

chapter, in large part, as an exercise of its oversight and legislative responsibility. Regardless of the justification for excluding or granting independence to some entities from the coverage of other laws, that justification does not apply to this chapter, where Congress has an interest in exercising its constitutional oversight and legislative responsibility as broadly as possible over all agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies issue rules that are not subject to the traditional 5 U.S.C. §553(c) rulemaking process. However, the authors intend the congressional review chapter to cover every agency, authority, or entity covered by subsection 551(1) that establishes policies affecting any segment of the general public. Where it was necessary, a few special exceptions were provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of particular applicability, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from other law. This is made clear by the provision of section 806 which states that the Act applies notwithstanding any other provision of law.

#### *Definition of a "major rule"*

The definition of a "major rule" in subsection 804(2) is taken from President Reagan's Executive Order 12291. Although President Clinton's Executive Order 12866 contains a definition of a "significant regulatory action" that is seemingly as broad, several of the Administration's significant rule determinations under Executive Order 12866 have been called into question. The authors intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsections 804(2)(B) and (C).

Pursuant to subsection 804(2), the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (the Administrator) must make the major rule determination. The authors intend that centralizing this function in the Administrator will lead to consistency across agency lines. Moreover, from 1981-93 OIRA staff interpreted and applied the same major rule definition under E.O. 12291. Thus, the Administrator should rely on guidance documents prepared by OIRA during that time and previous major rule determinations from that Office as a guide in applying the statutory definition to new rules.

Certain covered agencies, including many "independent agencies," include their proposed rules in the Unified Regulatory Agenda published by OMB but do not normally submit their final rules to OMB for review. Moreover, interpretative rules and general statements of policy are not normally submitted to OMB for review. Nevertheless, it is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator may request the recommendation of any agency covered by this chapter on whether a proposed rule is a major rule within the meaning of subsection 804(2), but the Administrator is responsible for the ultimate determination. Thus, all agencies or entities covered by this chapter will have to coordinate their rulemaking activity with OIRA so that the Administrator may make the final major rule determination.

#### *Scope of rules covered*

The authors intend this chapter to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review. The term "rule" in subsection 804(3) begins with the definition of a

"rule" in subsection 551(4) and excludes three subsets of rules that are modeled on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of "rule" in subsection 551(4) covers a wide spectrum of activities. First, there is formal rulemaking under section 553 that must adhere to procedures of sections 556 and 557 of title 5. Second, there is informal rulemaking, which must comply with the notice-and-comment requirements of subsection 553(c). Third, there are rules subject to the requirements of subsection 552(a)(1) and (2). This third category of rules normally either must be published in the Federal Register before they can adversely affect a person, or must be indexed and made available for inspection and copying or purchase before they can be used as precedent by an agency against a non-agency party. Documents covered by subsection 552(a) include statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect a member of the public. Fourth, there is a body of materials that fall within the APA definition of "rule" and are the product of agency process, but that meet none of the procedural specifications of the first three classes. These include guidance documents and the like. For purposes of this section, the term rule also includes any rule, rule change, or rule interpretation by a self regulatory organization that is approved by a Federal agency. Accordingly, all "rules" are covered under this chapter, whether issued at the agency's initiative or in response to a petition, unless they are expressly excluded by subsections 804(3)(A)-(C). The authors are concerned that some agencies have attempted to circumvent notice-and-comment requirements by trying to give legal effect to general statements of policy, "guidelines," and agency policy and procedure manuals. The authors admonish the agencies that the APA's broad definition of "rule" was adopted by the authors of this legislation to discourage circumvention of the requirements of chapter 8.

The definition of a rule in subsection 551(4) covers most agency statements of general applicability and future effect. Subsection 804(3)(A) excludes "any rule of particular applicability, including a rule that approves or prescribes rates, wages, prices, services, or allowances therefore, corporate and financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing" from the definition of a rule. Many agencies, including the Treasury, Justice, and Commerce Departments, issue letter rulings or other opinion letters to individuals who request a specific ruling on the facts of their situation. These letter rulings are sometimes published and relied upon by other people in similar situations, but the agency is not bound by the earlier rulings even on facts that are analogous. Thus, such letter rulings or opinion letters do not fall within the definition of a rule within the meaning of subsection 804(3).

The different types of rules issued pursuant to the internal revenue laws of the United States are good examples of the distinction between rules of general and particular applicability. IRS private letter rulings and Customs Service letter rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same circumstances. Examples of substantive and interpretative rules of general applicability will include most temporary and final Treas-

ury regulations issued pursuant to notice-and-comment rulemaking procedures, and most revenue rulings, revenue procedures, IRS notices, and IRS announcements. It does not matter that these later types of rules are issued without notice-and-comments rulemaking procedures or that they are accorded less deference by the courts than notice-and-comment rules. In fact, revenue rulings have been described by the courts as the "classic example of an interpretative rul[e]" within the meaning of the APA. See *Wing v. Commissioner*, 81 T.C. 17, 26 (1983). The test is whether such rules announce a general statement of policy or an interpretation of law of general applicability.

