

112TH CONGRESS
2D SESSION

H. R. 4116

To provide for regulatory accountability and for the revision of economically burdensome regulations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2012

Mr. LATHAM introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Rules, the Budget, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for regulatory accountability and for the revision of economically burdensome regulations, 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 Account-
5 ability and Economic Freedom Act of 2012”.

TITLE I—REGULATORY ACCOUNTABILITY

SEC. 101. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in paragraph (13), by striking “and” at the end;

(2) in paragraph (14), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(15) ‘major rule’ means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose—

“(A) an annual effect on the economy of \$100,000,000 or more, adjusted annually for inflation;

“(B) a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions;

“(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

1 “(D) significant impacts on multiple sec-
2 tors of the economy; and

3 “(16) ‘high-impact rule’ means any rule that
4 the Administrator of the Office of Information and
5 Regulatory Affairs determines is likely to impose an
6 annual cost on the economy of \$1,000,000,000 or
7 more, adjusted annually for inflation.”.

8 **SEC. 102. RULE MAKING.**

9 (a) Section 553(a) of title 5, United States Code, is
10 amended by striking “(a) This section applies” and insert-
11 ing “(a) APPLICABILITY.—This section applies”.

12 (b) Section 553 of title 5, United States Code, is
13 amended by striking subsections (b) through (c) and in-
14 serting the following:

15 “(b) RULE MAKING CONSIDERATIONS.—In a rule
16 making, an agency shall make all preliminary and final
17 factual determinations based on evidence and consider, in
18 addition to other applicable considerations, the following:

19 “(1) The legal authority under which a rule
20 may be proposed, including whether a rule making
21 is required by statute, and if so, whether by a spe-
22 cific date, or whether the agency has discretion to
23 commence a rule making.

1 “(2) Other statutory considerations applicable
2 to whether the agency can or should propose a rule
3 or undertake other agency action.

4 “(3) The specific nature and significance of the
5 problem the agency may address with a rule (includ-
6 ing the degree and nature of risks the problem poses
7 and the priority of addressing those risks compared
8 to other matters or activities within the agency’s ju-
9 risdiction), whether the problem warrants new agen-
10 cy action, and the countervailing risks that may be
11 posed by alternatives for new agency action.

12 “(4) Whether existing rules have created or
13 contributed to the problem the agency may address
14 with a rule and whether those rules could be amend-
15 ed or rescinded to address the problem in whole or
16 part.

17 “(5) Any reasonable alternatives for a new rule
18 or other response identified by the agency or inter-
19 ested persons, including not only responses that
20 mandate particular conduct or manners of compli-
21 ance, but also—

22 “(A) the alternative of no Federal re-
23 sponse;

24 “(B) amending or rescinding existing
25 rules;

1 “(C) potential regional, State, local, or
2 tribal regulatory action or other responses that
3 could be taken in lieu of agency action; and

4 “(D) potential responses that—

5 “(i) specify performance objectives
6 rather than conduct or manners of compli-
7 ance;

8 “(ii) establish economic incentives to
9 encourage desired behavior;

10 “(iii) provide information upon which
11 choices can be made by the public; or

12 “(iv) incorporate other innovative al-
13 ternatives rather than agency actions that
14 specify conduct or manners of compliance.

15 “(6) Notwithstanding any other provision of
16 law—

17 “(A) the potential costs and benefits asso-
18 ciated with potential alternative rules and other
19 responses considered under section 553(b)(5),
20 including direct, indirect, and cumulative costs
21 and benefits and estimated impacts on jobs (in-
22 cluding an estimate of the net gain or loss in
23 domestic jobs), economic growth, innovation,
24 and economic competitiveness;

1 “(B) means to increase the cost-effective-
2 ness of any Federal response; and

3 “(C) incentives for innovation, consistency,
4 predictability, lower costs of enforcement and
5 compliance (to Government entities, regulated
6 entities, and the public), and flexibility.

7 “(c) ADVANCE NOTICE OF PROPOSED RULE MAKING
8 FOR MAJOR RULES, HIGH-IMPACT RULES, AND RULES
9 INVOLVING NOVEL LEGAL OR POLICY ISSUES.—In the
10 case of a rule making for a major rule or high-impact rule
11 or a rule that involves a novel legal or policy issue arising
12 out of statutory mandates, not later than 90 days before
13 a notice of proposed rule making is published in the Fed-
14 eral Register, an agency shall publish advance notice of
15 proposed rule making in the Federal Register. In pub-
16 lishing such advance notice, the agency shall—

