
A CASE-STUDY ANALYSIS OF THE REAGAN REGULATORY- REVIEW PROGRAM

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FORCES AT WORK IN THE REGULATORY-REVIEW CONTROVERSY

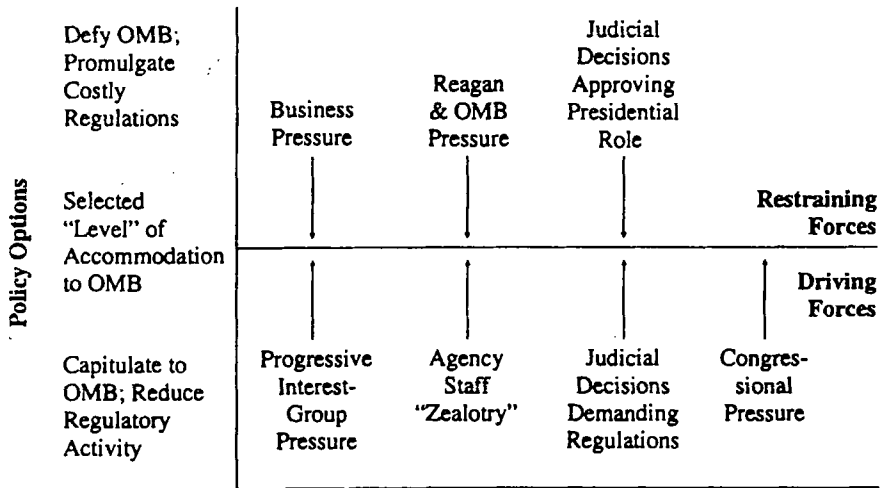
The regulatory-review process which President Ronald Reagan established in Executive Order 12291¹ on February 17, 1981, is a recent example of a catalyst of intragovernmental conflict in the U.S. government. Requiring executive agencies to submit their proposed regulations to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) for approval, the executive order set into motion a series of confrontations between the Executive Office of the President (EOP) and regulatory officials. Accordingly, the regulatory-review process supplemented the constitutionally driven conflicts involving the three branches, and involved the "fourth branch" (the administrative agencies) in intricate interrelationships fraught with partisan implications.

As Rosenbloom (Ingraham and Rosenbloom 1990) observes, the three branches of the government exhibit varying predilections. The executive branch favors the values of economy and efficiency. The legislative branch values representation and responsiveness. The judicial branch favors constitutional integrity and procedural due process. The executive branch predilection is typified by Reagan's regulatory-review regimen, which was an evolution of his predecessors' efforts—notably, initiatives of the Nixon, Ford, and Carter administrations—to secure a measure of influence over federal regulatory rulemaking. Traditionally, as the literature of political science has long reflected, presidents' influence over executive-agency operations was overshadowed by congressional influence (see, e.g., Aberbach 1990; Fiorina 1989; Harris 1964). Moreover, the "partnership" of the bureaucracy and the judiciary, proclaimed by the latter institution,² further dramatized the relative insignificance of the presidency in agency operations prior to Reagan's first inauguration. Reagan's initiative was understood to be a bold attempt by the White House to shift the adverse balance, at least to some degree, in its favor.

The review process can be analyzed as an outcome of the competing political forces that pressed upon the rulemaking agencies and of internal

administrative inclinations (such as the determination to preserve the agency and to defend its core mission). Lewin's "force-field analysis" approach (Golembiewski 1976) can be used to account for external and internal forces and for the resulting selection of a behavior. In the regulatory-review context, the forces can be diagrammed as shown in Figure 1.

Figure 1
Force-Field Analysis Applied To Executive Agency
Response To OMB Regulatory Review



The enhancement of influence by an unabashedly ideological White House alarmed advocates of progressive social regulation. Expressions of bravado by the architects of the Reagan regulatory-review procedure transformed the social regulatory advocates' alarm into rage. For example, OIRA's first deputy administrator, Jim J. Tozzi, boasted that he didn't "want to leave fingerprints" to ensure that his activities could not be traced (quoted in Behr 1981, A21).

