

Calendar No. 33

104TH CONGRESS
1ST SESSION

S. 219

[Report No. 104-15]

A BILL

To ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

MARCH 16, 1995

Reported with an amendment

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1ST SESSION**S. 219****[Report No. 104-15]**

To ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 12 (legislative day, JANUARY 10), 1995

Mr. NICKLES (for himself, Mr. BOND, Mrs. HUTCHISON, Mr. DOLE, Mr. GRASSLEY, Mr. ASHCROFT, Mr. COVERDELL, Mr. ABRAHAM, Mr. THOMPSON, Mr. BURNS, Mr. SHELBY, Mr. MCCONNELL, Mr. FAIRCLOTH, Mr. THOMAS, Mr. SMITH, Mr. MCCAIN, Mr. CRAIG, Mr. COATS, Mr. SANTORUM, Mr. MACK, Mr. GREGG, Mr. MURKOWSKI, Mr. LOTT, Mr. KYL, Mr. THURMOND, Mr. HATCH, Mr. HELMS, Mr. INHOFE, Mr. SIMPSON, Mr. GRAMM, Mr. FRIST, Mr. GRAMS, Mr. BENNETT, Mr. KEMPTHORNE, Mr. D'AMATO, Mr. STEVENS, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

MARCH 16, 1995

Reported by Mr. ROTH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDING.**

7 The Congress finds that effective steps for improving
8 the efficiency and proper management of Government op-
9 erations will be promoted if a moratorium on new rule
10 making actions is imposed and an inventory of such ac-
11 tions is conducted.

12 **SEC. 3. MORATORIUM ON REGULATIONS.**

13 (a) MORATORIUM.—During the moratorium period, a
14 Federal agency may not take any regulatory rulemaking
15 action, unless permitted under section 5. Beginning 30
16 days after the date of enactment of this Act, the effective-
17 ness of any regulatory rulemaking action taken during the
18 moratorium period but before the date of the enactment
19 shall be suspended until July 1, 1995, unless an exception
20 is provided under section 5.

21 (b) INVENTORY OF RULEMAKING.—Not later than 30
22 days after the date of enactment of this Act, the President
23 shall conduct an inventory and publish in the Federal Reg-
24 ister a list of all regulatory rulemaking actions covered
25 by subsection (a) and pending on the date of enactment.

1 **SEC. 4. SPECIAL RULE ON STATUTORY, REGULATORY AND**
 2 **JUDICIAL DEADLINES.**

3 (a) ~~IN GENERAL.~~—Any deadline for, relating to, or
 4 involving any action dependent upon, any regulatory rule-
 5 making action authorized or required to be taken before
 6 the end of the moratorium period is extended.

7 (b) ~~EXTENSION PERIOD.~~—Any deadline covered by
 8 subsection (a) shall be extended for 5 months or until July
 9 1, 1995, whichever is later.

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

15 (d) ~~IDENTIFICATION OF POSTPONED DEADLINES.~~—
 16 Not later than 30 days after the date of enactment of this
 17 Act, the President shall identify and publish in the Fed-
 18 eral Register a list of deadlines covered by subsection (a).

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

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

23 (1) the head of a Federal agency otherwise au-
 24 thorized to take the action submits a written request
 25 to the President, and a copy thereof to the appro-

1 appropriate committees of each house of the Congress;
2 and

3 ~~(2) the President finds, by Executive Order,~~
4 that a waiver for the action is—

5 ~~(A) necessary because of an imminent~~
6 ~~threat to health or safety or other emergency;~~
7 ~~or~~

8 ~~(B) necessary for the enforcement of crimi-~~
9 ~~nal laws; and~~

10 ~~(3) the Federal agency head publishes the find-~~
11 ~~ing and waiver in the Federal Register.~~

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

15 **SEC. 6. DEFINITIONS.**

16 For purposes of this Act—

17 ~~(1) FEDERAL AGENCY.—The term “Federal~~
18 ~~agency” means any “agency” as that term is defined~~
19 ~~in section 551(1) of title 5, United States Code (re-~~
20 ~~lating to administrative procedure).~~

21 ~~(2) MORATORIUM PERIOD.—The term “morato-~~
22 ~~rium period” means that period of time beginning~~
23 ~~November 9, 1994, and ending June 30, 1995.~~

24 ~~(3) REGULATORY RULEMAKING ACTION.—~~

1 (A) ~~IN GENERAL.~~—The term “regulatory
2 rulemaking action” means any rule making (as
3 defined in section 551(5) of title 5, United
4 States Code) on any rule normally published in
5 the Federal Register, including—

6 (i) the issuance of any substantive
7 rule, interpretative rule, statement of agen-
8 cy policy, notice of inquiry, advance notice
9 of proposed rulemaking, or notice of pro-
10 posed rulemaking; and

11 (ii) any other action taken in the
12 course of the process of rulemaking (except
13 a cost benefit analysis or risk assessment,
14 or both).

