

111TH CONGRESS
2^D SESSION

H. R. 6223

To establish a Congressional Office of Regulatory Analysis, to require the periodic review and automatic termination of Federal regulations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2010

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on 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 establish a Congressional Office of Regulatory Analysis, to require the periodic review and automatic termination of Federal 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 “Congressional Office
5 of Regulatory Analysis Creation and Sunset and Review
6 Act of 2010”.

7 **SEC. 2. TABLE OF CONTENTS.**

8 The table of contents for this Act is as follows:

- Sec. 1. Short title.
 Sec. 2. Table of contents.

TITLE I—CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS

- Sec. 101. Establishment of Office.
 Sec. 102. Responsibilities.
 Sec. 103. Effective date.

TITLE II—REGULATORY SUNSET AND REVIEW

- Sec. 201. Purposes.
 Sec. 202. Review of regulations.
 Sec. 203. Covered rules.
 Sec. 204. Criteria for sunset review.
 Sec. 205. Sunset review procedures.
 Sec. 206. Review deadlines for covered rules.
 Sec. 207. Sunset review notices and agency reports.
 Sec. 208. Designation of agency regulatory review officer.
 Sec. 209. Relationship to other law.
 Sec. 210. Effect of termination of a covered rule.
 Sec. 211. Judicial review.
 Sec. 212. Definitions.
 Sec. 213. Effective date.
 Sec. 214. Sunset of this title.

1 **TITLE I—CONGRESSIONAL OF-**
 2 **FICE OF REGULATORY ANAL-**
 3 **YSIS**

4 **SEC. 101. ESTABLISHMENT OF OFFICE.**

5 (a) ESTABLISHMENT.—

6 (1) IN GENERAL.—There is established a Con-
 7 gressional Office of Regulatory Analysis (in this title
 8 referred to as the “Office”).

9 (2) DIRECTOR.—The Office shall have a Direc-
 10 tor (in this title referred to as the “Director”) who
 11 shall be appointed by the Speaker of the House of
 12 Representatives and the majority leader of the Sen-
 13 ate after considering recommendations received from
 14 the Committee on Oversight and Government Re-

1 form of the House of Representatives and the Com-
2 mittee on Homeland Security and Governmental Af-
3 fairs of the Senate, without regard to political affili-
4 ation and solely on the basis of the Director's ability
5 to perform the duties of the Office.

6 (3) TERM.—

7 (A) IN GENERAL.—The term of office of
8 the Director shall be 4 years, but no Director
9 shall be permitted to serve more than 3 terms.

10 (B) VACANCY.—Any individual appointed
11 as Director to fill a vacancy prior to the expira-
12 tion of a term shall serve only for the unexpired
13 portion of that term. An individual serving as
14 Director at the expiration of that term may
15 continue to serve until the individual's successor
16 is appointed.

17 (4) REMOVAL.—The Director may be removed
18 by a concurrent resolution of the Congress.

19 (5) COMPENSATION.—The Director shall be
20 paid at a rate equal to the rate of basic pay for level
21 III of the Executive Schedule in section 5314 of title
22 5, United States Code.

23 (b) PERSONNEL.—

24 (1) IN GENERAL.—The Director shall appoint
25 and fix the compensation of such personnel as may

1 be necessary to carry out the duties and functions
2 of the Office.

3 (2) APPOINTMENT.—All personnel of the Office
4 shall be appointed without regard to political affili-
5 ation and solely on the basis of their fitness to per-
6 form their duties.

7 (3) DUTIES AND RESPONSIBILITIES.—The Di-
8 rector may prescribe the duties and responsibilities
9 of the personnel of the Office, and delegate to them
10 authority to perform any of the duties, powers, and
11 functions imposed on the Office or on the Director.

12 (4) EMPLOYEE STATUS.—For purposes of pay
13 (other than pay of the Director) and employment
14 benefits, rights, and privileges, all personnel of the
15 Office shall be treated as if they were employees of
16 the House of Representatives.

17 (c) EXPERTS AND CONSULTANTS.—In carrying out
18 the duties and functions of the Office, the Director may
19 procure temporary (not to exceed one year) and intermit-
20 tent services under section 3109(b) of title 5, United
21 States Code, but at rates for individuals not to exceed the
22 daily equivalent of the maximum annual rate of basic pay
23 under the General Schedule of section 5332 of title 5,
24 United States Code.

