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1ST SESSION

H. R. 450

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, FEBRUARY 22), 1995

Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Transition
5 Act of 1995”.

1 **SEC. 2. FINDING.**

2 The Congress finds that effective steps for improving
3 the efficiency and proper management of Government op-
4 erations, including enactment of a new law or laws to re-
5 quire (1) that the Federal rulemaking process include
6 cost/benefit analysis, including analysis of costs resulting
7 from the loss of property rights, and (2) for those Federal
8 regulations that are subject to risk analysis and risk as-
9 sessment that those regulations undergo standardized risk
10 analysis and risk assessment using the best scientific and
11 economic procedures, will be promoted if a moratorium on
12 new rulemaking actions is imposed and an inventory of
13 such action is conducted.

14 **SEC. 3. MORATORIUM ON REGULATIONS.**

15 (a) MORATORIUM.—Until the end of the moratorium
16 period, a Federal agency may not take any regulatory
17 rulemaking action, unless an exception is provided under
18 section 5. Beginning 30 days after the date of the enact-
19 ment of this Act, the effectiveness of any regulatory rule-
20 making action taken or made effective during the morato-
21 rium period but before the date of the enactment shall
22 be suspended until the end of the moratorium period, un-
23 less an exception is provided under section 5.

24 (b) INVENTORY OF RULEMAKINGS.—Not later than
25 30 days after the date of the enactment of this Act, the
26 President shall conduct an inventory and publish in the

1 Federal Register a list of all regulatory rulemaking actions
2 covered by subsection (a) taken or made effective during
3 the moratorium period but before the date of the enact-
4 ment.

5 **SEC. 4. SPECIAL RULE ON STATUTORY, REGULATORY, AND**
6 **JUDICIAL DEADLINES.**

7 (a) IN GENERAL.—Any deadline for, relating to, or
8 involving any action dependent upon, any regulatory rule-
9 making actions authorized or required to be taken before
10 the end of the moratorium period is extended for 5 months
11 or until the end of the moratorium period, whichever is
12 later.

13 (b) DEADLINE DEFINED.—The term “deadline”
14 means any date certain for fulfilling any obligation or ex-
15 ercising any authority established by or under any Federal
16 statute or regulation, or by or under any court order im-
17 plementing any Federal statute or regulation.

18 (c) IDENTIFICATION OF POSTPONED DEADLINES.—
19 Not later than 30 days after the date of the enactment
20 of this Act, the President shall identify and publish in the
21 Federal Register a list of deadlines covered by subsection
22 (a).

1 **SEC. 5. EMERGENCY EXCEPTIONS; EXCLUSIONS.**

2 (a) EMERGENCY EXCEPTION.—Section 3(a) or 4(a),
3 or both, shall not apply to a regulatory rulemaking action
4 if—

5 (1) the head of a Federal agency otherwise au-
6 thorized to take the action submits a written request
7 to the Administrator of the Office of Information
8 and Regulatory Affairs within the Office of Manage-
9 ment and Budget and submits a copy thereof to the
10 appropriate committees of each House of the Con-
11 gress;

12 (2) the Administrator of the Office of Informa-
13 tion and Regulatory Affairs within the Office of
14 Management and Budget finds in writing that a
15 waiver for the action is (A) necessary because of an
16 imminent threat to health or safety or other emer-
17 gency, or (B) necessary for the enforcement of
18 criminal laws; and

19 (3) the Federal agency head publishes the find-
20 ing and waiver in the Federal Register.

21 (b) EXCLUSIONS.—The head of an agency shall pub-
22 lish in the Federal Register any action excluded because
23 of a certification under section 6(3)(B).

24 (c) CIVIL RIGHTS EXCEPTION.—Section 3(a) or 4(a),
25 or both, shall not apply to a regulatory rulemaking action
26 to establish or enforce any statutory rights against dis-

1 crimination on the basis of age, race, religion, gender, na-
2 tional origin, or handicapped or disability status except
3 such rulemaking actions that establish, lead to, or other-
4 wise rely on the use of a quota or preference based on
5 age, race, religion, gender, national origin, or handicapped
6 or disability status.

