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Out of Spotlight, Bush Overhauls U.S. Regulations

By JOEL BRINKLEY

WASHINGTON, Aug. 13 - April 21 was an unusually violent day in Iraq; 68 people died in a car bombing in Basra, among them 23 children. As the news went from bad to worse, President Bush took a tough line, vowing to a group of journalists, "We're not going to cut and run while I'm in the Oval Office."

On the same day, deep within the turgid pages of the Federal Register, the National Highway Traffic Safety Administration published a regulation that would forbid the public release of some data relating to unsafe motor vehicles, saying that publicizing the information would cause "substantial competitive harm" to manufacturers.

As soon as the rule was published, consumer groups yelped in complaint, while the government responded that it was trying to balance the interests of consumers with the competitive needs of business. But hardly anyone else noticed, and that was hardly an isolated case.

Allies and critics of the Bush administration agree that the Sept. 11 attacks, the war in Afghanistan and the war in Iraq have preoccupied the public, overshadowing an important element of the president's agenda: new regulatory initiatives. Health rules, environmental regulations, energy initiatives, worker-safety standards and product-safety disclosure policies have been modified in ways that often please business and industry leaders while dismaying interest groups representing consumers, workers, drivers, medical patients, the elderly and many others.

And most of it was done through regulation, not law - lowering the profile of the actions. The administration can write or revise regulations largely on its own, while Congress must pass laws. For that reason, most modern-day presidents have pursued much of their agendas through regulation. But administration officials acknowledge that Mr. Bush has been particularly aggressive in using this strategy.

"There's been more federal regulations, more regulatory notices, than previous administrations," said Trent Duffy, a White House spokesman, though he attributed much of that to the new rules dealing with domestic security.

Scott McClellan, the chief White House spokesman, said of the changes, "The president's common-sense policies reflect the values of America, whether it is cracking down on corporate wrongdoing or eliminating burdensome regulations to create jobs."

Some leaders of advocacy groups argue that the public preoccupation with war and terrorism has allowed the administration to push through changes that otherwise would have provoked an outcry. Carl Pope, the executive director of the Sierra Club, says he does not think the administration could have succeeded in rewriting so many environmental rules, for example, if the public's attention had not been focused on national security issues.

"The effect of the administration's concentration on war and terror has been to prevent the public from focusing on these issues," Mr. Pope said. "Now, when I hold focus groups with the general public and tell them what has been done, they exclaim, 'How could this have happened without me knowing about it?' "

The administration has often been stymied in its efforts to pass major domestic initiatives in Congress. Even when both houses have been under Republican control, Senate Democrats, using parliamentary rules, have been able to block legislation eagerly sought by the White House and business groups, including bills on energy, bankruptcy and medical malpractice. So officials have turned to regulatory change.

Chad Colton, a spokesman for the Office of Management and Budget, which approves all new regulations, defends the administration's handling of new rules, saying: "The process is very open, very transparent. Some regulations we post get hundreds of comments, even thousands." Mr. Colton acknowledged that most comments came from industry or from public interest groups. "But those groups represent consumers."

Clarence Ditlow, who directs one of those public interest groups, the Center for Auto Safety, said: "People in my line of work are frustrated. We try to work harder. But the amount of media attention and public attention to consumer issues has gone way, way down since 9/11."

Stuart M. Butler, senior domestic policy analyst for the conservative Heritage Foundation, while agreeing that the wars "push a lot of other issues off the page, literally and figuratively," said, "It cuts both ways." The White House "also can't get traction on issues they care about, like Social Security reform, because of all the noise from the war in Iraq."

Bush administration officials and their allies say they use regulations because new laws are not needed for many of the changes they have made and going to Congress every time would be needlessly complicated. But Representative David R. Obey, the Wisconsin Democrat who is the ranking minority member of the Appropriations Committee, said regulatory changes did not benefit from the "checks and balances and oversight" that Congress provides.

