal”² (ECF No. 17 at 1); and (2) Defendants’ motion (ECF No. 27) to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim.

The Court heard oral argument on both motions on August 25, 2021. Upon review of the entire record and for the reasons set forth below, the Court concludes that Plaintiffs lack standing and that their claims are not ripe for adjudication. Therefore, the Court will grant Defendants’ motion to dismiss for lack of subject matter jurisdiction and will dismiss Plaintiffs’ motion as moot.

BACKGROUND

On January 20, 2021, President Biden issued EO 13990, titled “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.” 86 Fed. Reg. 7037. Section 5 of this Order, titled “Accounting for the Benefits of Reducing Climate Pollution,” provides in full:

(a) It is essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible, including by taking global damages into account. Doing so facilitates sound decision-making, recognizes the breadth of climate impacts, and supports the international leadership of the United States on climate issues. The “social cost of carbon” (SCC), “social cost of nitrous oxide” (SCN), and “social cost of methane” (SCM) are estimates of the monetized damages associated with incremental increases in greenhouse

² In their supporting brief, Plaintiffs narrow their request, asking only to “preliminarily enjoin all defendants, except for the President, from using the social cost of greenhouse gases promulgated in the February 26, 2021 Technical Support Document as binding values in any agency action.” ECF No. 18 at 59.

gas emissions. They are intended to include changes in net agricultural productivity, human health, property damage from increased flood risk, and the value of ecosystem services. An accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions.

(b) There is hereby established an Interagency Working Group on the Social Cost of Greenhouse Gases (the “Working Group”). The Chair of the Council of Economic Advisers, Director of OMB, and Director of the Office of Science and Technology Policy shall serve as Co-Chairs of the Working Group.

(i) Membership. The Working Group shall also include the following other officers, or their designees: the Secretary of the Treasury; the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Commerce; the Secretary of Health and Human Services; the Secretary of Transportation; the Secretary of Energy; the Chair of the Council on Environmental Quality; the Administrator of the Environmental Protection Agency; the Assistant to the President and National Climate Advisor; and the Assistant to the President for Economic Policy and Director of the National Economic Council.

(ii) Mission and Work. The Working Group shall, as appropriate and consistent with applicable law:

(A) publish an interim SCC, SCN, and SCM within 30 days of the date of this order, which agencies shall use when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions until final values are published;

(B) publish a final SCC, SCN, and SCM by no later than January 2022;

(C) provide recommendations to the President, by no later than September 1, 2021, regarding areas of decision-making, budgeting, and procurement by the Federal Government where the SCC, SCN, and SCM should be applied;

(D) provide recommendations, by no later than June 1, 2022, regarding a process for reviewing, and, as appropriate, updating, the SCC, SCN, and SCM to ensure that these costs are based on the best available economics and science; and

(E) provide recommendations, to be published with the final SCC, SCN, and SCM under subparagraph (A) if feasible, and in any event by no later than June 1, 2022, to revise methodologies for calculating the SCC, SCN, and SCM, to the extent that current methodologies do not adequately take account of climate risk, environmental justice, and intergenerational equity.

(iii) Methodology. In carrying out its activities, the Working Group shall consider the recommendations of the National Academies of Science, Engineering, and Medicine as reported in *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* (2017) and other pertinent scientific literature; solicit public comment; engage with the public and stakeholders; seek the advice of ethics experts; and ensure that the SCC, SCN, and SCM reflect the interests of future generations in avoiding threats posed by climate change.

86 Fed. Reg. 7040-41.

Interim Estimates

On February 26, 2021, the Working Group issued a document entitled “Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990” (“Interim Estimates”). These Interim Estimates are purportedly identical to prior estimates developed by another interagency working group under President Barack Obama in 2016, except that they have been adjusted for inflation. *See* ECF No. 6-2, Working Group, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates under E.O. 13990* (Feb. 2021), also available at

https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

Plaintiffs argue that the Interim Estimates are faulty for a number of reasons, including that the underlying factual inputs and modeling assumptions are arbitrary and lack a reasonable basis.³ Plaintiffs rely on a sworn declaration of Kevin D. Dayaratna, a statistician and data scientist at the Heritage Foundation’s Center for Data Analysis, in support of their assertions. Because EO 13990 provides that federal agencies “shall” use the Interim Estimates “when monetizing the value of changes in greenhouse gas emissions resulting from regulations and other relevant agency actions until final values are published,” 86 Fed. Reg. 7040, Plaintiffs assert that the Interim Estimates “will inevitably be used to justify increased regulation and restrictions in innumerable areas, affecting virtually every aspect of daily life.” ECF No. 18 at 19.

In support of this argument, Plaintiffs cite an academic review in 2017, which identified “at least eighty-three separate regulatory or planning proceedings conducted by six different federal agencies [that] have used the SCC or SCM in their analyses” through

³ For example, Plaintiffs describe in detail why the “discount rate” applied by the Working Group in developing the Interim Estimates was faulty. The discount rate is a “percentage factor designed to calculate the net present value of the future anticipated damages from a marginal increase in emissions of a particular gas.” ECF No. 18 at 17. According to Plaintiffs, the discount rates applied by the Working Group were too low, resulting in exaggerated “social costs” of the corresponding greenhouse gases. *See id.*

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