OMB to Keep Its Regulatory Powers In Reserve in Case Agencies Lag

But the basic Administration strategy is to put confirmed deregulators in agency posts and rely on them to decide how to meet the President's deregulatory goals.

BY TIMOTHY B. CLARK

By the end of March, the National Highway Traffic Safety Administration expects to publish a package of 10 to 20 proposals aimed at lightening the automobile industry's regulatory burden.

At the Labor Department, a task force is considering whether 22 regulations that the department froze on Feb. 12 should be revised or even eliminated.

At the Interior Department, Secretary James G. Watt has made it clear that he will seek to relax the restrictive land, forest, strip mining and fish and wildlife conservation policies of the Carter Administration.

And the Environmental Protection Agency (EPA), the largest of the regulatory agencies, is gingerly trying to adapt to President Reagan's Feb. 17 executive order on government regulation, which requires a balancing of the costs of regulations against their benefits and gives the Office of Management and Budget (OMB) more power to oversee EPA's performance.

These stirrings of deregulatory fervor in the executive branch regulatory agencies are early signals of the Administration's strategy for achieving what OMB director Dave Stockman has called a major "regulatory ventilation."

It increasingly appears to be a strategy of decentralized decision making. The Administration, White House officials say, will expect the new leaders of the regulatory agencies to decide how to meet Reagan's goal of reducing regulation.

That would distinguish the Administration's attempt to manage regulatory activity from its efforts to cut the budget, which Stockman has controlled closely. Though OMB has prepared a list of about 50 existing and proposed rules for agency review, Stockman is not as expert in regulatory matters as in the budget. Moreover, regulatory issues are often much more complex, frequently resting on sophisticated scientific data and falling outside OMB's expertise.

Reagan's executive order gives OMB and the Presidential Task Force on Regulatory Relief considerable power to crack the whip over the agencies, but they will probably use their most potent weapons infrequently, in cases in which agencies are obviously lagging.

Tentative indications come from OMB's enforcement of the 60-day freeze that Reagan imposed Jan. 29 on regulations scheduled to take effect between then and March 30. In a few instances, it has blocked agencies' attempts to exempt some of their regulations from the freeze. But few agencies have argued that their rules qualify for the exemption permitted by the executive order for emergencies, and most have refrained from asking for exemptions for rules that don't clearly meet the exemption criteria.

While the regulatory freeze is in effect, agencies are reviewing the "midnight rules" issued during the closing weeks of the Carter Administration and are studying regulations proposed by that Administration as well as those under development in the bureaucracy.

On March 30, rules that would cut costs to the private sector or otherwise lighten regulatory burdens will be allowed to take effect. Others will be subject to the cost and benefit analyses and other requirements outlined in the executive order. *(For a description of the order's requirements, see NJ, 2/21/81, p. 299.)*

In addition to relying on deregulation by the executive branch agencies, the Administration is using the budget as a lever to control the regulators, particularly the independent agencies not subject to direct presidential intervention. OMB has outlined large cuts in agency budgets and staffs, including 25 to 30 per cent at the Federal Trade Commission and the Consumer Product Safety Commission. Details of the new budget, released by Reagan on March 10, confirmed his intention to shrink substantially the resources available to the regulators.

Finally, the regulatory relief task force, chaired by Vice President George Bush, is beginning to work on changes the Administration will propose in the dozens of laws authorizing the government's major regulatory programs. The most important of these to come before Congress this year will be proposals for extending and modifying the Clean Air Act.

Gone are the days when the regulatory agencies were run by public interest group activists who had fought and sued the agencies to toughen enforcement of the laws they were later to administer. Organizations founded by Ralph Nader contributed half a dozen people to the Carter Administration, and key regulatory posts were also filled by leaders of the Natural Resources Defense Council Inc., the Environmental Defense Fund Inc. and the Consumer Federation of America. *(See NJ, 2/14/81, p. 269.)*

Indeed, many of Reagan's appointees are reverse images of their predecessors: lawyers who have fought the liberal activists in Congress and the courts. Watt, formerly head of a conservative public interest law firm that battled against tight environmental rules, is the best-known example.