7 **SEC. 6. DEFINITIONS.**

8 For purposes of this Act:

9 (1) FEDERAL AGENCY.—The term “Federal
10 agency” means any agency as that term is defined
11 in section 551(1) of title 5, United States Code (re-
12 lating to administrative procedure).

13 (2) MORATORIUM PERIOD.—The term “morato-
14 rium period” means the period of time—

15 (A) beginning November 20, 1994; and

16 (B) ending on the earlier of—

17 (i) the first date on which there have
18 been enacted one or more laws that—

19 (I) require that the Federal rule-
20 making process include cost/benefit
21 analysis, including analysis of costs
22 resulting from the loss of property
23 rights; and

24 (II) for those Federal regulations
25 that are subject to risk analysis and

1 risk assessment, require that those
2 regulations undergo standardized risk
3 analysis and risk assessment using the
4 best scientific and economic proce-
5 dures; or

6 (ii) December 31, 1995;

7 except that in the case of a regulatory rulemaking
8 action with respect to determining that a species is
9 an endangered species or a threatened species under
10 section 4(a)(1) of the Endangered Species Act of
11 1973 (16 U.S.C. 1533(a)(1)) or designating critical
12 habitat under section 4(a)(3) of that Act (16 U.S.C.
13 1533(a)(3)), the term means the period of time be-
14 ginning on the date described in subparagraph (A)
15 and ending on the earlier of the first date on which
16 there has been enacted after the date of the enact-
17 ment of this Act a law authorizing appropriations to
18 carry out the Endangered Species Act of 1973, or
19 December 31, 1996.

20 (3) REGULATORY RULEMAKING ACTION.—

21 (A) IN GENERAL.—The term “regulatory
22 rulemaking action” means any rulemaking on
23 any rule normally published in the Federal Reg-
24 ister, including—

1 (i) the issuance of any substantive
2 rule, interpretative rule, statement of agen-
3 cy policy, notice of inquiry, advance notice
4 of proposed rulemaking, or notice of pro-
5 posed rulemaking, and

6 (ii) any other action taken in the
7 course of the process of rulemaking (except
8 a cost benefit analysis or risk assessment,
9 or both).

10 (B) EXCLUSIONS.—The term “regulatory
11 rulemaking action” does not include—

12 (i) any agency action that the head of
13 the agency and the Administrator of the
14 Office of Information and Regulatory Af-
15 fairs within the Office of Management and
16 Budget certify in writing is limited to re-
17 pealing, narrowing, or streamlining a rule,
18 regulation, or administrative process or
19 otherwise reducing regulatory burdens;

20 (ii) any agency action that the head of
21 the agency and the Administrator of the
22 Office of Information and Regulatory Af-
23 fairs within the Office of Management and
24 Budget certify in writing is limited to mat-
25 ters relating to military or foreign affairs

1 functions, statutes implementing inter-
2 national trade agreements, including all
3 agency actions required by the Uruguay
4 Round Agreements Act, or agency manage-
5 ment, personnel, or public property, loans,
6 grants, benefits, or contracts;

7 (iii) any agency action that the head
8 of the agency and the Administrator of the
9 Office of Information and Regulatory Af-
10 fairs within the Office of Management and
11 Budget certify in writing is limited to a
12 routine administrative function of the
13 agency;

14 (iv) any agency action that—

15 (I) is taken by an agency that su-
16 pervises and regulates insured deposi-
17 tory institutions, affiliates of such in-
18 stitutions, credit unions, or govern-
19 ment sponsored housing enterprises;
20 and

21 (II) the head of the agency cer-
22 tifies would meet the standards for an
23 exception or exclusion described in
24 this Act; or

1 (v) any agency action that the head of
2 the agency certifies is limited to interpret-
3 ing, implementing, or administering the in-
4 ternal revenue laws of the United States.