17 “(1) include a written statement identifying, at
18 a minimum—

19 “(A) the nature and significance of the
20 problem the agency may address with a rule, in-
21 cluding data and other evidence and informa-
22 tion on which the agency expects to rely for the
23 proposed rule;

24 “(B) the legal authority under which a rule
25 may be proposed, including whether a rule mak-

1 ing is required by statute, and if so, whether by
2 a specific date, or whether the agency has dis-
3 cretion to commence a rule making;

4 “(C) preliminary information available to
5 the agency concerning the other considerations
6 specified in subsection (b);

7 “(D) an explanation of how addressing the
8 problem will help the agency meet its perform-
9 ance goals reported to Congress under the Gov-
10 ernment Performance and Results Act; and

11 “(E) in the case of a rule that involves a
12 novel legal or policy issue arising out of statu-
13 tory mandates, the nature of and potential rea-
14 sons to adopt the novel legal or policy position
15 upon which the agency may base a proposed
16 rule;

17 “(2) make publicly available any data used in
18 any cost-benefit analysis conducted by the agency
19 for purposes of the rule making;

20 “(3) solicit written data, views or argument
21 from interested persons concerning the information
22 and issues addressed in the advance notice; and

23 “(4) provide for a period of not fewer than 60
24 days for interested persons to submit such written
25 data, views, or argument to the agency.”.

1 **SEC. 103. EFFECTIVE DATE.**

2 The amendments made by this Act to sections 553
3 of title 5, United States Code, shall not apply to any rule
4 makings pending or completed on the date of enactment
5 of this Act.

6 **TITLE II—CONGRESSIONAL RE-**
7 **VIEW OF AGENCY RULE MAK-**
8 **ING**

9 **SEC. 201. PURPOSE.**

10 The purpose of this Act is to increase accountability
11 for and transparency in the Federal regulatory process.
12 Section 1 of article I of the United States Constitution
13 grants all legislative powers to Congress. Over time, Con-
14 gress has excessively delegated its constitutional charge
15 while failing to conduct appropriate oversight and retain
16 accountability for the content of the laws it passes. By
17 requiring a vote in Congress, the REINS Act will result
18 in more carefully drafted and detailed legislation, an im-
19 proved regulatory process, and a legislative branch that
20 is truly accountable to the American people for the laws
21 imposed upon them.

22 **SEC. 202. CONGRESSIONAL REVIEW OF AGENCY RULE MAK-**
23 **ING.**

24 Chapter 8 of title 5, United States Code, is amended
25 to read as follows:

1 **“CHAPTER 8—CONGRESSIONAL REVIEW**
 2 **OF AGENCY RULE MAKING**

“Sec.

“801. Congressional review.

“802. Congressional approval procedure for major rules.

“803. Congressional disapproval procedure for nonmajor rules.

“804. Definitions.

“805. Judicial review.

“806. Exemption for monetary policy.

“807. Effective date of certain rules.

3 **“§ 801. Congressional review**

4 “(a)(1)(A) Before a rule may take effect, the Federal
 5 agency promulgating such rule shall submit to each House
 6 of the Congress and to the Comptroller General a report
 7 containing—

8 “(i) a copy of the rule;

9 “(ii) a concise general statement relating to the
 10 rule;

11 “(iii) a classification of the rule as a major or
 12 nonmajor rule, including an explanation of the clas-
 13 sification specifically addressing each criteria for a
 14 major rule contained within sections 804(2)(A),
 15 804(2)(B), and 804(2)(C);

16 “(iv) a list of any other related regulatory ac-
 17 tions intended to implement the same statutory pro-
 18 vision or regulatory objective as well as the indi-
 19 vidual and aggregate economic effects of those ac-
 20 tions; and

21 “(v) the proposed effective date of the rule.

1 “(B) On the date of the submission of the report
2 under subparagraph (A), the Federal agency promulgating
3 the rule shall submit to the Comptroller General and make
4 available to each House of Congress—

5 “(i) a complete copy of the cost-benefit analysis
6 of the rule, if any, including an analysis of any jobs
7 added or lost, differentiating between public and pri-
8 vate sector jobs;

9 “(ii) the agency’s actions pursuant to sections
10 603, 604, 605, 607, and 609 of this title;

11 “(iii) the agency’s actions pursuant to sections
12 202, 203, 204, and 205 of the Unfunded Mandates
13 Reform Act of 1995; and

14 “(iv) any other relevant information or require-
15 ments under any other Act and any relevant Execu-
16 tive orders.

17 “(C) Upon receipt of a report submitted under sub-
18 paragraph (A), each House shall provide copies of the re-
19 port to the chairman and ranking member of each stand-
20 ing committee with jurisdiction under the rules of the
21 House of Representatives or the Senate to report a bill
22 to amend the provision of law under which the rule is
23 issued.

