percent since 1960. In 1982, the tax share stood at 19.8 percent of GDP. By 1989, the tax share had declined slightly to 19.2 percent of GDP—much the same as it had been back in 1960.

In short, whether we have raised or lowered tax rates, the percentage of GDP in taxes has hovered at 19 percent. The issue, of course, is what GDP would have been like in 1989 if it had grown at the rate of a large and growing GDP, or of an anemic, stagnant one?

Here again, the real numbers destroy the myths. That is the story. According to the Federal Office of Management and Budget (OMB), in 1982, the year the tax cuts were implemented, tax receipts stood at $637.8 billion. In 1989, the tax receipts had increased to $990.7 billion.

How did this come about? By lowering taxes, the government freed up capital and entrepreneurial spirit, creating jobs and wealth and expanding the size of the economic pie. From 1982 to 1989, GDP increased from $5.1 to $5.4 trillion. Therefore, while tax rates fell, tax revenues as a share of GDP remained relatively constant at just over 19 percent, the dollar amount of tax revenues collected by the federal government rose dramatically, because the economic pie grew.

Tax cuts will increase economic growth and thereby reduce the deficit. The question is, by how much? Historian Bruce Bartlett, a former assistant secretary of the Treasury, notes that the OMB figures show that increases in real GDP significantly reduce the deficit. The OMB figures show that for every 1 percent reduction in the real GDP, the deficit would be diminished by more than $150 billion if the economy grew just 1 percent faster than currently projected over the next five years.

Of course, Bartlett says, there is no guarantee that the Republican tax cuts will achieve a 1 percent faster growth rate. But there is no doubt they will increase growth above current levels if we have our fiscal house in order. If growth is just 0.4 percent faster per year it would be enough to make the tax cut deficit-neutral, based on the OMB data.

Thus, a dispassionate review of the figures shatters the myth that the Reagan tax cuts increased the deficit. The problem was not our revenue stream, either in terms of the percentage of GDP paid in taxes, or in real tax dollars received. The problem was too much spending. From 1982 to 1989, government spending rose from $745 billion to $1.14 trillion—a 53 percent jump.

Tax cuts in the 1980s can help produce the same type of economic growth they generated in the 1960s. This growth in turn will help us pay for all we must do. All we must do is reduce the rate at which government spending grows. CBO figures show that, if we simply hold the rate at which federal spending grows to a little over 2 percent per year, we can cut taxes by $189 billion and balance the budget by the year 2002.

MYTH NO. 3

But this reference to tax cuts brings us face to face with another myth, namely that tax cuts disproportionately benefit the rich at the expense of the poor.

The myth explodes, however, on contact with the facts. A CBO study shows that lower income-tax rates actually increase the percentage of the total tax bill paid by the rich while decreasing the tax burden on the poor. The center of the myth is that cutting tax rates between decreases in the marginal tax rate and increases in the share of revenue paid by the top 1 percent of income earners. And, of course, income earned by the most wealthy went down in the taxes paid by the lower 50 percent of income earners.

For example, by 1988, the share of income taxes paid by the bottom 50 percent of taxpayers assumed just 5.7 percent of the income tax burden. Also in 1988, the average tax payment of the top 1 percent of taxpayers amounted to 27.5 percent of the total. On the other hand, after the budget summit deal in 1981, the marginal tax rate was increased from 28 to 31 percent. This produced a 3.5 percent decrease in the revenue share paid by the top 1 percent—down to 24.6 percent. While the marginal tax rates decreased, the rich paid more, and as marginal rates increased the rich paid less, leaving more for the middle class and poor to pay.

Clearly, then, if we want to help the middle class, the last thing we should do is increase marginal tax rates. Such an increase on the middle-class incomes will exacerbate the problem of the highest taxes, in particular, on the middle class, the last thing we should do is increase marginal tax rates.

The answer to our dilemma, then, is not to keep our current high taxes but to cut taxes while bringing spending under control. By bringing together disparate kinds of tax cuts, from a $500-per-child tax credit to a reduction in the capital-gains tax rate that will strengthen small businesses and entrepreneurs, we can increase the well-being and productivity of America’s middle-class families, thereby permitting the middle-class families to build a better future for their children.

Thus, the proposed $500-per-child tax credit directly benefits the middle class. The Joint Committee on Taxation has reported that three-quarters of the benefits from this tax cut will go to people with incomes less than $75,000. A capital-gains tax cut will accrue to the middle class as well. IRS data show that 55 percent of capital gains earned $50,000 or less. And 75 percent of them earn $75,000 or less. These tax cuts will bring real relief to American middle-class families. They will help the economy and thereby help lower the deficit.