Business is cheering the new Administration from the sidelines. The Chamber of Commerce of the United States has prepared a list of dozens of regulations it said should be repealed or

President Reagan's Trio of Deregulators

James C. Miller III, Rich Williamson and C. Boyden Gray hardly knew one another when they joined the Reagan Administration, but they have quickly become friends and close colleagues as they have worked together to breathe life into the Presidential Task Force on Regulatory Relief.

The three form the staff of the task force, though each has another full-time job, Williams with President Reagan, Gray with Vice President George Bush and Miller with Office of Management and Budget (OMB) director Dave Stockman. They will have important voices on issues that come before the task force, including controversial and expensive rules issued by regulatory agencies and legislation developed to reform agency missions.

Though Bush chairs the task force, its executive director is Miller. That is chiefly because Miller, as administrator of the Office of Information and Regulatory Affairs at OMB, controls a staff of about 90 people who are trained to monitor regulatory activities in the agencies. Gray, who is counsel to the Vice President, has a staff of only one deputy. Williamson serves as assistant to the President for intergovernmental affairs.

Miller

Miller, 38, a congenial southerner who joined OMB from the American Enterprise Institute for Public Policy Research, is an economist who has spent much of his time in recent years analyzing federal regulations and suggesting alternative ways of achieving regulatory goals. His job at OMB seems tailor-made for him, and he has moved into it with relish. At a press conference in February, he told reporters that they could expect results from his efforts to deregulate the U.S. economy in 12 to 18 months. "I've written a lot about regulatory reform," he said, "and if we haven't succeeded by then, I'm going to stop writing about it, because then I'll know that it can't be done."

Miller is indeed a prolific author and editor. A listing of selected books, monographs and articles to which he has lent his name consumes three pages of a seven-page resume, which also includes two pages of references to his congressional testimony and presentations to agencies.

The title of one of Miller's articles, "Lessons of the Economic Impact Statement Program," published in 1977 in AEI's *Regulation* magazine, gives a clue to Miller's qualifications for his present job. Miller was an active participant in the regulatory management system devised during the Ford Administration—a system relying on "economic impact statements"—while serving as an assistant director of the Council on Wage and Price Stability. Miller, who holds a doctorate in economics from the University of Virginia, also has worked at the Council of Economic Advisers, Texas A&M University and the Transportation Department.

Williamson

Williamson, 31, could easily have qualified for a leading role in *Knute Rockne, All-American*, the movie in which Reagan starred as George Gipp. He was a captain of the football and wrestling teams at New Trier High School in Winnetka, Ill., and attained the rank of eagle scout in the Boy Scouts.

At Princeton University, Williamson played varsity football, won wrestling tournaments and was elected president of the 1970-71 senior class. He earned a degree from the University of Virginia Law School in 1974.

For two years, he was legislative counsel and administrative assistant to Rep. Philip M. Crane, R-Ill., and for the following three years practiced law in the Washington office of Winston & Strawn, a large, Chicago-based corporate law firm. He was made a partner last May. He served as deputy to the chairman of the Reagan-Bush campaign, Sen. Paul Laxalt, R-Nev.

Gray is a tall, lanky attorney who has spent his professional career working around the fringes of government, with only passing temptations to join it. His one-page resume is as terse as he is reluctant to seek the recognition so often courted by those who are appointed to government office.

Gray, 38, graduated magna cum laude from Harvard University and earned his law degree at the University of North Carolina, where he was first in his class and editor-in-chief of the law review. His family hails from Winston-Salem, N.C., where they have owned most of the local news media.

In 1969, he joined the Washington law firm of Wilmer, Cutler & Pickering and was made a partner in 1976. At the firm, he specialized in antitrust and administrative law and represented the Business Roundtable, the American Mining Congress and individual companies before Congress on antitrust issues and regulatory matters.

Gray

His service in government seemed foreordained; his father, Gordon, served as Army Secretary during the Truman Administration and then was a member of the Foreign Defense Advisory Board from 1961 until it was abolished by President Carter in 1977.

revised and outlined the qualifications desirable in appointees to regulatory agencies. The chamber and three other leading business groups have formed a Coalition on Regulatory Reform to provide joint views on legislation to change the regulatory process.

