

111TH CONGRESS
1ST SESSION

H. R. 34

To delay the implementation of agency rules adopted within the final 90 days of the final term a President serves.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. NADLER of New York introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To delay the implementation of agency rules adopted within the final 90 days of the final term a President serves.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Midnight Rule Act”.

5 **SEC. 2. RESTRICTIONS ON MIDNIGHT RULEMAKING.**

6 Title 5, United States Code, is amended by inserting
7 after section 555 the following new section:

8 **“§ 555a. Restrictions on midnight rulemaking**

9 “(a) RULES ADOPTED IN THE FINAL 90 DAYS OF
10 A PRESIDENTIAL ADMINISTRATION.—Notwithstanding

1 section 801, a midnight rule shall not take effect until 90
2 days after the agency head is appointed by the new Presi-
3 dent.

4 “(b) PRESIDENTIAL AUTHORITY.—

5 “(1) NOTICE.—Notwithstanding any other pro-
6 vision of this section, a midnight rule that would not
7 take effect by reason of subsection (a) may take ef-
8 fect if the President serving his final term makes a
9 determination under paragraph (2) and submits
10 written notice of such determination to the Con-
11 gress.

12 “(2) EXCEPTIONS.—A determination under this
13 paragraph is a determination made by the President
14 by Executive Order that the midnight rule should
15 take effect because such rule is—

16 “(A) necessary because of an imminent
17 threat to health or safety or other emergency;

18 “(B) necessary for the enforcement of
19 criminal laws;

20 “(C) necessary for national security; or

21 “(D) issued pursuant to any statute imple-
22 menting an international trade agreement.

23 “(3) EFFECT ON CONGRESSIONAL DISAPPROVAL
24 PROCEDURES.—An exercise by the President of the
25 authority under this subsection shall have no effect

1 on congressional disapproval procedures under sec-
2 tion 802 or congressional review under section 801.

3 “(c) DISAPPROVAL BY A NEW AGENCY HEAD.—

4 “(1) DISAPPROVAL.—The agency head ap-
5 pointed by the new President may disapprove of a
6 midnight rule no later than 90 days after being ap-
7 pointed.

8 “(2) PROCEDURE.—The agency head appointed
9 by the new President may disapprove a midnight
10 rule by publishing a statement of disapproval in the
11 Federal Register and sending a notice of disapproval
12 to the congressional committees of jurisdiction.

13 “(d) DEFINITIONS.—The term ‘midnight rule’ means
14 a rule adopted by an agency within the final 90 days a
15 President serves in office.”.

16 **SEC. 3. CLERICAL AMENDMENT.**

17 The table of contents of chapter 5 of title 5, United
18 States Code, is amended by inserting after the item relat-
19 ing to section 555 the following new item:

“555a. Midnight rulemaking.”.

20 **SEC. 4. EFFECTIVE DATE.**

21 The amendments made by this Act shall apply to any
22 rule adopted on or after October 22, 2008.

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