New regulations first appear as notices of proposed rule-making in the Federal Register, which is published every weekday. Generally, government officials and others directly concerned with government business read this dense publication.

The National Highway Traffic Safety Administration published the new rule on the public release of auto-safety information on July 28, 2003, but outside the industry hardly anyone took notice. In the following months, allies of tire manufacturers and automakers flooded the agency with comments, and all of them "contended that the release of early warning data is likely to cause substantial competitive harm," the agency said. At the same time, consumer groups argued that the data "should be released because it is important to the identification of potential defects," the agency added.

When the agency published a revised final rule on April 21, 2004, it exempted from public release warranty-claim information, industry reports on safety issues and consumer complaints, among other data, saying that releasing that information would cause "substantial competitive harm."

Public Citizen, a consumer advocacy group, filed suit, saying consumers needed the data to inform themselves about unsafe vehicles and tires. But Ray Tyson, the chief spokesman for the highway safety agency, said: "The suggestion that the American consumer is missing out is off the mark. I can't believe this information would be of much interest to the general public."

A Pro-Business Tilt

The overall regulatory record shows that the Bush administration has heeded the interests of business and industry. Like the Reagan administration, which made regulatory reform a priority, officials under Mr. Bush have introduced new rules to ease or dismantle existing regulations they see as cumbersome. Some analysts argue that the Bush administration has introduced rules favoring industry with a dedication unmatched in modern times.

"My thoughts go back to Herbert Hoover," said Robert Dallek, the presidential historian. "No president could have been more friendly to business than Hoover" until the Bush administration.

While John D. Graham, administrator of information and regulatory affairs at the Office of Management and Budget, does not dispute the administration's pro-business tilt, he said there had been notable exceptions, which his office approved when government officials "provided adequate scientific and economic justification."

Examples, Mr. Graham added, include "stricter fuel-saving rules for S.U.V.'s" and "a 90-percent reduction in diesel-engine exhaust," as well as "mandatory criteria for the lifesaving performance of side-impact air bags" in cars.

But examples of countervailing, business-friendly changes abound, some that broke through the flak thrown up from the wars, and others that remain little known.

The administration, at the request of lumber and paper companies, gave Forest Service managers the right to approve logging in federal forests without the usual environmental reviews. A Forest Service official explained that the new rule was intended "to better harmonize the environmental, social and economic benefits of America's greatest natural resource, our forests and grasslands."

In March of 2003, the Mine Safety and Health Administration published a proposed new regulation that would dilute the rules intended to protect coal miners from black-lung disease. The mine workers union called the new rules "extremely dangerous," while a mine safety administration official contended, "We are moving on toward more effective prevention of black-lung disease."

In May 2003, the Bush administration dropped a proposed rule that would have required hospitals to install facilities to protect workers against tuberculosis. Hospitals and other industry groups had lobbied against the change, saying that it would be costly and that existing regulations would accomplish many of the same aims.

But workers unions and public health officials argued that the number of tuberculosis cases had risen in 20 states and that the same precautions that were to have been put into place for tuberculosis would also have been effective against SARS.

The next month, the Department of Labor, responding to complaints from industry, dropped a rule that required employers to keep a record of employees' ergonomic injuries. Labor unions complained that without the reporting, it would be difficult to identify dangerous workplaces. But the department, in a statement, argued that the records "would not provide additional information useful to identifying possible causes or methods to prevent injury."

The administration's 2004 budget proposed to cut 77 enforcement and related positions from the Occupational Safety and Health Administration, while adding two new staff members whose jobs would be to help industry comply with agency rules. Labor Secretary Elaine L. Chao explained to a House committee that the agency would "continue to target inspections based on the worst hazards and the most dangerous workplaces." As the budget proposal was announced, President Bush and other senior officials focused most of their remarks on the large increases proposed for defense and domestic security.