15 (B) ~~EXCLUSIONS.~~—The term “regulatory
16 rulemaking action” does not include—

17 (i) any agency action that the head of
18 the agency certifies is limited to repealing,
19 narrowing, or streamlining a rule, regula-
20 tion, or administrative process, to issuing
21 or promulgating a rule required to make
22 effective tax relief provided by statute, or
23 otherwise reducing regulatory burdens; or

24 (ii) any action that the head of the
25 agency certifies is limited to matters relat-

1 ing to military or foreign affairs functions
2 or agency management, personnel, or pub-
3 lic property, loans, grants, benefits or con-
4 tracts.

5 (4) RULE.—The term “rule” means the whole
6 or a part of an agency statement of general or par-
7 ticular applicability and future effect designed to im-
8 plement, interpret, or prescribe law or policy. Such
9 term does not include the approval or prescription,
10 on a case-by-case or consolidated case basis, for the
11 future of rates, wages, corporate or financial struc-
12 tures or reorganization thereof, prices, facilities, ap-
13 pliances, services or allowances therefor or of valu-
14 ations, costs, or accounting, or practices bearing on
15 any of the foregoing. Such term also does not in-
16 clude the granting of an application for a license,
17 registration, or similar authority, granting or rec-
18 ognizing an exemption, granting a variance or peti-
19 tion for relief from a regulatory requirement, or
20 other action relieving a restriction, or adopting a
21 rule necessary to permit new or improved applica-
22 tions of technology.

23 **SEC. 7. CIVIL ACTION.**

24 In addition to any remedy otherwise available, who-
25 ever is adversely affected by any conduct of a Federal

1 agency in violation of section 3 or 4 may in civil action
2 against that agency obtain appropriate relief. The court
3 may award a prevailing plaintiff in an action under this
4 section reasonable attorney's fees.

5 **SEC. 8. SEVERABILITY.**

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

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

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the "Regulatory Transition*
15 *Act of 1995".*

16 **SEC. 2. FINDING.**

17 *The Congress finds that effective steps for improving*
18 *the efficiency and proper management of Government oper-*
19 *ations will be promoted if a moratorium on certain signifi-*
20 *cant regulatory actions is imposed and an inventory of such*
21 *actions is conducted.*

22 **SEC. 3. MORATORIUM ON REGULATIONS.**

23 (a) *MORATORIUM.*—During the moratorium period, a
24 Federal agency may not take any significant regulatory ac-
25 tion, unless permitted under section 5. Beginning 30 days

1 *after the date of enactment of this Act, the effectiveness of*
2 *any significant regulatory action taken during the morato-*
3 *rium period but before the date of the enactment shall be*
4 *suspended until the end of the moratorium, unless an excep-*
5 *tion is provided under section 5.*

6 *(b) INVENTORY OF RULEMAKING.—Not later than 30*
7 *days after the date of enactment of this Act, and on a*
8 *monthly basis thereafter, the Administrator of the Office of*
9 *Information and Regulatory Affairs within the Office of*
10 *Management and Budget shall conduct an inventory and*
11 *publish in the Federal Register a list of all significant regu-*
12 *latory actions covered by subsection (a), identifying those*
13 *which have been granted an exception as provided under*
14 *section 5.*

15 **SEC. 4. SPECIAL RULE ON STATUTORY, REGULATORY AND**
16 **JUDICIAL DEADLINES.**

17 *(a) IN GENERAL.—Any deadline for, relating to, or in-*
18 *volving any action dependent upon, any significant regu-*
19 *latory action prohibited or suspended under section 3 is ex-*
20 *tended for 5 months or until the date occurring 5 months*
21 *after the end of the moratorium period, whichever is later.*

22 *(b) DEADLINE DEFINED.—The term “deadline” means*
23 *any date certain for fulfilling any obligation or exercising*
24 *any authority established by or under any Federal statute*

1 *or regulation, or by or under any court order implementing*
2 *any Federal statute or regulation.*

3 *(c) IDENTIFICATION OF POSTPONED DEADLINES.—Not*
4 *later than 30 days after the date of enactment of this Act,*
5 *the Administrator of the Office of Information and Regu-*
6 *latory Affairs within the Office of Management and Budget*
7 *shall identify and publish in the Federal Register a list of*
8 *deadlines covered by subsection (a).*

