Calendar No. 33

104TH CONGRESS
1st Session

SENATE

REPORT
104–15

REGULATORY TRANSITION ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 219

TOGETHER WITH

MINORITY VIEWS

TO ENSURE ECONOMY AND EFFICIENCY OF FEDERAL GOVERNMENT OPERATIONS BY ESTABLISHING A MORATORIUM ON REGULATORY RULEMAKING ACTIONS, AND FOR OTHER PURPOSES

MARCH 16, 1995.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
99–010 WASHINGTON : 1995

99–010

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REGULATORY TRANSITION ACT OF 1995

MARCH 16, 1995.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 219]

The Committee on Governmental Affairs, to which was referred the bill (S. 219) to ensure economy and efficiency of Federal Government operations by establishing a moratorium on certain significant regulatory actions, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of the substitute and recommends that the bill as amended do pass.

I. SUMMARY

The Regulatory Transition Act of 1995 ("the Act") establishes a moratorium on regulatory rulemaking actions by most agencies of the Federal Government, covering rulemakings between November 9, 1994 and December 31, 1995, unless an Act of Congress provides an earlier termination date. It is intended that comprehensive regulatory reform legislation will provide an earlier termination date. On the date of enactment, agencies are prohibited from taking most significant regulatory actions until the end of the moratorium period. In addition, thirty days after enactment, the effectiveness of any regulatory rulemaking action taken during the moratorium period, but before the date of enactment, is suspended until the end of the moratorium period.

"Significant rulemaking action" is defined in the Act so that many agency actions, such as substantive rules interpretive rules, statements of agency policy, guidances, guidelines, or notices of proposed rulemaking, are potentially covered by the moratorium. In conformity with Executive Order 12866, those significant rulemaking actions are further limited to agency actions that the Administrator of the Office of Information and Regulatory Affairs finds: (i) has an annual effect on the economy of $100,000,000 or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (ii) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (iii) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

The bill does not prohibit agencies during the moratorium period from conducting cost/benefit analysis or risk assessment on regulations; nor does it prevent the public from providing comments to agencies on pending regulations.

The bill provides for exceptions to the moratorium in two distinct ways. Minor, specific exceptions are made by narrowing the definitions of a "rule" to exclude items such as certain regulations on railroad crossings or regulations relating to the safety and soundness of depository institutions. Exclusions from the definition of "rule" are self-executing. But the authority for major exceptions, those most commonly discussed, is not self-executing. Rather, a process is established whereby the appropriate agency petitions the President who is given discretion to decide whether regulations in various areas are to be excepted from the moratorium. These areas include imminent threats to health and safety, the criminal laws, military affairs, international trade, internal revenue laws, and other matters.

Although the legislation provides the President discretion to exempt certain regulations and shields his determinations from judicial review, it is not intended that the President's authority be coextensive with all significant regulatory actions. Thus, his authority to exempt regulations on health and safety, for example, generally is limited to those regulations that address an "imminent threat". Since so many of the covered regulations arguably might be somehow relevant to health and safety concerns, the absence of such limitations might allow the President to except virtually any regulation, no matter how remotely related to health or safety.

Because many agencies face statutorily or judicially imposed deadlines for the promulgation of regulations, the Act extends all such deadlines for five months beyond the end of the moratorium period. The Act also requires the President to publish a list of all such deadlines in the Federal Register.

Since the moratorium is intended to be in effect only for a short period of time, the bill provides that no determination under the Act is subject to adjudicative review before any tribunal or court of law.

In reaction to the public outcry against ever increasing regulatory burdens, several Senate committees are presently considering comprehensive reform of the regulatory process. In view of the large number of significant rules in the pipeline, the Committee believes that they should be suspended long enough to allow the reform legislation's requirements to apply to them. That is the purpose of the reported legislation.

II. BACKGROUND

The congressional elections on November 8, 1994, were a watershed in the relationship between the American people and their government. The public sent a clear message to Washington that they want a smaller, more efficient, and more effective government. This message reflects a deep and growing resentment about the rising costs of federal regulations, and their intrusiveness into the lives of most Americans.

Although many regulations provide important protections and benefits to the public, it is clear that the regulatory process is broken. Many regulations impose undue costs, and the regulatory process itself is ossified, unresponsive, and inefficient. The cumulative cost of regulation is enormous and is rising at an alarming rate. Professor Thomas Hopkins conservatively estimated the annual cost of federal regulations at $560 billion for 1992; it is expected to rise another $100 billion by the end of this decade. Although generally imposed on businesses and governments, regulations act as hidden taxes on the American consumer and taxpayer through higher prices, diminished wages, increased taxes, or reduced government services. This hidden tax amounts to about $6,000 per year for the average American household.[1] Our nation cannot afford to ignore the need to reform the regulatory process to ensure that agencies seriously consider whether regulations are justifiable and rational. If agencies decide to issue regulations, they should do so in a smarter, more cost-effective manner.

This history of regulation in America, as well as Congressional and Presidential efforts to control it, is well documented and does not need to be repeated here in full detail.[2] What is important to recount is the recent history of Executive Branch efforts to reform the regulatory process. Because these efforts have failed to produce significant lasting regulatory reform, this Committee believes it is now time for Congress to take firm action.

President Richard Nixon established the first modern regulatory review program, entitled the Quality of Life review (QOL). Under QOL, agencies were required to consider various regulatory alternatives and their costs when developing "significant" regulations. The proposed and final regulations were submitted to OMB, which circulated them to other agencies for comment.

President Gerald Ford continued the QOL review when he assumed office in 1974. Concerned about inflation, he also issued Executive Order 11821 (E.O. 11821), requiring agencies to prepare in-

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[1] See Thomas D. Hopkins, "Costs of Regulation: Filling the Gaps" (Rep. Prepared for Reg. Info. Service Center) (Aug. 1992).

[2] The last significant attempt by Congress to reform the regulatory process was in 1981, with the Senate's consideration of Senate Bill 1080. The Senate Judiciary Committees Report on the bill is an excellent source of information. See Senate Report No. 97–284.

flationary impact statements for all major regulations. E.O. 11821 directed OMB to develop criteria for identifying major regulations and to prescribe procedures for their evaluation.

President Jimmy Carter's Executive Order 12044 extended president Ford's efforts to reduce the costs of regulations by revising rulemaking procedures. E.O. 12044 directed agencies to identify "significant" regulations imposing costs on the economy of $100 million or more per year or causing a major increase in costs or prices to various groups or regions, and to prepare a cost/benefit analysis for such regulations. Despite these efforts, the number of new federal regulations spiralled higher than ever, reaching an all-time record high of 73,258 pages in the Federal Register during the last year of the Carter Administration.

To stem the rising tide of regulations, President Ronald Reagan issued Executive Order 12291 shortly after taking office. This Order incorporated and expanded upon the key provisions of E.O. 12044, including a review of existing regulations, selecting the least costly regulatory alternative when developing new regulations, and requiring agencies to prepare regulatory cost/benefit analyses (termed regulatory impact statements) for major regulations. President Reagan directed agencies to develop regulations only if there was a clear need, the benefits outweighed the costs, and the least costly alternative was chosen. Most importantly, E.O. 12291 centralized review and clearance of regulatory actions in OIRA within OMB. Agencies had to respond to OMB comments and incorporate those comments and the agencies responses in the rulemaking file before issuing a final regulation. For the first time, no regulations could be promulgated unless they were first approved by one central clearinghouse. President Reagan also issued Executive Order 12498 in March 1985, directing agencies to prepare a yearly agenda containing all contemplated regulatory actions for the coming year. Except for emergency situations, agencies were prohibited from taking any significant regulatory actions that had not been included in the agenda, unless those actions were cleared through by OMB. President Reagan's efforts proved successful, at least temporarily. By 1986, the number of new regulations being published in the Federal Register had been reduced to 44,812 pages.

President George Bush continued President Reagan's Executive Orders when he took office in 1989. Concerned about the continuing increase in the cost of regulations, however, he established the President's Council on Competitiveness in March 1989 to oversee regulatory issues. Chaired by Vice President Dan Quayle, the Council focused on reducing the cost of new and existing regulations. In January 1992, President Bush issued a 90-day moratorium on new regulations. During the moratorium, agencies were directed to identify existing regulations imposing unnecessary regulatory burdens and to develop programs to reduce or eliminate those burdens. The moratorium was later extended through the rest of President Bush's term in office.

On October 4, 1993, President Bill Clinton issued Executive Order 12866, revoking prior Executive Orders, but incorporating or restating some of the key provisions from those prior orders. And

President Clinton has continued President Bush's efforts to make the Vice President a central figure in the regulatory process.

The case for enacting a regulatory moratorium is this: Regulations have grown dramatically in number and complexity over the recent past, and there are strong signs they will continue to grow.

Regulations can also be measured by the costs they impose on the American people. The Clinton Administration has estimated that federal regulations cost the private sector alone "at least $430 billion per year—9 percent of our gross domestic product."[3] Other conservative estimates put the private sector cost of regulation at over $580 billion per year—and rising.[4] Regulations are costly to the federal government as well.[5]

As taxpayers, the American people have a right to ask whether they are getting their money's worth. Currently, too few regulations are subjected to stringent cost/benefit analysis or risk assessment based on sound science. Without such protections, regulations can have unintended results.

Without significant new controls, the volume of regulations will only grow larger. In a recent Presidential publication, the Administration listed 4,300 additional rulemakings scheduled for fiscal year 1995 and beyond, with 872 final rules set to be released in the six months between October 1994 and April 1995.[6]

In light of the significant but largely unsuccessful efforts of the Executive branch to control the regulatory process, major substantive reform is now high on the agenda of the 104th Congress. In order to implement needed reform, however, it is important to temporarily put a "hold" on the promulgation of new regulations by passing the Regulatory Transition Act of 1995. There are at least two clear benefits to this Act. First, a moratorium will provide both the executive and the legislative branches (as well as the regulated public) with more time to focus on ways to fix current regulations and the regulatory system. Everyone involved in the regulatory process will be largely freed from the daily burden of having to review, consider and correct newly promulgated regulations (which currently average over 200 pages every working day). Second, regulations will be temporarily suspended and re-evaluated to ensure they can pass the new standards that will emerge with substantive regulatory reform.

III. LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

Just before the 104th Congress convened, the idea for a moratorium on new regulations was proposed as a Presidential Executive Order. On December 12, 1994, Republican leaders of the House and Senate asked President Clinton to voluntarily impose a moratorium on all federal rulemaking for the first 100 days of Congress (see letter in appendix). They asked the President to direct agencies to: (1) identify regulations in which the costs exceed the benefits; (2) recommend actions to eliminate unnecessary regulatory burdens; (3)

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[3] Vice President Al Gore, "From Red Tape to Results: Creating a Government that Works Better & Costs Less," Report of the National Performance Review, Sept. 7, 1993, at 32.

[4] Thomas D. Hopkins, "Costs of Regulations: Filling the Gaps" (Rep. prepared for Reg. Info. Service Center) Table 2 (Aug. 1992) (estimate for 1933, in 1991 dollars).

[5] See The Heritage Foundation, "A Citizens Guide to Regulation," at 1 (edited by S. Eckerly, Sept. 1994).

[6] See Regulatory Plan and Unified Agenda of Federal Regulations, (Nov. 14, 1994).

recommend ways to give state, local and tribal governments more flexibility to meet federal mandates; and (4) share their information and analysis with Congress.

Two days later, the President responded (see letter in appendix). The Administration disputed Congress belief that a moratorium was the best way to proceed with regulatory reform.

After the President rejected a voluntary moratorium, Senator Don Nickles (R–OK), along with 34 other co-sponsors, introduced the Regulatory Transition Act of 1995 on January 12, 1995.

Committee hearings

On Tuesday, February 7, 1995 at 10:00 a.m., the Committee on Governmental Affairs met pursuant to notice. The purpose of the hearing was to receive testimony form members of the Senate on S. 219, the Regulatory Transition Act of 1995, as well as on proposals to reform the regulatory process.

The Honorable Don Nickles (R–OK), the sponsor of S. 219, testified in support of his bill. He stated that the first step to reforming the regulatory process was to put a hold on new regulations so that they can be reviewed and questioned for their necessity. He recounted that on December 12, 1994, the Republican leadership of the House and Senate wrote to President Clinton and requested that he impose a moratorium on new regulations. The Administration rejected the request, and ignored the health and safety exceptions suggested in the letter and raised the emotional examples of regulations dealing with ''tainted meat'' and ''Desert Storm Syndrome.''

Senator Nickles stated that the purpose of the temporary moratorium is to give Congress enough time to pass legislation to comprehensively change the regulatory process. He stated that he was pleased to join Senator Dole in introducing S. 343, the ''Comprehensive Regulatory Reform Act.'' Senator Nickles also noted that he introduced S. 348, the ''Regulatory Oversight Act of 1995,'' to provide a 45-day review period for Congress to enact a joint resolution to reject any final regulation.

Senator Hutchison, a co-sponsor of S. 219, spoke strongly in favor of the bill. She emphasized the need for swift action on the moratorium and noted that the bill contains an exemption for regulations designed to address harm to people.

On Wednesday, February 22, at 10:00 a.m., this Committee held another hearing on S. 219 at the request of the minority. Before the hearing, on the Friday, February 17, the staff of Senator Nickles made available a revised draft of S. 219, which they designed to address concerns raised about the original bill. (A modification of this draft was used by the Committee in marking up the legislation.)

The Honorable Sally Katzen, Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, testified in opposition to the bill. She said she believed regulations were not inherently good or bad, but rather had the potential to be either. She testified that excessive or poorly designed regulations can cause confusion and delay and generate unreasonably burdensome compliance costs. She also stated, however, that they can assure equal access to markets, limit pollution, and provide

other benefits to society. She said she opposed S. 219 because it would stop good regulations as well as bad ones, and substitute an arbitrary administrative process for substantive improvements. She also raised a number of questions about the definitions and exemptions in the bill. However, she also stated that she had not reviewed the revised draft of S. 219 prepared by the staff of Senator Nickles.

Mr. Stephen Kaplan, the General Counsel of the Department of Transportation, stated that he strongly believed that imposing a moratorium, such as that suggested by S. 219, may cause damage to those it is intended to help, and will result in unnecessary and unintended injuries and loss of life.

Mr. William Schultz, the Deputy Commissioner for Policy, Food and Drug Administration, stated that S. 219 would seriously impede the ability of the FDA to take appropriate action to reduce or eliminate risks to public health. He provided examples of regulations he believed could be affected by the moratorium.

Mr. C. Boyden Gray, Chairman of Citizens for a Sound Economy and Partner, Wilmer Cutler & Pickering, testified in support of S. 219 and of a timeout on regulations. He stated that in 1981 and again in 1992, a timeout on issuing regulations had permitted the White House to tell the agencies to review the regulations being promulgated. He stated that he was not aware of any great public health or safety difficulties arising out of either of those moratoria. Mr. Gray further stated that he did not believe that many of the regulations cited at the hearing by opponents of the moratorium would be stopped by S. 219. He also stated that a regulatory moratorium would not be so difficult to manage and would provide an important time-out to review existing regulations. He noted that the moratorium would capture many unduly expensive rules and that, in particular, EPA's California Car Rule and Enhanced Monitoring Rule were extremely burdensome.

Mr. Thomas J. Donohue, President and Chief Executive Officer, American Trucking Associations, Inc., testified in support of S. 219. He said that he believes that a moratorium on federal rules is necessary while setting up a system that would allow for cost/benefit analysis and risk assessment of regulations. He stated that, as an example, rules for pre-employment and random alcohol testing of truck drivers would cost the trucking industry $250,000,000 in one year, even though in a random test only .2% of truck drivers failed a .02% alcohol standard. In addition, he cited as another example of undue and burdensome regulations to which the moratorium is properly directed as the Occupational Safety and Health Administration's (OSHA's) upcoming ergonomics proposal. He said this rule might well require that trucks be steered in a different way or might prevent workers from lifting more than 25 pounds. He said that the rules were not cost-effective.

Mr. Dean McGrath, Senior Attorney with the American Automobile Manufacturer's Association, testified in support of S. 219. He said that the auto industry, as one of the most heavily regulated industries in the country, can name many examples of good legislative intentions gone awry. In particular, Mr. McGrath supported the fact that the moratorium would suspend the EPA approved petition submitted by the Northern States and the District

of Columbia that would mandate the adoption of California's auto emissions program in the Northeastern States. Mr. McGrath also said that the AMAA supported S. 219's exception for regulations dealing with imminent threats to health and safety and other emergencies. Finally, he supported applying the moratorium retroactively. He believed that this would address the concern that has been expressed that some rules were issued simply to avoid contrary direction from the new Congress. He said that he believed that limiting this potential "political" perception problem could only enhance the integrity of the regulatory process.

Mr. Sal Risalvato, owner of Riverdale Texaco, Riverdale, New Jersey, testified that government regulation had cost him and his business thousands of dollars. He said he had spent $95,000 making adjustments to new tanks in order to comply with environmental regulations. He also said federal regulators were trying to force New Jersey to perform new emissions inspections that would cause him to purchase equipment costing from $35,000 to $100,000. He said he believed the moratorium period would allow the Committee to look at regulatory reforms, and that he believed a longer moratorium was needed.

Mr. Rainer Mueller, a private citizen and founder of Safe Tables Our Priority (STOP), testified in opposition to S. 219. He stated that his son Eric Mueller died as a result of eating meat contaminated with E. coli bacteria. Mr. Mueller stated that a new meat inspection rule which could have prevented his son's death would be stopped by this legislation. Specifically he referred to the USDA proposed Hazardous Analysis Critical Control Point (HACCP) regulations to improve meat and poultry inspection. Under HACCP, likely hazards in a production system are regularly monitored on the basis of risk. Risks are identified, their controls determined and monitored, and end products are periodically sampled to check the HACCP process. Mr. Mueller stated that S. 219 would freeze this regulation, effectively maintaining what he believes is an outdated and broken meat and poultry inspection system.

Mr. David G. Hawkins, Senior Attorney with the Natural Resources Defense Council, testified in opposition to S. 219. He stated that a moratorium was the wrong tool for better regulation. He said a moratorium would delay important public protections, such as child-resistant packaging, and would lead to many deaths. He emphasized that the fundamental flaw of a moratorium is that it would prevent the adoption of beneficial rules. Mr. Hawkins noted that the focus of the Senate moratorium bill is on big rules, but that only guarantees that the moratorium will stall many rules that would have provided big benefits to the public. He stated that the rules on municipal waste incinerators and medical waste incinerators, for example, could reduce 200,000 tons of toxic emissions annually but would be blocked by the moratorium.

Mr. Hawkins also noted that significant rules are the most closely analyzed rules under President Clinton's Executive Order 12866. He questioned the value of delaying the very rules that receive the most analysis. He also forecasted that S. 219 would encourage OMB not to classify rules as significant to avoid the moratorium. Those rules then would not receive close scrutiny under E.O. 12866.

Finally, Mr. Hawkins stated that the section 7 of S. 219 does not adequately foreclose judicial review. He said the revised language would not preclude judicial review in a challenge to a final rule. He also stated that S. 219 makes a rule already proposed an illegality. He stated that the retroactive effect of the moratorium will have unpredictable impacts on existing contracts, business relations, and the economy.

Amendments and Committee action

On March 7, 1995 and on March 9, 1995, the Committee on Governmental Affairs marked up the bill and on March 9 reported the bill, as amended, on a roll call vote of 6 Ayes and 5 Nays. Voting in the affirmative were Senators Roth, Cohen, Thompson, Cochran, Grassley, and Smith. In addition, Senators Stevens and McCain voted in the affirmative by proxy. Negative votes were cast by Senators Glenn, Levin, Lieberman, Akaka, and Dorgan. Senators Nunn and Pryor were noted by proxy as being opposed.