A Case of Tired Truckers

In one little-known case, litigants say the administration managed to turn a Congressional mandate on its head. In 1995, the National Transportation Safety Board issued a startling study on fatal truck accidents. Thousands of people die on the highways each year in collisions with heavy trucks. The board studied 107 crashes in which the truck driver survived and found that more than half resulted from truck-driver fatigue. Nineteen of the truckers admitted to falling asleep at the wheel.

As a result of that report, Congress the same year ordered the government to revise driving-hour rules for truckers. Under regulations unchanged since 1939, truckers could drive 10 hours at a stretch and then had to rest for eight hours. The rules, Congress said, were to be changed to "reduce fatigue-related incidents and increase driver alertness." At that time, both the Senate and the House were under Republican control, and lawmakers began debating what to do.

The truck-related accident death toll hit a new high in 1997; 5,398 people died. Congress went further in 1999 and created a new federal agency, the Federal Motor Carrier Safety Administration, and the Clinton administration set a goal of reducing truck-related accident fatalities by half over the following 10 years.

Consumer and driver-safety groups, including Public Citizen and Parents Against Tired Truckers, started lobbying the new agency to shorten the number of hours drivers could stay behind the wheel. But trucking industry officials argued that shorter shifts would disrupt delivery schedules, which in turn would raise prices on thousands of products delivered by truck.

Last year, the Department of Transportation finally issued a new rule, saying in a prepared statement that it would "save hundreds of lives" and "protect billions in commerce." The change would increase allowable driving time from 10 hours without a break to 11 hours. But after 11 hours, drivers would have to take 10 hours off instead of eight.

Trucking companies said they were satisfied with the rule while truck drivers deplored it, saying the added hours of driving time would increase driver fatigue.

Public Citizen and the other safety groups filed suit, saying the new rule, in all its detail, actually increased driving hours per week by 30 percent. The suit is pending. Joan Claybrook, the president of Public Citizen, said the new rule "does nothing positive, it does a lot of negative, and it's a big waste of four years' effort."

Courts Have Their Say

For all the ambition behind the campaign to remake the government's regulatory structure, courts have forced the administration to pull back a striking number of initiatives.

Last August, for example, the administration relaxed its clean-air rules by allowing thousands of corporations to upgrade their plants without having to install expensive pollution-control equipment, saying that would allow plants to modernize more easily, leading to greater efficiency and lower consumer costs.

Utilities had lobbied for change; environmental groups filed suit. In December, a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit blocked the rule, at least temporarily, indicating that the court doubted the administration had authority to modify the Clean Air Act by regulation.

In a case involving air-conditioners, the Department of Energy announced in May 2002 that it would weaken a standard issued during the Clinton administration to make home air-conditioners more efficient. The department did order an efficiency increase, but less than had been mandated under Mr. Clinton. An Energy Department official said: "This is not a rollback. It is an increase" in efficiency.

Major air-conditioner manufacturers had lobbied against the improved efficiency standard, saying the new models would be unaffordable. Right away, the attorneys general from seven states, including New York, New Jersey, Connecticut and California, filed suit to restore the old standard. In January of this year, a three-judge panel of the United States Court of Appeals for the Second Circuit, in New York, ruled that the Bush administration did not have the legal right to revise the efficiency rule.

While the administration has had some successes in relaxing environmental rules, other changes have been stymied by the courts. A federal judge blocked a plan by the Department of the Interior to allow an energy company to drill for oil at one proposed location, adjacent to the Arches National Park in Utah, saying the government had not adequately considered the environmental impact of the plan. And an Interior Department judicial agency blocked a plan to develop the Powder River Basin in Wyoming.

Still, the administration is pleased with its overall record of regulatory change. Mr. Graham, the budget office official, eagerly acknowledged that the regulatory tilt had been toward business. "The Bush administration has cut the growth of costly business regulations by 75 percent, compared to the two previous administrations," he said.

Representative Obey said he believed most Americans remained unaware of many of the changes.

"Most people are busy just trying to make a living," he said. "And with all the focus on Iraq and bin Laden, it gives the administration an opportunity to take a lot of loot out the back door without anybody noticing."