9 **SEC. 5. EXCEPTIONS.**

10 *(a) IN GENERAL.—Except as provided in subsection*
11 *(b), section 3(a) or 4(a), or both, shall not apply to a sig-*
12 *nificant regulatory action if—*

13 *(1) the head of a Federal agency otherwise au-*
14 *thorized to take the action submits a written request*
15 *to the President, and a copy thereof to the appro-*
16 *priate committees of each house of the Congress;*

17 *(2) the President finds, in writing, the action*
18 *is—*

19 *(A) necessary because of an imminent*
20 *threat to human health or safety or other emer-*
21 *gency;*

22 *(B) necessary for the enforcement of crimi-*
23 *nal laws;*

24 *(C) related to a regulation that has as its*
25 *principal effect fostering economic growth, re-*

1 *pealing, narrowing, or streamlining a rule, regu-*
2 *lation, administrative process, or otherwise re-*
3 *ducing regulatory burdens;*

4 *(D) issued with respect to matters relating*
5 *to military or foreign affairs or international*
6 *trade;*

7 *(E) principally related to agency organiza-*
8 *tion, management, or personnel;*

9 *(F) a routine administrative action, or*
10 *principally related to public property, loans,*
11 *grants, benefits, or contracts;*

12 *(G) limited to matters relating to negotiated*
13 *rulemaking carried out between Indian tribes*
14 *and the applicable agency under the Indian Self-*
15 *Determination Act Amendments of 1994 (Public*
16 *Law 103-413; 108 Stat. 4250); or*

17 *(H) limited to interpreting, implementing,*
18 *or administering the internal revenue laws of the*
19 *United States; and*

20 *(3) the Federal agency head publishes the finding*
21 *in the Federal Register.*

22 *(b) INAPPLICABILITY OF EXCEPTIONS.—The authority*
23 *provided under subsection (a) shall not apply to any action*
24 *described under section 6(B)(ii).*

1 **SEC. 6. DEFINITIONS.**

2 *For purposes of this Act—*

3 (1) *FEDERAL AGENCY.*—*The term “Federal agency” means any “agency” as that term is defined in*
4 *section 551(1) of title 5, United States Code (relating*
5 *to administrative procedure).*

7 (2) *MORATORIUM PERIOD.*—*The term “moratorium period” means that period of time beginning*
8 *November 9, 1994, and ending on December 31, 1995,*
9 *unless an Act of Congress provides an earlier termi-*
10 *nation date for such period.*

12 (3) *SIGNIFICANT REGULATORY ACTION.*—*The*
13 *term “significant regulatory action” means any ac-*
14 *tion that—*

15 (A)(i) *consists of the issuance of any sub-*
16 *stantive rule, interpretative rule, statement of*
17 *agency policy, guidance, guidelines, or notice of*
18 *proposed rulemaking; and*

19 (ii) *the Administrator of the Office of Infor-*
20 *mation and Regulatory Affairs within the Office*
21 *of Management and Budget finds—*

22 (I) *has an annual effect on the econ-*
23 *omy of \$100,000,000 or more or adversely*
24 *affects in a material way the economy, a*
25 *sector of the economy, productivity, com-*
26 *petition, jobs, the environment, public*

1 *health or safety, or State, local, or tribal*
2 *governments or communities;*

3 *(II) creates a serious inconsistency or*
4 *otherwise interferes with an action taken or*
5 *planned by another agency;*

6 *(III) materially alters the budgetary*
7 *impact of entitlements, grants, user fees, or*
8 *loan programs or the rights and obligations*
9 *of recipients thereof; or*

10 *(IV) raises novel legal or policy issues*
11 *arising out of legal mandates, the Presi-*
12 *dent's priorities, or the principles set forth*
13 *in Executive Order 12866; or*

14 *(B)(i) withdraws or restricts recreational,*
15 *subsistence, or commercial use of any land under*
16 *the control of a Federal agency, except for those*
17 *actions described under paragraph (4) (K) and*
18 *(L); or*

19 *(ii) is taken to carry out—*

20 *(I) the Interagency Memorandum of*
21 *Agreement Concerning Wetlands Deter-*
22 *minations for Purposes of Section 404 of the*
23 *Clean Water Act and Subtitle B of the Food*
24 *Security Act (59 Fed. Reg. 2920) (referred*

1 to in this clause as the “Memorandum of
2 Agreement”); or

3 (II) any method of delineating wet-
4 lands based on the Memorandum of Agree-
5 ment for purposes of carrying out subtitle C
6 of title XII of the Food Security Act of 1985
7 (16 U.S.C. 3821 et seq.) or section 404 of
8 the Federal Water Pollution Control Act (33
9 U.S.C. 1344).