Moreover, a number of amendments were offered, debated and voted upon, including the following:

Accepted:

(1) Roth Substitute for S. 219 (voice vote):

Limits moratorium to ''significant regulatory action taken during the moratorium period'' (no longer action ''made effective'' during the moratorium);

Extends moratorium period to ''time beginning November 9, 1994, and ending on December 31, 1995, unless an Act of Congress provides for an earlier termination date for such a period.''

Limits judicial review language to ''No determination under this Act shall be subject to adjudicative review before an administrative tribunal of court of law.''

(2) Cochran amendment to exempt ''any action taken to ensure the safety and soundness of a Farm Credit System institution or to protect the Farm Credit Insurance Fund.'' (voice vote)

(3) Pryor amendment to exempt ''any agency action that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping, if a Federal law prohibits such activity in the absence of agency action.'' (voice vote)

(4) Akaka amendment to exempt ''the promulgation of any rule or regulation relating to aircraft overflights on national parks, except those in Alaska, by the Secretary of Transportation or the Secretary of Interior pursuant to the procedures specified in the advanced notice of proposed rulemaking published on March 17, 1994, at 59 Fed. Reg. 12740 et seq.'' (voice vote)

(5) Levin amendment to exempt ''any significant regulatory action which establishes or enforces any statutory rights that prohibit discrimination on the basis of race, religion, sex, age, national origin or handicapped or disability status.'' (voice vote)

(6) Glenn amendment to exempt ''any regulatory action to improve safety, including such an action to improve airworthiness of aircraft engines.'' (voice vote)

(7) Glenn amendment to exempt ''any regulatory action that would upgrade safety and training standards for commuter airlines to those of major airlines.'' (voice vote)

(8) Glenn amendment to exempt ''any regulatory action by the Environmental Protection Agency that would protect the public from exposure to lead from house paint, soil or drinking water.'' (voice vote, 3/9)

(9) Thompson amendment to exempt ''any clarification of existing responsibilities regarding highway safety warning devices'' (intended to cover railroad crossings). An amendment that would clarify existing responsibilities regarding highway safety warning devices so as to promote safety, and would allow a proposed Department of Transportation rule to go forward for public comment. (voice vote)

(10) McCain amendment to exempt actions ''limited to matters relating to negotiated rulemaking carried out between Indian tribal governments and that agency under the 'Indian Self-Determination Act Amendments of 1994 (Public Law 103–413)'.'' (voice vote)

(11) Grassley amendment to include in the moratorium actions to ''carry out the Interagency Memorandum of Agreement Concerning Wetlands Determinations for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act (59 Fed. Reg. 2920); or any method of delineating wetlands based on the Memorandum of Agreement for purposes of carrying out subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.) or section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).'' (voice vote)

(12) Stevens amendment to extend the moratorium to include any action that ''withdrawals or restricts recreational, subsistence, or commercial use of any land under control of a Federal agency, except'' with respect to ''military or foreign affairs or international trade'' or ''principally related to agency organization, management, or personnel'', and to define ''public property'' as ''all property under the control of a Federal agency, other than land'' (in order to preclude any Presidential exemptions of public land rules under the public property exemption in Section 5(F) (accepted 8–5) Voting in the affirmative were Senator Roth, Stevens, Thompson (by proxy), Cochran, Grassley (by proxy), McCain (by proxy), Smith (by proxy) and Dorgan. Negative votes were cast by Senators Glenn, Nunn, Levin, Lieberman (by proxy), and Akaka (by proxy).

(13) Glenn amendment to exempt ''any regulatory action to provide compensation to Persian Gulf War Veterans for disability from undiagnosed illnesses, as provided by the Persian Gulf War Veterans' Benefit Act.'' (accepted 8–6) Voting in the affirmative were Senators Glenn, Nunn, Levin (by proxy), Pryor (by proxy), Lieberman, Akaka (by proxy), Dorgan (by proxy) and Smith. Negative votes were cast by Senators Roth, Cohen, Thompson (by proxy), Cochran, Grassley (by proxy), and McCain (by proxy).

Rejected:

(1) Glenn amendment to exempt ''any regulatory action to reduce pathogens in meat and poultry taken by the Food Safety and Inspection Service of the U.S. Department of Agriculture, including Hazardous Analysis Critical Control Point (HACCP) regulations.'' (rejected 7–7) Voting in the affirmative were Senators Glenn, Nunn

(by proxy), Levin, Pryor (by proxy), Lieberman (by proxy), Akaka, Dorgan (by proxy). Negative votes were cast by Senators Roth, Stevens (by proxy), Thompson (by proxy), Cochran (by proxy), Grassley, McCain (by proxy), and Smith (by proxy).

(2) Glenn amendment to exempt "any regulatory action by the Environmental Protection Agency that relates to control of microbial and disinfection byproduct risks in drinking water supplies." (rejected 7–8) Voting in the affirmative were Senators Glenn, Nunn (by proxy), Levin, Pryor (by proxy), Lieberman (by proxy), Akaka (by proxy), and Dorgan. Negative votes were cast by Senators Roth, Stevens (by proxy), Cohen, Thompson (by proxy), Cochran (by proxy), Grassley, McCain, and Smith.

(3) Glenn amendment to exempt "any regulatory actions to ensure safe and proper disposal of radioactive waste, as well as any action regarding decontamination and decommissioning of NRC-licensed sites. (rejected 7–8) Voting in the affirmative were Senators Glenn, Nunn (by proxy), Levin (by proxy), Pryor (by proxy), Lieberman (by proxy), Akaka, and Dorgan, Negative votes were cast by Senators Roth, Stevens (by proxy), Cohen (by proxy), Thompson (by proxy), Cochran, Grassley, McCain (by proxy), and Smith.

(4) Levin amendment to exempt "any significant regulatory action the principal purpose of which is to protect or improve human health or safety and for which a cost-benefit analysis has been completed and the head of the agency taking such action has concluded to the extent permitted by law that the benefits justify the costs." (rejected 7–7) Voting in the affirmative were Senators Glenn, Nunn (By proxy), Levin, Pryor (by proxy), Lieberman (by proxy), Akaka, and Dorgan (by proxy). Negative votes were cast by Senators Roth, Stevens (by proxy), Thompson (by proxy), Cochran (by proxy), Grassley, McCain (by proxy), and Smith.

(5) Levin amendment to:

Eliminate retroactivity of the moratorium, making the period "from the date of enactment of this Act until December 31, 1995" (rather than starting on November 9, 1994);

Require the President to "publish in the Federal Register a list of all rules covered by [the moratorium]" (a one-time reporting rather than a monthly reporting requirement); and

Limit the moratorium to significant, final rules (no longer extending the moratorium to a "substantive rule, interpretative rule, statement of agency policy, guidance, guidelines, or notice of proposed rulemaking"). (rejected, 7–8) Voting in the affirmative were Senators Glenn, Nunn, Levin, Pryor (by proxy), Lieberman (by proxy), Akaka (by proxy), and Dorgan (by proxy). Negative votes were cast by Senators Roth, Stevens (by proxy), Cohen, Thompson (by proxy), Cochran (by proxy), Grassley, McCain, and Smith.

(6) Levin amendment to exempt any deadlines from the moratorium that are statutorily or judicially mandated. (The amendment deletes "Section 4. Special Rule on Statutory, Regulatory, and Judicial Deadlines"). (rejected 7–8) Voting in the affirmative were Senators Glenn, Nunn, Levin, Pryor (by proxy), Lieberman (by proxy), Akaka (by proxy), and Dorgan. Negative votes were cast by Sen-

ators Roth, Stevens (by proxy), Cohen, Thompson (by proxy), Cochran (by proxy), Grassley, McCain, and Smith.

(7) Levin amendment to delete the five month extension of the moratorium for deadlines. (The current bill states that "any deadline for . . . any significant regulatory action . . . is extended for 5 months or until the date occurring 5 months after the end of the moratorium, whichever is later.") (rejected 7–8) Voting in the affirmative were Senators Glenn, Nunn, Levin, Pryor (by proxy), Lieberman, Akaka (by proxy), and Dorgan. Negative votes were cast by Senators Roth, Stevens (by proxy), Cohen, Thompson (by proxy), Cochran (by proxy), Grassley, McCain, and Smith.

(8) Levin amendment to exempt "any significant regulatory action which is the consensual product of regulatory negotiation pursuant to the Regulatory Negotiation Act." (rejected 7–8) Voting in the affirmative were Senators Glenn, Nunn (by proxy), Lieberman, Akaka, and Dorgan. Negative votes were cast by Senators Roth, Stevens (by proxy), Cohen (by proxy), Thompson (by proxy), Cochran, Grassley, McCain (by proxy), and Smith.

Tabled:

(1) Levin amendment to exempt "any significant regulatory action which enforces constitutional rights of individuals." (Table 8–7) Voting in the affirmative were Senators Roth, Stevens (by proxy), Cohen (by proxy), Thompson (by Proxy), Cochran (by proxy), Grassley, McCain (by proxy), and Smith. Negative votes were cast by Senators Glenn, Nunn (by proxy), Levin, Pryor (by proxy), Lieberman (by proxy), Akaka, and Dorgan (by proxy).

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The name of the Act is the "Regulatory Transition Act of 1995".

Section 2. Finding

The purpose of the legislation is to promote effective measures for greater efficiency and proper management in government operations. These efforts include the steps being taken by Congress to enact (A) requirements for cost/benefit analysis and (B) requirements for standardized risk analysis and risk assessment that use the best scientific and economic procedures, in the case of those federal regulations which are subject to risk analysis and risk assessment.

Section 3. Moratorium on regulations

Section 3(a) establishes a moratorium on federal significant regulatory actions that are not otherwise excepted or excluded under other provisions of the Act. Because the moratorium begins November 9, 1994 and may end December 31, 1995, the operative provisions of this subsection first direct that any federal agency may not take any significant rulemaking action beginning on the date of the enactment of the Act.