Most rules or other agency actions that grant an approval, license, registration, or similar authority to a particular person or particular entities, or grant or recognize an exemption or relieve a restriction for a particular person or particular entities, or permit new or improved applications of technology for a particular person or particular entities, or allow the manufacture, distribution, sale, or use of a substance or product are exempted under subsection 804(3)(A) from the definition of a rule. This is probably the largest category of agency actions excluded from the definition of a rule. Examples include import and export licenses, individual rate and tariff approvals, wetlands permits, grazing permits, plant licenses or permits, drug and medical device approvals, new source review permits, hunting and fishing take limits, incidental take permits and habitat conservation plans, broadcast licenses, and product approvals, including approvals that set forth the conditions under which a product may be distributed.

Subsection 804(3)(B) excludes "any rule relating to agency management or personnel" from the definition of a rule. Pursuant to subsection 804(3)(C), however, a "rule of agency organization, procedure, or practice," is only excluded if it "does not substantially affect the rights or obligations of non-agency parties." The authors' intent in these subsections is to exclude matters of purely internal agency management and organization, but to include matters that substantially affect the rights or obligations of outside parties. The essential focus of this inquiry is not on the type of rule but on its effect on the rights or obligations of non-agency parties. •

#### 10TH ANNIVERSARY OF CHERNOBYL

• Mr. LEVIN. Mr. President, on April 26, 1986, reactor number 4 at the V.I. Lenin Atomic Power Plant in Chernobyl near Kiev, Ukraine exploded. The explosion released a cloud of radioactive steam into the atmosphere reported to contain about 200 times more radio activity than was released at Hiroshima and Nagasaki.

The explosion took an enormous toll on the people directly exposed to the radiation emitted from the plant. Shortly after the explosion, Soviet officials admitted to 31 deaths among reactor operators and the team attempting to contain the damage. Thousands of workers were eventually exposed at the site.

However, children have been the first among the general population to suffer from the effects of the explosion at Chernobyl. Children are most susceptible to the radioactive iodine emitted from Chernobyl because of their active

thyroid glands. Researchers in the region have seen a dramatic increase in thyroid cancer among children. However, this is only the earliest problem to make itself known and one of the few to be studied. The problem with estimating the toll on human life in the region is that 10 years is a short period of time to see all of the impacts. Radioactive fallout is only beginning to show its damaging effects on the population.

At the time of the explosion, the prevailing winds carried much of the radiation north into Belarus and points beyond. Excessive levels of radiation were recorded in Scandinavia, Great Britain, the Mediterranean, and Alaska in the first weeks after the explosion. About 1000 acres of pine forest in the path of the first plume of the Chernobyl explosion died immediately as a result of direct fallout. A permanent 30-kilometer dead zone was established around the power station where human habitation is still forbidden today because of the high level of contamination. The Chernobyl area, known as the Polissia region, was once famous for its old-growth forests rich with mushrooms, berries and medicinal herbs. The community's well-being revolved around the health of the forest. Their dependency on the forest resulted in a very unique spirituality and culture in the region. After the accident, residents were forced to leave their homes and move to completely different environments. The inability to return to the land they once knew and worries about possible exposure to radiation now cause great stress among the population. Two of Chernobyl's four units remain functional today. Ukraine says it wants to completely close Chernobyl, but cannot function without the energy it provides and cannot afford to properly close the plant, even though radioactive material is now threatening water tables in the area. The American people should specifically lend their support to the efforts to make the area around Chernobyl as safe as possible. We should also work to improve the health, economic and environmental well-being of areas affected by the Chernobyl disaster. The Chernobyl explosion has been a devastating event for the entire world. Ukrainian-Americans have worked strenuously to lend support to their homeland. In my home State, the Michigan Committee—Chernobyl Challenge 1996 will be holding events to commemorate the 10-year anniversary of the explosion. On April 28, 1996, a commemorative program will be held at St. Josaphat Ukrainian Catholic Church in Warren, MI. The guest speaker will be Ukraine's Ambassador to the United Nations, Anatoly Zlenko. There will also be blood drives held at the Ukrainian Cultural Center and at St. Michael Ukrainian Catholic Church in cooperation with the American Red Cross, where volunteers will bring to the public's attention the ongoing tragedy in Ukraine. I salute their

efforts to help Ukraine recover from the tragedy that occurred a decade ago at Chernobyl.●

