

DIFFERENTIATION AMONG FATS, OILS, AND GREASES

SEPTEMBER 27, 1995.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

[To accompany H.R. 436]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 436) to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. DIFFERENTIATION AMONG FATS, OILS, AND GREASES.

(a) IN GENERAL.—In issuing or enforcing any regulation or establishing any interpretation or guideline relating to a fat, oil, or grease under any Federal law pertaining to the transportation, storage, disposal, discharge, or release of that substance, the head of any Federal agency shall differentiate between—

(1)(A) animal fats and oils and greases, and fish and marine mammal oils, within the meaning of paragraph (2) of section 61(a) of title 13, United States Code; or

(B) oils of vegetable origin, including oils from the seeds, nuts, and kernels referred to in paragraph (1)(A) of such section; and

(2) other oils and greases, including petroleum.

(b) CONSIDERATIONS.—In differentiating between the class of fats, oils, and greases described in subsection (a)(1) and the class of oils and greases described in subsection (a)(2), the head of the Federal agency shall consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

PURPOSE AND SUMMARY

Congress has enacted two principal statutes that address the discharge of “oil” into the Nation’s waters—the Federal Water Pollution Control Act, and the Oil Pollution Act of 1990 (OPA 90). Due to these statutes’ broad definition of oil and the lack of clear Congressional direction on differentiating animal fats and vegetable oils from other types of oils and greases, including petroleum, regulatory agencies have not made such differentiations in certain implementing regulations they propose and promulgate. As these rules could impose costly, inappropriate, and sometimes counterproductive requirements on handlers and transporters of animal fats and vegetable oils, it is necessary for Congress to direct such Federal agencies to make such differentiations.

BACKGROUND AND NEED FOR LEGISLATION

In 1990, in response to several petroleum oil spills, including the Exxon Valdez spill, the Congress enacted the Oil Pollution Act of 1990 (OPA 90) to reduce the risk of oil spills, improve facility and vessel oil spill response capabilities, and minimize the impact of oil spills on the environment. In enacting OPA 90, Congress amended the Federal Water Pollution Control Act to impose certain requirements on the owners and operators of vessels carrying “oil” and on facilities posing a risk of “substantial” harm or “significant and substantial harm” to the environment, including requiring owners and operators to prepare and submit response plans to various Federal agencies for review and approval, or stop handling oil. Other requirements affecting the handling and transportation of oil also were enacted.

Although petroleum oil was the focus of Congress’ attention during the enactment of OPA 90, the application of the law has not been limited to petroleum oil. The requirements of the law have been applied to all oils, including animal fats and vegetable oils.

The animal fat and vegetable oil industry handles, ships, and stores over 25 billion pounds of animal fats and vegetable oils annually in the United States. These agricultural substances are essential components of food products produced in the United States. There are several reasons why the handling and transportation of animal fat and vegetable oils should be treated differently from the handling and transportation of non-animal fat and vegetable oils,

including petroleum. First, there is evidence that exposure of animal fat and vegetable oils to the environment does not present the same environmental risks as exposure of non-animal fat and vegetable oils, such as petroleum. For example, a June 28, 1993, report by ENVIRON Corporation, "Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways" and an associated Aqua Survey, Inc. study on the aquatic toxicity of petroleum oil and of animal fats and vegetable oils made the following findings with respect to animal fats and vegetable oils:

They are readily biodegradable;

They are not persistent in the environment;

They have a high biological oxygen demand (BOD), which could result in oxygen deprivation where there is a large spill in a confined body of water that has low flow and dilution;

They are essential components to human and wildlife diets;

and

They can coat aquatic biota and foul wildlife (*e.g.*, matting of fur or feathers, which may lead to hypothermia).

Second, there are notable differences in the manner in which animal fats and vegetable oils and other non-animal fats and vegetable oils are transported. Vessels carrying petroleum oils can exceed 500,000 deadweight tons. In contrast, vegetable oils typically are carried on small parcel tankers ranging from 30,000 to 45,000 deadweight tons. Further, differences exist in the size of the tanks in vessels carrying these two kinds of products. Large tankers carrying petroleum oil may have 10 large center tanks and 15 wing tanks with individual tank capacities reaching approximately 592,000 tons or 177,600,000 gallons of oil. Parcel tankers carrying vegetable oil typically have about 30 to 35 cargo tanks that range from 1,000 to 3,500 tons capacity each. With regard to transfer operations, the typical amount of vegetable oil loaded or offloaded during a transfer ranges from 500 to 5,000 tons. In contrast, a tanker carrying petroleum commonly loads or offloads its entire cargo during one transfer operation.