25 (d) RELATIONSHIP TO EXECUTIVE BRANCH.—

1 (1) INFORMATION REQUESTS.—The Director is
2 authorized to secure information, data, estimates,
3 and statistics directly from the various departments,
4 agencies, and establishments of the executive branch
5 of Government, including the Office of Management
6 and Budget, and the regulatory agencies and com-
7 missions of the Government. All such departments,
8 agencies, establishments, and regulatory agencies
9 and commissions shall promptly furnish the Director
10 any available material which the Director determines
11 to be necessary in the performance of the Director’s
12 duties and functions (other than material the dislo-
13 sure of which would be a violation of law).

14 (2) USE OF SERVICES, FACILITIES, AND PER-
15 SONNEL.—The Director is authorized, upon agree-
16 ment with the head of any such department, agency,
17 establishment, or regulatory agency or commission,
18 to use its services, facilities, and personnel with or
19 without reimbursement, and the head of each such
20 department, agency, establishment, or regulatory
21 agency or commission is authorized to provide the
22 Office such services, facilities, and personnel.

23 (e) RELATIONSHIP TO OTHER AGENCIES OF CON-
24 GRESS.—In carrying out the duties and functions of the
25 Office, and for the purpose of coordinating the operations

1 of the Office with those of other congressional agencies
2 with a view to using most effectively the information, serv-
3 ices, and capabilities of all such agencies in carrying out
4 the various responsibilities assigned to each, the Director
5 is authorized to obtain information, data, estimates, and
6 statistics developed by the General Accountability Office,
7 the Congressional Budget Office, and the Congressional
8 Research Service, and upon agreement with the Comp-
9 troller General, the Director of the Congressional Budget
10 Office, or the Director of the Congressional Research
11 Service to use their services, facilities, and personnel with
12 or without reimbursement. The Comptroller General and
13 such Directors are authorized to provide the Office with
14 the information, data, estimates, and statistics, and the
15 services, facilities, and personnel, referred to in the pre-
16 ceding sentence.

17 (f) ASSISTANCE TO THE CONGRESS.—The Director
18 shall provide to the Committee on Oversight and Govern-
19 ment Reform of the House of Representatives and the
20 Committee on Homeland Security and Governmental Af-
21 fairs of the Senate, information that will assist the com-
22 mittee in the discharge of all matters within its jurisdic-
23 tion, including information with respect to its jurisdiction
24 over authorization and oversight of the Office of Informa-

1 tion and Regulatory Affairs of the Office of Management
2 and Budget.

3 (g) INFORMATION.—

4 (1) FREEDOM OF INFORMATION.—The Office
5 shall make available information from its activities
6 in accordance with section 552 of title 5, United
7 States Code.

8 (2) PUBLIC DOCKET.—The Office shall main-
9 tain a publicly available log of information (other
10 than information which may not be released under
11 section 552(b) of title 5, United States Code) that
12 shall contain—

13 (A) all written communications, regardless
14 of format, between Office personnel and any
15 person who is not employed by the Federal Gov-
16 ernment; and

17 (B) the dates and names of individuals in-
18 volved in all substantive oral communications,
19 including meetings and telephone conversations
20 between Office personnel and any person not
21 employed by the Federal Government, and the
22 subject matter of such communications.

23 (h) APPROPRIATIONS.—There are authorized to be
24 appropriated to the Office such sums as may be necessary
25 for each of fiscal years 2011 through 2018.

1 **SEC. 102. RESPONSIBILITIES.**

2 (a) TRANSFER OF FUNCTIONS UNDER CHAPTER 8
3 FROM GAO TO OFFICE.—

4 (1) DIRECTOR'S NEW AUTHORITY.—Section
5 801 of title 5, United States Code, is amended—

6 (A) by striking “Comptroller General”
7 each place it occurs and inserting “Director of
8 the Office”; and

9 (B) by striking “the Comptroller General’s
10 report” in subsection (a)(2)(B) and inserting
11 “the report of the Director of the Office”.

12 (2) DEFINITION.—Section 804 is amended by
13 adding at the end the following:

14 “(4) The term ‘Director of the Office’ means
15 the Director of the Congressional Office of Regu-
16 latory Affairs established by section 101 of the Con-
17 gressional Office of Regulatory Analysis Creation
18 and Sunset and Review Act of 2010.”.

