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Regulatory Reform Plans For Next White House May Bolster CO2 Curbs

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As the Bush administration draws to a close, several policy experts—some with ties to environmentalists—are ramping up discussions of possible regulatory reform agendas and carbon dioxide (CO2) regulatory options for the next president. The effort includes discussions of Clean Air Act regulatory options for greenhouse gases; a call for a new executive order to modify regulatory reviews; analyses of alleged data gaps in current cost-benefit reviews; and proposed organizational changes at the White House.

While many of the analyses or proposals—being put forward by economists, attorneys and environmentalists—revolve around long-running disputes over how federal agencies should review regulations, sources familiar with them suggest that the efforts may have particular relevance to global warming policies, given the growing concern over climate change and the focus on regulatory review analyses that in the past have downplayed the benefits of reducing greenhouse gas emissions.

Among the latest proposals is an October “policy brief” by Michael Livermore—an environmentalist and head of the Institute for Policy Integrity—calling for a new executive order within the first 100 days of the next administration to reform the regulatory review process and ensure “balanced cost-benefit analysis and smart, effective regulation.”

The brief builds in part on a broader critique of cost-benefit analyses by Livermore and Richard Revesz, *Retaking Rationality: How Cost-Benefit Analysis Can Better Protect the Environment and Our Health*. Livermore in his policy brief argues that changes to cost-benefit analyses by federal agencies are needed because of anti-regulatory biases built up in existing cost benefit reviews, including “too much of a focus on ‘countervailing risks’ of regulation—where the secondary effects of a regulation impose social costs.” According to Livermore, not enough attention is focused on the “ancillary benefits” of regulation. Livermore cites growing concerns about climate change and energy as reasons why the alleged bias in regulatory reviews is a major problem, and he includes in the brief a “mark up” of a 1993 executive order on regulatory reviews as a way to suggest a roadmap to a new executive order on the issue.

Livermore suggests fixes including a requirement that the Office of Management & Budget’s Office of Information and Regulatory Affairs implement a process to enable a challenge to agency inaction on rules. A new executive order should make clear that both deregulatory and regulatory decisions should be subjected to cost-benefit analysis as well as to the “same level of scrutiny,” according to the brief.

In separate but related developments, two economists at Resources for the Future (RFF)—Richard Morgenstern and Winston Harrington—as well as Georgetown Law Center Professor Lisa Heinzerling are poised to release a book likely to discuss possible reforms to the regulatory review process and to highlight questions about current cost-benefit analysis assumptions. Issues include what many critics contend are elevated “discount rates” that the Bush administration has used to estimate future benefits of regulations—assumptions that have a particularly large effect in reducing the benefits of greenhouse gas emissions controls. A

source familiar with the book says it will also draw lessons on reforming cost-benefit analyses from a number of case studies, including EPA's controversial mercury regulation for power plants, the agency's Clean Air Interstate Rule for reducing transported air pollution, and cooling water intake requirements.

New Analysis

A separate analysis released Oct. 29 by the group Environmental Defense Fund (EDF) outlines a wave of criticism that the Bush administration has faced on its regulatory review of regulations, specifically on the subject of global warming and energy use. In the report, "Carbon Counts: Incorporating the Benefits of Carbon Reduction Into Federal Rulemaking," EDF argues that executive branch agencies have been ignoring existing policies that require consideration of societal benefits from regulations that reduce greenhouse gas emissions. EDF cites three specific instances of recent rulemaking by the Bush administration the group says improperly downplayed or ignored the greenhouse gas-related benefits of the rules—the Department of Transportation's 2006 light truck standards, Department of Energy furnace efficiency standards and September 2008 standards for gasoline engines used in equipment such as lawnmowers and personal watercraft. The report argues that federal agencies should factor the "social cost of carbon" into the federal rulemaking process and calls the move a "common sense opportunity to craft policies that secure the benefits of greenhouse gas reduction today," even while lawmakers continue to pursue climate change legislation.

In a separate, upcoming policy paper, Georgetown's Heinzerling and environmental attorney Richard Ayres—a co-founder of the Natural Resources Defense Council—are working with other coauthors to develop recommendations on steps the next president could take to address climate change.

According to a source familiar with the effort, the details are still being worked out but the authors are considering proposing organizational changes—in part to address concerns over the current regulatory review process at the Office of Management & Budget. The authors are also likely to discuss options for regulating greenhouse gases under the Clean Air Act regulatory approaches. On the organizational front, the source says the paper may discuss issues including a possible revitalized role for the White House Council on Environmental Quality.—*Doug Obey*

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