24 “(2)(A) The Comptroller General shall provide a re-
25 port on each major rule to the committees of jurisdiction

1 by the end of 15 calendar days after the submission or
2 publication date as provided in section 802(b)(2). The re-
3 port of the Comptroller General shall include an assess-
4 ment of the agency's compliance with procedural steps re-
5 quired by paragraph (1)(B).

6 “(B) Federal agencies shall cooperate with the Comp-
7 troller General by providing information relevant to the
8 Comptroller General's report under subparagraph (A).

9 “(3) A major rule relating to a report submitted
10 under paragraph (1) shall take effect upon enactment of
11 a joint resolution of approval described in section 802 or
12 as provided for in the rule following enactment of a joint
13 resolution of approval described in section 802, whichever
14 is later.

15 “(4) A nonmajor rule shall take effect as provided
16 by section 803 after submission to Congress under para-
17 graph (1).

18 “(5) If a joint resolution of approval relating to a
19 major rule is not enacted within the period provided in
20 subsection (b)(2), then a joint resolution of approval relat-
21 ing to the same rule may not be considered under this
22 chapter in the same Congress by either the House of Rep-
23 resentatives or the Senate.

1 “(b)(1) A major rule shall not take effect unless the
2 Congress enacts a joint resolution of approval described
3 under section 802.

4 “(2) If a joint resolution described in subsection (a)
5 is not enacted into law by the end of 70 session days or
6 legislative days, as applicable, beginning on the date on
7 which the report referred to in section 801(a)(1)(A) is re-
8 ceived by Congress (excluding days either House of Con-
9 gress is adjourned for more than 3 days during a session
10 of Congress), then the rule described in that resolution
11 shall be deemed not to be approved and such rule shall
12 not take effect.

13 “(c)(1) Notwithstanding any other provision of this
14 section (except subject to paragraph (3)), a major rule
15 may take effect for one 90-calendar-day period if the
16 President makes a determination under paragraph (2) and
17 submits written notice of such determination to the Con-
18 gress.

19 “(2) Paragraph (1) applies to a determination made
20 by the President by Executive order that the major rule
21 should take effect because such rule is—

22 “(A) necessary because of an imminent threat
23 to health or safety or other emergency;

24 “(B) necessary for the enforcement of criminal
25 laws;

1 “(C) necessary for national security; or

2 “(D) issued pursuant to any statute imple-
3 menting an international trade agreement.

4 “(3) An exercise by the President of the authority
5 under this subsection shall have no effect on the proce-
6 dures under section 802.

7 “(d)(1) In addition to the opportunity for review oth-
8 erwise provided under this chapter, in the case of any rule
9 for which a report was submitted in accordance with sub-
10 section (a)(1)(A) during the period beginning on the date
11 occurring—

12 “(A) in the case of the Senate, 60 session days,
13 or

14 “(B) in the case of the House of Representa-
15 tives, 60 legislative days,

16 before the date the Congress is scheduled to adjourn a
17 session of Congress through the date on which the same
18 or succeeding Congress first convenes its next session, sec-
19 tions 802 and 803 shall apply to such rule in the suc-
20 ceeding session of Congress.

21 “(2)(A) In applying sections 802 and 803 for pur-
22 poses of such additional review, a rule described under
23 paragraph (1) shall be treated as though—

24 “(i) such rule were published in the Federal
25 Register on—

1 “(I) in the case of the Senate, the 15th
2 session day, or

3 “(II) in the case of the House of Rep-
4 resentatives, the 15th legislative day,
5 after the succeeding session of Congress first con-
6 venes; and

7 “(ii) a report on such rule were submitted to
8 Congress under subsection (a)(1) on such date.

9 “(B) Nothing in this paragraph shall be construed
10 to affect the requirement under subsection (a)(1) that a
11 report shall be submitted to Congress before a rule can
12 take effect.

13 “(3) A rule described under paragraph (1) shall take
14 effect as otherwise provided by law (including other sub-
15 sections of this section).

16 **“§ 802. Congressional approval procedure for major**
17 **rules**

18 “(a)(1) For purposes of this section, the term ‘joint
19 resolution’ means only a joint resolution addressing a re-
20 port classifying a rule as major pursuant to section
21 801(a)(1)(A)(iii) that—

22 “(A) bears no preamble;

23 “(B) bears the following title (with blanks filled
24 as appropriate): ‘Approving the rule submitted by
25 _____ relating to _____.’;

1 “(C) includes after its resolving clause only the
2 following (with blanks filled as appropriate): ‘That
3 Congress approves the rule submitted by _____ re-
4 lating to _____.’; and

5 “(D) is introduced pursuant to paragraph (2).

