



Obama Freezes Bush Midnight Regulations For Review

By **Jesse Greenspan**

Law360, New York (January 21, 2009) -- In one of his first moves in office, President Barack Obama has frozen all pending regulations — many of which involve environmental matters — until they can be reviewed by agency leaders appointed by the new administration.

Such a freeze is typical, and has been done by the past few incoming administrations, according to experts.

"Every incoming administration has done something like this, just as every outgoing administration adopts, passes and shoves out the door dozens of regulations before they leave office," said Tom Skinner, a partner at Mayer Brown LLP and the former head of environmental enforcement at the U.S. Environmental Protection Agency.

"It's not a shock, it's not a surprise," Skinner added. "What becomes important is that the new review be undertaken as swiftly and promptly as possible in order to provide certainty going forward."

In a memorandum sent Tuesday to the heads of executive departments and agencies, Obama's chief of staff, Rahm Emanuel, requested that they not send any proposed or final regulations to the Office of the Federal Register for publication and that they withdraw all proposed or final regulations that have not yet been published in the Federal Register.

He also asked them to consider extending for 60 days the effective date of regulations that have been published but have not yet taken effect and to reopen the notice-and-comment period.

"It is important that President Obama's appointees and designees have the opportunity to review and approve any new or pending regulations," Emanuel said.

Among other things, the freeze will halt a rule on corporate fuel economy standards. It will also halt a rule designed to change the format of the list of endangered species and a rule to remove endangered species protections for gray wolves, according to Noah Greenwald, biodiversity program director at the Center for Biological Diversity.

"Given that wolves are absent from 95 percent of their historical range and that there are large areas of the country where there is certainly habitat for them ... it doesn't make sense to delist wolves now," Greenwald said.

He added that most of the so-called midnight regulations appeared to have a total disregard for the public interest.

Nonetheless, many of those rules have already been finalized, including relaxed standards for mountaintop removal mining, a leasing program for oil shale, relaxed standards for runoff from factory farms and a change to the Endangered Species Act that allows federal agencies to approve development projects without first having to consult with government scientists.

As a result, those rules can only be changed by the courts, through an act of Congress or by going through the rulemaking process all over again.

In fact, most of the rules important to the Bush administration were finalized at least a couple of months ago so they could not easily be overturned by Obama, according to Roger R. Martella, a partner in the environmental practice group at Sidley Austin LLP.

"It seems that there was some strategic thinking," Martella said.