

# THE FEDERAL REPORT

## OMB Accused of 'Backdoor' Policy Role

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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 announced that it was putting a long list of Carter administration regulations on hold and reviewing others for possible rescission. 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, as 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 less a question of bureaucratic infighting than of who sets government policy: Congress or the president. That, in part, is why Rep. John D. Dingell (D-Mich.), chairman of the House Energy and Commerce subcommittee on oversight and investigations, is investigating the 55 rules.

There is little on the record so far to help him. OMB officials seldom write down their reasons for asking an agency to rethink a rule. "If there's something on the record indicating that OMB raised certain concerns, the people who liked the regulation [before the review] could use it to go to court," explains Jim J. Tozzi, OMB's deputy administrator for information and regulatory affairs.

In some of the cases, however, OMB officials clearly pressured an agency to change a regulation about to become final. Take the case of the rules setting up marine sanctuaries at Point Reyes and the Channel Islands off the California coast.

### The Regulations in Question

This is a list of the 55 regulations submitted by the Office of Management and Budget to the House Energy and Commerce subcommittee on oversight and investigations. The names of the agencies have been added.

**COMMERCE DEPARTMENT (National Oceanographic and Atmospheric Administration)**  
Point Reyes-Farallon Islands national marine sanctuary regulations  
Channel Islands national marine sanctuary regulations

**ENERGY DEPARTMENT**  
Wind energy technology application program

**HEALTH AND HUMAN SERVICES DEPARTMENT**  
Classification of anesthesiology devices (final rule)

Classification of physical medicine devices (final rule)

Classification of ophthalmic devices (proposed rule)

Classification of clinical chemistry and clinical technology devices (proposed rules)

Classification of ear, nose and throat devices (proposed rules)

Federal financial participation in the costs of cooperative agreements with court and law enforcement officials (proposed rules)

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**  
Section 8 housing assistance payments program — Financing adjustment for fair market rents

Part 51 — Environmental criteria and standards projects in designated clear zones

Part 200 — Change in provisions and characteristics of debarments, book entry

Part 200 — Introduction — Subpart 5 — Minimum property standards — Proposed addition of water conservation requirements to HUD

Part 885 — Section 202 — Loans for housing for the elderly or handicapped — proposed rule

Part 51 — Environmental criteria and standards projects near hazardous operations

Subpart 200 — Subpart 5 — Change to HUD 4902.1, MPS for One- and Two-Family Dwellings — Proposed Rule

Part 804 — Low-rent housing home ownership opportunities — 805 — Indian Housing and Part 841, Public Housing Development Phase

Part 200 — Subpart 5 — Introduction, minimum property standards, proposed revision of use of materials Bulletin No. 78A for PE, BAS, vinyl chloride

Part 14 — Privacy Act of 1974 (Proposed rule)

Part 200 — Use of materials Bulletin No. 79, acrylonitrile-butadiene

Part 570 — Grant administration requirement for use of escrow accounts for property rehabilitation loans and grants in Community Development Block Grant program (proposed rule)

Part 846 — Low-income public housing — Lease and revivance procedures (proposed rule)

Part 570 — Community Development Block Grant applications for discretionary awards for technical assistance (proposed rule)

Part 570 — Community Development Block Grant Subpart D — Entitlement grants (proposed rule)

Part 888 — Fair market rents for new construction and substantial rehabilitation Section 8 projects, Belle Creek, Mich. (proposed rule)

Part 887 — Section 8 housing assistance payments program — existing housing section 882.215 eviction (proposed rule)

Part 865 — Public housing agency-owned projects, project management, Subpart E — Consolidated supply project (proposed rule)

Part 200 — Proposed use of Materials Bulletin No. 78A, periscope interior stair treads and certification project (proposed rule)

Part 871 — Review of applications for housing assistance and allocation of housing assistance funds (proposed rule)

Part 146 — Nondiscrimination on the basis of age in programs or activities receiving federal financial assistance from HUD (proposed rule)

Part 242 — Mortgage insurance for hospitals, eligibility requirements (proposed rule)

Part 284 — Concurrence Subpart A, eligibility requirements Subpart B — Contract rights and obligations (proposed rule)

Part 144 — Nondiscrimination in programs and activities receiving assistance under Title I of the Housing and Community Development Act of 1974 (proposed rule)

Part 570 — Subpart F, Small Cities Program, Commonwealth of Puerto Rico (proposed rule)

Part 400 — Subchapter F, Mortgage and Tenant Relationship, Mortgage Relationship to Tenant (proposed rule)

Part 220, 221, 226 — Preparation of mortgages (proposed rules)

Part 570 — Community Development Block Grants, Community Development disaster assistance programs (proposed rule)

Part 207, 213, 221, 222, 241, and 342 — Consistent repair orders (proposed rule)

**INTERIOR DEPARTMENT**  
Nondiscrimination against minority and woman-owned business enterprises in Outer Continental Shelf leasing activities (rescission of rule)

**JUSTICE DEPARTMENT**  
Proposed revisions of regulations pertaining to nonimmigrant "F-1" students and schools approved for their attendance

Formulate grants for juvenile justice

Nondiscrimination on the basis of sex

Nondiscrimination on the basis of handicap

**TRANSPORTATION DEPARTMENT (Federal Aviation Administration)**  
Use of alcohol or drugs

Elimination of nonessential crew member duties

Here gliders and other ultralight vehicles proposed operation requirements

**ENVIRONMENTAL PROTECTION AGENCY**  
Timber effluent guidelines for best practicable control (BPT) and best conventional control (BCT) technology

Amendments to general pretreatment regulations for industrial sources

Revisions to improved fuel economy labeling

Kentucky bubble action (air pollution control)

State registration of pesticides to meet special local needs

Exclusion and exemption of motor vehicles and motor vehicle exemptions (engines)

**FEDERAL EMERGENCY MANAGEMENT AGENCY**  
Federal crime insurance program

**INTERSTATE COMMERCE COMMISSION**  
Minimum levels of financial responsibility

**NATIONAL ENDOWMENT FOR THE HUMANITIES**  
Title VI Regulation — Nondiscrimination on the basis of race, color or national origin within NEH-funded programs

"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... OMB is obviously influencing policy."

A similar situation involved Environmental Protection Agency officials who handle regulations that set standards governing industry wastes 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 going ahead 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 take a look at."

The reasons OMB returned other rules are less clear. Five Food and Drug Administration rules setting classifications 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 Eisenach 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 they are only carrying out the directive of the president to reduce the regulatory burden.

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 Oceanographic and Atmospheric Administration to take another look at the leasing prohibitions. Six months later, a consultant is still studying the issue for NOAA, and the shoreline areas remain unregulated.