6 “(2) After a House of Congress receives a report
7 classifying a rule as major pursuant to section
8 801(a)(1)(A)(iii), the majority leader of that House (or
9 his or her respective designee) shall introduce (by request,
10 if appropriate) a joint resolution described in paragraph
11 (1)—

12 “(A) in the case of the House of Representa-
13 tives, within three legislative days; and

14 “(B) in the case of the Senate, within three ses-
15 sion days.

16 “(3) A joint resolution described in paragraph (1)
17 shall not be subject to amendment at any stage of pro-
18 ceeding.

19 “(b) A joint resolution described in subsection (a)
20 shall be referred in each House of Congress to the commit-
21 tees having jurisdiction over the provision of law under
22 which the rule is issued.

23 “(c) In the Senate, if the committee or committees
24 to which a joint resolution described in subsection (a) has
25 been referred have not reported it at the end of 15 session

1 days after its introduction, such committee or committees
2 shall be automatically discharged from further consider-
3 ation of the resolution and it shall be placed on the cal-
4 endar. A vote on final passage of the resolution shall be
5 taken on or before the close of the 15th session day after
6 the resolution is reported by the committee or committees
7 to which it was referred, or after such committee or com-
8 mittees have been discharged from further consideration
9 of the resolution.

10 “(d)(1) In the Senate, when the committee or com-
11 mittees to which a joint resolution is referred have re-
12 ported, or when a committee or committees are discharged
13 (under subsection (c)) from further consideration of a
14 joint resolution described in subsection (a), it is at any
15 time thereafter in order (even though a previous motion
16 to the same effect has been disagreed to) for a motion
17 to proceed to the consideration of the joint resolution, and
18 all points of order against the joint resolution (and against
19 consideration of the joint resolution) are waived. The mo-
20 tion is not subject to amendment, or to a motion to post-
21 pone, or to a motion to proceed to the consideration of
22 other business. A motion to reconsider the vote by which
23 the motion is agreed to or disagreed to shall not be in
24 order. If a motion to proceed to the consideration of the
25 joint resolution is agreed to, the joint resolution shall re-

1 main the unfinished business of the Senate until disposed
2 of.

3 “(2) In the Senate, debate on the joint resolution,
4 and on all debatable motions and appeals in connection
5 therewith, shall be limited to not more than 2 hours, which
6 shall be divided equally between those favoring and those
7 opposing the joint resolution. A motion to further limit
8 debate is in order and not debatable. An amendment to,
9 or a motion to postpone, or a motion to proceed to the
10 consideration of other business, or a motion to recommit
11 the joint resolution is not in order.

12 “(3) In the Senate, immediately following the conclu-
13 sion of the debate on a joint resolution described in sub-
14 section (a), and a single quorum call at the conclusion of
15 the debate if requested in accordance with the rules of the
16 Senate, the vote on final passage of the joint resolution
17 shall occur.

18 “(4) Appeals from the decisions of the Chair relating
19 to the application of the rules of the Senate to the proce-
20 dure relating to a joint resolution described in subsection
21 (a) shall be decided without debate.

22 “(e) In the House of Representatives, if any com-
23 mittee to which a joint resolution described in subsection
24 (a) has been referred has not reported it to the House
25 at the end of 15 legislative days after its introduction,

1 such committee shall be discharged from further consider-
2 ation of the joint resolution, and it shall be placed on the
3 appropriate calendar. On the second and fourth Thursdays
4 of each month it shall be in order at any time for the
5 Speaker to recognize a Member who favors passage of a
6 joint resolution that has appeared on the calendar for at
7 least 5 legislative days to call up that joint resolution for
8 immediate consideration in the House without intervention
9 of any point of order. When so called up a joint resolution
10 shall be considered as read and shall be debatable for 1
11 hour equally divided and controlled by the proponent and
12 an opponent, and the previous question shall be considered
13 as ordered to its passage without intervening motion. It
14 shall not be in order to reconsider the vote on passage.
15 If a vote on final passage of the joint resolution has not
16 been taken by the third Thursday on which the Speaker
17 may recognize a Member under this subsection, such vote
18 shall be taken on that day.

19 “(f)(1) If, before passing a joint resolution described
20 in subsection (a), one House receives from the other a
21 joint resolution having the same text, then—

22 “(A) the joint resolution of the other House
23 shall not be referred to a committee; and

24 “(B) the procedure in the receiving House shall
25 be the same as if no joint resolution had been re-

1 ceived from the other House until the vote on pas-
2 sage, when the joint resolution received from the
3 other House shall supplant the joint resolution of
4 the receiving House.