On the other side, organized labor, consumer and environmental groups are preparing for the worst. Associates of Nader are studying how to block regulatory delays in court. The National Consumers League is looking into the legality of curbing regulatory programs through budget cuts. And the AFL-CIO, which organized a 157-member coalition of groups to fight the Reagan budget cuts, may join smaller coalitions to fight reductions in regulatory activities.

THE VIEW FROM OMB

In addition to granting exemptions to the regulatory freeze, OMB is responsible for making sure that the agencies conduct adequate analyses of the impacts of new regulations and that they choose the least burdensome alternatives. OMB can delay new rules it deems inadequate and order agencies to consider terminating existing regulations.

In Stockman, Reagan has an OMB director who will deregulate with enthusiasm. A year ago, he advocated an across-the-board cut of 17.5 per cent in the budgets of the regulatory agencies. And in a memo last November on "Avoiding a GOP Economic Dunkirk," he warned that the past decade of "regulatory evolution is just now reaching the stage at which it will sweep through the industrial economy with near gale force. . . ." He called for a "series of unilateral administrative actions" to pull back regulations and extensive changes in the statutes authorizing regulatory programs.

As director of OMB's new Office of Information and Regulatory Affairs, James C. Miller III will be in charge of Stockman's regulatory review. Miller, an economist formerly with the American Enterprise Institute for Public Policy Research, played an important role in drafting the executive order. *(See box, p. 425.)*

It differs in important respects from an executive order in effect during the Carter Administration, notably in the powers given OMB to influence agency action. While well-intentioned, President Carter's regulatory management system was merely "hortatory," Miller said, and his appointees to key agency and OMB posts "had a point of view" that favored regulation. "When the chips were down, OMB just would not stand up to the constituencies" demanding regulation, he said.

Raymond A. Peck Jr., administrator of the National Highway Traffic Safety Administration, has no background in auto safety but considerable experience in advocating deregulation of industry.

All this will change, he said. "There are new appointees with new points of view. There is exceeding resolve on the part of the President to reduce burdens. And the appointment of the Vice President's task force, along with the new powers given OMB," will give the White House "much more clout" with the agencies than it had in the past Administration.

While the order strengthens OMB's hand, it drops a section of the Carter order that attempted to make political appointees at the agencies responsible for controlling regulatory proposals. This was the "foundation" of Carter's executive order, said a November report by OMB, which added that before the requirement was instituted, "oversight of agency regulations often occurred only at the program level."

Miller argues, however, that the omission of this requirement is not important because Reagan is selecting agency heads who will make regulatory reform one of their primary missions. Nonetheless, a high-ranking agency official who asked not to be identified said that without the requirement, his office would not scrutinize many relatively minor regulations. Instead, it would simply forward them to OMB without close examination.

The executive order also repealed, inadvertently, an existing order authorizing OMB to set ceilings on the amount of paperwork agencies can demand of the public. Miller said, however, that the Paperwork Reduction Act, which his office administers, includes enough authority to control paperwork.

Unlike Carter's, Reagan's executive order was not written in consultation with the agencies, some of which resent their exclusion. Some EPA officials complain that OMB has fashioned itself into an adversary of the agencies.

Miller said that is not OMB's intent. "We made the executive order as strong as possible so that we would not have guerrilla warfare" from agencies that don't want to follow Reagan's prescription for regulatory relaxation, he said. "Good fences make good neighbors, and clear rules have the same effect."

OMB's regulatory staff is too small to engage effectively in war with the agencies, Miller added. His office was built on an existing OMB unit and will also get staff from the Council on Wage and Price Stability and the U.S. Regulatory Council, both of which will be phased out. But it will have only about 90 staff members responsible for processing both paperwork requests and regulatory clearances, even though Reagan's executive order requires that virtually every proposed regulation be sent to OMB.

Given the potential workload, Miller will have to rely on the agencies to initiate most deregulatory actions and to write rules in the least burdensome fashion possible. But OMB doubtless will crack the whip a few times, as it has in handling requests for exemptions from the regulatory freeze.

The Commerce Department's Export Control Administration, for example, asked for a blanket exemption from the order on the ground that most of its rules are issued for national security or foreign policy reasons—categories exempted under the freeze. OMB denied the request, noting that some of the agency's rules were intended to meet the problem of short domestic supply. OMB added that it was reserving the opportunity to review the paperwork requirements, often voluminous, that accompany the rules.