With the OIRA's regulatory-review process shrouded in secrecy, virtually the only sources of information about the influence on regulatory policy in specific instances were the advocates of social regulation themselves. Such advocates, who often relied on leaks supplied by disgruntled agency officials (Seidman and Gilmour 1986), had an incentive to publicize OIRA

efforts to undermine proposed social regulations. Hence, the most commonly reported information about OMB and OIRA involvement in rule-making was disseminated by OMB's and OIRA's critics. They repeatedly portrayed the review process as a meat-grinder for progressive regulations, whereby a continuous procession of proposals—each proposal the result of years of design work in the agencies—was being secretly massacred. By the time of Reagan's second term as president, after several years of relentless criticism, OMB officials vehemently denied the accusations that an ideological campaign of anti-regulation was being waged, preferring to describe the secretive process as nonpartisan and technical.

This paper evaluates the arguments that the White House had established a mechanism which was systematically intercepting and destroying incipient progressively oriented regulatory proposals. The case studies will show that the regulatory-review process tended to have that effect only when regulatory proposals lacking committed support by interest groups were processed. This is so because the interest groups' efforts to publicize OIRA's disapprovals of such proposals often overcame OIRA's decisions by attracting columns of other supporters who would overwhelm OIRA. The case studies also show that OIRA's efforts were often consumed by a focus on trivial editorial revisions. While some regulatory proposals were, indeed, terminated, by far the more common fate which awaited regulatory proposals was a lengthy period of delay, from the date that the proposals were originally submitted to OIRA until the date that they could finally be promulgated.

A NOTE ABOUT SELECTION OF CASES

In this article, three rulemaking efforts are profiled to help in the examination of three fates which may await the ideas of federal regulators. The following describes the three categories, each of which will be treated with a case-study example: (1) a case study of a regulatory design which was reviewed by OIRA and which eventually was promulgated without OIRA-inspired substantive change, (2) a case study of a regulatory design which was reviewed by OIRA and which eventually was promulgated with relatively minor OIRA-inspired substantive change, and (3) a case study of a regulatory design which was reviewed by OIRA and which eventually was promulgated with major OIRA-inspired change or was abandoned by the agency as a result of the review process.

Placing cases into these categories is frequently a subjective process because advocates of competing policy positions may argue about whether an OIRA-inspired revision is "minor" or "major." Hence, it would be

fanciful to insist that the three categories are mutually exclusive and exhaustive in practice. Furthermore, it was quite difficult to identify rule-making efforts as having clearly sustained major or even minor substantive OIRA-inspired revisions affecting the final rule. Some of the most notorious instances of OIRA involvement—ethylene oxide, hazard communication, grain dust, to name a few—incited congressional activity (such as acrimonious hearings) and judicial review which shined a spotlight upon the OIRA role and reversed OIRA's ambitions. In such instances, the ultimate result of OIRA's involvement was merely delay. Delay is a principal result of OIRA review, and many federal regulators were exasperated by the notion that their regulatory proposals which could save lives now were delayed for months or years. Nevertheless, delay does not constitute a substantive change in the text of a regulation. To find examples of amended regulatory designs, one would usually look in vain through the literature, because the literature contains examples of disputes in which OIRA involvement came to light and could be challenged as executive interference in quasi-legislative activity. The literature is less apt to spotlight cases in which OIRA helped resolve a regulatory duplication or helped find a more efficient way to accomplish the same objective, because interest groups rarely have the motivation to lift the veil off of noncontroversial OIRA suggestions (and thus the cases do not tend to come to the attention of scholars). OIRA's penchant for unobtrusiveness not only helped it avoid blame, it also placed a restraint on its development of beneficial public relations. The literature will also miss cases in which an agency sacrificed one regulatory design opposed by OIRA in negotiations designed to save a second OIRA-targeted regulation more dear to the agency, because part of the "bargain" may have been concealment of its terms.

Of the 75 individuals whom the author interviewed on the topic of regulatory review, 22 discussed the case studies with him. These 22 individuals comprise thirteen executive-branch employees, seven interest-group employees, one congressional staff member, and one regulatory consultant. As a result of these interviews, the rulemaking efforts described below were selected for the three case studies. This selection may be helpful in illuminating some of the combinations of forces which may have awaited any given rulemaking effort during the Reagan-Bush era.

