

White House Memo May Threaten EPA Climate Finding, Analysts Say

By Abby Smith

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- EPA would have 120 days to respond to free market group's petition, per new OMB guidance
- Regulatory experts, scientists warn petition signals open door to challenge any federal science

A recent update from the White House budget office is breathing new life into outside challenges to the EPA's pivotal climate science finding.

This isn't the first time the Competitive Enterprise Institute, a free-market group that has long been critical of climate regulation, has asked the Environmental Protection Agency to take another look at its 2009 greenhouse gas endangerment finding—the agency's conclusion that greenhouse gas emissions endanger the public health and welfare, serving as the legal underpinning for regulations designed to combat climate change.

But the group's May 13 petition comes on the heels of updated guidance from the Office of Management and Budget that outlines a new process for outside groups to request corrections of information that the EPA and other federal agencies produce.

That April 24 guidance sets a 120-day deadline for an agency to answer, directs a "point-by-point" response, and gives the OMB a role in the process.

Climate regulation supporters warn the move could open the door for the Trump administration, which has routinely expressed doubts in mainstream climate science, to undercut the EPA's finding that greenhouse gas emissions endanger public health and welfare.

But regulatory analysts and scientists say that, even more consequentially, the free market group's petition signals a potential coming wave in industry and ideological challenges to any federal science they don't like.

Petitions like this could become "part of the playbook" for opponents of environmental regulation, Amit Narang, regulatory policy advocate for consumer advocacy group Public Citizen, told Bloomberg Environment.

"When you're going after science this strong and solid, then the OMB memo basically puts everything on the table," Narang added, noting the science supporting the EPA's climate finding has only gotten stronger since 2009.

Procedural Petition

The Competitive Enterprise Institute, however, says its latest petition focuses on procedural flaws in the EPA's 2009 finding. The group says the EPA didn't follow the proper peer-review procedures under the 2001 Data Quality Act, and say the EPA's inspector general found similar issues with the finding in a 2011 report.

This new request for correction is wholly separate from the group's 2017 petition asking the EPA to reconsider the substance of the endangerment finding, said Devin Watkins, an attorney with the institute.

The EPA hasn't responded to that petition yet. But the agency will have just 120 days, according to the OMB guidance, to answer to the group's procedural critiques.

The free-market group wants the EPA, should it also find issues with the 2009 finding, to immediately stop disseminating the finding and restart a peer review of the document. That means the EPA would remove the finding from its website and stop using it in regulations until it has gone through another peer review, Watkins said.

OMB Guidance

Should the EPA disagree with the Competitive Enterprise Institute, the group can appeal. That action would have to be reviewed by officials independent of the initial response, according to the OMB guidelines.

But the guidelines don't specify how many times a group can appeal and when the process would come to an end, said Andrew Rosenberg, director of the Center for Science and Democracy at the Union of Concerned Scientists.

"It's yet another opportunity to challenge any information you don't like and require the agency to go round and round and round on challenge, response, appeal, new challenge, on lots of different things," Rosenberg said.

Public Citizen's Narang said the addition of OMB's role in responding to requests for correction expands the reach of the White House into the agencies' science and decisionmaking.

Watkins, though, backed the April guidelines for giving the OMB a role in the process. He criticized the previous process, which was housed entirely within an agency.

"Frankly, I wish there was an appeal to OMB," he added, suggesting there should be an avenue to seek a decision directly from OMB that is independent of the EPA or other federal agencies.

'Totally Unstable Government'

Rosenberg, who previously worked at the National Oceanic and Atmospheric Administration, also raised alarm that the OMB guidance would be applied retroactively to science and decisions federal agencies made previously—a step that he said is unusual for White House guidance.

The endangerment finding “has been adjudicated,” Rosenberg said, referring to court cases that have upheld the EPA’s authority to regulate greenhouse gases and thrown out challenges to the climate finding itself.

If the administration allows requests for correction to look backward to decisions that have been legally settled, “it means we have a totally unstable government,” he added. “Nobody ever knows whether decisions have any staying power.”

But on the climate science—and likely criticism from environmental groups of the petition—Watkins says he isn’t worried.

“If they’re so confident” the science is settled, “then that’s what the outcome will be,” he said.

The EPA didn’t immediately respond to Bloomberg Environment’s request for comment.

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