Because some time will have elapsed from November 9, 1994 until the enactment of the legislation, the Act also provides that, beginning on the thirtieth day following enactment, any regulatory rulemaking action that was taken or made effective between No-

vember 9, 1994 and the date of enactment shall be suspended until the end of the moratorium period. Both the moratorium on future significant regulatory actions and the suspension of actions already taken apply only to regulatory actions that have not been excluded or excepted under other provisions of the Act.

The thirty-day delay for the suspension of recent regulatory actions is intended to permit federal agencies and the OIRA Administrator, and the President time to identify or decide when rulemaking actions qualify for an exception.

The moratorium is intended to cover those regulatory rulemaking actions that are within the constitutional purview of this Congress. The Committee is aware that many rulemaking actions are appropriate and necessary for carrying out regulatory reform, are streamlining efforts already underway, are in response to imminent threats to health or safety or other form of emergency, or are otherwise appropriate to exclude from the moratorium, given the goals and objectives of this legislation in the context of larger regulatory reform efforts of which it is a part. Thus, this subsection refers to section 5 of the Act, which sets forth certain areas in which the President has discretion to provide exceptions to the moratorium.

Section 3(b) requires the Administrator of the Office of Information and Regulatory Affairs (OIRA) to provide an inventory, which shall be published in the Federal Register, of the significant regulatory actions that are covered by the moratorium and that were taken or made effective from the first day of the moratorium period, November 9, 1994, through the date of enactment. This requirement is intended to ensure that the public, the Congress, and agency officials have notice of those significant regulatory actions that are suspended by the moratorium.

Section 4. Special rules regarding certain deadlines

Section 4(a) extends certain statutory deadlines, as well as certain deadlines established by courts and regulation. Any deadline that is covered by the Act would be extended for either five months or until five months after the end of the moratorium period, whichever is later. In the case of deadlines that would expire during the moratorium period, even with a five-month extension, or which have already expired and with which agencies or others have not complied, those deadlines would be extended until the end of the moratorium period. This section covers any deadline for, relating to, or involving any action dependent upon a significant regulatory action authorized or required by statute or court order and that is authorized or required to be taken before the end of the moratorium period.

Section 4(b) defines the term "deadline" to mean any date certain for fulfilling any obligation or exercising any authority established by or under any statute or regulation, or by or under any court order implementing any federal statute or regulation. A date would be a date certain if it were specified in or could be readily calculated on the basis of a statute, regulation, or court order. A deadline would be covered if it is within the constitutional purview of this Congress. The court order directing EPA to issue a Federal Im-

plementation Plan for California would be an example of a court order deadline extended by this Act.

The committee is responding to both legal and practical concerns in this section. First, this section extends by power of law those deadlines that cannot be met because of the moratorium. Second, there are situations, such as under the Clean Air Act, in which statutory deadlines are prescribed for compliance and certain rulemaking actions are necessary preconditions for compliance with those deadlines. The failure to provide for an extension of those deadlines would, without this section, subject agencies, state officials, businesses, and the public to a severely compressed period in which to comply with the law. This section is intended to relieve that time compression. Thus, it is clear that not all deadlines are extended, only those deadlines that are directly or indirectly related to a significant regulatory action affected by the moratorium within these categories.

Section 4(c) contains a provision under which the Administrator of OIRA will identify the list of covered deadlines and will publish that list in the Federal Register within 30 days after the date of enactment of this Act.

Section 5. Emergency exceptions; exclusions

Section 5 defines certain areas in which the President is given discretion to make exceptions to the moratorium imposed by section 3, and the deadline extension under section 4. In particular, these areas include matters that pose an imminent threat to human health or safety or other emergency, or relate to the enforcement of criminal laws. The moratorium on rulemaking actions and the postponement of related deadlines are waived under the provisions of this section.

The President could except any specific regulatory rulemaking action upon a written request by an agency head. The President would need only to find in writing that a waiver for the action is appropriate because the regulatory action falls within the exemption areas of section 5(a)(2). For example, S. 219, like its House counterpart, allows the President to make an exemption where the regulatory action is: (A) necessary because of an imminent threat to health or safety or other emergency, or (B) necessary for the enforcement of criminal laws. The primary purpose of this exception is to ensure that the Act does not impede the promulgation of regulations that are necessary to address imminent threats to health or safety. This Committee intends the President to exercise reasoned discretion in making this certification, guided by this Committee's concern for the protection of the health and safety of the public.

It is the Committee's understanding that the President has ample authority to except from the moratorium the promulgation of rules and regulations that are necessary to make food safe from E. coli bacteria, so long as there are no accompanying extraneous requirements or arbitrary rules. Several witnesses so testified at this committee's hearings.

The inclusion of the word "imminent" is not intended to pose an insurmountable obstacle to the certification of health or safety regulations. Rather, it is intended to guard against the undisciplined use of this exception as a means to evade Congressional intent. For

example, this Committee does not intend this exemption area to apply to OSHA's regulations prescribing ergonomic protection standards, which require employers to build new work environments to prevent disorders associated with repetitive motions. Such regulations could not be excepted from the moratorium under section 5(a)(2) because they do not address a threat that is imminent.

It is the intent of the committee to allow the President, in his discretion, to exempt from the moratorium regulations which will prevent imminent threats to human health and safety. The Pathogen Reduction, Hazard Analysis and Critical Control Point (HACCP) Systems rulemaking proposed by USDA's Food Safety and Inspection Service is an example of a regulation which the President may decide, in his best judgment, warrants this action. USDA estimates that 5 million cases of food-borne illness can be attributed annually to meat and poultry products and that these illnesses result in 4,000 deaths each year. Implementation of the HACCP proposal is expected to reduce the number of these illnesses by 90 percent.

The Bureau of Alcohol, Tobacco, and Firearms has proposed to issue final regulations governing the alteration of producer recall information on containers of distilled spirits, wine and beer under the Federal Alcohol Administration Act of 1935 (27 U.S.C. 105e) that would facilitate the ability of the producer to recall his product to protect the health or safety of the consuming public. If so, these regulations could be excluded from the moratorium under this provision.

The bill as reported when compared to the bill as introduced allows further exemptions in section 5(a)(2) where the significant regulatory action is: (C) related to a regulation that has as its principal effect fostering economic growth, repealing, narrowing, streamlining, or otherwise reducing regulatory burdens; (D) related to military, foreign affairs, or international trade; (E) principally related to agency organization, management, or personnel; (F) a routine administrative action, or principally related to public property, loans, grants, benefits, or contracts; (G) related to negotiated rulemaking between Indian tribes and the applicable agency under the Indian Self-Determination Act Amendments of 1994; or (H) limited to interpreting, implementing, or administering the internal revenue laws of the United States.

In creating the exemption area for streamlining under section 5(a)(2)(C), the Committee notes that there are a number of ways a rule can be determined to be streamlining. Some rules, such as a pending decision to lower bank deposit insurance premium rates by the Federal Deposit Insurance Corporation, can be less burdensome on their face. Other rules can be excluded from the moratorium if they reduce regulatory burdens by providing more cost-effective methods for achieving the requirements of a law. Rules that implement market-based solutions or that provide alternate systems for compliance would also be among those that should qualify for this exclusion. Such an example would be regulatory changes currently being considered by the Environmental Protection Agency to its final reformulated gasoline rules. In addition, regulations promulgated under the authority of statutes that serve to streamline an agency function should also fall within this exclusion. An

example of a rule which meets these latter criteria is the rule establishing procedures for the Opt-In program for Combustion Sources under section 410 of the Clean Air Act. The opt-in program allows the sale of excess sulfur dioxide emission allowances resulting from voluntary emission reductions to sources which have sulfur dioxide compliance obligations under Title IV of the Clean Air Act. Another example of a rulemaking covered by this exclusion would be those regulations promulgated pursuant to the Federal Acquisition Streamlining Act of 1994 (P.L. 103–355).

The Committee notes that regulatory changes being sought by EPA and states with respect to the Inspection and Maintenance and Transportation Conformity rules under the Clean Air Act are activities that reduce regulatory burdens and therefore would qualify for an exemption under 5(a)(2)(C).

Section 5(a)(2)(C)'s exclusion for streamlining regulations should be broadly interpreted to include those agency actions required to determine whether a regulation is, in fact, streamlining in nature. For example, the Department of Transportation is currently considering whether alternative standards to the existing HM–181 standards are appropriate for open-head fibre drums used for the transportation of liquids. If the Department of Transportation determines that such alternative standards are appropriate, that decision could result in eliminating an unnecessary regulatory burden on the fibre-drum industry. Obviously, the Department should be permitted to not only promulgate such regulations (if appropriate), but also to take preliminary actions necessary to determine whether the alternative standards are appropriate. Similarly, the Bureau of Alcohol, Tobacco and Firearms is about to issue final regulations governing trade practices under the Federal Alcohol Administration Act of 1935 (27 U.S.C. 201 et seq.) that could simplify alcohol promotional practices. If so, these regulations could be excluded from the moratorium under this provision. The Committee is also aware that the EPA is scheduled to promulgate a final rule in August 1995 clarifying the liability of secured creditors under the EPA's underground storage tank regulations. Such a rule is likely to reduce regulatory burdens in this area and could be excluded from the moratorium on this basis.

In order to avoid any ambiguity, the Committee explicitly notes that actions taken under Section 301 of the Trade Act of 1930 (19 U.S.C. 2411 et seq.) would be exempt from the moratorium. Section 301 authorizes the USTR to enforce United States rights under trade agreements, and therefore is an enforcement function and not a regulatory action. This, therefore, is not a matter committed to Presidential discretion under subsection 5(a)(2)(D).