REGULATION SUSTAINING NO CHANGE: OSHA'S GRAIN-DUST RULEMAKING

The first category—regulatory concepts which were subjected to the OIRA clearance process and eventually emerged intact—contains a sub-

stantial majority of rulemakings. Most proposals were routinely processed by OIRA without change. Sometimes, OIRA pointed out some helpful change in language or strategy which would help avoid a regulatory duplication or overlap. Because such instances lack the element of intrigue, we deliberately pass up those cases in favor of the grain-dust standard of the Occupational Safety and Health Administration (OSHA), a case in which OIRA efforts to impede OSHA's rulemaking process were overcome by the system of checks and balances.

As OSHA had an idea on the drawing board in 1980 for a regulation which would establish new requirements to prevent grain-elevator explosions, incoming Reagan Administration officials weighed in. In a December 1980 article, OMB Director-designate David A. Stockman (1980)³ identified proposed regulations that he would try to obstruct, including a grain-dust regulation. As OSHA's rulemaking proceeded, OMB sought to influence the outcome, seeking certain provisions and exceptions. Labor unions and public-interest groups accused OMB of acting at the behest of industry to try to undermine OSHA's rulemaking (OMB Watch 1987).

Based on National Academy of Sciences (NAS) studies and on comments from the public, OSHA wrote a draft of a regulation. In May 1983, OSHA transmitted the draft to OMB, proposing that grain elevator operators be required to prevent the accumulation of 1/8 inch of grain dust, as recommended by NAS. OSHA officials reportedly opted for the 1/8-inch standard based on Factory Mutual Engineering Corporation and Canadian Engineering association studies, instead of a 1/64-inch standard demanded by labor unions. OMB Watch offered another explanation: "More cynical observers said OSHA had simply settled for a standard the agency thought it could get past OMB" (1987, 38).

OMB took eight months to review this draft, objecting to the costs of compliance and questioning the cost-effectiveness. OSHA reviewed the issue and, in 1984, published a second notice of proposed rulemaking (NPRM), soliciting further public comment about three potential alternatives developed by OIRA in consultation with the grain industry (*Federal Register* 1984).

A proposed regulation was delivered by OSHA to OMB for review in accordance with Executive Order 12291. At OMB, review of the proposal was entrusted to economist John F. Morrall, III, who was on record as opposing OSHA efforts to promulgate safety standards (U.S. Senate Committee on Governmental Affairs 1986). OMB met with or otherwise communicated with several industry associations, a consultation whose

existence was confirmed by the National Grain and Feed Association (NGFA) and reported by OMB Watch (1987).

OMB dismissed the studies calling for a 1/64-inch or even 1/8-inch grain-dust accumulation limit. OMB warned that the compliance costs to the industry of such a standard would be so high as to exceed the average pre-tax profits of 10,000 small grain elevators. Thus, OMB vowed to oppose the manual-sweeping requirement, concluding that OSHA's analysis exaggerated the benefits of sweeping and that the proposed rule is inappropriate in general for smaller facilities (such as feed mills). The "60-day review" actually consumed eight months and, to the consternation of advocates of the OSHA initiative, was conducted in secret. OMB called on OSHA to abandon its proposal and to pursue instead regulations involving three less-costly alternatives.

The Senate Governmental Affairs Committee's Subcommittee on Intergovernmental Relations received numerous complaints about OMB's interference in OSHA's grain-dust rulemaking. On January 28, 1986, the subcommittee convened a hearing to discuss grain-elevator explosions. Labor union representatives denounced OMB's involvement in the rulemaking. A compelling chronicle of OMB's opposition to the grain-dust standard and its contacts with industry was created. Laborers and their sympathizers, by 1986 on the alert to Reagan Administration efforts to deregulate, found that the revelations of the OMB role appeared to be fueling the campaign to overcome OMB's resistance and to advance the OSHA grain-dust rulemaking.

Based on public comments and its own analyses, OSHA prepared a new standard defying OMB's recommendations for once-per-shift sweeping. OSHA had proposed earlier a 1/8-inch dust accumulation limit on average in any 200-square-foot priority area; instead, in order to have a more readily enforceable standard, it prohibited a 1/8-inch accumulation at any point within 50 feet of any priority area. OSHA also required facility-wide housekeeping and other preventive measures. The final rule was issued on December 31, 1987 (*Federal Register* 1987b).