19 (3) MAJOR RULES.—Section 801(a)(2)(A) of
20 title 5, United States Code, is amended to read as
21 follows:

22 “(2)(A) The Director of the Office shall provide a re-
23 port on each major rule to the committees of jurisdiction
24 in each House of the Congress by the end of 30 calendar
25 days after the submission or publication date as provided

1 in section 802(b)(2). The report of the Director shall in-
2 clude—

3 “(i) an assessment of the compliance by the
4 Federal agency with the requirements in paragraph
5 (1)(B); and

6 “(ii) an analysis of the rule by the Director,
7 using any relevant data and analyses generated by
8 the Federal agency and any data of the Office, in-
9 cluding the following:

10 “(I) A description of the potential benefits
11 of the rule, including any beneficial effects that
12 cannot be quantified in monetary terms and the
13 identification of those likely to receive the bene-
14 fits.

15 “(II) A description of the potential costs of
16 the rule, including any adverse effects that can-
17 not be quantified in monetary terms and the
18 identification of those likely to bear the costs.

19 “(III) A determination of the potential net
20 benefits of the rule, including an evaluation of
21 effects that cannot be quantified in monetary
22 terms.

23 “(IV) A description of alternative ap-
24 proaches that could achieve the same regulatory
25 goal at a lower cost, together with an analysis

1 of the potential benefits and costs and a brief
2 explanation of the legal reasons why such alter-
3 natives, if proposed, could not be adopted.

4 “(V) A summary of how these results dif-
5 fer, if at all, from the results that the promul-
6 gating agency received when conducting similar
7 analyses.”.

8 (4) NONMAJOR RULES.—The Office shall con-
9 duct an assessment and analysis, as described in
10 section 801(a)(2)(A) of title 5, United States Code,
11 of any nonmajor rule, as defined in section 804(3)
12 of such title, when requested to do so by a com-
13 mittee of the House of Representatives or the Senate
14 or by an individual Representative or Senator.

15 (5) PRIORITIES.—

16 (A) ASSIGNMENT.—To ensure that anal-
17 ysis of the most significant regulations occurs,
18 the Office shall give first priority to, and shall
19 conduct analyses of, all major rules, as defined
20 in section 804(2) of title 5, United States Code.
21 Secondary priority shall be assigned to requests
22 from committees of the House of Representa-
23 tives and the Senate. Tertiary priority shall be
24 assigned to requests from individual Represent-
25 atives and Senators.

1 (B) DISCRETION TO DIRECTOR OF OF-
2 FICE.—The Director of the Office shall have
3 the discretion to assign priority among the sec-
4 ondary and tertiary requests.

5 (b) TRANSFER OF CERTAIN FUNCTIONS UNDER THE
6 UNFUNDED MANDATES REFORM ACT OF 1995 FROM
7 CBO TO OFFICE.—

8 (1) COST OF REGULATIONS.—Section 103 of
9 the Unfunded Mandates Reform Act of 1995 (2
10 U.S.C. 1511) is amended—

11 (A) in subsection (b), by striking “the Di-
12 rector” and inserting “the Director of the Con-
13 gressional Office of Regulatory Analysis”; and

14 (B) in subsection (c), by inserting after
15 “Budget Office” the following: “or the Director
16 of the Congressional Office of Regulatory Anal-
17 ysis”.

18 (2) ASSISTANCE TO THE CONGRESSIONAL OF-
19 FICE OF REGULATORY ANALYSIS.—Section 206 of
20 the Unfunded Mandates Reform Act of 1995 (2
21 U.S.C. 1536) is amended—

22 (A) by amending the section heading to
23 read as follows: “**SEC. 206. ASSISTANCE TO**
24 **THE CONGRESSIONAL OFFICE OF REGU-**
25 **LATORY ANALYSIS.**”; and

1 (B) in paragraph (2), by striking “the Di-
2 rector of the Congressional Budget Office” and
3 inserting “the Director of the Congressional Of-
4 fice of Regulatory Analysis”.

5 (c) OTHER REPORTS.—In addition to the analyses of
6 major and nonmajor rules described in subsection (a), the
7 Office shall also issue an annual report including esti-
8 mates of the total costs and benefits of all existing Federal
9 regulations.

10 **SEC. 103. EFFECTIVE DATE.**

11 This title and the amendments made by this title
12 shall take effect 180 days after the date of the enactment
13 of this Act.