There are many other examples of rules that streamline or reduce the regulatory burden. The Environmental Protection Agency has been working for some time to streamline existing regulations on the phaseout of the production of ozone-depleting chemicals and to reduce burdens imposed by those regulations. The new rule accomplish several goals. The new regulations will be consistent with the Montreal Protocol on Substances that deplete the Ozone Layer by permitting U.S. producers of ozone-depleting chemicals to continue to produce and sell those chemicals in foreign markets for feedstock use. This would narrow and streamline the existing rule

by providing treatment for production for export feedstock use consistent with the existing rules for domestic feedstock use. The regulations also would modify rules on the import of "used" or "recycled ozone-depleting chemicals to reduce illegal imports. The Committee believes that the exemption for rules that streamline rules or otherwise reduce regulatory burdens would apply to these EPA regulations on the phaseout of ozone-depleting chemicals.

The Committee intends the term "international trade" in subsection 5(a)(2)(D) to be read broadly to exempt from the moratorium regulatory actions, that interpret, implement or administer the nation's import, export, and tariff laws, such as the Customs Modernization Act, that was part of the implementing legislation for the North American Free Trade Agreement. Pub. Law 103–182, 107 State. 2057 (Dec. 8, 1993). The Committee intends the exclusion for regulations relating to international trade agreements to provide the Executive branch with the flexibility to promulgate appropriate regulations to carry out international trade agreements, such as the NAFTA and the Uruguay Round of the GATT, including all agency actions required by the Uruguay Round Agreements Act.

Section 5(a)(2)(F)'s exclusion for routine administrative functions is intended by the Committee to be an exception for regulations that are purely routine or administrative in nature. This category of exclusion was initially created out of bipartisan concern that such obvious regulatory necessities as the authorization of daylight savings time (which is contained in 49 C.F.R. Part 71.2) should not be included in the moratorium.

It is also the intent of the Committee that the exception for routine administrative functions provided by section 5(a)(2)(F) would provide an exemption for agencies, such as the Nuclear Regulatory Commission, or the Securities and Exchange Commission for any regulations concerning the collection of user and/or filing fees.

The Committee also notes that the exception provided by section 5(a)(2)(F) for significant regulatory action principally related to "benefits" would exempt from the moratorium regulations concerning the distribution of benefits, including veterans benefits. The committee adopted an amendment to specify that the moratorium would not apply to any regulation to compensate Persian Gulf War veterans for disability from undiagnosed illnesses. However, this amendment does not mean that the "benefits" exception does not cover benefits for gulf War veterans, other veterans or other benefit recipients.

It is the opinion of the Committee that the regulations published on January 6, 1995 implementing the Federal Crop regulations necessary for the implementation of that Act fall completely within the exception provided within this legislation under section 5(a)(2)(F) and, therefore, are exempt from any moratorium established by this legislation. That Act provides benefits to farmers through insurance policies or contracts and thus this bill should not be used to withhold such benefits or interfere with such contracts as provided for under the exception in section 5(a)(2)(F).

It is the expectation of the Committee that the Treasury Department will not invoke the exception granted actions relating to internal revenue laws so as to issue regulations inconsistent with the

historical views of the Congress regarding the export source rules of section 863(b) or to reverse a court decision interpreting that section.

Section 5(a)(3) requires that findings to exclude significant regulatory actions from the moratorium under section 5 must be published in the Federal Register by the agency head.

Section 6. Definitions

Section 6 contains the definitions of certain terms used in the Act.

Section 6(1) defines ''Federal agency'' in the same manner as that term is defined in the Administrative Procedures Act, 5 U.S.C. 551(1).

Section 6(2) defines ''moratorium period'' as the period of time beginning November 9, 1994, and ending on December 31, 1995, (unless an Act of Congress such as regulatory reform legislation provides an earlier termination date).

Section 6(3) defines ''significant regulatory action'' by stating the general rule in subsection (A)(i) and further limiting the term in subsection (A)(ii). Subsection 6(3)(A)(i) defines ''significant regulatory action'' to include the issuance of any substantive rule, interpretive rule, statement of agency policy, guidance, guidelines, or notice of proposed rulemaking. Section 6(3)(A)(ii) further limits the term ''significant regulatory action'' to any action that the Administrator of the Office of Information and Regulatory Affairs finds—(i) has an annual effect on the economy of $100,000,000 or more or adversely affects in a material way the economy, a sector or the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (ii) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (iii) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Subsection 6(3)(B) then expands ''significant regulatory action'' to cover certain restrictions on the use of public lands and certain wetlands determinations. The authority to grant exceptions provided by section 5(a)(2) does not apply to the wetlands determinations covered by section 6(3)(B)(ii). Finally, section 6(4) provides added exclusions to the term ''significant regulatory action'' through the definition of ''rule; guidance; or guidelines''.

The definition of ''significant regulatory action'' does not include cost/benefit analysis and risk assessment actions, as well as activity necessary for conducting a cost/benefit analysis or risk assessment on regulations already proposed (or already promulgated). Obviously, such an analysis or assessment would not be conducted where a regulation has not yet been issued or proposed, nor could the allowance of such activity be considered as a means to permit new proposed rulemaking to be issued.

Section 6(4) defines ''rule,'' ''guidance,'' or ''guideline'' as the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or pre-

scribe law or policy. Having affirmatively stated the meaning of "rule," "guidance," or "guidelines," this subsection clarifies the meaning by listing a variety of agency actions that do not constitute a "rule," "guidance," or "guidelines." Because such actions are outside of the definition of "rule," "guidance," or "guidelines", they are likewise outside the scope of the moratorium and do not need to be certified as an exclusion or exception in order for the action to occur.

One of the general principles underlying this list of non-rules, non-guidance, and non-guidelines is a concern that the free market be allowed to operate without additional interference from government. Thus, agency actions that must be taken in order for new technology, products, or services to be made available to the public are not intended to be stopped by the moratorium. For example, the Act does not prohibit the Federal Communications Commission from issuing rules to establish and govern the introduction of a new communications service, including those that involve changes in the use of the radio spectrum. Nor does the Act prohibit the Food and Drug Administration from issuing pre-market approvals for pharmaceuticals, medical devices, and food additives.

The Committee also intends the list of non-rules, non-guidance, and non-guidelines to include the expansion, contraction, or limitation of authority to harvest Federal fishery resources as recommended by a Regional Fishery Management Council or the Atlantic States Marine Fishery Commission. Moreover, amendments to existing regulations promulgated by the USDA Agricultural Marketing Service relating to self-help or industry marketing initiatives designed to improve the agricultural marketing sectors ability to distribute agricultural commodities were not intended to be included in the meaning of the term "rule."

The Committee intends that the term "rule" does not include rules of securities self-regulatory organizations registered with the Securities and Exchange Commission. Section 19(b) of the Securities and Exchange Act of 1934 requires self-regulatory organizations such as national securities exchanges to submit their own rules to the SEC for publication in the Federal Register, opportunity for public comment, and SEC approval or disapproval. Self-regulatory organizations need rule-making flexibility to ensure the orderly operation of the securities markets. Their rules are not federal rules for the purpose of this legislation, but private sector rules which require SEC approval under the securities laws.

The Committee understands that there could well be overlapping bases for exclusions from the moratorium. In particular, section 6(4)(L) removes from the definition of "rule," "guidance," or "guidelines" agency actions that tend to ease regulatory burdens. Such regulations could also be excluded from the moratorium by section 5(a)(2)(C)'s exclusion for streamlining regulations. The Fish and Wildlife Service's proposed 4(d) rule for the Northern Spotted Owl is an example of the type of rulemaking that should move forward under S. 219. According to the Administration, the proposed rule will provide "relief from certain of the current restrictions and would increase timber available for harvest on non-federal lands, provide certainty to landowners—in particular small to mid-sized landowners—and minimize social and economic costs resulting

from the conservation of the owl.'' This proposed rule clearly meets the definition of excluded regulatory rulemaking action. The Committee encourages the Fish and Wildlife Service to develop other 4(d) rules with similar economic and social effects. Such special rules to reduce the impact of the Endangered Species Act on private property are actions to relieve regulatory restrictions under section 6(4)(D).

The Committee intends to exclude from the definition of ''rule'' the final rule issued by the United States Department of Agriculture (and published in the Federal Register on Dec. 6, 1994) on meat derived from advanced separation machinery. This rule effectively relieves a regulatory restriction on the meat industry by updating the definition of meat, and permitting the meat industry to treat as meat rather than as ''mechanically separated (species)'' those ingredients derived from machines that separate meat from bone without grinding, crushing, or pulverizing the bone. Under prior regulation, meat that was mechanically de-boned could not be marketed as meat, but only as ''mechanically separated (species).'' This rule recognizes the advance in meat/bone separation technology over prior systems, allows the public to benefit from this new technology, and permits industry to distribute its product properly identified as meat rather than as ''mechanically separated (species).''

Section 6(4)(B) contains an exception to the moratorium to provide for actions taken in connection with the implementation of monetary policy or actions taken to ensure the safety and soundness of federally insured depository institutions, credit unions, or government sponsored housing enterprises or to protect the deposit insurance funds. Safety and soundness regulations are designed to supervise conduct contrary to accepted standards of banking operations which might result in abnormal risk or loss to banking institutions or shareholders. The moratorium will in no way affect such safety or soundness regulations. Moreover, as explained above, the moratorium does not prevent the Federal Deposit Insurance Corporation from proposing and subsequently adopting a revised rule to reduce the deposit insurance premiums paid by banks. In providing this exception, the Committee also wants to make clear that any regulations relating to the Community Reinvestment Act, the Truth in Lending Act or any other consumer law are not to be considered matters of safety or soundness and are not covered by this limited exclusion in any manner.

The Committee intends to exclude from the definition of ''rule'' such regulations as issued on February 15, 1995, by the Department of Housing and Urban Development to revise and clarify the final rule on escrow accounting procedures under the Real Estate Settlement Procedures Act. The February 15 regulations reduce regulatory burden by eliminating a requirement to provide a detailed explanation, when providing borrowers with their annual escrow account statement, of why the low point in the escrow account may have exceeded the amount permitted by the regulation.

The Senate bill preserves the independence of the Federal Reserve Board (and other financial regulators) in section 6(4)(B), by exempting from the definition of ''rule'' (and thereby exempting from the moratorium) prescriptions of rates and ''any action taken

in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions.