When the rule was "posted" at the Office of the Federal Register the day before publication, the NGFA filed suit in the U.S. Court of Appeals for the Fifth Circuit in New Orleans, objecting to the rule's provisions which were more stringent than industry wanted. The labor unions filed suit in the U.S. Court of Appeals for the District of Columbia Circuit, pressing their demand for a 1/64-inch limit on grain-dust accumulation at any point anywhere in the facility. The NGFA, which filed the earlier of the two suits, asked that the case be consolidated in the more conservative Fifth Circuit, and the

motion was granted. In *National Grain and Feed Association v. Occupational Safety and Health Administration* (1988), the court told OSHA in 1988 that it has to show a reasonable relationship of costs and benefits in its standard for sweeping. The court found that OSHA's analysis of the rate at which grain dust could be swept away and OSHA's program to protect grain-elevator employees were both suspect. The court stayed execution of the sweeping rate and the dust-accumulation limit, and speculated that a facility-wide standard might have more justification. But Secretary of Labor Ann D. McLaughlin challenged the court's construction of the Occupational Safety and Health Act and petitioned for recognition of her discretionary authority. The court reversed its stay in the 1989 phase of *NGFA v. OSHA*, but still called for additional analysis relating to the appropriateness of a facility-wide standard.

OSHA finally completed a revised analysis and presented it to the court for the 1990 phase of *NGFA v. OSHA*. The Fifth Circuit court lifted the stay on the 1/8-inch standard around hazardous areas effective August 1, 1990, and ordered OSHA to examine the feasibility of a facility-wide standard. OSHA Fire Protection Engineer Thomas H. Seymour noted the historic nature of the outcome: It was the first time that the conservative Fifth Circuit court upheld an OSHA regulation in its entirety (Seymour interview 1990). In the final analysis, OSHA's original regulatory design emerged from the regulatory-review process virtually unscathed.

REGULATION SUSTAINING MINOR SUBSTANTIVE CHANGE: EPA'S PROPOSED REVISION OF THE HAZARD RANKING SYSTEM

The second category—regulatory concepts which were subjected to the OIRA clearance process and eventually emerged with minor substantive change—contains an indeterminate number of proposed regulations, depending on one's defining of minor substantive change. OIRA sometimes insisted vehemently on the substitution of one word for another—e.g., "financial" in place of "economic"—and appeared to believe that a victory had been achieved when the change was made. Frequently, OIRA called for word changes or insertion or deletion of phrases or sentences in the preamble of the proposed regulation, which rather effectively altered the apparent purpose and thrust of the policy. Whether changes in the preamble constitute a substantive change is a legitimate focus of debate, but OIRA's demands for such changes and its satisfaction from securing such changes provided the appearance that the changes must have significance (or else the behavior was irrational).

This section relates the story of the emergence of a revision to the Hazard Ranking System through which the Environmental Protection Agency (EPA) would reduce the liability of alleged polluters in proportion to the amount of waste already removed from the disposal site. OIRA reportedly advocated to EPA that this credit be instituted, and the provision is a part of the rule which was promulgated in December 1990.

In 1980 Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The law established the Hazardous Substance Response Trust Fund, more popularly known as the "Superfund" (CERCLA §221). The fund of \$1.6 billion would allow the president to subsidize the cleanup of waste sites. The president delegated his authority to the administrator of EPA in Executive Orders 12286 and 12316. It thus became the administrator's duty to establish a National Oil and Hazardous Substance Pollution Contingency Plan (NCP) (*Code of Federal Regulations* 1992; *Federal Register* 1982, later revised), detailing a list of sites targeted for earliest action. The list is called the National Priority List (NPL) (*Code of Federal Regulations* 1992, at Appendix B, and Funk 1985, 1-2, 9). More than 1000 sites are listed.

To implement NCP requirements, EPA adopted the Hazard Ranking System (HRS). This system is a scoring process which assesses the relative danger associated with actual or potential damage at a waste site. The HRS score would charge against the site all of the cumulative waste dumped at the site, regardless of how much of the waste was removed by the polluter. So if 500 pounds of waste were originally dumped at the site but 100 pounds had been transported away, the 500-pound quantity would be inserted into the formula. To some extent, the damage done by the 100 pounds of removed waste might be irreversible (such as leaching into ground water), so the inclusion of it in the HRS score has some justification. Still, the irrevocability aspect is widely regarded to err on the risk-averse side and to provide no incentive to remove toxic waste.

