

112TH CONGRESS
2D SESSION

S. 2368

To ensure economy and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President's final days in office, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2012

Mr. JOHNSON of Wisconsin (for himself, Mrs. HUTCHISON, Mr. KYL, Mr. SHELBY, Mr. THUNE, Mr. DEMINT, Mr. PAUL, Ms. AYOTTE, Mr. RISCH, Mr. JOHANNES, Mr. COATS, Mr. CHAMBLISS, Mr. RUBIO, Mr. BOOZMAN, Mr. BARRASSO, Mr. VITTER, Mr. MCCONNELL, Mr. BLUNT, Mr. SESSIONS, Mr. ROBERTS, Mr. INHOFE, Mr. GRAHAM, Mr. TOOMEY, Mr. BURR, Mr. HELLER, Mr. MORAN, Mr. ISAKSON, Mr. CORNYN, Mr. LEE, Ms. COLLINS, Mr. COCHRAN, Mr. HOEVEN, Mr. MCCAIN, Mr. COBURN, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To ensure economy and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President's final days in office, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Midnight Rule Relief
3 Act of 2012”.

4 **SEC. 2. MORATORIUM ON MIDNIGHT RULES.**

5 Except as provided under sections 3 and 4, during
6 the moratorium period, an agency may not propose or fi-
7 nalize any midnight rule that the Administrator of the Of-
8 fice of Information and Regulatory Affairs of the Office
9 of Management and Budget finds is likely to result in—

10 (1) an annual effect on the economy of
11 \$100,000,000 or more;

12 (2) a major increase in costs or prices for con-
13 sumers, individual industries, Federal, State, or local
14 government agencies, or geographic regions; or

15 (3) significant adverse effects on competition,
16 employment, investment, productivity, innovation, or
17 on the ability of United States-based enterprises to
18 compete with foreign-based enterprises in domestic
19 and export markets.

20 **SEC. 3. SPECIAL RULE ON STATUTORY, REGULATORY, AND**
21 **JUDICIAL DEADLINES.**

22 (a) **IN GENERAL.**—Section 2 shall not apply with re-
23 spect to any deadline—

24 (1) for, relating to, or involving any midnight
25 rule;

1 (2) that was established before the beginning of
2 the moratorium period; and

3 (3) that is required to be taken during the mor-
4 atorium period.

5 (b) PUBLICATION OF DEADLINES.—Not later than
6 30 days after the beginning of a moratorium period, the
7 Administrator of the Office of Information and Regulatory
8 Affairs of the Office of Management and Budget shall
9 identify and publish in the Federal Register a list of dead-
10 lines covered by subsection (a).

11 **SEC. 4. EXCEPTION.**

12 (a) EMERGENCY EXCEPTION.—Section 2 shall not
13 apply to a midnight rule if the President determines that
14 the midnight rule is—

15 (1) necessary because of an imminent threat to
16 health or safety or other emergency;

17 (2) necessary for the enforcement of criminal
18 laws;

19 (3) necessary for the national security of the
20 United States; or

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

23 (b) DEREGULATORY EXCEPTION.—Section 2 shall
24 not apply to a midnight rule that the Administrator of
25 the Office of Information and Regulatory Affairs within

1 the Office of Management and Budget certifies in writing
2 is limited to repealing an existing rule.

3 (c) NOTICE OF EXCEPTIONS.—Not later than 30
4 days after a determination under subsection (a) or a cer-
5 tification is made under subsection (b), the head of the
6 relevant agency shall publish in the Federal Register any
7 midnight rule excluded from the moratorium period due
8 to an exception under this section.

9 **SEC. 5. DEFINITIONS.**

10 In this Act:

11 (1) AGENCY.—The term “agency” has the
12 meaning given that term under section 551 of title
13 5, United States Code, except that such term does
14 not include—

15 (A) the Federal Election Commission;

16 (B) the Board of Governors of the Federal
17 Reserve System;

18 (C) the Federal Deposit Insurance Cor-
19 poration; or

20 (D) the United States Postal Service.

21 (2) DEADLINE.—The term “deadline” means
22 any date certain for fulfilling any obligation or exer-
23 cising any authority established by or under any
24 Federal statute or rule, or by or under any court

1 order implementing any Federal statute, regulation,
2 or rule.

3 (3) MORATORIUM PERIOD.—The term “morato-
4 rium period” means the day after the day referred
5 to in section 1 of title 3, United States Code,
6 through January 20 of the following year, in which
7 a President is not serving a consecutive term.

8 (4) MIDNIGHT RULE.—The term “midnight
9 rule” means an agency statement of general applica-
10 bility and future effect, issued during the morato-
11 rium period, that is intended to have the force and
12 effect of law and is designed—

13 (A) to implement, interpret, or prescribe
14 law or policy; or

15 (B) to describe the procedure or practice
16 requirements of an agency.

17 (5) RULE.—The term “rule” has the meaning
18 given that term under section 551 of title 5, United
19 States Code.

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