14 **TITLE II—REGULATORY SUNSET**
15 **AND REVIEW**

16 **SEC. 201. PURPOSES.**

17 The purposes of this title are—

18 (1) to require agencies to regularly review their
19 significant rules to determine whether they should be
20 continued without change, modified, consolidated
21 with another rule, or terminated;

22 (2) to require agencies to consider the com-
23 ments of the public, the regulated community, and
24 the Congress regarding the actual costs and burdens
25 of rules being reviewed under this title, and whether

1 the rules are obsolete, unnecessary, duplicative, con-
2 flicting, or otherwise inconsistent;

3 (3) to require that any rules continued in effect
4 under this title meet all the legal requirements that
5 would apply to the issuance of a new rule, including
6 any applicable Federal cost-benefit and risk assess-
7 ment requirements;

8 (4) to provide for the review of significant rules
9 and other rules through a sunset review process and
10 to provide for the repeal or other change in such
11 rules in accordance with chapters 5 and 7 of title 5,
12 United States Code;

13 (5) to provide for a petition process that allows
14 the public and appropriate committees of the Con-
15 gress to request that other rules that are not signifi-
16 cant be reviewed in the same manner as significant
17 rules; and

18 (6) to require the Administrator to coordinate
19 and be responsible for sunset reviews conducted by
20 the agencies.

21 **SEC. 202. REVIEW OF REGULATIONS.**

22 A covered rule shall be subject to review in accord-
23 ance with this title. Upon completion of such review, the
24 agency which has jurisdiction over such rule shall—

1 (1) issue a final report under section 207(e)(2)
2 continuing such rule; or

3 (2) conduct a rulemaking in accordance with
4 section 207(d) to modify, consolidate with another
5 rule, or terminate such rule.

6 **SEC. 203. COVERED RULES.**

7 (a) COVERED RULES.—For purposes of this title, a
8 covered rule is a rule that—

9 (1) is determined by the Administrator to be a
10 significant rule under subsection (b); or

11 (2) is any other rule designated by the agency
12 which has jurisdiction over such rule or by the Ad-
13 ministrator under this title for sunset review.

14 (b) SIGNIFICANT RULES.—For purposes of this title,
15 a significant rule is a rule that the Administrator deter-
16 mines—

17 (1) has resulted in or is likely to result in an
18 annual effect on the economy of \$100,000,000 or
19 more;

20 (2) is a major rule, as defined in section 804(2)
21 of title 5, United States Code; or

22 (3) was issued pursuant to a significant regu-
23 latory action, as that term is defined in Executive
24 Order 12866 (5 U.S.C. 601 note; relating to regu-
25 latory planning and review).

1 (c) PUBLIC PETITIONS.—

2 (1) IN GENERAL.—Any person adversely af-
3 fected by a rule that is not a significant rule may
4 submit a petition to the agency which has jurisdic-
5 tion over the rule requesting that such agency des-
6 ignate the rule for sunset review. Such agency shall
7 designate the rule for sunset review unless such
8 agency determines that it would not be in the public
9 interest to conduct a sunset review of the rule. In
10 making such determination, such agency shall take
11 into account the number and nature of other peti-
12 tions received on the same rule, whether or not they
13 have already been denied.

14 (2) FORM AND CONTENT OF PETITION.—A pe-
15 tition under paragraph (1)—

16 (A) shall be in writing, but is not otherwise
17 required to be in any particular form;

18 (B) shall identify the rule for which sunset
19 review is requested with reasonable specificity
20 and state on its face that the petitioner seeks
21 sunset review of the rule; and

22 (C) shall be accompanied by a \$20 proc-
23 essing fee.

24 (3) RESPONSE REQUIRED FOR NONCOMPLYING
25 PETITIONS.—If such agency determines that a peti-

1 tion does not meet the requirements of this sub-
2 section, such agency shall provide a response to the
3 petitioner within 30 days after receiving the petition,
4 notifying the petitioner of the problem and providing
5 information on how to formulate a petition that
6 meets those requirements.

7 (4) DECISION WITHIN 90 DAYS.—Within the
8 90-day period beginning on the date of receiving a
9 petition that meets the requirements of this sub-
10 section, such agency shall transmit a response to the
11 petitioner stating whether the petition was granted
12 or denied, except that such agency may extend such
13 period by a total of not more than 30 days.

14 (5) PETITIONS DEEMED GRANTED FOR SUB-
15 STANTIAL INEXCUSABLE DELAY.—A petition for
16 sunset review of a rule is deemed to have been
17 granted by such agency, and such agency is deemed
18 to have designated the rule for sunset review, if a
19 court finds there is a substantial and inexcusable
20 delay, beyond the period specified in paragraph (4),
21 in notifying the petitioner of such agency's deter-
22 mination to grant or deny the petition.