Congress enacted the Superfund Amendments and Reauthorization Act of 1986 (SARA), which, in part, required EPA to study revisions in the HRS to more accurately assess the risk to health and the environment. An advance NPRM issued by EPA on April 9, 1987 (*Federal Register* 1987a) and a public meeting apparently caused the HRS to come to OMB's attention. An EPA staff member recalled that OMB officials first broached the subject of credit for removed waste. It is not known what motivated OMB to initiate the concept, but OMB was committed wholeheartedly to it. On December 23, 1988, EPA published a comprehensive NPRM carrying out its mandate to consider HRS revision (*Federal Register* 1988).

Among the changes, the NPRM called for a revision which would provide credit for removal actions under some circumstances, thus reversing the risk-averse nature of the existing inflexible provision. The proposal underwent OIRA review for eight months.

EPA and OMB engaged in spirited discussions about the concept of the credit. Internal disagreements within EPA created unpredictability in the agency's own position on the issue. Eventually, EPA submitted to OMB the draft of a regulation which would provide some credit for removed waste. Officials of EPA acknowledged that OMB's review had an impact on the removal credit. "The rule has thousands of factors; [OIRA is] focusing on [that] one factor," one EPA staff member explained. "They have a valid argument," said another, "but it's not an inevitable one." When the final rule was published on December 14, 1990 (*Federal Register* 1990 at 51567-51569), OMB's second period of review of the rule concluded after seven months.

Because the public comments came almost exclusively from industry, this input was essentially congruent with OMB's. EPA's public docket index for the NPRM (coded 105NCP-HRS) shows very scarce involvement from organizations which could be considered environmental advocacy groups. None of these comments pertained to the provision relating to the credit for removal of hazardous waste. But the comments from industry reinforced OMB's call for the credit and inspired further EPA analysis on the subject.

Although an internal debate within EPA seemed to have been ongoing, according to sources in the agency, concerning the credit for removed waste, the EPA staff people opposing the concession to industry obtained no support from the political environment. The notion that removed waste may have already inflicted undetected but irreversible damage generated no action from environmental groups, and thus—when the final rule was promulgated—the relaxed provision was included. That OMB championed the relaxation of the HRS algorithm, bolstered by appeals for change from industrial associations, created a minor substantive change clearly in the spirit of the cost-benefit criterion of Executive Order 12291. In so far as the credit provides some market-type incentive for polluters to clean up their own mess, the change may be just the kind of remedy which 1970s economists envisioned when they called for more extensive regulatory reform through presidential leadership.

REGULATION SUSTAINING MAJOR SUBSTANTIVE CHANGE (OR UNDERMINED): EPA'S NSPS FOR STATIONARY-SOURCE NITROGEN-OXIDE EMISSIONS

The third category—regulatory concepts which were subjected to the OIRA clearance process and eventually emerged with major substantive change, or which never emerged at all—contains an indeterminate number, partly because of the uncertainty of the definition of major substantive change and partly because regulatory officials had some incentives to conceal instances in which planned rulemakings were distorted or terminated because of OMB disapproval.

This is the case of the aborted attempt of EPA regulators to promulgate a regulation creating a New Source Performance Standard (NSPS) for nitrogen-oxide (NO_x) emissions from stationary pollution sources. Like an airplane falling from the sky and disappearing from radar monitors, the regulatory design vanished from the public-policy agenda. Limited documentation indicates that OMB opposition caused dispirited EPA regulators to concede the issue.