Third, spills of animal fats or vegetable oils are likely to be smaller and to occur less frequently than spills of non-animal fats and vegetable oils. Data compiled by the Coast Guard reveals that, from 1986 to 1992, animal fats and vegetable oils together accounted for only about 0.4 percent of the oil spill incidents in and around U.S. waters (both in terms of incidents and their volume). Less than half of those spills were in water. Further, these spills were generally very small. Only thirteen of those spills were greater than 1,000 gallons. Thus, only about 0.02 percent of all oil spill incidents in and around U.S. waters over the last seven years were spills of animal fats or vegetable oils greater than 1,000 gallons.

Finally, there is evidence that the response to a spill of animal fats or vegetable oils should, in certain circumstances, be different than the response to a spill of non-animal fats and vegetable oils, including petroleum. In comments filed on RSPA Docket Nos. HM-214 and PC-1, dated June 3, 1993, the Department of Interior (DOI) recommended the establishment of response plan requirements for animal fats and vegetable oils comparable to those for other oils. This recommendation was based on anecdotal data derived from a discharge of butter from a U.S. government warehouse

into Shoal Creek, Maryland. DOI conceded, however, that the principal adverse environmental effects of the Shoal Creek incident were caused by the removal efforts themselves.

Differentiation by Federal agencies between animal fats and vegetable oils and other oils and greases, including petroleum, also is consistent with President Clinton's Executive Order on Regulatory Planning and Review (E.O. 12,866, 58 Fed. Reg. 51,735, 51,736 (1993)) which sets out the following principles:

In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction;

Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative of its other regulations or those of other Federal agencies.

Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities) consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

The Committee concludes, therefore, that there is strong evidence on which to base a conclusion that Federal agencies charged with the handling, transportation, and disposal of animal fats and vegetable oils should differentiate between such fats and oils and other oils and greases, including petroleum.

HEARINGS

The Committee on Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On September 27, 1995, the Committee ordered reported H.R. 436, with an amendment, by voice vote, a quorum being present.

ROLL CALL VOTES

Clause 9(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and on amendments thereto. There were no recorded votes taken in connection with ordering H.R. 436 reported or in adopting the amendment. The voice votes taken in Committee are as follows:

COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

Bill

H.R. 436, a bill to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes.

Amendment

Amendment by Mr. Bliley re: clarifies that the bill applies to the transportation, storage, disposal, discharge or release of such oils.

Disposition

Agreed to, by a voice vote.

Motion

Motion by Mr. Bliley to order H.R. 436, as amended, reported to the House.

Disposition

Agreed to, by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House, the Committee has not held oversight or legislative hearings on this legislation.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

COMMITTEE COST ESTIMATE

Under clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee is required to provide the following: (1) an estimate of the costs which would be incurred in carrying out this bill in the fiscal year in which it is reported, and in each of the five following fiscal years; (2) a comparison of the estimate of such costs by the Committee with any estimate of such costs made by any government agency and submitted to the Committee; and (3) when practicable, a comparison of the total estimated funding level for the relevant program with the appropriate levels under current law.

The legislation would require the head of a Federal agency to differentiate between animal fats and vegetable oils and other oils and greases, including petroleum, when issuing or enforcing any regulation or establishing any interpretation or guideline relating to a fat, oil or grease under any Federal law pertaining to the transportation, storage, disposal, discharge, or release of that substance. The legislation does not impose any new rulemaking requirements on any agency. Therefore, the Committee estimates that compliance with this provision would not result in any signifi-

cant additional costs being incurred, either in the fiscal year in which it is reported or in any of the five following fiscal years. The Committee further estimates that the legislation would not impose any additional costs on State and local governments.

No other cost estimates have been submitted to the Committee; therefore, the Committee is unable to compare the Committee's cost estimate with any other cost estimate. Finally, the Committee believes that it is not practicable to compare the total estimated funding level for the relevant program with the appropriate levels under current law because the legislation applies to a broad array of programs and because the Committee has estimated that the legislation does not impose any significant additional costs.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1995.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 436, a bill to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes, as ordered reported by Committee on Commerce on September 27, 1995. The bill would require the head of a Federal agency to apply different regulatory standards to classes of fats and vegetable oils and other classes of other oils, including petroleum oil, based on physical, chemical and other properties. CBO estimates that enacting H.R. 436 would not result in any significant cost to the Federal Government, and would not affect the budgets of State or local governments.