5 “(2) This subsection shall not apply to the House of
6 Representatives if the joint resolution received from the
7 Senate is a revenue measure.

8 “(g) If either House has not taken a vote on final
9 passage of the joint resolution by the last day of the period
10 described in section 801(b)(2), then such vote shall be
11 taken on that day.

12 “(h) This section and section 803 are enacted by
13 Congress—

14 “(1) as an exercise of the rule making power of
15 the Senate and House of Representatives, respec-
16 tively, and as such is deemed to be part of the rules
17 of each House, respectively, but applicable only with
18 respect to the procedure to be followed in that
19 House in the case of a joint resolution described in
20 subsection (a) and superseding other rules only
21 where explicitly so; and

22 “(2) with full recognition of the Constitutional
23 right of either House to change the rules (so far as
24 they relate to the procedure of that House) at any

1 time, in the same manner and to the same extent as
2 in the case of any other rule of that House.

3 **“§ 803. Congressional disapproval procedure for**
4 **nonmajor rules**

5 “(a) For purposes of this section, the term ‘joint res-
6 olution’ means only a joint resolution introduced in the
7 period beginning on the date on which the report referred
8 to in section 801(a)(1)(A) is received by Congress and
9 ending 60 days thereafter (excluding days either House
10 of Congress is adjourned for more than 3 days during a
11 session of Congress), the matter after the resolving clause
12 of which is as follows: ‘That Congress disapproves the
13 nonmajor rule submitted by the _____ relating to
14 _____, and such rule shall have no force or effect.’ (The
15 blank spaces being appropriately filled in).

16 “(b)(1) A joint resolution described in subsection (a)
17 shall be referred to the committees in each House of Con-
18 gress with jurisdiction.

19 “(2) For purposes of this section, the term submis-
20 sion or publication date means the later of the date on
21 which—

22 “(A) the Congress receives the report submitted
23 under section 801(a)(1); or

24 “(B) the nonmajor rule is published in the Fed-
25 eral Register, if so published.

1 “(c) In the Senate, if the committee to which is re-
2 ferred a joint resolution described in subsection (a) has
3 not reported such joint resolution (or an identical joint
4 resolution) at the end of 15 session days after the date
5 of introduction of the joint resolution, such committee may
6 be discharged from further consideration of such joint res-
7 olution upon a petition supported in writing by 30 Mem-
8 bers of the Senate, and such joint resolution shall be
9 placed on the calendar.

10 “(d)(1) In the Senate, when the committee to which
11 a joint resolution is referred has reported, or when a com-
12 mittee is discharged (under subsection (c)) from further
13 consideration of a joint resolution described in subsection
14 (a), it is at any time thereafter in order (even though a
15 previous motion to the same effect has been disagreed to)
16 for a motion to proceed to the consideration of the joint
17 resolution, and all points of order against the joint resolu-
18 tion (and against consideration of the joint resolution) are
19 waived. The motion is not subject to amendment, or to
20 a motion to postpone, or to a motion to proceed to the
21 consideration of other business. A motion to reconsider the
22 vote by which the motion is agreed to or disagreed to shall
23 not be in order. If a motion to proceed to the consideration
24 of the joint resolution is agreed to, the joint resolution

1 shall remain the unfinished business of the Senate until
2 disposed of.

3 “(2) In the Senate, debate on the joint resolution,
4 and on all debatable motions and appeals in connection
5 therewith, shall be limited to not more than 10 hours,
6 which shall be divided equally between those favoring and
7 those opposing the joint resolution. A motion to further
8 limit debate is in order and not debatable. An amendment
9 to, or a motion to postpone, or a motion to proceed to
10 the consideration of other business, or a motion to recom-
11 mit the joint resolution is not in order.

12 “(3) In the Senate, immediately following the conclu-
13 sion of the debate on a joint resolution described in sub-
14 section (a), and a single quorum call at the conclusion of
15 the debate if requested in accordance with the rules of the
16 Senate, the vote on final passage of the joint resolution
17 shall occur.

18 “(4) Appeals from the decisions of the Chair relating
19 to the application of the rules of the Senate to the proce-
20 dure relating to a joint resolution described in subsection
21 (a) shall be decided without debate.

