

Bush pushes through scores of reactionary “midnight regulations”

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As President George Bush's term comes to an end, federal agencies are in the process of enacting last-minute pro-business regulations. The "midnight regulations," as they are called, will have drastically adverse effects on the working class and large sections of the US population.

The new rules will affect a wide range of areas, including the environment, civil rights, on-the-job safety and highway safety. More than 60 of these regulations have already been approved by the White House. Vice-President Dick Cheney and White House Chief of Staff Joshua Bolten have taken the lead in pushing through the rule changes over the last eight months, often over the opposition of career employees and staff scientists at federal agencies.

A partial review of the rules being finalized by various regulatory agencies show that they will:

- Allow coal companies to dump tons of rock and dirt from mountaintop mining operations into nearby streams and valleys.
- Exempt factory farms and their huge animal waste runoff from federal air pollution laws.
- Undermine the Endangered Species Act by eliminating a long-standing provision requiring independent scientific reviews before construction or drilling is allowed in an endangered species' habitat.
- Make it more difficult for workers to use family and medical leave.
- Ease air pollution emissions standards on refineries.
- Allow doctors, hospitals and clinics to deny medical services to patients based only on a medical worker's religious prejudices.
- Make it easier for logging and mining companies to get permits in protected areas.
- Allow agencies to ignore the effect of greenhouse gas emission in their assessment of new projects.
- Permit streamlined lease sales of wilderness lands.

The spate of last-minute regulations amounts to a massive handout to corporate special interests. The rules in question are not executive orders, reversible with the advent of a new

president, but federal regulations that can be delayed only if they meet certain timeline constraints. Those rules expected to cost \$100 million or more a year legally go into effect 60 days after they're finalized; minor regulations go into effect in 30 days.

The regulations could be overturned by a simple majority of both the House and the Senate, but the 1996 law allowing this has only been used once. If a rule hasn't yet taken effect, an incoming president can revoke it.

In any event, president-elect Obama and the Democratic leadership in Congress have, for the most part, not made a major issue of the new rules. The foresight and planning expended in the push for rule changes indicate the calculation by the White House, undoubtedly well founded, that the Democrats will not wage a serious fight to undo them.

Some of the changes face court challenges, but this is a protracted and costly process.

The Bush administration's regulatory blitz is designed to accommodate corporate lobbyists who have descended on Washington in the waning days of Bush's term, determined to protect their well-heeled clients.

Throughout the past year, the White House has intervened aggressively to distort and disrupt the efforts of various regulatory agencies charged with protecting public health and safety.

In November, the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) ignored safety research to authorize codification of a 2004 regulation that allows 11 hours of driving for commercial truckers at a stretch and 60 hours behind the wheel in a seven-day period or 70 in eight days. Courts have twice rejected the regulation.

According to a report from the trade publication *Logistics Management*, "[T]he timing of the rule's release was critical. Currently, truck drivers and the trucking industry are living with this dangerous regulation, but it is only temporary. Had the rule remained in its interim form, it would have been relatively easy for the forthcoming Obama administration to

finalize a new rule more protective of the safety of both truck drivers and other motorists."

The final rule goes into effect January 19, the day before Bush leaves office.

In April, Bush appointees at the Environmental Protection Agency announced they were changing the process for assessing the risks posed by toxic chemicals to involve the Office of Management and Budget. The new rules will give the OMB, an agency with little scientific knowledge, the ability to review and alter scientific findings relating to chemical exposure standards.

The OMB has already intervened on several occasions to weaken rules and standards proposed by the EPA. Its most strident opposition has been directed against efforts to address the threat posed by global warming.

The OMB managed to completely block attempts by the EPA to curb greenhouse gas emissions, barring the EPA from issuing a report that said greenhouse gases were pollutants subject to federal regulation.

According to a December 16, 2008, report in the online journal *OMB Watch*, "In March, President Bush himself stepped in to force EPA to abandon its plan to set a seasonal standard for ozone exposure tailored especially to the needs of plant life. OMB challenged the scientific basis for EPA's decision and encouraged the agency to consider the economic impact of the new standard...."

The Occupational Safety and Health Administration (OSHA) quietly issued a new rule relating to toxic substances in the workplaces last July, in what is being called "stealth regulation." Bush political appointees in OSHA overrode the objections of career health and safety professionals to push through the change. The new rule increases the allowable exposure of workers to dangerous chemicals and toxins by changing the way exposure is measured. The proposal applies to OSHA and the Mine Safety and Health Administration.

New OSHA regulations that would protect workers have been stymied over the past eight years. According to one report, between 2001 and 2007 OSHA released 86 percent fewer rules and regulations termed economically significant by the OMB than during the Clinton administration. It has published only one new rule related to workers' health, and that was only because of a court order.

According to the AFL-CIO: "Overall, dozens of OSHA and MSHA standards were pulled from the Administration's regulatory agenda, including MSHA standards on mine rescue teams, self-contained self-rescue devices and escape ways and refuges which may have helped to prevent the fatalities at the Sago mine. Some new mine safety rules are now being developed and issued, but only as a result of legislation enacted in the wake of the Sago disaster,"

according to the AFL-CIO.

While according to the Bureau of Labor Statistics, a staggering 5,840 workers were fatally injured on the job in 2006, there were some 50,000-60,000 deaths due to occupational diseases.

The situation at OSHA spotlights the pro-business and crude cronyism that has characterized the Bush administration. At OSHA, it has led to upheaval among staff and resulted in some cases in the resignation of long-time employees.

In one notorious case, in early 2001, Peter Infante, an epidemiologist at OSHA, sought to publish a special bulletin concerning dental technicians. He wanted to warn them that they could be exposed to dangerous beryllium alloys while grinding fillings. Health studies showed that even a single day's exposure at the agency's permitted level could lead to incurable lung disease. The views of the entire OSHA staff working on beryllium issues were overridden under industry pressure. Infante said the episode was "the last straw" that provoked him to resign in 2002.

The agency's first director under Bush was John L. Henshaw, an industrial hygienist who had worked for Monsanto and another chemical firm. He startled career officials by telling them in an early meeting that "employers were OSHA's real customers, not the nation's workers. "

Henshaw oversaw the withdrawal of Clinton's ergonomics regulation in 2001—the one case where a new Congress overturned a lame-duck president's "midnight regulation." Bush's OSHA director instead promised to issue non-mandatory guidelines and to cite violators under a general OSHA statute promoting safety. But Richard Soltan, who retired from OSHA in 2006 after 7 years as the Philadelphia regional administrator and 11 years as a deputy administrator, called Henshaw's promise "a sham." "I don't think we prosecuted two cases," Soltan told the *Washington Post*. "It was window dressing."

In 2006, Henshaw was replaced by Edwin G. Foulke Jr., a South Carolina lawyer and former Bush fundraiser who spent years defending companies cited by OSHA for safety and health violations.

The author also suggests:

Bush: "Human life is precious"—EPA: "Less than you might think"



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