It is the intent and understanding of the Committee that section 6(4) exempts any restrictions on actions to implement self-help marketing initiatives, marketing order mergers, or generic promotion programs. Therefore, such programs would not be subject to the moratorium on regulations provided by the bill.

For purposes of section 6(4)(B), the term "government sponsored housing enterprise" has the same meaning as the word "enterprise" as that word is defined in section 1303(6) of the Housing and Community Development Act of 1992. It is the Committee's understanding and intent that the following agencies would be covered by section 6(4)(B): the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Office of Federal Housing Enterprise Oversight.

Section 6(5) defines "license" as an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission.

Section 6(6) defines "public property" as all property under the control of a Federal agency, other than land.

Section 7. Exclusions

This section makes clear that the Act does not apply to any significant regulatory action to prohibit discrimination on the basis of race, religion, sex, age, national origin, handicap, or disability status.

Section 8. Civil Actions

This section makes it clear that the Act prohibits adjudicative review of any determination under the Act by any administrative tribunal or court of law.

Section 9. Severability

Section 9(a) states that the Act supersedes other law, and is effective notwithstanding any other provision of law.

Section 8(b) makes each provision of the Act severable from each other provision. If a court holds any provision of the Act to be invalid, or holds invalid the application of any particular provision of the Act in any particular or general circumstance, only the specific provision at issue shall be affected. The remainder of the Act, and its application in all other circumstances, shall remain in full force and effect.

V. REGULATORY IMPACT OF LEGISLATION

Paragraph II(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill." Because enactment of S. 219 would not result in any additional regulation of individuals and would simplify present law, the Committee anticipates a beneficial result from the moratorium on regula-

tions and from the subsequent regulatory reform legislation the moratorium is intended to serve.

VI. COST ESTIMATE OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 15, 1995.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 219, the Regulatory Transition Act of 1995, as ordered reported by the Senate Committee on Governmental Affairs on March 9, 1995. We estimate that enacting the bill would result in changes in discretionary administrative and other costs to the federal government, but that the net changes would be less than $500,000 annually. In addition, enacting S. 219 could affect direct spending; however, the consequences of the bill are not sufficiently clear for CBO to be able to determine whether there would be such effects or how much they would be. Because the bill could affect direct spending, pay-as-you-go procedures would apply.

Bill purpose

S. 219 would prevent federal agencies from taking most significant regulatory rulemaking actions from the date of enactment of the bill until December 31, 1995. (The bill defines a significant regulatory action generally as one having an economic impact of at least $100 million annually.) In addition, beginning 30 days after enactment, most significant rules issued during the period from November 9, 1994, to the date of enactment would be suspended until December 31, 1995. Deadlines relating to such suspended rules would be extended for five months or until December 31, 1995, whichever is later. These provisions could be waived if the Office of Information and Regulatory Affairs within the Office of Management and Budget finds that the regulatory action involves an imminent emergency or the enforcement of criminal laws. Many other regulatory rules also would be exempt from S. 219, including those relating to the internal revenue laws of the United States.

Impact on discretionary spending

Agencies would incur some additional costs to determine which of their existing significant rules should be suspended and to resolve issues that result from extending the deadlines. Agencies also would have to determine which proposed new significant rules would meet the exemptions of the bill and could therefore be implemented. These tasks, and others relating to S. 219, are not done under current law; however, agencies could save some resources that would otherwise be used to write new regulations. CBO estimates that any net administrative costs or savings from enacting the bill would be less than $500,000 annually.

Impact on direct spending

The impact of the rulemaking moratorium on direct spending and receipts is uncertain both in magnitude and direction. Whether or not a direct spending program is affected would depend on how an agency interprets the bill's exemptions (in section 5) and the bill's definition of a significant regulatory action (in section 6).

The rulemaking moratorium could affect the issuance of regulations governing the payment rates for some federal benefit programs, like Medicare or Medicaid. But the exclusion in section 5(a)(2)(F) could be interpreted to mean that regulations specifying changes in such benefit programs would not be affected by the moratorium. Moreover, because S. 219 does not change the laws underlying entitlement benefits, the rights of individuals to benefits specified in law should not be affected. However, implementation of the law often depends on Federal Register notices and regulations that indicate how the law is to be implemented. A delay in publishing regulations might well lead to litigation because of differing interpretations of the law.

CBO also considered whether or not enactment of this legislation could interfere with the ability of agencies, such as the Nuclear Regulatory Commission (NRC), to assess user fees and charges. Under current law, NRC and other agencies will issue rules this year to collect more than $500 million in user fees, with the NRC accounting for about $400 million of these fees in 1995. S. 219 could prevent the collection of such fees if agencies are prevented from issuing the necessary regulations. Based on information from the administration, however, we expect that most agencies would take the actions necessary to collect user fees, claiming that their collection efforts are exempted from the moratorium imposed by S. 219. Some agencies could claim that their actions in collecting fees do not meet the definition of a significant regulatory action in section 6 of the bill, while others may rely on one of the exemptions included in section 5. Because such agency determinations are not subject to judicial review, CBO does not expect enactment of this bill to interfere with collection of these user fees.

Specific reference in section 6 to regulations affecting management of federal lands and programs regulating wetland conservation areas could increase direct spending. In the case of federal land management, enacting the bill could hinder implementation of the President's Forest Plan for the northwest. Failure to implement this plan could result in a court injunction, limiting or shutting down timber harvests in certain regions where previous endangered species determinations would apply. Based on information provided by the Department of Agriculture, we believe that issuance of an injunction could lower timber receipts in the Pacific Northwest.

A limitation on agency actions applying to wetland conservation could encourage farmers to utilize acreage otherwise subject to use restrictions. If this leads to increased planting of crops supported by Department of Agriculture commodity programs, then federal outlays would increase. Again, however, the bill provides latitude for exempting specific actions, and because such determinations are not subject to judicial review, there is no indication that the admin-

istration would significantly alter these programs of the Department of Agriculture.

Impact on State and local governments

Enacting S. 219 would not affect any routine, ongoing payments to state and local governments, but the bill could affect federal payments that are subject to rulemaking during the period covered by the bill. It is possible that some regulatory actions that would otherwise provide relief to state and local governments could be delayed or precluded, thereby increasing their costs for various activities. CBO has no basis for predicting the direction, magnitude, or timing of such impacts.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz, who can be reached at 226–2860, and Paul Cullinan.

Sincerely,

JUNE E. O'NEILL, *Director.*

VII. MINORITY VIEWS

1. OVERVIEW: REGULATORY REFORM, NOT A FREEZE

The regulatory moratorium established by S. 219 would suspend all significant proposed and final regulations, policy statements, guidance and guidelines issued or to be issued from November 9, 1994, through December 31, 1995—and all statutory and judicial deadlines for such actions from November 9, 1994, through May 1996. While comprehensive regulatory reform is clearly needed for the Federal government, this legislation is not an appropriate or necessary way to achieving such reform as its proponents claim.

S. 219 as reported by our Committee is dangerous; it does not distinguish between good and bad regulations. It suspends regulations designed to protect public health and safety but exempts regulations solely because they may ease administrative requirements. It is arbitrary and reckless. Based seemingly on whim, it exempts some regulations but not others even though the regulations may be comparable.

There are indeed overly burdensome rules and regulations. As the majority points out, the cumulative costs of Federal regulations have risen over the past twenty years. (The majority states, however, that the cost of regulations is "conservatively estimated" at $560 billion for 1992. That estimate is highly questionable and is certainly not "conservative". A GAO review of that estimate submitted to the Committee on March 8, 1995, suggests serious problems in the methods used in that particular study.) Congress must be sensitive to this fact. We must ensure that the laws we pass meet public needs effectively and efficiently. The mounting costs of regulations require that we closely examine both the regulatory process and the laws that result in regulations. But, we must not ignore the significant improvements that regulations can bring to the daily lives of Americans. For example, since the Occupational Safety and Health Administration came into being in 1970, the workplace fatality rate has dropped by over 50 percent. The Food and Drug Administration has made our food and medicines safer. Thanks to the work of the Environmental Protection Agency, our country now enjoys cleaner air and water.

Clearly the work of government is not finished. The government still has a vital role to play in protecting public health and safety, ensuring equal opportunities in education, employment and housing, promoting a healthy economy, and protecting the environment. With diminishing resources, the question becomes how we can provide these services in a cost-effective way. The Congress and the Executive Branch must work together to continue to improve the way the government does business, and in fact several initiatives are already underway—from government streamlining and reengineering to regulatory reform.

Much more is at stake, however, than merely improving government processes. The regulatory moratorium legislation implies that Federal agencies have simply run amok by issuing too many regulations and that process controls will fix everything. This is just not true. As stated in one of the hearings before the Committee, perhaps 80 percent of all agency rules are required by law. Agencies regulate because the law requires them to do so. Thus, while the majority report accurately describes the increase in regulations over the last twenty years, it ignores the twenty years of legislation (most signed by Republican Presidents) that led to this increase in rules. While nameless "regulations" may be a convenient whipping boy, it ignores the reality of the harder task of tackling individual substantive law. This is a major reason that, while the majority report suggests that there is universal support for a moratorium, the proposal is, to the contrary, actually quite controversial. More than 200 groups have opposed the moratorium, including the American Heart and Lung Associations, the Child Welfare League of America, the Consumer Federation of America, the Epilepsy Foundation of America, the Leadership Council on Civil Rights, the League of Women Voters in the U.S., and the National Council of Senior Citizens.

Finally, whatever the interests of its proponents, the moratorium legislation is truly unnecessary. The President has required all Federal agencies to review their regulations and to report back by June 1 on those which should be eliminated or changed. This report will provide the information we need to reform regulations and programs smartly, avoiding arbitrary and potentially grave, unintended consequences. In addition, there are various regulatory reform initiatives underway in this and other committees to strengthen our regulatory system—risk assessment, cost-benefit analysis, review of existing rules, centralized regulatory review, and more. A moratorium does nothing toward real regulatory reform.