#### SUBMITTING CHANGES TO THE BUDGET RESOLUTION DISCRETIONARY SPENDING LIMITS, APPROPRIATE BUDGETARY AGGREGATES, AND APPROPRIATIONS COMMITTEE ALLOCATION

● Mr. DOMENICI. Mr. President, section 103(c) of Public Law 104-121, the Contract With America Advancement Act, requires the chairman of the Senate Budget Committee to adjust the discretionary spending limits, the appropriate budgetary aggregates and the Appropriations Committee's allocation contained in the most recently adopted Budget Resolution—in this case, House Concurrent Resolution 67—to reflect additional new budget authority and outlays for continuing disability reviews—CDR's, as defined in section 201(g)(1)(A) of the Social Security Act.

I hereby submit revisions to the non-defense discretionary spending limits for fiscal year 1996 contained in sec. 201 of House Concurrent Resolution 67 in the following amounts:

1996				
Budget authority:				
Current	nondefense	discretionary	spending	
limit				\$219,668,000,000
Adjustment				15,000,000
Revised	nondefense	discretionary	spending	
limit				219,683,000,000
Outlays:				
Current	nondefense	discretionary	spending	
limit				267,725,000,000
Adjustment				60,000,000
Revised	nondefense	discretionary	spending	
limit				267,785,000,000

I hereby submit revisions to the budget authority, outlays and deficit aggregates for fiscal year 1996 contained in sec. 101 of House Concurrent Resolution 67 in the following amounts:

1996				
Budget authority:				
Current aggregate				\$1,285,500,000,000
Adjustment				15,000,000
Revised aggregate				1,285,515,000,000
Outlays:				
Current aggregate				1,288,100,000,000
Adjustment				60,000,000
Revised aggregate				1,288,160,000,000
Deficit:				
Current aggregate				245,600,000,000
Adjustment				60,000,000
Revised aggregate				245,660,000,000

I hereby submit revisions to the 1996 Senate Appropriations Committee budget authority and outlay allocations, pursuant to sec. 302 of the Congressional Budget Act, in the following amounts:

1996				
Budget authority:				
Current Appropriations Committee allocation				\$772,349,000,000
Adjustment				15,000,000
Revised Appropriations Committee allocation				772,364,000,000
Outlays:				
Current Appropriations Committee allocation				\$807,374,000,000
Adjustment				60,000,000
Revised Appropriations Committee allocation				807,434,000,000

Public Law 104-121 also requires me to adjust discretionary spending limits for any future fiscal year—1997-2002—when the Committee on Appropriations

reports an appropriations measure specifying an amount in excess of a 1995 base level amount for continuing disability reviews. The allowable adjustment to the outlay cap amounts to \$2.7 billion over the period 1996 to 2002. CBO estimates that the additional CDR's flowing from the increased appropriations would result in savings in the Social Security, SSI Medicare and Medicaid programs of roughly \$3.5 billion over the 7-year time frame.●

#### TRIBUTE TO PRINCE GEORGES COUNTY

● Mr. SARBANES. Mr. President, I rise to join the people of Maryland in celebrating the tricentennial anniversary of the founding of Prince Georges County on April 23, 1696. Over the centuries the residents and leadership of Prince Georges County have demonstrated a remarkable commitment to preserving their rich historic legacy, while encouraging economic growth and cultural enrichment.

While evidence suggests that the first human settlements in the area later to be called Prince Georges County existed over 10,000 years ago, the first documented visit to the region occurred in 1608 when Captain John Smith sailed up the Potomac River to map the Chesapeake Bay region and search for food for the fledgling Jamestown Colony. Captain Smith paid only a brief visit to this region which, less than a century later, would be home to about 1,700 Marylanders. This rich land extending from Mattawoman Creek in the south all the way to the Pennsylvania border was proclaimed a self-governing county by the colonial Governor in 1696, and was named Prince Georges County in honor of Prince George of Denmark, husband of Princess Anne, heir to the throne of England.

Due to the abundance of fertile farm land, agriculture dominated the local economy in colonial times, contributing to the livelihood of almost every Prince Georges County inhabitant. Preservation of this important aspect of colonial life has remained a priority to the residents of Prince Georges County who, through groups such as the Accokeek Foundation, work to maintain the National Colonial Farm, displaying to all a continuum of American farm life from the 1600's through the 18th century.

Evidence of the importance of the agricultural economy in southern Maryland remains in many aspects of Prince Georges County life, including the Maryland higher education system. In 1856, in order to educate the sons of colonial farmers and to foster the exchange of new ideas, the Maryland Agricultural College—the first of its kind in the Nation—was established in Prince Georges County. Today we know the Maryland Agricultural College as the University of Maryland College Park, the flagship institution of the University of Maryland system.