OMB Accused of ‘Backdoor’ Policy Role

The Regulations in Question

By Felicity Barringer

In the six months since the Office of Management and Budget became the clearinghouse for government regulations, a growing number of critics have charged that the government’s accountants have become backdoor policy-makers, whose secret deliberations affect everything from marine sanctuaries to medical devices.

At the beginning of the new administration, the agency was required to put a long list of Carter administration regulations on hold and reviewing others for possible revision. Since that time, OMB has sent 55 rules back to the agency that wrote them.

At times, OMB seems to have pressured agencies into policy changes, while at other times OMB interference involved little more than benign paper-pushing.

At stake, in almost all bureaucratic fights, is power. And since the agencies that make the rules derive their power from Congress, while OMB gets its regulatory authority from a Reagan executive order, it is a less a question of bureaucratic infighting than of who sets government policy — Congress or the president.


There is little on the record so far to help him. OMB officials seldom write down their reasons for making an agency rethink a rule. “If there’s anything on the record indicating that OMB raised certain concerns, the people who liked the regulation [before] have to go dig it up,” explains Jim Tosti, OMB’s deputy administrator for information and regulatory affairs.

In some cases, however, OMB officials clearly pressed an agency to change a regulation about to become final. OMB’s review of the rules that set up marine sanctuaries at Point Reyes and the Channel Islands off the California coast took years.

The rules would have prohibited any offshore drilling in the sanctuaries. When President Reagan took office, the rules were final but had not taken effect because the period set for congressional review had not expired. So OMB asked the Commerce Department’s National Oceanic and Atmospheric Administration to take another look at the leasing restrictions. Six months later, a consultant was still studying the issue for NOAA, and the shorelines remain unregulated.

“It’s very hard to characterize what’s going on at OMB as making policy,” said Bill Sullivan, deputy director of regulatory policy at Commerce. OMB was “bringing pressure. NOAA would have preferred to leave the regs in place . . . Of public is obviously influencing policy.”

A similar situation involved Environmental Protection Agency officials who handled a proposal to set standards governing industry waste and how much industry must spend to comply with Clean Water Act requirements. Two EPA rules returned by OMB dealt with these questions; both are on hold.

“OMB said get going along with the regulations would be inappropriate,” said Steven Schatzow, director of EPA’s Office of Water Regulations and Standards. “It’s fair to say that these are major issues that the new political leadership wants to make a look at.”

The reasons OMB returned other rules are less clear. Five Food and Drug Administration rules setting classification for various medical devices were returned; an FDA spokesman said that the agency had merely failed to get the necessary clearance from its parent department, Health and Human Services.

Other changes requested by OMB were clearly minor. A lot of them simply involved changes in the preambles,” according to Jeff Etteneich of OMB.

At least eight of the 55 rules submitted to Dingell’s subcommittee have been published in proposed or final form after the OMB-ordered review, most remained largely unchanged.

“There is no question that OMB is a policy-making agency,” charges Charles Ludlam, a consultant with the Alliance for Justice, a newly formed coalition of public interest and poverty law groups. “The fact that we don’t know why OMB rejected the regulations and who OMB people met with and what information they relied on is what’s wrong with the process.”

OMB officials, however, say any agency could halt the directive of the president to reduce the regulatory burden.