5 (4) RULE.—The term “rule” means the whole
6 or a part of an agency statement of general or par-
7 ticular applicability and future effect designed to im-
8 plement, interpret, or prescribe law or policy. Such
9 term does not include the approval or prescription,
10 on a case-by-case or consolidated case basis, for the
11 future of rates, wages, corporation, or financial
12 structures or reorganizations thereof, prices, facili-
13 ties, appliances, services or allowances therefor, or of
14 valuations, costs, or accounting, or practices bearing
15 on any of the foregoing, nor does it include any ac-
16 tion taken in connection with the safety of aviation
17 or any action taken in connection with the imple-
18 mentation of monetary policy or to ensure the safety
19 and soundness of federally insured depository insti-
20 tutions, any affiliate of such an institution, credit
21 unions, or government sponsored housing enterprises
22 or to protect the Federal deposit insurance funds.
23 Such term also does not include granting an applica-
24 tion for a license, registration, or similar authority,
25 granting or recognizing an exemption, granting a

1 variance or petition for relief from a regulatory re-
2 quirement, or other action relieving a restriction (in-
3 cluding any agency action which establishes, modi-
4 fies, or conducts a regulatory program for a rec-
5 reational or subsistence activity, including but not
6 limited to hunting, fishing, and camping, if a Fed-
7 eral law prohibits the recreational or subsistence ac-
8 tivity in the absence of the agency action) or taking
9 any action necessary to permit new or improved ap-
10 plications of technology or allow the manufacture,
11 distribution, sale, or use of a substance or product.

12 (5) RULEMAKING.—The term “rulemaking”
13 means agency process for formulating, amending, or
14 repealing a rule.

15 (6) LICENSE.—The term “license” means the
16 whole or part of an agency permit, certificate, ap-
17 proval, registration, charter, membership, statutory
18 exemption, or other form of permission.

19 (7) IMMINENT THREAT TO HEALTH OR SAFE-
20 TY.—The term “imminent threat to health or safe-
21 ty” means the existence of any condition, cir-
22 cumstance, or practice reasonably expected to cause
23 death, serious illness, or severe injury to humans, or
24 substantial endangerment to private property during
25 the moratorium period.

1 **SEC. 7. LIMITATION ON CIVIL ACTIONS.**

2 No private right of action may be brought against
3 any Federal agency for a violation of this Act. This prohi-
4 bition shall not affect any private right of action or remedy
5 otherwise available under any other law.

6 **SEC. 8. RELATIONSHIP TO OTHER LAW; SEVERABILITY.**

7 (a) **APPLICABILITY.**—This Act shall apply notwith-
8 standing any other provision of law.

9 (b) **SEVERABILITY.**—If any provision of this Act, or
10 the application of any provision of this Act to any person
11 or circumstance, is held invalid, the application of such
12 provision to other persons or circumstances, and the re-
13 mainder of this Act, shall not be affected thereby.

14 **SEC. 9. REGULATIONS TO AID BUSINESS COMPETITIVE-**
15 **NESS.**

16 Section 3(a) or 4(a), or both, shall not apply to any
17 of the following regulatory rulemaking actions (or any
18 such action relating thereto):

19 (1) **CONDITIONAL RELEASE OF TEXTILE IM-**
20 **PORTS.**—A final rule published on December 2,
21 1994 (59 Fed. Reg. 61798), to provide for the con-
22 ditional release by the Customs Service of textile im-
23 ports suspected of being imported in violation of
24 United States quotas.

25 (2) **TEXTILE IMPORTS.**—Any action which the
26 head of the relevant agency and the Administrator

1 of the Office of Information and Regulatory Affairs
2 certify in writing is a substantive rule, interpretive
3 rule, statement of agency policy, or notice of pro-
4 posed rulemaking to interpret, implement, or admin-
5 ister laws pertaining to the import of textiles and
6 apparel including section 334 of the Uruguay Round
7 Agreements Act (P.L. 103–465), relating to textile
8 rules of origin.