10 (4) *RULE; GUIDANCE; OR GUIDELINES.*—The
11 terms “rule”, “guidance”, or “guideline” mean the
12 whole or a part of an agency statement of general or
13 particular applicability and future effect designed to
14 implement, interpret, or prescribe law or policy. Such
15 term shall not include—

16 (A) the approval or prescription, including
17 on a case-by-case or consolidated case basis, for
18 the future of rates, wages, corporate or financial
19 structures or reorganization thereof, prices, fa-
20 cilities, appliances, services or allowances there-
21 for or of valuations, costs, or accounting, or
22 practices bearing on any of the foregoing;

23 (B) any action taken in connection with the
24 implementation of monetary policy or to ensure
25 the safety and soundness of federally insured de-

1 *pository institutions, any affiliate of such an in-*
2 *stitution, credit unions, the Federal Home Loan*
3 *Banks, or Government sponsored housing enter-*
4 *prises, or to protect the Federal deposit insur-*
5 *ance funds;*

6 *(C) any action taken to ensure the safety*
7 *and soundness of a Farm Credit System institu-*
8 *tion or to protect the Farm Credit Insurance*
9 *Fund;*

10 *(D) any action taken in connection with the*
11 *reintroduction of non-essential experimental pop-*
12 *ulations of wolves before the date of the enact-*
13 *ment of this Act;*

14 *(E) any action by the Environmental Pro-*
15 *tection Agency that would protect the public*
16 *from exposure to lead from house paint, soil, or*
17 *drinking water;*

18 *(F) any action to provide compensation to*
19 *Persian Gulf War veterans for disability from*
20 *undiagnosed illnesses, as provided under the Per-*
21 *sian Gulf War Veterans' Benefits Act (title I of*
22 *Public Law 103-446; 108 Stat. 4647) and the*
23 *amendments made by that Act;*

1 (G) any action to improve aircraft safety,
2 including such an action to improve the air-
3 worthiness of aircraft engines;

4 (H) any action that would upgrade safety
5 and training standards for commuter airlines to
6 the standards of major airlines;

7 (I) the promulgation of any rule or regula-
8 tion relating to aircraft overflights on national
9 parks by the Secretary of Transportation or the
10 Secretary of the Interior pursuant to the proce-
11 dures specified in the advanced notice of pro-
12 posed rulemaking published on March 17, 1994,
13 at 59 Fed. Reg. 12740 et seq., except that this
14 subparagraph shall not apply to any such over-
15 flight in the State of Alaska;

16 (J) any clarification of existing responsibil-
17 ities regarding highway safety warning devices;

18 (K) any action that establishes, modifies,
19 opens, closes, or conducts a regulatory program
20 for a commercial, recreational, or subsistence ac-
21 tivity relating to hunting, fishing, or camping, if
22 a Federal law prohibits such activity in the ab-
23 sence of agency action; or

24 (L) the granting of an application for or is-
25 suance of a license, registration, or similar au-

1 *thority, granting or recognizing an exemption,*
2 *granting a variance or petition for relief from a*
3 *regulatory requirement, or other action relieving*
4 *a restriction, or taking any action necessary to*
5 *permit new or improved applications of tech-*
6 *nology or allow manufacture, distribution, sale,*
7 *or use of a substance or product.*

8 (5) *LICENSE.*—*The term “license” means the*
9 *whole or part of an agency permit, lease, certificate,*
10 *approval, registration, charter, membership, statutory*
11 *exemption, or other form of permission, including any*
12 *such form of permission relating to hunting and fish-*
13 *ing.*

14 (6) *PUBLIC PROPERTY.*—*The term “public prop-*
15 *erty” means all property under the control of a Fed-*
16 *eral agency, other than land.*

17 **SEC. 7. EXCLUSIONS.**

18 *This Act shall not apply to any significant regulatory*
19 *action that establishes or enforces any statutory rights that*
20 *prohibit discrimination on the basis of race, religion, sex,*
21 *age, national origin, handicap, or disability status.*

22 **SEC. 8. CIVIL ACTION.**

23 *No determination under this Act or agency interpreta-*
24 *tion under section 6(4) shall be subject to adjudicative re-*
25 *view before an administrative tribunal or court of law.*

1 **SEC. 9. SEVERABILITY.**

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

4 (b) *SEVERABILITY.*—*If any provision of this Act, or*
5 *the application of any provision of this Act to any person*
6 *or circumstance, is held invalid, the application of such*
7 *provision to other persons or circumstances, and the re-*
8 *mainder of this Act, shall not be affected thereby.*

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