2. THE FLAWS OF S. 219

While proponents of the moratorium state that its purpose is to improve efficiency and effectiveness and allow for "Congress to rationalize the regulatory reform process," the moratorium is ironically an inefficient, ineffective, and irrational approach. The moratorium will create delays in good regulations, waste money, and create great uncertainty for citizens, businesses, and others. The report speaks of the regulatory process being "ossified, unresponsive, and inefficient." The moratorium will only add to that. For example:

While the moratorium purports to be a neutral "time-out" for all significant regulatory actions, the targeted rules and the variety and number of exceptions are evidence that the legislation is really an example in political "ticket fixing."

During the Committee mark-up numerous exceptions to the moratorium were accepted. Members offered twenty-two amendments to S. 219. Many were to exempt specific health and safety rules from the moratorium; others were to exempt broad categories of regulations; two were put forth that would expand the scope of the moratorium. Thirteen amendments were accepted, eight rejected, and one tabled. There appeared to be very little logic in what was

rejected or accepted. Although meat and water safety amendments were defeated, others, such as exemptions related to commuter air safety, railroad crossing safety, duck hunting, and lead poisoning prevention, were passed. We fully supported all amendments that would limit the moratorium. The inconsistency, however, of the majority only heightens our concerns about the legislation.

The bill's exemption of rules that address any "imminent threat to health and safety" is unclear and the majority report's interpretation leaves unanswered many questions about what would and would not be covered. The bill would permit the President, upon written request by an agency head, to exempt a significant regulatory action from the moratorium upon a finding that the regulatory action "is necessary because of an imminent threat to human health or safety or other emergency" (sec. 5(a)(2)(A)). For certain amendments in the mark-up, the majority argued that specific exemptions were unnecessary because of the broad exemption authority given to the President under section 5 of the legislation. The majority could not, however, provide a consistent interpretation of "imminent" or how it would be applied.

For example, an amendment to exempt regulatory actions to reduce pathogens in meat and poultry was rejected. This amendment would address rules to update inspection techniques for meat and poultry and would provide a safeguard against E. Coli and other contamination. Mr. Rainer Mueller, whose son died from El Coli-contaminated hamburger, testified before the Committee on February 22, and poignantly described the personal tragedy and ultimate price paid for unsafe food. In January, the U.S. Department of Agriculture released a proposed Hazardous Analysis Critical Control Point regulation to improve meat and poultry inspection. This rule would mandate rigorous sanitation requirements and scientific testing for bacteria in meat and poultry processing. While the minority argued that E. Coli was indeed a serious health threat, it would probably not be considered "imminent," and therefore it should be specifically included as an exemption in the bill. Chairman Roth stated, "S. 219 depends on the use of common-sense judgment by the President. 'Imminent' is not intended to pose an insurmountable obstacle * * *. We are actually empowering the President to take appropriate action in such situations * * *."

Senator Glenn also proposed an amendment to exempt actions by EPA to control microbial and disinfection byproduct risks, such as cryptosporidium, in drinking water supplies. Cryptosporidium killed over 100 people in Milwaukee, Wisconsin, and made 400,000 sick. Again, this amendment was rejected, with the bill's proponents citing the Presidential discretion to exempt rules that deal with imminent health and safety problems.

At the very end of the markup, however, the Committee reversed this thinking by accepting an amendment to exempt rules relating to lead poisoning prevention. Senator Roth stated, "I do think it falls within the exemptions [of "imminent threat"], but we are willing to accept the amendment." This broad amendment would exclude from the moratorium any action by the EPA that would protect the public from exposure to lead from house paint, soil or drinking water. Included in the regulations that would be affected

by the moratorium would be requirements that home buyers and renters by informed if there are known lead hazards prior to making purchases or rental decisions, and that all lead abatement workers are certified to professional standards of practice.

The majority report attempts to resolve the uncertainties left from the mark-up by stating that USDA's meat inspection rules should be exempted "so long as there are no accompanying extraneous requirements or arbitrary rules". We are at a loss to understand the meaning of that condition. The report also states that "this Committee does not intend this exemption area to apply to OSHA's regulations prescribing ergonomic protection standards," but that the Bureau of Alcohol, Tobacco, and Firearms rule on alcoholic beverage container recall information "could be excluded from the moratorium under this provision." The minority is simply at a loss to understand the majority's logic, or the legislative record on which to base such findings.

The Committee's treatment of these regulations and the "imminent threat" exemption leaves a completely inconsistent record. And despite the majority's suggestion, "imminent" will not cover most important health and safety rules. The statutory language refers to "imminent threat to human health or safety *or other emergency*" (emphasis added). Moreover, the definition of "imminent" is "likely to occur at any moment, impending; threateningly or menacingly near or at hand." Most health and safety rules, while designed to addressed pressing problems, simply can not be described as emergency rules in any common understanding of the term.

What deserves to be exempted "just in case" and what does not? There was much discussion on the intent of the moratorium, and what some of the unintended consequences might be. Clearly the Committee decided that rules related to public health (e.g., meat and poultry inspections, drinking water safety) did not need to be specifically exempted "just in case" they were not exempted under other provisions in the bill. Others, including some that had potential to be exempted through other language in the bill were nonetheless included as specific amendments. For example, the Committee accepted an amendment to exempt any regulatory action to provide compensation to Persian Gulf War Veterans for disability from undiagnosed illnesses. While some on the majority argued that the rule to allow the Secretary of Veterans Affairs to provide such compensation would be already included under exemptions for "benefits" or for "military affairs," the Committee decided to vote in favor of this amendment "just in case."

The Committee also accepted an amendment that would exempt agency action that "establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping." This amendment would ensure that duck-hunting season would not be affected by the moratorium. Senator Cochran stated, "The point of the moratorium was never to interfere with this kind of regulation. * * * [T]he word gets all over the country that this legislation is going to have this unintended consequence. So the point of the amendment is to make certain that nobody can misunderstand this."

In addition, the Committee decided to accept an amendment that would exempt from the moratorium any clarification by the Depart-

ment of Transportation of existing responsibilities regarding highway safety warning devices. The intent of this amendment is to clarify state and local authority for determining whether a railroad crossing device is necessary and the installation of such a device. The Committee also accepted amendments related to aircraft safety, commuter plane safety, and aircraft flights over national parks.

As stated earlier, other health and safety amendments were rejected, even though it is not at all clear that they will fall under the exemption for "imminent" health and safety threats. For example, an amendment to exempt rules relating to safe disposal of nuclear waste and to decontamination and decommissioning standards for NRC-licensed facilities was not accepted. The Chairman argued that this would qualify as an "imminent threat" and would therefore not be needed. However, it is difficult to argue that some waste, which has been sitting in temporary storage for decades, now presents an "imminent" hazard, or that standards for decontaminating or decommissioning NRC-licensed sites, which have been under development for some time, now fall under an "imminent" exemption.

The Committee accepted an amendment to exempt any actions to establish or enforce rights that prohibit discrimination on the basis of race, religion, sex, age, national origin, or handicapped or disability status. Directly after accepting this amendment, the Committee voted to table an amendment that would have exempted any actions to enforce the constitutional rights of individuals, on the grounds that there was "a certain amount of ambiguity." These amendments are similar to ones included by the Committee in the unfunded mandates legislation. As Senator Levin stated, "this is a lot less ambiguous than [other amendments adopted by the Committee]. These are constitutional rights, and constitutional rights have been clearly defined. * * * If we are going to protect statutory rights to non-discrimination, * * * surely we ought to give the same protection to constitutional rights that are being implemented or enforced by law. * * * We should not put constitutional rights on a lower level than the statutory rights."

The Committee accepted an amendment to exempt any rules under the Indian Self-Determination act which had been the product of regulatory negotiation. Yet, when Senator Levin proposed an amendment to exclude all consensual rulemakings, the amendment was rejected.

In addition to the indiscriminate acceptance and rejection of amendments in Committee on specific rules, the majority report lists rules that are meant to be covered by the moratorium. In not one instance did the Committee in any of its deliberations make any finding on the merits of any of these rules. There may well be good arguments for stopping some or all of these rules, but that is not the point. The majority is creating exemptions from specific agency decisions with no legislative record.

The juxtaposition in the majority report of these so-called "bad rules" with what appear to be special interest "good rules" shows how inequitable and unfair this process is. There is no legislative record in the Committee to support the findings, let alone discussion, of the "good" regulations referred to in the Committee report. Consider the following striking examples of rules that the majority

report stated should not be included in the moratorium and for which the Committee has absolutely no record:

> "Final regulations governing the alteration of producer recall information on containers of distilled spirits, wine and beer under the Federal Alcohol Administration Act of 1935 (27 U.S.C. 105e)";
>
> "Final regulations governing trade practices under the Federal Alcohol Administration Act of 1935 (27 U.S.C. 201 et seq.)" relating to "alcohol promotional practices";
>
> "The final rules issued by the United States Department of Agriculture (and published in the Federal Register on Dec. 6, 1994) on meat derived from advanced separation machinery"; and
>
> "Department of Transportation "HM–181 standards . . . for open-head fiber drums used for the transportation of liquids."

The retroactivity of the moratorium stops regulations that have already been issued and creates unnecessary confusion. The bill applies both prospectively and retroactively. It would apply to all significant regulatory actions that occurred as of November 9, 1994. Retroactively stopping rules is extremely unfair to businesses and individuals who have complied with the regulatory process, playing by the rules, and counting on the finality of the regulations already in effect. Many businesses have already spent money to comply with regulations, or made investments based upon regulations that have been issued. Retroactively suspending final rules could give a competitive advantage to businesses that chose to ignore regulations issued since November. Similarly, it is unfair to companies that made investments to comply with those regulations. Regulatory reform should be prospective not retroactive; to do otherwise is wasteful and confusing.

Moreover, the stated purpose of the moratorium is to stop regulatory actions that may benefit from future regulatory reform legislation. However no regulatory reform bill that the Senate is now considering would apply retroactively. So rules that are final since November 9, 1994, would not be covered by the regulatory analysis requirements proposed under any pending reform legislation. Thus, subjecting such rules to a moratorium accomplishes nothing, except to suspend the effectiveness of the rule for the period of the moratorium.

