There has been a lot of talk about "midnight regulations" issued or initiated by the Bush administration in its final days (including the one that is the subject of this post by Holly). Outgoing presidents, starting at least with Jimmy Carter, have had a practice of issuing many new regulatory decisions in a hurry as they leave office, with the goal of promoting their policy agendas long after they are gone. Elizabeth Kolbert published a short piece about this phenomenon in the New Yorker this past December, with an insightful analysis of why presidents do this.

While Kolbert notes that the phenomenon started in the Carter administration and was taken to new heights (or at least, to record numbers of Federal Register pages) by Bill Clinton, she adds that

> What distinguishes this Administration in its final days—as in its earlier ones—is the purity of its cynicism. White House officials haven't even bothered to argue that these new rules are in the public interest. Such a claim would, in any event, be impossible to defend, as just about every midnight regulation being proposed is, evidently, a gift to a favored industry.

Kolbert follows with specific examples.

Now, OMB Watch and the Center for American Progress have teamed up to publish the white paper "After Midnight: The Bush legacy of deregulation and what Obama can do." From the Executive Summary:

> the Bush administration's final flurry was just part of an eight-year campaign to gut public safeguards in service to corporate special interests and right-wing ideology. As a result of these actions, the nation's air and water are less healthy, consumers and investors are more likely to be defrauded, food and other products are less safe, workers are at greater risk of being injured or killed, and public land is being degraded by rampant mining and drilling. President Obama faces an enormous challenge in reversing the damage.
>
> This task is even more difficult because of procedural roadblocks erected under President Bush that serve to prevent protective regulation. These roadblocks generally skew analytical requirements to favor corporate interests and add bureaucratic layers to gum up the rulemaking process.

In the end, this white paper attempts not only to catalogue and criticize the "midnight regulations" (and includes a useful appendix listing all those regulatory actions), but also to recommend new regulatory principles for the Obama administration. The principles are:

> Regulatory decisions should be timely and responsive to public need.
> The regulatory process must be transparent and improve public participation.
> Regulatory decisions should be based on well-informed, flexible decision making.
> Authority to make decisions about regulations should reflect the statutory delegation granted by Congress.
> Agencies must have the resources to meet their statutory obligations and organizational missions.
> Government must do a better job of encouraging compliance with existing regulations and enforce them fairly.

The paper's recommendations are not concrete enough to establish a plan for action for the new administration, and overall the paper is perhaps a bit too heavy on rhetoric criticizing the Bush administration for my taste (not because I don't think the previous administration deserves criticism but because I just don't see how that rhetoric is helpful in moving us forward). Nonetheless, the paper is worth reviewing to learn about the new set of midnight regulations, and also to get a good sense of what has been lacking over the past eight years, what regulatory challenges the Obama administration and Congress are facing, and what principles might help to move us forward towards sounder, more effective regulation.