22 “(e) In the Senate the procedure specified in sub-
23 section (c) or (d) shall not apply to the consideration of
24 a joint resolution respecting a nonmajor rule—

1 “(1) after the expiration of the 60 session days
 2 beginning with the applicable submission or publica-
 3 tion date, or

4 “(2) if the report under section 801(a)(1)(A)
 5 was submitted during the period referred to in sec-
 6 tion 801(d)(1), after the expiration of the 60 session
 7 days beginning on the 15th session day after the
 8 succeeding session of Congress first convenes.

9 “(f) If, before the passage by one House of a joint
 10 resolution of that House described in subsection (a), that
 11 House receives from the other House a joint resolution
 12 described in subsection (a), then the following procedures
 13 shall apply:

14 “(1) The joint resolution of the other House
 15 shall not be referred to a committee.

16 “(2) With respect to a joint resolution described
 17 in subsection (a) of the House receiving the joint
 18 resolution—

19 “(A) the procedure in that House shall be
 20 the same as if no joint resolution had been re-
 21 ceived from the other House; but

22 “(B) the vote on final passage shall be on
 23 the joint resolution of the other House.

24 **“§ 804. Definitions**

25 “For purposes of this chapter—

1 “(1) The term ‘Federal agency’ means any
2 agency as that term is defined in section 551(1).

3 “(2) The term ‘major rule’ means any rule, in-
4 cluding an interim final rule, that the Administrator
5 of the Office of Information and Regulatory Affairs
6 of the Office of Management and Budget finds has
7 resulted in or is likely to result in—

8 “(A) an annual effect on the economy of
9 \$100,000,000 or more;

10 “(B) a major increase in costs or prices for
11 consumers, individual industries, Federal,
12 State, or local government agencies, or geo-
13 graphic regions; or

14 “(C) significant adverse effects on competi-
15 tion, employment, investment, productivity, in-
16 novation, or on the ability of United States-
17 based enterprises to compete with foreign-based
18 enterprises in domestic and export markets.

19 “(3) The term ‘nonmajor rule’ means any rule
20 that is not a major rule.

21 “(4) The term ‘rule’ has the meaning given
22 such term in section 551, except that such term does
23 not include—

24 “(A) any rule of particular applicability,
25 including a rule that approves or prescribes for

1 the future rates, wages, prices, services, or al-
2 lowances therefore, corporate or financial struc-
3 tures, reorganizations, mergers, or acquisitions
4 thereof, or accounting practices or disclosures
5 bearing on any of the foregoing;

6 “(B) any rule relating to agency manage-
7 ment or personnel; or

8 “(C) any rule of agency organization, pro-
9 cedure, or practice that does not substantially
10 affect the rights or obligations of non-agency
11 parties.

12 **“§ 805. Judicial review**

13 “(a) No determination, finding, action, or omission
14 under this chapter shall be subject to judicial review.

15 “(b) Notwithstanding subsection (a), a court may de-
16 termine whether a Federal agency has completed the nec-
17 essary requirements under this chapter for a rule to take
18 effect.

19 “(c) The enactment of a joint resolution of approval
20 under section 802 shall not be interpreted to serve as a
21 grant or modification of statutory authority by Congress
22 for the promulgation of a rule, shall not extinguish or af-
23 fect any claim, whether substantive or procedural, against
24 any alleged defect in a rule, and shall not form part of
25 the record before the court in any judicial proceeding con-

cerning a rule except for purposes of determining whether
or not the rule is in effect.

“§ 806. Exemption for monetary policy

“Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

“§ 807. Effective date of certain rules

“Notwithstanding section 801—

“(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

“(2) any rule other than a major rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.”.

1 **SEC. 203. BUDGETARY EFFECTS OF RULES SUBJECT TO**
 2 **SECTION 802 OF TITLE 5, UNITED STATES**
 3 **CODE.**

4 Section 257(b)(2) of the Balanced Budget and Emer-
 5 gency Deficit Control Act of 1985 is amended by adding
 6 at the end the following new subparagraph:

7 “(E) BUDGETARY EFFECTS OF RULES
 8 SUBJECT TO SECTION 802 OF TITLE 5, UNITED
 9 STATES CODE.—Any rules subject to the con-
 10 gressional approval procedure set forth in sec-
 11 tion 802 of chapter 8 of title 5, United States
 12 Code, affecting budget authority, outlays, or re-
 13 cepts shall be assumed to be effective unless it
 14 is not approved in accordance with such sec-
 15 tion.”.

16 **TITLE III—ELIMINATION OF**
 17 **BURDENSOME RULES**

18 **SEC. 301. RED TAPE REDUCTION COMMISSION.**

19 (a) ESTABLISHMENT.—There is established a com-
 20 mission to be known as the “United States Red Tape Re-
 21 duction Commission” (in this section referred to as the
 22 “Commission”).

