Under executive orders dating back to Reagan, regulatory agencies like EPA are supposed to follow cost-benefit analysis in making decisions. Under the Trump Administration, however, cost-benefit analysis has barely even served as window-dressing for its deregulatory actions. It has launched a series of efforts to prevent full counting of regulatory benefits, as well as committing any number of sins against economic principles, as I detailed in a post in January. Essentially, the Administration has had a laser-like focus on the costs of regulation, which it often exaggerates, while making every effort to ignore or minimize possible benefits. If Trump is reelected, that will continue.

But what if the Democrats win? Then things are more complicated. A lot depends on the identity of the Democratic nominee. Regardless of who that person may be, however, some parts of cost-benefit analysis will survive, at least so long as we have our current environmental laws and our current Justices. When regulations are based on health risks, the Supreme Court has long required that risk levels be quantified as much as possible. Most environmental laws require consideration of costs, which means that, if the Democrats win, agencies will still have to estimate them. Even when cost estimates aren't required, the government would presumably like to present its own numbers rather than leaving industry claims unchallenged in the political arena. These components of cost-benefit analysis would remain.

Even under a Democratic Administration, at least some attention would have to be given to the relative scale of regulatory costs and benefits. In a 2015 case involving regulation of mercury emissions, the Supreme Court seemed to mandate some comparison of costs and benefits, at least to the extent of avoiding gross disproportionality. Although the Court did recognize an exception when statutes clearly preclude such a comparison, Justice Scalia's majority opinion seemed to mandate such comparisons for many regulations. Thus, in some form or another, the balance between costs and benefits seemingly must be taken into account in order to satisfy the courts unless Congress has dictated otherwise.

Even so, there are still a range of potential approaches to defining and comparing costs and benefits. The most cautious approach would be to follow the lead of the Obama Administration, playing strict heed to cost-benefit analysis. But the party has moved leftwards since the Obama Administration. It's plausible to think that even a moderate Democrat might want to move regulatory impact analysis in a different direction. One option would be to put a more environment-friendly spin on cost-benefit analysis. NYU's Richard Revesz has long advocated this approach. Current guidelines for cost-benefit analysis date back to the Clinton Administration

and do not reflect important developments in environmental economics since then.

On the other hand, a Democratic President might choose a bolder path. One possibility would be to move away from monetizing the benefits of environmental regulation such as lives saved or species preserved. Instead, the focus would be on projecting those impacts and weighing them in qualitative terms against the economic impacts of a regulation, including not only aggregate costs but job numbers, innovation, and economic inequality. The agency would then make a judgment about whether the costs were disproportionate to the benefits.

Another possibility would be to continue to have agencies prepare cost-benefit analyses, but to revamp White House review. One option would be to shift much of the White House "regulatory czar" position from its current home in the Office of Information and Regulatory Affairs (OIRA). OIRA could be left with authority only over regulations having no significant environmental impact. The "regulatory czar" for other regulations would be the Council on Environmental Quality (CEQ), which would be charged with assessing the sustainability dimension of all government activities. CEQ was created in 1970 but has languished since the Reagan Administration. But with a new progressive mandate, it could become a major player within government. Alternatively, the new President could create an office of Regulatory Equity and Sustainability, with authority over all regulations.

At present, all of this is the rankest speculation. The difference between the moderate and progressive approaches to regulatory impact assessment pale in comparison to their differences with the Trump Administration. Just another reason why the next election is so important.