The 1980s teach us—if only we will examine their lessons properly—that a vibrant economy, spurred by low taxes and fewer regulations, will produce balanced budgets and economic well-being for the middle class. We need only trust Americans to spend and invest their own money as they see fit, not us. We need only trust the people, rather than government, to make their own decisions about how to take care of their families and improve their lot in life.

CONGRESSIONAL REVIEW TITLE OF H.R. 3136

Mr. NICKLES. Mr. President, I will submit for the Record a statement which serves to provide a detailed explanation and a legislative history for the congressional review title of H.R. 3136, the Small Business Regulatory Enforcement Fairness Act of 1996. H.R. 3136 was introduced by Senator R. EID on March 31, 1996, and was signed by the President the next day. Ironically, the President signed the legislation on the first anniversary of the passage of S. 219, the forerunner to the congressional review title, which was passed by the Senate by a vote of 100 to 0 on March 29, 1995. Because title III of H.R. 3136 was the product of negotiation with the Senate and did not go through the committee process, no other expression of legislative history exists other than the statement made by Senator R. EID and myself immediately before passage of H.R. 3136 on March 28. I am submitting a joint statement to be printed in the Record on behalf of myself, as the sponsor of the S. 219, Senator R. EID, the prime co-sponsor of S. 219, and Senator STEVENS, the chairman of the Committee on Governmental Affairs. This joint statement is intended to provide guidance to the agencies that will be reviewing congressional review rules.
for almost twenty years. Use of a simple (one-house), concurrent (two-house), or joint (two houses plus the President) resolution are among the options that have been debated by Congress. A previous House provision limited the effectiveness of a major rule for any period when the House or Senate was in recess for more than three days. On November 9, 1995 both the House and Senate passed this version of the congressional review legislation as part of the first debt limit extension bill. President Clinton vetoed the bill, principally for reasons unrelated to the congressional review provision.

On February 29, 1996, a House version of the congressional review legislation was published in the Congressional Record as title III of H.R. 994, which was scheduled to be brought to the House floor in the coming week. This bill was almost identical to the legislation approved by both Houses in H.R. 2586. On March 19, 1996, the Senate adopted a congressional review provision similar to that of H.R. 942, which carried the bill passed the Senate 100-0. The congressional review legislation in S. 942 was similar to the original version of S. 219 that passed the Senate on March 29, 1995.

Soon after passage of S. 942, representatives of the relevant House and Senate committees submitted a copy of the rule and a brief report about it to each House of Congress and to the Comptroller General before the rule can take effect. In addition to a copy of the rule, the report must contain a statement relating to the rule, including whether it is a major rule under the chapter, and the proposed effective date of the rule. Because the Senate did not agree to a conference on H.R. 450 and S. 219, both Houses continued to incorporate the congressional review provisions from the House and Senate versions of the second debt limit bill. Section 25 of the Senate Governmental Affairs Committee report out S. 343, the "Comprehensive Regulatory Reform Act of 1995," and S. 291, the "Comprehensive Regulatory Enforcement Fairness Act of 1996," to establish a "Congressional Review Act," which was included in the final compromise language was the "Comprehensive Regulatory Reform Act of 1995," which also included a congressional review provision. The congressional review provision in S. 343 that was debated by the Senate adopted language similar to the House provision to allow the expedited procedures also to apply to resolutions disapproving proposed rules, and provisions that would have extended the effectiveness of a major rule for any period when the House or Senate was in recess for more than

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1 \*In the Senate, a "session day" is a calendar day in which the Senate is in session. In the House of Representatives, the same term is normally expressed as a "legislative day." In the congressional record, however, a "session day" means both a "session day" of the Senate and a "legislative day" of the House of Representatives unless the context of the paragraph indicates otherwise.
would not further delay the effective date of the rule. Moreover, pursuant to subsection 801(a)(5), the effective date of a rule shall not be delayed by this chapter beyond the date on which the President may reject a joint resolution of disapproval under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" except from that definition and from the requirements of subsections 801(a)(1)(A) and 801(a)(1)(B). However, such an issuance shall still fall within the definition of "rule" and would be subject to the procedures for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to pass a resolution of disapproval under section 803.