23 (b) DUTIES OF COMMISSION.—

24 (1) IN GENERAL.—The Commission shall advise
 25 the Federal Government on the modification, con-
 26 solidation, or elimination of Federal regulatory re-

1 quirements to reduce direct or indirect burdens on
2 businesses in the United States.

3 (2) PUBLIC COMMENT.—The Commission shall
4 conduct public hearings at locations throughout the
5 United States and establish a Web site that allows
6 the public to submit comments on hardships in com-
7 plying with rules and proposals for modification,
8 consolidation, or elimination of such rules.

9 (3) PRIORITIZATION OF RULES FOR REVIEW.—
10 The Commission shall develop criteria to prioritize
11 rules for review, including the number and nature of
12 public request for review of rules.

13 (4) REVIEW OF RULES.—The Commission shall
14 review rules according to criteria developed by the
15 Commission to meet each of the following goals:

16 (A) A reduction of the burdens of compli-
17 ance with Federal rules, especially those rules
18 which would have an effect on small businesses.

19 (B) Elimination of rules or regulatory re-
20 quirements that have a measurable detrimental
21 effect on growth, innovation, job-creating abil-
22 ity, and global competitiveness of businesses in
23 the United States.

24 (C) Modification of rules to simplify and
25 clarify regulatory requirements.

1 (D) Removal of barriers to the entry of
2 new competitors in the marketplace.

3 (E) Elimination of rules for which ongoing
4 costs exceed the ongoing benefits.

5 (F) Increasing regulatory flexibility by re-
6 placement of command and control rules with
7 alternatives, such as performance standards.

8 (c) MEMBERSHIP.—

9 (1) NUMBER AND APPOINTMENT.—The Com-
10 mission shall be composed of 8 members appointed
11 by the President by and with the advise and consent
12 of the Senate, 4 of which shall represent private in-
13 dustry, including small business interests.

14 (2) TERMS.—Each member shall be appointed
15 for a term of one year that may be renewed by the
16 President without the advise and consent of the Sen-
17 ate.

18 (3) RATES OF PAY.—The Comptroller General
19 of the United States is authorized to determine rates
20 of pay, not to exceed limits under the Federal Advi-
21 sory Committee Act, for members for each day (in-
22 cluding travel time) during which the member is en-
23 gaged in the actual performance of the duties vested
24 in the Commission.

1 (4) TRAVEL EXPENSES.—Members shall receive
2 travel expenses, including per diem in lieu of subsist-
3 ence, in accordance with sections 5702 and 5703 of
4 title 5, United States Code.

5 (5) CHAIRPERSON.—The Chairperson of the
6 Commission shall be elected by the members. The
7 term of office of the Chairperson shall be one year.

8 (d) STAFF OF COMMISSION.—The Chairperson of the
9 Commission may hire staff, without regard to the provi-
10 sions of title 5, United States Code, governing appoint-
11 ments in the competitive service, and without regard to
12 the provisions of chapter 51 and subchapter III of chapter
13 53 of such title relating to classification and General
14 Schedule pay rates, except that no rate of pay fixed under
15 this subsection may exceed the limits under the Federal
16 Advisory Committee Act. The Chairperson of the Commis-
17 sion may fix the compensation of Commission staff with-
18 out regard to the provisions of chapter 51 and subchapter
19 III of chapter 53 of title 5, United States Code, relating
20 to classification of positions and General Schedule pay
21 rates, except that the rate of pay may not exceed the limits
22 under the Federal Advisory Committee Act.

23 (e) EXPERTS AND CONSULTANTS.—The Commission
24 may procure the services of experts and consultants in ac-
25 cordance with the provisions of section 3109(b) of title 5,

1 United States Code, but at rates for individuals not to
2 exceed the daily equivalent of the highest rate payable
3 under section 5332 of such title.

4 (f) CONTRACT AUTHORITY.—The Commission may—

5 (1) procure supplies, services, and property by
6 contract in accordance with applicable laws and reg-
7 ulations and to the extent or in such amounts as are
8 provided in appropriations Acts; and

9 (2) enter into contracts with departments,
10 agencies, and instrumentalities of the Federal Gov-
11 ernment, State agencies, and private firms, institu-
12 tions, and agencies, for the conduct of research or
13 surveys, the preparation of reports, and other activi-
14 ties necessary for the discharge of the duties of the
15 Commission, to the extent or in such amounts as are
16 provided in appropriations Acts.