The Treasury Department similarly asked for a blanket exemption, apparently on the basis that the freeze order exempted rulings of the Internal Revenue Service. But the department's Bureau of Alcohol, Tobacco and Firearms sometimes also issues major regulations, OMB pointed out, and top Treasury officials quickly agreed to withdraw the staff request.

Stockman's intention to reduce regulatory activity by cutting back on agency budgets was apparent when Reagan released his fiscal 1982 budget on March 10. He proposed cutting EPA's budget for regulatory endeavors (excluding sewage treatment grants) by $90 million. The Federal Trade Commission's budget would drop by $8 million, and the Consumer Product Safety Commission would suffer a cut of $14 million in its budget.

HIGHWAY SAFETY

The key to Reagan's deregulatory strategy appears to be the people he is putting in place in the regulatory agencies. The contrast between his and Carter's regulators is instructive.

Carter's administrator of the National Highway Traffic Safety Administration was Joan T. Claybrook, formerly an attorney for Nader's Public Citizen Inc. Reagan's choice is Raymond A. Peck Jr., 41, a lawyer who held energy, environmental and regulatory posts in the Commerce, Treasury and Interior Departments during the Nixon and Ford Administrations.

Most recently vice president for regulatory affairs of the National Coal Association, Peck has no background in auto safety but considerable experience in advocating deregulation of industry. His deputy will be Diane K. Steed, a 14-year veteran of the civil service who, as chief of regulatory policy at OMB since 1978, supervised agencies' efforts to make their regulations less burdensome to the private sector.

Though not yet confirmed by the Senate, Peck has been on the job for several weeks. His views were reflected in a proposal by Transportation Secretary Drew Lewis to delay for a year the requirement for airbags or automatic seatbelts for some 1982 cars. Claybrook had made airbags, which the auto industry tried to block, her top priority.

Peck and Steed found that the agency's requirement for such "passive restraints" had become outdated. Adopted in 1977, it stipulated that manufacturers must include passive restraints in large cars beginning with the 1982 model year, in intermediate cars a year later and in small cars a year after that. But the huge rise in fuel costs has been pushing large cars out of production just as the first phase of the rule was set to take effect. By delaying the standard for a year, the agency could save the industry roughly $30 million in capital investments it would need to install airbags in large cars.

That investment would soon be obsolete if large car production lines are closed down. And, as Lewis noted, large cars are inherently safer than the small cars that are dominating today's market.

The agency may ultimately turn away from airbags in favor of mandatory use of seatbelts. One agency staffer suggested that states be allowed to repeal their 55-mile-an-hour speed limits, which are now a requirement for federal transportation subsidies, if they would also enact laws mandating seatbelt use. If there is validity to recent tests that have shown shoulder harnesses to be more effective than airbags, that approach would both satisfy the states and promote safety.

Labor Secretary Raymond J. Donovan quickly demonstrated his enthusiasm for deregulation by suspending the effective dates of 22 rules issued toward the end of the Carter Administration, including some not covered by Reagan's freeze.

Peck and Steed have spent the past several weeks poring over the hundreds of regulations already on the traffic safety agency's books, as well as rules proposed or under development. They have found a lot of "silly stuff," Steed said, including a proposal to exempt windows to the rear of the driver of a van from a "transparency" requirement that applies to auto windshields. Despite the requirement, vans are not required to have side windows to the rear of the driver and those that do are often painted over. Van manufacturers petitioned the agency to change the rule in late 1978, and the agency published a proposal to do so in the *Federal Register* in November 1979. But it took no final action.

Peck and Steed are also considering changing rules that require tire manufacturers to grade their products for treadwear, traction and heat resistance. Manufacturers frequently grade one line of tires higher than others—and charge a premium for it—despite the fact that all the lines pass muster. It is illegal to overgrade tires but not to undergrade them.

The new agency leaders will probably propose to apply the grading system only to treadwear, a key indicator of how long a tire will last. Traction, if warranted, will become a safety standard, and heat resistance likely will be dropped.

During their review of regulations, Peck and Steed do not plan to minimize their agency's safety goals. Peck took his job on the explicit condition that he would not have to engage in the kind of cost-benefit analysis that attempts to weigh the value of human life, a technique some economists in the new Administration have advocated.