A court may not stay or suspend the effective date of a rule beyond the period specified in section 801 simply because a resolution of disapproval is pending in Congress. The authors determined the relationship between the period of time that a major rule is delayed and the period of time during which Congress could use the expedited procedures in section 802 to pass a resolution of disapproval. Although it would be best for Congress to act pursuant to this chapter before a major rule becomes effective, it was recognized that Congress could not often act immediately after a rule was issued because it may be issued during a recess of Congress, adjourned for more than 3 days, or during other periods when Congress cannot devote the time to complete prompt legislative action. Accordingly, the authors determined that Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule takes effect. Such court action would be contrary to the many express provisions governing when different types of rules may take effect. Such court action would be contrary to the authors' intent because it would upset an important compromise on how long a delay in the effectiveness of any rule beyond the date specified in the version that passed the Senate or House of Representatives and the version that passed both Houses on November 9, 1995. It is also the authors' belief that such court action would be inconsistent with the principles of separation of powers under the Constitution, art. I, § 7, cl. 2, in that courts may not intervene in the legislative process to pass resolutions of disapproval before regulated parties must invest the significant resources necessary to comply with a major rule. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule becomes effective, and it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule become effective, the authors provided that an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of this chapter, is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence fishing, and hunting, from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or otherwise impractical." In subsection 808(3), the "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment pursuant to 5 U.S.C. § 553(b). This is an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated

### Purpose of and Exceptions to the Delay of Major Rules

The reason for the delay in the effectiveness of a major rule beyond that provided in APA subsection 553(a) is to provide Congress with an opportunity to consider the many express provisions governing when different types of rules may take effect. Congress may continue to use the expedited procedures to pass resolutions of disapproval for a period of time after a major rule becomes effective, and it would be preferable for Congress to act during the delay period so that fewer resources would be wasted. To increase the likelihood that Congress would act before a major rule becomes effective, the authors provided that an approximately 60-day delay period in the effective date of a major rule, rather than an approximately 45-day delay period in some earlier versions of this chapter, is not subject to the delay period of subsection 801(a)(3) if the President determines in an executive order that one of four specified situations exist and notifies Congress of his determination. The second is in subsection 808(1), which excepts specified rules relating to commercial, recreational, or subsistence fishing, and hunting, from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3). The third is in subsection 808(2), which excepts certain rules from the initial delay specified in subsection 801(a)(1)(A) and from the delay in the effective date of a major rule provided in subsection 801(a)(3) if the relevant agency finds "for good cause . . . that notice and public procedure thereon are impracticable, unnecessary, or otherwise impractical." In subsection 808(3), the "good cause" exception in subsection 808(2) is taken from the APA and applies only to rules which are exempt from notice and comment pursuant to 5 U.S.C. § 553(b). This is an analogous statute. The fourth exception is in subsection 804(2). Any rule promulgated

### Time Periods Governing Passage of Joint Resolutions

Passed resolution pursuant to this chapter would be treated differently than its action or inaction regarding any other bill or resolution.

- Time periods governing passage of joint resolutions

Subsection 802(a) provides that a joint resolution disapproving of a particular rule may be introduced in either House beginning on the date of the rule and accompanying report are received by Congress until 60 calendar days thereafter (excluding days either House may be in recess for more than 3 days during a session of Congress). But if Congress did not have sufficient time in a previous session to introduce or consider a joint resolution disapproving of a major rule, in subsection 802(c), the rule and accompanying report will be treated as if it were first required by Congress on the 13th session day in the Senate, or 12th session day in the House, after the start of its next session. When a rule was submitted near the end of a Congress or prior to the start of the next Congress, a joint resolution of disapproval regarding that rule may be introduced in the next Congress beginning on the 13th session day of the Senate or 12th session day in the House during 60 calendar days thereafter (excluding days either House of Congress is adjourned for more than 3 days during the session) regardless of whether such a resolution was introduced in the prior Congress. Of course, any joint resolution pending from the first session of a Congress, may be introduced further in the next session of the same Congress.

Subsections 802(c)–(d) specify special procedures to apply to the consideration of a joint resolution of disapproval in the Senate. Subsection 802(c) allows 30 Senators to petition for the discharge of resolution from a committee. A joint resolution of disapproval may be introduced any time (the later of 20 calendar days after the rule is submitted to Congress or published in the Federal Register, if it is so published). Subsection 802(d) specifies procedures for the consideration of a resolution on the Senate floor. Such a resolution is highly privileged, points or order are waived, a motion to postpone consideration is not in order, the resolution is unamendable, and debate on the joint resolution and "on all debatable motions and appeals in connection therewith" (including a motion to proceed) is limited to no more than 10 hours.