17 (g) RELATIONSHIP TO EXECUTIVE BRANCH.—

18 (1) INFORMATION REQUESTS.—The Commis-
19 sion is authorized to secure information, data, esti-
20 mates, and statistics directly from the various de-
21 partments, agencies, and establishments of the exec-
22 utive branch of Government, including the Office of
23 Management and Budget, and the regulatory agen-
24 cies and commissions of the Government. All such
25 departments, agencies, establishments, and regu-

1 latory agencies and commissions shall promptly fur-
2 nish the Commission any available material which
3 the Chairperson of the Commission determines to be
4 necessary in the performance of the Commission's
5 duties and functions (other than material the disclo-
6 sure of which would be a violation of law).

7 (2) USE OF SERVICES, FACILITIES, AND PER-
8 SONNEL.—The Commission is authorized, upon
9 agreement with the head of any such department,
10 agency, establishment, or regulatory agency or com-
11 mission, to use its services, facilities, and personnel
12 with or without reimbursement, and the head of
13 each such department, agency, establishment, or
14 regulatory agency or commission is authorized to
15 provide the Commission such services, facilities, and
16 personnel.

17 (h) RELATIONSHIP TO OTHER AGENCIES OF CON-
18 GRESS.—In carrying out the duties and functions of the
19 Commission, and for the purpose of coordinating the oper-
20 ations of the Commission with those of other congressional
21 agencies with a view to using most effectively the informa-
22 tion, services, and capabilities of all such agencies in car-
23 rying out the various responsibilities assigned to each, the
24 Commission is authorized to obtain information, data, es-
25 timates, and statistics developed by the Government Ac-

1 countability Office, the Congressional Budget Office, and
2 the Congressional Research Service, and upon agreement
3 with the Comptroller General, the Director of the Congres-
4 sional Budget Office, or the Director of the Congressional
5 Research Service to use their services, facilities, and per-
6 sonnel without reimbursement. The Comptroller General
7 and such Directors are authorized to provide the Commis-
8 sion with the information, data, estimates, and statistics,
9 and the services, facilities, and personnel, referred to in
10 the preceding sentence.

11 (i) ASSISTANCE TO THE CONGRESS.—The Commis-
12 sion shall provide to the Committee on Oversight and Gov-
13 ernment Reform of the House of Representatives and the
14 Committee on Homeland Security and Governmental Af-
15 fairs of the Senate, information that will assist the com-
16 mittee in the discharge of all matters within its jurisdic-
17 tion, including information with respect to its jurisdiction
18 over authorization and oversight of the Office of Informa-
19 tion and Regulatory Affairs of the Office of Management
20 and Budget.

21 (j) REPORTS.—

22 (1) ANNUAL REPORTS.—Not later than one
23 year after the date of the enactment of this Act, and
24 annually thereafter for each of the following five
25 years, the Commission, with an affirmative vote of

1 a majority of the members of the Commission, shall
2 submit to the President and the Congress a report
3 on the findings and conclusions of the Commission
4 under subsection (b), together with its recommenda-
5 tions for legislation.

6 (2) CONGRESSIONAL REVIEW.—

7 (A) HOUSE OF REPRESENTATIVES.—Not
8 later than three days after receiving the report
9 pursuant to paragraph (1), in the House of
10 Representatives, the majority leader of the
11 House of Representatives (or his designee) and
12 the minority leader of the House of Representa-
13 tives (or his designee) shall introduce (by re-
14 quest), a joint resolution implementing the rec-
15 ommendations in the report.

16 (B) SENATE.—Not later than three days
17 after receiving the report pursuant to para-
18 graph (1), in the Senate, the majority leader of
19 the Senate (or his designee) and the minority
20 leader of the Senate (or his designee) shall in-
21 troduce a joint resolution described in subpara-
22 graph (A) (by request).

23 (C) APPLICABLE PROCEDURES.—Such
24 joint resolution shall be deemed to be a joint
25 resolution described under section 802(a) of

1 title 5, United States Code, for purposes of con-
2 sideration by either House.

3 (3) PRESIDENTIAL REVIEW.—Not later than 30
4 days after receiving the report pursuant to para-
5 graph (1), the President shall submit a review on
6 such report to the Congress.

7 (4) PUBLIC AVAILABILITY OF COMMISSION RE-
8 PORTS.—The Commission shall publish its reports
9 on a public Internet Web site maintained by the
10 Commission.

11 (k) TERMINATION.—The Commission shall terminate
12 on the day after the final report is published in the Fed-
13 eral Register pursuant to subsection (i)(4).

14 (l) APPLICATION OF FACA.—The provisions of the
15 Federal Advisory Committee Act (5 U.S.C. App) shall
16 apply to the Commission, except as otherwise provided in
17 this Act.

○