ON THE JOB

At the Labor Department, Secretary Raymond J. Donovan, a construction company executive who was active in Reagan's campaign, has gone out of his way to demonstrate his enthusiasm for deregulation. On Feb. 12, he issued an eight-page press release saying that "in his first major announcement since his confirmation by the Senate," he was suspending the effective dates of 22 rules issued toward the end of the Carter Administration, including some not covered by Reagan's freeze. Donovan said he was "firmly convinced that careful and deliberate regulatory reform is a vital component of President Reagan's strategy to lead America to prosperity without inflation."

About a week before Reagan issued his executive order on Feb. 17, Donovan set up a regulatory task force under the management of T. Timothy Ryan Jr., the department's solicitor-designate. The task force has about 30 members, including all assistant secretaries and 11 associate solicitors. It has been meeting once a week to review the frozen regulations and to establish a format for conducting the "regulatory impact analysis" for major rules required under the executive order.

About 10 of the frozen rules, most of which are steps toward less regulation, are probably acceptable under any standard and will be allowed to take effect when the freeze is lifted on March 30. One, for example, would make the cancer policy of the Occupational Safety and Health Administration (OSHA) conform to a Supreme Court ruling, in a case involving the chemical benzene, that OSHA must prove a reasonable relationship between the cost of its rules to industry and benefits to workers. Another would reduce the number of air quality samples required at mines regulated by the Mine Safety and Health Administration. And two others would reduce reporting requirements for company pension programs.

But Donovan is likely to take a hard line on most of the rules he delayed. He announced an "indefinite postponement" of a "midnight regulation" that would have made more executives, managers and professionals subject to minimum wage and overtime provisions of the Fair Labor Standards Act, arguing that it would "exacerbate business costs."

He postponed until April 17, nearly three weeks after the freeze expires, rules requiring that prevailing wages be paid to workers under federal contract

Keeping an Eye on the Watchdog

The day-to-day task of making sure that the regulatory agencies are complying with President Reagan's Feb. 17 executive order on federal regulation will be centered in the Office of Management and Budget (OMB). But OMB's performance will be subject to review by the new Presidential Task Force on Regulatory Relief, with Vice President George Bush as its chairman.

The task force members, Bush announced on Jan. 30, will be Treasury Secretary Donald T. Regan, Attorney General William French Smith, Commerce Secretary Malcolm Baldrige, Labor Secretary Raymond J. Donovan, OMB director Dave Stockman, Council of Economic Advisers chairman Murray L. Weidenbaum and Martin Anderson, assistant to the President for policy development. *(For background on the task force, see NJ, 2/7/81, p. 215.)*

In his Jan. 30 statement, Bush said the task force's basic duties will include:

- reviewing major regulatory proposals from executive agencies, especially if they have particular policy significance or appear to overlap with the jurisdiction of other agencies;
- assessing existing rules, especially those that are particularly costly to the national economy "or to key industrial sectors";
- overseeing the development of legislative proposals to modify the Clean Air Act and other expiring statutes and, "more importantly, to codify the President's views on the appropriate role and objectives of regulatory agencies."

Bush, in announcing the task force, said it would be governed by three general principles:

- "Federal regulations should be initiated only when there is a compelling need."
- "Alternative regulatory approaches (including no regulation) should be considered and the approach selected that imposes the least possible burden on society consistent with achieving the over-all statutory and policy objectives."
- "Regulatory priorities should be governed by an assessment of the benefits and costs of the proposed regulations."

The task force's principal job may well turn out to be making sure that legislation is drafted to change the regulatory programs to which the President objects. Most of the drafting, however, will be done in the agencies themselves. The task force asked the heads of each executive branch agency to designate staff members to keep in touch with the task force staff. A preliminary list of these staff contacts follows. The list will grow and change as the State Department and other agencies add names to it and as interim staff contacts are replaced with permanent designees. Most of the policy-level officials listed below have been nominated but not yet confirmed by the Senate. Interim contacts are denoted with an asterisk.

Agriculture Department: James Barnes, general counsel.

*Commerce Department: Robert Miki, acting deputy assistant secretary for regulatory policy.