Subsection 802(e) provides that the special Senate procedures specified in subsections 802(c)–(d) shall not apply to the consideration of any joint resolution of disapproval of a rule after 60 session days of the Senate beginning on the later date that is subject to Congress. A joint resolution disapproving of a major rule goes into effect immediately if the President die before the expiration of time provided in subsection 801(a)(5), the effective date of a rule shall not otherwise be delayed by this chapter beyond the date on which the President may reject a joint resolution of disapproval under the Telecommunications Act of 1996 or any amendments made by that Act that otherwise could be classified as a "major rule" except from that definition and from the requirements of subsections 801(a)(1)(A) and 801(a)(1)(B). However, such an issuance shall still fall within the definition of "rule" and would be subject to the procedures for non-major rules. A determination under subsection 801(c), subsection 804(2), or section 808 shall have no effect on the procedures to pass a resolution of disapproval under section 803.
normal rules of either House—without one exception. Subsection 802(f) sets forth one unique provision that does not expire in either House. Subsection 802(f) provides procedures for passage of a joint resolution of disapproval when one House passes a joint resolution and transmits it to the other House that has not yet completed action. In both Houses, the joint resolution of disapproval that has not yet completed action, in either House to act shall not be referred to a committee but shall be held at the desk. In the Senate, if a joint resolution has passed both Houses, the final vote of the Senate shall be on the joint resolution of the first House (no matter when that vote takes place). If the second House passes the resolution, no conference is necessary and the joint resolution will be presented to the President for his signature. Subsection 802(f) is justified because subsection 802(a) sets forth the required language of a joint resolution in each House, and thus, permits little variance in the joint resolutions that could be introduced in each House.

Effect of enactment of a joint resolution of disapproval

Subsection 801(b)(1) provides that: "A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule." Subsection 801(b)(2) provides that such a disapproved rule "may not be reissued in substantially the same form, and any rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the joint resolution disapproving the original rule." Subsection 801(b)(2) is necessary to prevent circumvention of a resolution disapproval. Nevertheless, it may have a different impact on the issuing agencies depending on the nature of the underlying law that authorized the rule.

If the law that authorized the disapproved rule provides broad discretion to the issuing agency regarding the substance of such a rule, the agency may exercise its broad discretion to issue a rule with a substantially different impact from the initially disapproved rule. Depending on the law that authorized the rule, an issuing agency may have both options. But if an agency is mandated to promulgate a particular rule and its discretion in issuing the rule is narrowly circumscribed, the enactment of a resolution of disapproval for that rule may work to prohibit the reissue of any rule. The authors intend this chapter to be comprehensive in its treatment of the procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of either House of Congress to "determine the Rules of its Proceedings." U.S. Const., art. I, § 5, cl. 2, which includes being the final arbiter of the meaning and intent of the Constitution.

The limitation on a court's review of subsidiary determination or compliance with congressional procedures, however, does not apply to the congressional procedures of disapproval. As explained in the Senate, the Congress is enacting the congressional review procedures in this chapter. This latter limitation on the scope of judicial review was drafted in recognition of the constitutional right of either House of Congress to "determine the Rules of its Proceedings." U.S. Const., art. I, § 5, cl. 2, which includes being the final arbiter of the meaning and intent of the Constitution.

Enactment of a joint resolution of disapproval for a rule that was already in effect

Subsection 801(f) provides that: "Any rule that takes effect and later is made of no effect by enactment of a joint resolution of disapproval, described under section 802, shall be treated as though such rule had never taken effect." Application of this subsection should be consistent with existing judicial precedents on rules that are deemed never to have taken effect.

Agency information required to be submitted to GAO

Pursuant to subsection 803(a)(1)(B), the federal agency promulgating the rule shall submit to the Comptroller General (and make available to each House) (i) a complete copy of the cost-benefit analysis of the rule, if any, (ii) the agency's actions related to the Regulatory Flexibility Act, (iii) the agency's actions related to the Unfunded Mandates Reform Act, and (iv) any other relevant information or requirements under any other Act and any relevant Executive Orders." Pursuant to subsection 803(a)(1)(B), in instances where the agency submits the following information to the Comptroller General on the day the agency submits the rule to Congress and to GAO.

