

### The Deep State Struggle—Is there still hope?

Following up on recent Supreme Court decisions that relaxed procedural strictures and reined in federal agencies' power to interpret the limits of their own authority, the President, through a series of executive orders is trying to reassert control over the administrative agencies. These orders add a new level of OMB review designed to keep regulations and interpretations consistent with the law and with Administration policy. Earlier notes — *DOGE REDUX* and *Back to the Future* — argued this could finally give the President real control over the agencies in the Executive Branch.

EPA's repeal of the greenhouse gas related Endangerment Finding showed that the system can work. The efficient rulemaking proceeding shifted a primary driving force for EPA actions away from the global issue of climate change and toward concentration on issues that more directly affect the health and safety of Americans.

As previously noted, however, the pending MTVLO rulemaking is a critical early test of whether that successful experience can be duplicated on a broader basis. To date, the prognosis is not encouraging.

With the repeal of the Endangerment finding, the MTVLO rule lost its original justification — reduction of greenhouse gas emissions. But EPA quietly recast it as a measure to reduce emissions of hazardous air pollutants. The new regulations, as proposed, would, for the first time, impose a 95% by-weight HAPs reduction mandate on offshore loading terminals *beyond U.S. territorial waters*. The initial capital costs would exceed \$100M+ per new terminal and \$250M+ per existing terminals and would add tens of millions in operating costs per year. The resulting dollar cost per ton of HAP reduction would be in the hundreds of thousands. The compliance technology that is being used to claim that the 95% reduction is feasible is not only completely untried, it creates new safety risks and, on balance, is likely to cost more lives than it saves.

This is exactly the kind of rule the new review process was built to catch. It didn't.

The reason: staff at the EPA regional level appear to have controlled the inputs — the cost estimates, the feasibility analysis, the threshold determinations — and steered a defective rule around the check that was designed to stop it.

Thus, the new review architecture seems sound but it still can be defeated. Not by open defiance — but by managing the information it runs on.

A control system that can be steered around by the people it's meant to control is only as strong as its weakest input.

Full analysis — including four concrete reforms to give the program teeth — is available at [2025lawandpolicy.com](http://2025lawandpolicy.com).