9 (3) CUSTOMS MODERNIZATION.—Any action
10 which the head of the relevant agency and the Ad-
11 ministrator of the Office of Information and Regu-
12 latory Affairs certify in writing is a substantive rule,
13 interpretive rule, statement of agency policy, or no-
14 tice of proposed rulemaking to interpret, implement,
15 or administer laws pertaining to the customs mod-
16 ernization provisions contained in title VI of the
17 North American Free Trade Agreement Implemen-
18 tation Act (P.L. 103–182).

19 (4) ACTIONS WITH RESPECT TO CHINA RE-
20 GARDING INTELLECTUAL PROPERTY PROTECTION
21 AND MARKET ACCESS.—A regulatory rulemaking ac-
22 tion providing notice of a determination that the
23 People’s Republic of China’s failure to enforce intel-
24 lectual property rights and to provide market access
25 is unreasonable and constitutes a burden or restric-

1 tion on United States commerce, and a determina-
2 tion that trade action is appropriate and that sanc-
3 tions are appropriate, taken under section
4 304(a)(1)(A)(ii), section 304(a)(1)(B), and section
5 301(b) of the Trade Act of 1974 and with respect
6 to which a notice of determination was published on
7 February 7, 1995 (60 Fed. Reg. 7230).

8 (5) TRANSFER OF SPECTRUM.—A regulatory
9 rulemaking action by the Federal Communications
10 Commission to transfer 50 megahertz of spectrum
11 below 5 GHz from government use to private use,
12 taken under the Omnibus Budget Reconciliation Act
13 of 1993 and with respect to which notice of proposed
14 rulemaking was published at 59 Federal Register
15 59393.

16 (6) PERSONAL COMMUNICATIONS SERVICES LI-
17 CENSES.—A regulatory rulemaking action by the
18 Federal Communications Commission to establish
19 criteria and procedures for issuing licenses utilizing
20 competitive bidding procedures to provide personal
21 communications services—

22 (A) taken under section 309(j) of the Com-
23 munications Act and with respect to which a
24 final rule was published on December 7, 1994
25 (59 Fed. Reg. 63210); or

1 (B) taken under sections 3(n) and 332 of
2 the Communications Act and with respect to
3 which a final rule was published on December
4 2, 1994 (59 Fed. Reg. 61828).

5 (7) WIDE-AREA SPECIALIZED MOBILE RADIO LI-
6 CENSES.—A regulatory rulemaking action by the
7 Federal Communications Commission to provide for
8 competitive bidding for wide-area specialized mobile
9 radio licenses, taken under section 309(j) of the
10 Communications Act and with respect to which a
11 proposed rule was published on February 14, 1995
12 (60 Fed. Reg. 8341).

13 (8) IMPROVED TRADING OPPORTUNITIES FOR
14 REGIONAL EXCHANGES.—A regulatory rulemaking
15 action by the Securities and Exchange Commission
16 to provide for increased competition among the stock
17 exchanges, taken under the Unlisted Trading Privi-
18 leges Act of 1994 and with respect to which pro-
19 posed rulemaking was published on February 9,
20 1995 (60 Fed. Reg. 7718).

21 **SEC. 10. DELAYING EFFECTIVE DATE OF RULES WITH RE-**
22 **SPECT TO SMALL BUSINESSES.**

23 (a) DELAY EFFECTIVENESS.—For any rule resulting
24 from a regulatory rulemaking action that is suspended or
25 prohibited by this Act, the effective date of the rule with

1 respect to small businesses may not occur before six
2 months after the end of the moratorium period.

3 (b) SMALL BUSINESS DEFINED.—In this section, the
4 term “small business” means any business with 100 or
5 fewer employees.

Passed the House of Representatives February 24,
1995.

Attest:

ROBIN H. CARLE,

Clerk.