The authors intend information supplied in conformity with subsection 803(a)(1)(B)(iv) to encompass both agency-specific statutes and government-wide statutes and executive orders that impose requirements relevant to the rule. Examples of agency-specific statutes include information regarding compliance with the law that authorized the rule and any agency-specific procedural requirements, such as the Safe Drinking Water Act, the Product Safety Act, and the Safe consumption of jet fuel. Examples of government-wide statutes include E.O. No. 12866 (Sept. 30, 1993) (Regulatory Flexibility Act), E.O. No. 12372 (Feb. 28, 1982) (Proper Use of Regulations), E.O. No. 1260, (Sept. 30, 1988) (Enhancing the Federal Register), E.O. No. 12369 (Oct. 27, 1988) (Federalism Considerations in Policy Formulation and Implementation), and E.O. No. 12612 (Oct. 26, 1987) (Federalism Considerations in Policy Formulation and Implementation).

GAO reports on major rules

Fifteen days after the federal agency submits a copy of a major rule and report to each House of Congress and the Comptroller General, the Comptroller General shall prepare and provide a report on the major rule to the committee of jurisdiction in each House. Subsection 803(a)(2)(B) requires agencies to cooperate with the Comptroller General in providing information relevant to the Comptroller General's reports on major rules. Given the 15-day deadline for these reports, it is essential that the agency's initial submission to the General Accounting Office (GAO) contain all of the information necessary for GAO to conduct its analysis. Of course, the agency's submission must include the information required of all rules pursuant to 803(a)(1)(B). Whenever possible, OMB should work with GAO to alert the Comptroller General to individual major rules that are being issued and to provide as much advance information to GAO as possible on such proposed major rules. In particular, OMB should attempt to provide the complete cost-benefit analysis on a major rule, if any, well in advance of the final rule's promulgation. It also is essential for the agencies to present this information in a format that will facilitate GAO's analysis. The authors expect that GAO and OMB will work to develop, to the extent practicable, standard formats for agency submissions. OMB also should ensure that agencies follow such formats. The authors believe that agencies will expend no effort to provide GAO with any additional information that GAO may require for a thorough report. The authors do not intend the Comptroller General's reports to be delayed beyond the 15-day deadline due to lack of information or resources unless the committees of jurisdiction indicate a different preference. Of course, OMB will supplement its initial report at any time with any additional information, on its own, or at the request of the relevant committees or jurisdiction.

Covered agencies and entities in the executive branch

The authors intend this chapter to be comprehensive in the agencies and entities that are covered by this legislation. Coverage under this chapter (S551) that definition includes "each authority of the Government" that is not an agency of the United States Government as designated by the Comptroller General. With those few exceptions, the objective was to cover each and every government entity, whether it is a department, independent agency, or government corporation. This is because Congress is enacting the congressional review
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. In those situations, it is possible overrule agencies and entities within its legislative jurisdiction.

In some instances, federal entities and agencies may issue rules that are not subject to traditional 5 U.S.C. § 553(c) rulemaking process. However, the authors intend the third chapter to cover agency, authority, or entity covered by subsection 551(1) that establishes policies affecting any segment of the general public. Where it was not necessary, no exemption was provided, such as the exclusion for the monetary policy activities of the Board of Governors of the Federal Reserve System, rules of practice and procedure, and rules of agency management and personnel. Where it was not necessary, no exemption was provided and no exemption should be inferred from the fact that it was made clear by the provision of section 556 which states that the Act applies notwithstanding any other provision of law.

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 12291 involved interpretations of the term "rule" in that order. Therefore, the authors intend the term "major rule" in this chapter to be broadly construed, including the non-numerical factors contained in the subsection and to include illustrative examples of rules.

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 be consistent across agencies. Moreover, from 1981-93 OIRA staff interpreted and applied the same major rule definition under Executive Order 12291. Thus, the Administrator should rely on guidance documents OIRA during that time and previous major rule determinations from that Office as a guide in applying the statute 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, the Administrator is the Administrator that must make the major rule determination under this chapter whenever a new rule is issued. The Administrator must receive recommendations from 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 an entity subject to legislative oversight. The term "rule" in subsection 804(3) begins with the definition of a "rule" in subsection 551(4) and excludes those rules that are mandated on APA sections 551 and 553. This definition of a rule does not turn on whether a given agency rule is a notice-and-comment provision of the APA, or whether the rule at issue is subject to any other notice-and-comment procedures. The definition of a "major rule" is 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 general requirements (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. There is a spectrum of activities that fall within the APA definition of "rule" and are the product of agency process, but none of the procedures or 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, rulemaking, or other agency action 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 this chapter 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 authorizes rates, charges, fees, 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 that 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. However, such rules are no longer 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 rulings are classic examples of rules of particular applicability, notwithstanding that they may be cited as authority in transactions involving the same or similar facts. That is, substantive and interpretative rules of general applicability will include most temporary and final Trea-