The Clean Air Act Amendments of 1970 created an extensive program to restrain the growth in air pollution. In 1979, EPA personnel concluded that it would be appropriate to control emissions of nitrogen oxide from *large* internal-combustion engines in such facilities as electric-power generators, oil-drilling rigs, pipelines, and various other huge engines at stationary sources. On July 23 of that year, EPA developed two limits—700 parts per million (ppm) for previously unregulated natural-gas-fired engines and 600 ppm for diesel engines. The proposal was awaiting action within the agency when the change of administrations occurred and the new Reagan Administration called in many pending rules for review. Under this arrangement, EPA sent to OMB a somewhat different recommendation under which the revision would apply only to diesel and dual-fired engines. EPA had come to realize that the best technology for achieving a 40-percent reduction (138,000 tons) in nitrogen-oxide emissions from natural-gas-fired engines might result in a carbon monoxide (CO) increase of 309,000 tons. Because these facilities tended to be located in densely populated areas whose traffic was already causing elevated carbon-monoxide standards and because many of their facilities might have been forced into noncompliance with carbon-monoxide limits, EPA backed off on the part of the proposal which would revise the NSPS criterion involving nitrogen oxide as it applied to natural-gas-fired engines.

In the summer of 1981 OMB signalled EPA that the proposal to revise the nitrogen-oxide NSPS was unacceptable. OMB said that EPA's decision

to exclude natural-gas-fired engines from the proposal made the remaining proposal, which would reduce emissions by 22,000 tons at a cost of \$500 per ton, too trivial to promulgate. OMB also observed that many of the diesel engines are located in sparsely populated areas whose air quality problems are relatively modest. Late in 1982, a meeting involving representatives of EPA and OMB had the long-awaited proposal on the agenda; OMB officials reasserted the position that the narrower scope of the proposal caused the proposal to be more trouble than it was worth (Goodwin 1982). In mid-1983, OMB notified EPA of its irrevocable disapproval.

With its rejection by OMB, the proposal disappears from the pages of history. Environmental groups had little or nothing to say about the birth and the death of the proposal to revise the nitrogen-oxide NSPS criteria. Although many EPA personnel passionately supported the proposal and defended it repeatedly to OMB, the inattention of advocacy groups doomed the "orphan" regulatory proposal, and it has been forgotten. In the absence of any support from interest groups, Congress, and the courts, the idea was clearly vulnerable to the regulatory clearance process.

CONCLUSION

The preceding case studies reveal some of the general rules which governed the review of regulations at OMB pursuant to Executive Order 12291. The activities, behaviors, and outcomes which are observed in the case studies are summarized in Table 1.

The case studies describe some of the forces which were experienced by regulatory officials. Application of force-field analysis helps to identify these forces and to understand the regulatory officials' selection of a "level" of (1) accommodation to OMB's anti-regulation preference and defiance of progressive legislators and interest groups and (2) resistance against OMB's preference and defense of the progressive, pro-regulation agenda. For example, the regulatory clearance process unquestionably enabled the president and his agents to exert substantial control over rulemaking at the expense of other authorities; nevertheless, **efforts by interest groups, Congress, or the courts to overcome presidential opposition to a given regulatory policy have remained viable.** In cases involving a lack of interest by these competitors, OMB has been able to draw regulatory officials into negotiations where it could get some things while giving up other things. The revised NSPS for stationary sources of nitrogen oxide is an example of an "orphan" rule, adopted by no one and thus vulnerable to a successful OMB "veto." But where intense interest-group involvement ignited Congress or (perhaps with less durable results) the judicial branch,

Table 1
Summary of Activities, Behaviors, and
Outcomes Observed in Case Studies

	OSHA Grain Dust	EPA Hazard Ranking Score Revision	EPA Nitrogen-Oxide NSPS Revision
Category	Virtually intact.	Minor substantive change.	Major change/undermined.
Status of Rulemaking	Essentially complete.	Complete.	Terminated.
Indication of Political Advantage	Congress and courts predominate, after mobilization by advocacy groups.	OMB exerts influence bolstered by business associations.	OMB prevails over internal EPA faction.
Due-Process Experience	OMB seeks unobtrusive influence; is overcome through exposure of its activities.	OMB seeks influence; no interest groups challenge OMB through due process.	OMB seeks influence; no interest groups are known to challenge OMB through due process.
Delay	About 8 years.	About 1 year.	Permanent.
Concern for Compliance Costs	OSHA's studies show interest in compliance costs, although studies are oriented toward justification of the proposed rule.	EPA is motivated to consider that compliance costs of existing rule exceed benefits.	EPA offers modifications reflecting awareness of trade-offs, but defends cost-effectiveness of remaining provisions; remaining provisions are defeated.
Rationality	OSHA seeks to demonstrate linkage between hazard and remedy through extensive studies by consultants.	EPA recognizes that transporting hazardous waste from a waste site may conceivably reduce hazard, so regulatory action may be obviated.	EPA recognizes that reducing NO _x emissions in natural-gas-fired engines may result in more CO emissions; withdraws provision covering such engines.