Defense Department: William H. Taft IV, general counsel.

*Education Department: Theodore Sky, acting general counsel.

*Energy Department: Raymond Romatowski, acting undersecretary.

*Housing and Urban Development Department: S. Leigh Curry Jr., acting deputy general counsel for operations.

Interior Department: Moody Tidwell, deputy solicitor.

Justice Department: Kenneth Staff, counselor to the Attorney General.

Labor Department: T. Timothy Ryan Jr., solicitor.

Transportation Department: John Fowler, general counsel.

*Treasury Department: George Cross, assistant to the Secretary.

Council of Economic Advisers: Tony Gomez-Ibanez, senior staff economist.

White House Office of Policy Development: Edwin J. Gray, deputy assistant to the President for policy development and director of the Office of Policy Development.

Office of the U.S. Trade Representative: Theodore Hume, deputy general counsel.

*Environmental Protection Agency: Michele B. Corash, general counsel.

to provide automatic data processing and timber sales services. And he withdrew an OSHA proposal under development in the Carter Administration to require labeling of hazardous chemicals.

Among rules whose effective dates were delayed until March 30 was a measure to require employers to provide workers with "walkaround pay" while they accompany OSHA safety inspectors on their rounds. It is likely to be eliminated.

Evidence of the Administration's search for committed deregulators to head major regulatory agencies is found in Reagan's decision to nominate Thorne G. Auchter, a 35-year-old Florida building contractor, as administrator of OSHA. Auchter, *The Wall Street Journal* said, believes that OSHA "symbolizes goverment overregulation."

THE ENVIRONMENT

Reagan's nominee for the top job at EPA is Anne M. Gorsuch, a 38-year-old attorney for Mountain Bell Telephone Co. in Denver who served from 1976 to 1980 in the Colorado House. Gorsuch has described herself as an "environmentalist" but also has pledged her allegiance to Reagan's deregulatory goals and has said she is "absolutely" in favor of cost-benefit analyses of environmental rules. Denver newspapers describe her as a conservative Republican who has frequently opposed governmental intervention in the private sector. *(See NJ, 2/28/81, p. 367.)*

EPA's rules are more numerous and expensive than those of other agencies, and Congress has given it little discretion to change them. In March 1979, a Business Roundtable study of costs imposed on 48 companies by six regulatory agencies found that EPA accounted for 77 per cent. The latest calendar of federal regulations, issued in November by the U.S. Regulatory Council, shows EPA with 24 major pending rules, more than any other agency.

EPA also operates under a series of court orders obtained by environmental groups during periods when the agency seemed to be falling behind in its work. One such order requires EPA to speed up its effort, now more than a year behind schedule, to set standards for water pollution discharges by 21 industries.

In an analysis of 175 pending regulations, Roy N. Gamse, acting assistant administrator for planning and management, calculated that 107, or 61 per cent, were required by statute or court order and that another 9 per cent were deregulatory actions considered desirable by industry. The implication is that Reagan will have to seek changes in EPA's statutes to attack the bulk of its regulatory programs.

Gamse and outgoing general counsel Michele B. Corash said in a memo to top agency officials that Reagan's executive order would broaden the definition of "major" rules whose economic effect must be analyzed.

In an interview, Gamse predicted that the agency would easily meet the order's demands for detailed estimates of the costs of its regulations. EPA already has about 150 economists, analysts and other personnel assigned to looking at the costs of regulations, and its economic analysis is considered by many to be as good as that produced by any regulatory agency.

But Gamse was concerned about the kind of benefit analysis that might be required. "The state of the art,' said Gamse, "does not permit us to compute benefits in dollars and then compare them with costs in dollars. Some of the industry groups want to prohibit regulations from being issued if it cannot be shown that dollar benefits outweigh dollar costs. But that would be a sure way to guarantee that there would be very few environmental regulations." *(See NJ, 2/14/81, p. 256.)*

EPA has tried to measure the total benefits of its clean air program by estimating the total cost of the damage inflicted by air pollution on health, property and crop yields, but it has never been able to make such a calculation for any single regulation. The agency is spending almost $1 million this year to support a "benefits assessment group" that is attempting to find ways to show dollar benefits side by side with dollar costs.