Reporting and decision requirements will completely bog down the President. The structure that the bill uses is cumbersome and one that encourages extensive lobbying throughout the life of the moratorium. In order to exempt a rule, the agency head must make a determination in writing that a rule meets one of the exceptions and then present that determination to the President who must then review it and make a determination whether or not to support that agency head's recommendation. If the President agrees, he must file a notice in the Federal Register, stating that a rule has been exempted from the moratorium (or, it appears, whether a rule previously exempted is no longer exempt). The requirement of monthly reports means that the agency heads and the President will be routinely lobbied by persons affected by covered rulemakings as to whether or not a rulemaking should be in or ex-

empt from the moratorium. It is a nightmarish process except from the perspective of a lobbyist.

The five-month extension for deadlines is arbitrary, unnecessary, and merely draws out this problematic legislation. The Committee bill includes in the moratorium all deadlines that have been imposed either by a court or statute with respect to a significant regulatory action. Senator Levin offered an amendment to strike this section of the bill so that statutory and judicial deadlines would not be affected by the moratorium. Deadlines are dates that have been set previously by statute—passed by both houses of Congress and the President—to require that a regulatory action be taken by a date certain. Congress did not set those deadlines unwittingly; we set them because we were concerned enough about the particular situation to place the timing for action into law. The Consumer Product Safety Commission rule on choking hazards of toys for small children is one such example. Congress passed a law in 1994 requiring the CPSC to act by July 1, 1994, on rules implementing toy labeling provisions for choking hazards. Similarly, we have courts which have set deadlines based on extensive legal records and proceedings. As with the issue of retroactivity, inclusion of deadlines in the moratorium is useless, because many of these deadlines involve rules that are already final and have already become effective. Regulatory reform legislation will not likely affect these rules.

Moreover, the Committee bill establishes a new and longer time period for the moratorium as it applies to deadlines. The moratorium for significant regulatory actions is from November 9, 1994, to December 31, 1995, but for statutory or judicial deadlines, the moratorium extends for five months beyond December 31st, to May 31, 1996. The majority states that the purpose for the extended deadline is to avoid all the deadlines coming into effect at the same time the moratorium is lifted from the rulemakings. We do not see the logic in this argument nor do we know of one request from an agency that such an extended moratorium be provided for deadlines.

Many of the terms and definitions are unclear and will likely compound the problems of unintended consequences. For example, the bill's definition of "significant regulatory action" includes any "statement of agency policy, guidance, guidelines." There was no discussion by the majority of what this would actually cover. Thus, when the Committee accepted an amendment to include in the "significant" definition any action that "withdraws or restricts recreational, subsistence, or commercial use" of public land, the majority was unable to explain what would or would not be included.

The Stevens Amendment has wide-reaching, detrimental effects for public lands. Meriting separate discussion is the amendment by Senator Stevens that the Committee adopted concerning Federal agency actions on Federal lands. The Stevens amendment added to the definition of "significant regulatory action" (and thus to coverage of the moratorium) any agency action which "withdraws or restricts recreational, subsistence, or commercial use of any land under the control of a Federal agency. . . ."

The Committee had an extensive discussion about the amendment in an attempt to fully understand its scope. While there was

considerable uncertainty during the mark-up as to the actual effect of the amendment, subsequent review has demonstrated that the scope of the amendment is sweeping and would stop not only regulatory actions but virtually all enforcement of regulations on Federal lands. That means that National Park Service employees would not be able to carry out basic management responsibilities in our national parks. The Park Service would not be able to prevent hot rods from racing in national parks, restrict access to fragile archeological sites, or close dangerous passes on snow-covered peaks. As the National Parks and Conservation Association has said, ''This prohibition against rulemaking effectively eliminates the abilities of the Bureau of Land Management, the National Park Service, the Fish and Wildlife Service and the Forest Service to manage federal lands for resource protection. According to the Wilderness Society, ''This sweeping amendment would undermine fundamental protections for our national parks, national wildlife refuges, national forests, and all other public lands.'' The same strong point has been made by other conservation and environmental groups. The Committee's adoption of the Stevens Amendment demonstrates the lack of understanding the Committee had with respect to the full consequences of its actions on this bill.

3. CONCLUSION

The Committee hearing on February 22, 1995, and the mark-up on March 7 and 9, 1995, highlighted many problems with the moratorium proposal. The majority report only compounds these issues. In the views above we have again discussed many of these issues. Unfortunately, the outlined problems involve only those examples that we know of now. We believe there could well be many other important rules that would be inadvertently or otherwise inappropriately be stopped. The public will be the victims of such arbitrary congressional action. The moratorium is a bad idea.

There are most probably many rules that should be examined and even rescinded. We would support any reasonable effort to target specific regulatory problems areas—again, that is what the President is currently doing. We cannot, however, support an arbitrary, across-the-board freeze. We should fix the regulatory process, we should not freeze it and the benefits that flow from it.

JOHN GLENN.
SAM NUNN.
CARL LEVIN.
DAVID PRYOR.
J. LIEBERMAN.
DANIEL K. AKAKA.

VIII. CHANGES IN EXISTING LAWS

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 219, as reported are as follows: No changes.

APPENDIX

CONGRESS OF THE UNITED STATES,
Washington, DC, December 12, 1994.

THE PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: On November 8th, the American people sent a message to Washington. They voted for a smaller, less intrusive government. We urge you to respond to that message by issuing an Executive Order imposing a moratorium on all federal rulemaking. This moratorium should go into affect immediately and remain in effect for the first 100 days of the next Congress. During the moratorium, agencies should be directed to (1) identify both current and proposed regulation with costs to society that outweigh any expected benefits; (2) recommend actions to eliminate any unnecessary regulatory burden; (3) recommend actions to give state, local, or tribal governments more flexibility to meet federally-imposed responsibilities; and (4) make this information and the analysis supporting it available to Congress.

The moratorium we are proposing should not apply to all regulations. For example, the proposed moratorium should specifically exempt regulations that would relax a current regulatory burden. Previous moratoriums have exempted several types of regulations including those that (1) are subject to a statutory or judicial deadline; (2) respond to emergencies such as those that pose an imminent danger to human health or safety; or (3) are essential to the enforcement of criminal laws. It is our hope that you will review past exemption categories and use them to guide you in establishing similar standards for purposes of administering this moratorium.

Excessive regulation and red tape have imposed an enormous burden on our economy. Private estimates have projected the combined direct cost of compliance with all existing federal regulations to the private sector and to state and local governments at well over $500 billion per year. Your own National Performance Review observed that the compliance costs imposed by federal regulations on the private sector alone were "at least $430 billion per year 9 percent of our gross domestic product." This hidden tax has pushed up prices for goods and services for American families, and limited the ability of small businessmen and women to create jobs. The Small Business Administration estimates that small businesses in this country spend at least a billion hours a year filling out government forms.

The annual Unified Agenda of Federal Regulations, released on November 10, 1994, indicates that the Administration completed

767 regulations during the past six months and is pursuing over 4,300 rulemakings during the next fiscal year. We believe this moratorium on new federal regulations would send a clear signal that, working together, we intend to ease the burden of federal overregulation on consumers and businesses that has slowed economic growth and stifled job creation.

Thank you for your consideration of this request. We look forward to working with you to ensure that regulatory policy works for the American people, not against them.

Respectfully,

TRENT LOTT.
THAD COCHRAN.
DON NICKLES.
NEWT GINGRICH.
DICK ARMEY.
TOM DELAY.
JOHN BOEHNER.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, December 14, 1994.

Hon. DON NICKLES,
U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES: President Clinton has asked me to reply to your letter requesting that he issue an Executive order imposing a moratorium on all federal rulemaking.

As you know, the overwhelming majority of federal regulations are mandated by Congress so that federal agencies can put into practice your policy decisions. For example, much regulatory activity of the Clinton Administration involves protecting disabled Americans against discrimination and protecting all Americans against the health effects of pollution. These regulations are mandated by the Americans With Disabilities Act and the Clean Air Act, measures supported by Republicans in Congress and signed into law by President Bush.

President Clinton is concerned about the cost of regulations to businesses, individuals, and other governmental entities, whether or not those costs are mandated by Congress. The President has therefore directed Executive Branch agencies to regulate only when necessary, and only in the most cost-effective manner. The President has also ordered agencies to review existing regulations to eliminate rules that are duplicative, unnecessary, or not cost-effective.

Among the changes initiated by the Administration as a result of this directive are reforms that will free U.S. companies to export their goods overseas without drowning in paperwork, and provide the first upgrading in a generation of school nutrition standards for student meals. We have also opened the regulatory process so that individuals, businesses, and governmental entities can know in advance what regulations are being proposed and can participate more effectively in their development.

The ''regulatory moratorium'' you have proposed would stop rules from being issued regardless of their merit. For example, our infor-

mation about upcoming regulations indicates that this ''moratorium'' would prevent the Department of Agriculture from dealing with tainted meat in the food supply; the Department of Veterans Affairs from providing veterans with additional assistance for undiagnosed illnesses that may be the result of their service in the Persian Gulf War; and the Department of Labor from protecting children ages 14–17 from harmful conditions in the workplace.

A moratorium is a blunderbuss that could work in unintended ways. When President Bush tried such an approach in his Administration, it did not achieve its stated objective of reducing the number of federal regulations. In fact, in the month immediately after that moratorium, the number of regulations actually increased.

In sum, while we share the view that burdensome regulations need to be cut back, we disagree that a blanket moratorium is the best way to proceed. We believe that we can work together on this issue to achieve a thoughtful solution to this problem.

Sincerely yours,

SALLY KATZEN.

Identical letters sent to Hon. Robert Dole, Hon. Trent Lott, Hon. Thad Cochran, Hon. Newt Gingrich, Hon. Tom DeLay, Hon. Dick Armey, and Hon. John Boehner.

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