HONORABLE MENTION

# EFFICIENCY AND EQUITY IN REGULATION

by Caroline Cecot

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The Joseph Biden Administration has signaled an interest in ensuring that regulations appropriately benefit vulnerable and disadvantaged communities. Prior presidential administrations have focused on ensuring that regulations are efficient, maximizing the net benefits to society, without considering who benefits or who loses from these policies. Supporters of the current process are concerned that pursuing equity will come at significant cost to efficiency and ultimately leave everyone worse off.

This framework—efficiency versus equity—is misguided and counterproductive in many cases. All regulations have distributional consequences, and the traditional arguments for ignoring these consequences are outdated or wrong. In addition, current agency practice is often far from efficient, and there are opportunities to advance equity by improving the efficiency of regulations. In fact, neutral procedures such as cost-benefit analysis are more likely to benefit disadvantaged groups than is raw politics, whatever the intention, at least based on experience in regulatory policy. Furthermore, cost-benefit analysis and efficiency considerations more generally could help avoid outcomes that are, in their implementation, inequitable.

This Article supports these arguments by drawing on examples from the environmental context, where considerations of equity and efficiency have often been thought to conflict. Based on such examples, this Article proposes two rules of thumb for agencies to follow in order to promote both equity and efficiency using their existing authorities and avoid lose-lose scenarios. First, agencies should not leave society, from the aggregate perspective, worse off. In other words, agencies should pursue cost-benefit-justified actions. Second, within such cost-benefit justified actions, agencies should ensure that their actions do not leave disadvantaged groups worse off. In doing so, agencies should pay attention to the incidence of regulatory costs on such groups and consider deploying transfers under the agency's authority where appropriate and available to offset costs. This Article then compares this approach to proposals to consider equity in regulation more generally.

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