Still another problem is that some of EPA's authorizing legislation does not seem to allow it to consider costs as it decides on regulations. The Clean Air Act, notably, stipulates that the agency must base its air quality standards on the health effects of air pollutants.

As Gamse and Corash note, the executive order will give OMB 60 days to comment on EPA regulations before they are proposed and 30 days between their proposal and issuance. Gamse is concerned that OMB's reviews could duplicate the experience of the Nixon Administration, when OMB indefinitely delayed EPA rules. The reviews, he noted, may well be supervised by Jim J. Tozzi Jr., deputy to OMB regulatory chief Miller. Tozzi ran OMB's reviews of EPA in the early 1970s.

"If they review a proposed rule for 60 days, then a final rule for 30 days," said Gamse, "we'll just start planning to spend three months more getting out a rule. But if they extend the reviews past that, it could really hold up compliance with our statutes."

Anne M. Gorsuch, administrator of the Environmental Protection Agency, calls herself an "environmentalist" but also pledges allegiance to Reagan's deregulatory goals and supports cost-benefit analyses of environmental rules.

Gamse said OMB's performance in handling requests for exemptions from Reagan's freeze has "not been good." OMB "just didn't seem to be ready for the workload," he said. He emphasized that EPA asked for exemptions only for rules that clearly met the criteria outlined in the executive order.

In mid-February, OMB approved exemptions for several deregulatory proposals, including a measure to postpone noise standards for trucks and another to grant variances from air pollution standards to smelters. And it approved issuance of standards that would help industry follow EPA rules.

TROUBLE AHEAD?

OMB's effort is not without its opponents. Advocates of strong federal regulation of the private sector are talking of using the courts to stave off OMB.

The executive order, said William A. Butler, vice president and counsel to the 430,000-member Audubon Society, "amounts to a power play that shifts power from the regulatory agencies to OMB. With elaborate paperwork requirements, clearances and justifications, they may make it almost impossible to issue an affirmative regulation, while at the same time making rescission of regulations exceedingly easy."

Butler said that court action is possible if OMB unduly delays proposed regulations. (At EPA, Gamse said he expected an increase in court suits aimed at forcing the agency to meet regulatory deadlines.)

The National Consumers League on Feb. 19 issued a release charging that "by forcing regulatory cutbacks through budget limitations, the President is attempting to circumvent the congressionally mandated responsibilities of such agencies as the Federal Trade Commission and the Consumer Product Safety Commission." The league will fight the budget cuts in Congress, executive vice president Sandra L. Willett said in an interview.

"Congress has recently spent months debating the FTC, its role and effectiveness," she said. "To have Stockman come in and quickly sweep aside months of legislative history is something we won't easily accept."

The AFL-CIO, said George H. R. Taylor, director of the occupational safety and health department, will fight attempts to roll back health and safety regulations and cut agency budgets. It will probably join coalitions of environmentalists and consumerists, he said, and in return for their help on labor issues will aid them in lobbying on their concerns.

An early battle on Capitol Hill is likely to be fought over legislation to reform regulatory procedures by giving parts of Reagan's executive order statutory authority and extending their reach to the independent regulatory agencies. Some versions of the legislation would also require that rules meet a stringent cost-benefit test, give federal courts increased power to review regulatory actions and allow the Senate or House to veto any rule. Sen Paul Laxalt, R-Nev., a close Reagan ally, is among those pushing for early action.

The legislation is anathema to Congress Watch and other public interest groups, and some proposals even worry the Administration. The Justice Department, for example, opposes a legislative veto.

Antonin Scalia, co-editor of *Regulation* magazine, argues in the current issue that "the imposition of new procedural impediments can only succeed, during the Reagan Administration, in preserving the administrative decisions of the past." The legislation, Scalia warns, would make regulatory change more difficult, and its Republican advocates have failed to realize that a new team is in place and preparing sweeping changes in agency policies.

By implication, Scalia's argument also extends to the requirements of the executive order; detailed cost-benefit analysis could delay deregulatory actions as easily as new regulations. But Miller replies that the order will be waived for deregulatory actions. In that comment is found the heart of the Administration's developing strategy: to deregulate quickly and to throw obstacles in the path of additional regulation. □