Enactment of H.R. 436 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

On September 27, 1995, CBO transmitted a cost estimate for H.R. 436, the Edible Oil Regulatory Reform Act, as ordered reported by the House Committee on Agriculture on September 20, 1995. The two bills differ in that the Agriculture Committee's version would change financial responsibility requirements for tank vessels carrying animal fat or vegetable oil. The Commerce Committee's version would also limit the reform to regulation of transportation, storage, disposal, discharge or release of the substance. CBO has estimated the same budgetary impact for both bills.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hull.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1 provides that in issuing or enforcing any regulation or establishing any interpretation or guideline relating to a fat, oil, or grease under any Federal law pertaining to the transportation, storage, disposal, discharge, or release of that substance, the head of any Federal agency shall differentiate between the following: (1) animal fats and oils and greases, and fish and marine mammal oils, within the meaning of 13 U.S.C. 61(a)(2) or oils of vegetable origin, including oils from the seeds, nuts, and kernels referred to 13 U.S.C. 61(a)(1); and (2) other oils and greases, including petroleum.

Section 1 further provides that in differentiating between the classes of fats, oils, and greases described above, the head of the Federal agency shall consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

COMMITTEE CORRESPONDENCE

U.S. CONGRESS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, September 27, 1995.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to thank you for your cooperation regarding H.R. 436, a bill relating to the regulation of animal fats, vegetable oils, and other types of oils and greases, which your Committee ordered reported today.

Pursuant to Rule X of the Rules of the House, H.R. 436 directly affects provisions of statutes within the Transportation and Infrastructure Committee's jurisdiction. In fact, the Transportation and Infrastructure Committee has already passed language virtually identical to H.R. 436 in two separate contexts: section 413 of H.R. 1361, the Coast Guard Authorization Act for fiscal year 1996 and section 506 of H.R. 961, the Clean Water Amendments of 1995. Each bill, including the animal fat/vegetable oil provisions, subsequently passed the House of Representatives.

In each instance, the animal fat/vegetable oil language focuses on regulation under the Oil Pollution Act and the Clean Water Act—statutes which are under the jurisdiction of the Transportation and Infrastructure Committee. Over the last several years, the Committee has gathered testimony and other data indicating that the need for this legislation stems primarily from current or proposed regulations under these two Acts.

In view of the Speaker's desire to move H.R. 436 to the Floor in an expeditious fashion, I do not intend to seek a sequential referral of the bill. However, I would appreciate your acknowledgement of

the Transportation and Infrastructure Committee's jurisdiction over the bill and an acknowledgement of the Transportation and Infrastructure Committee's right to seek conferees in the event that this legislation is considered in a House-Senate conference. The Transportation and Infrastructure Committee will refrain from seeking a sequential referral of H.R. 436 with the understanding that you will continue to work with us on this legislation. However, by agreeing not to seek a sequential referral, the Transportation Committee does not waive its jurisdiction over these matters. I would further request that our exchange of letters on this matter be included in the Committee's report on H.R. 436.

Thank you for your cooperation in this matter. I look forward to working with you in the future, both on this bill and other legislation of mutual interest to our two Committees.

With kind personal regards, I remain
Sincerely,

BUD SHUSTER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, September 27, 1995.

Hon. BUD SHUSTER,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter of September 27, 1995, regarding H.R. 436, relating to the regulation of animal fats, vegetable oils, and other types of oil and greases.

I appreciate the interest that the Committee on Transportation and Infrastructure has in this legislation. As your letter indicates, the Committee could be successful in asserting a right to a sequential referral of H.R. 436. Therefore, I am most appreciative of your decision not to request such a referral in the interest of expediting consideration of the bill.

You have my assurance that agreements worked out by our respective staffs will be included in a manager's amendment as this bill is considered on the House floor. I also recognize your Committee's right to seek conferees on H.R. 436.

Thank you for your cooperation in this matter and for your support of this legislation.

Sincerely,

THOMAS J. BLILEY, Jr.,
Chairman.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
This legislation does not amend any existing Federal law.