

FOCUSES - The 20 Years War

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In the best tradition of declaring victory before withdrawing from the battlefield, Jim J. Tozzi dashed off "a note to the regulatory relief community" before retiring from the Office of Management and Budget (OMB) to open his own private consulting firm.

Tozzi, an OMB veteran who served most recently as deputy administrator of the information and regulatory affairs office, wrote, "It has taken us nearly 20 years, through five Administrations, to establish a central review office in OMB which has the authority to curtail the promulgation of onerous regulations."

As Tozzi well knows--having wrestled with the regulatory process under four Presidents--no candidate campaigns for the Oval Office on the promise that he intends to be an onerous regulator. President Carter, for example, ordered federal agencies to perform regulatory analyses of all significant rule-making proposals. He established a centralized Regulatory Analysis Review Group to oversee agency efforts and, in a 1978 executive order, decreed that "regulations shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations or on state and local governments."

The Carter Administration, however, was noted for its aggressive, mission-oriented agency officials, who frequently clashed with the regulation reviewers over the question of what constituted unnecessary burdens. William D. Nordhaus, a member of Carter's Council of Economic Advisers who helped form the Regulatory Analysis Review Group, left government in 1979 with a keen sense of frustration.

The regulatory agencies are effectively out of control of both the Congress and the President," Nordhaus said in a March 1979 interview after returning to private life. "Many of the regulators are very good people, but without both economic control and political control over people's activities, we're very likely to get outcomes that are not terribly sensible."

Frustration apparently ran just as deep on the opposite side of the regulatory street within the Carter Administration. In an August 1979 interview, Thomas C. Jorling, who recently had resigned as an assistant administrator at the Environmental Protection Agency (EPA), complained of what he saw as the dilution of decision-making authority that results from "the increasing intensity with which the government reviews itself." Jorling said he sometimes felt at EPA "very much like industry must feel, sometimes, that all we are dealing with is reviewers."

Intrestingly, Nordhaus and Jorling took diametrically oppoviews on how best to serve the public interest. As a strong proponent of cost-benefit analysis operating from the privileged locus of the Executive Office of the President, Nordhaus charged that the regulatory agencies operate with "no political control and ultimately no accountability." But Jorling's agency perspective was that the executive review process shifted power to "amorphous" officials, "most of whom are not available for public scrutiny. . . . I think that is one of the most disconcerting features about government life right now--it is so shielded from individual accountability."

Tozzi, in his April 29 letter, asserted that under President Reagan, the centralized regulatory review system "is well and working." The President's intention "to reduce the burden of existing and future regulations" was spelled out in an executive order issued before he had been in office a month. Vice President George Bush was named to head the Task Force on Regulatory Relief, clearly indicating the priority Reagan assigned to the task and also leaving no doubt that the effort was to be controlled from the White House. Appointees to regulatory agencies were carefully screened to assure their commitment as "team players." No clashes of the Nordhaus-Jorling variety were to be expected, and none have occurred.

All proposed and final regulations must be submitted to OMB for review. Those that would have substantial economic effects --more than \$100 million ayear--must be accompanied by an agency-prepared regulatory impact analysis, which OMB also reviews. The Administration estimates that its reform efforts thus far have resulted in "savings in unnecessary costs totaling \$9 to \$11 billion for one-time capital expenditures and \$6 billion in recurring annual costs."

Tozzi, however, is far too experienced a bureaucratic foot soldier to assume that the regulatory reform war has ended. "It is just a matter of time before attempts will be made to weaken our authority either through statutory or administrative changes," he warned in his April 29 letter, sent less than a month before he left OMB.

While few complaints arise from within the Reagan Administration, the question of public accountability in the centralized review of regulations is, if anything, an even hotter issue now than it was during the Carter years. Bush's task force has openly courted advice from regulated interests, and the review process, as run by Tozzi and his boss, Christopher C. DeMuth, has been criticized for its informal dealings with affected parties, most often from the business community.

Rep. John D. Dingell, D-Mich., has said he intends to sponsor legislation to require the OMB deregulators to disclose all their contacts with outside groups and with federal agencies as well. There have even been signs of uneasiness from within Administration ranks. Thorne G. Auchter, Reagan's appointee to head the Occupational Health and Safety Administration, recently shocked his critics in organized labor by taking their side in protesting an OMB review decision on regulations to protect textile workers from exposure to disease-causing cotton dust. OMB ruled that employers should be allowed to deal with the cotton dust hazard by providing

employees with respirators rather than having to install more costly engineering controls. Auchter supported the labor-backed position that engineering controls should be required and, after a four month battle with OMB, prevailed.

Reagan already has been burned by allegations that his environmental regulators have been far too cozy with business interests. As next year's election approaches, Democrats are going to be asking sharp questions about the objectivity and accountability of the White House's regulatory reviewers.

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