Sources: Interviews with 13 executive-branch officials, seven interest-group employees, one congressional staff member, and one regulatory consultant.

the illumination of OIRA activities tended to prove embarrassing to OMB and tended to result in a snowball effect which would overwhelm OIRA's ambitions. It is thus extremely difficult to find well-documented instances of proposed rules which were permanently undermined by OMB, because those who had incentive to document the cases usually had the incentive

and desire to expose OIRA activities and to find allies in the other branches of government, leading to reversal of OMB's decision.

In so far as most cases fall into the first category of regulations which eventually emerge with virtually no OIRA-imposed change, the clear overriding result of regulatory clearance is **delay**. After over a decade of experience with Executive Order 12291, regulatory officials identified delay as the paramount result of regulatory clearance. The delay may have involved lengthy internal review in OIRA, or it may have involved the period of time while congressional hearings and/or litigation occurred, or all of these combined, but delay proved to be the principal outcome. OSHA's grain-dust rulemaking was suspended for years because of the clearance process, while the revision of the Hazard Ranking System was held up for a total of about a year. Regulatory officials expressed frustration and even alarm about the extent of harm which they perceived to be done during the waiting period, while they awaited the opportunity to enforce the rules which they deemed necessary for the health and welfare of the public.

The case studies show that agencies carried out cost-benefit analyses rather faithfully, reflecting **sensitivity to compliance costs**. OSHA sponsored at least two such analytical studies on grain dust before developing a rule. EPA was accommodating toward OMB's proposal that the Hazard Ranking System be revised to allow a credit for waste transported from a waste site. Undoubtedly, this sensitivity changed the tone of regulations throughout the federal government.

Executive Order 12291 does appear to have contributed a factor of **rationality** to rulemaking. All of the cases reflect agency efforts to cause regulations to make sense. In the grain-dust case, OSHA examined the structure and operations of grain elevators to ensure that costly housekeeping methods were genuinely useful and necessary. In the HRS revision case, EPA was hospitable to the argument that waste carted away might conceivably have been neutralized as a menace to health. In the nitrogen-oxide case, EPA limited the scope of its own proposed regulation when it saw that the reward for reducing nitrogen-oxide emissions from natural-gas-fired engines would be an increase in carbon monoxide. Surely those who deemed economists' complaints in the 1970s about inefficient, irrational regulations to have validity can find some comfort in this noteworthy development.

ISSUES FOR FURTHER RESEARCH

The installation of a Democratic administration under President Bill Clinton presents an opportunity to compare Republican and Democratic

regulatory-review strategies. If the observations about Reagan-Bush regulatory review stated in the previous section appear to govern regulatory relationships and behavior in the Clinton administration as well, the status of the observations as generalized rules transcending the president's party affiliation will be strengthened.

Therefore, further studies will be useful to assess these questions: Does the presidential orientation toward "economy and efficiency" essentially guarantee conflict with the regulatory objectives of members of Congress and of progressive interest groups? Do executive agencies, members of Congress, and federal judges recognize a necessity of accommodating the president's regulatory policies? Can review of regulations by the president's aides enhance the quality of regulation, or will delay remain the most conspicuous result of regulatory review? The answers will reveal much about the modern relationship between the president and his executive branch and about the relative influence of the president and Congress in regulatory affairs.

NOTES

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¹*Federal Register* 1981; *Code of Federal Regulations* 1981; and *Public Papers of the Presidents of the United States: Ronald Reagan, 1981*. 1982, 104-108.

²The "partnership metaphor" was described in Polsby (1978, 34) based on Judge David Bazelon's opinion in *Environmental Defense Fund v. Ruckelshaus* (1971).

³The article was based on Stockman's earlier memorandum, "Avoiding a GOP Economic Dunkirk," which was ostensibly his operational blueprint for reviving the economy but was actually intended to attract President-elect Reagan's attention toward Stockman's interest in becoming OMB's director. See also Stockman (1986, 69-73).

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