23 (6) PUBLIC LOG.—Such agency shall maintain
24 a public log of petitions submitted under this sub-

1 section, that includes the status or disposition of
2 each petition.

3 (d) CONGRESSIONAL REQUESTS.—

4 (1) IN GENERAL.—An appropriate committee of
5 the Congress, or a majority of the majority party
6 members or a majority of nonmajority party mem-
7 bers of such a committee, may request in writing
8 that the Administrator designate any rule that is not
9 a significant rule for sunset review. The Adminis-
10 trator shall designate such rule for sunset review
11 within 30 days after receipt of such a request unless
12 the Administrator determines that it would not be in
13 the public interest to conduct a sunset review of
14 such rule.

15 (2) NOTICE OF DENIAL.—If the Administrator
16 denies a congressional request under this subsection,
17 the Administrator shall transmit to the congressional
18 committee making the request a notice stating the
19 reasons for the denial.

20 (e) PUBLICATION OF NOTICE OF DESIGNATION FOR
21 SUNSET REVIEW.—After designating a rule under sub-
22 section (c) or (d) for sunset review, the agency or the Ad-
23 ministrator shall promptly publish a notice of that des-
24 ignation in the Federal Register.

1 **SEC. 204. CRITERIA FOR SUNSET REVIEW.**

2 (a) COMPLIANCE WITH OTHER LAWS.—In order for
3 any rule subject to sunset review to continue without
4 change or to be modified or consolidated in accordance
5 with this title, such rule must be authorized by law and
6 meet all applicable requirements that would apply if it
7 were issued as a new rule pursuant to section 553 of title
8 5, United States Code, or other statutory rulemaking pro-
9 cedures required for that rule. For purposes of this sec-
10 tion, the term “applicable requirements” includes any re-
11 quirement for cost-benefit analysis and any requirement
12 for standardized risk analysis and risk assessment.

13 (b) GOVERNING LAW.—If there is a conflict between
14 such applicable requirements and an Act under which a
15 rule was issued, the conflict shall be resolved in the same
16 manner as such conflict would be resolved if the agency
17 were issuing a new rule.

18 **SEC. 205. SUNSET REVIEW PROCEDURES.**

19 (a) FUNCTIONS OF THE ADMINISTRATOR.—

20 (1) NOTICE OF RULES SUBJECT TO REVIEW.—

21 (A) INVENTORY AND FIRST LIST.—Within
22 one year after the date of the enactment of this
23 Act, the Administrator shall conduct an inven-
24 tory of existing rules and publish a first list of
25 covered rules. The list shall—

1 (i) specify the particular group to
2 which each significant rule is assigned
3 under paragraph (2), and state the review
4 deadline for all significant rules in each
5 such group; and

6 (ii) include other rules subject to sun-
7 set review for any other reason, and state
8 the review deadline for each such rule.

9 (B) SUBSEQUENT LISTS.—After publica-
10 tion of the first list under subparagraph (A),
11 the Administrator shall publish an updated list
12 of covered rules at least annually, specifying the
13 review deadline for each rule on the list.

14 (2) GROUPING OF SIGNIFICANT RULES IN FIRST
15 LIST.—

16 (A) STAGGERED REVIEW.—The Adminis-
17 trator shall assign each significant rule in effect
18 on the date of enactment of this Act to one of
19 4 groups established by the Administrator to
20 permit orderly and prioritized sunset reviews,
21 and specify for each group an initial review
22 deadline in accordance with section 206(a)(1).

23 (B) PRIORITIZATIONS.—In determining
24 which rules shall be given priority in time in
25 that assignment, the Administrator shall con-

1 sult with appropriate agencies, and shall
2 prioritize rule based on—

3 (i) the grouping of related rules in ac-
4 cordance with paragraph (3);

5 (ii) the extent of the cost of each rule
6 and on the regulated community and the
7 public, with priority in time given to those
8 rules that impose the greatest cost;

9 (iii) consideration of the views of reg-
10 ulated persons, including State and local
11 governments;

12 (iv) whether a particular rule has re-
13 cently been subject to cost-benefit analysis
14 and risk assessment, with priority in time
15 given to those rules that have not been
16 subject to such analysis and assessment;

17 (v) whether a particular rule was
18 issued under a statutory provision that
19 provides relatively greater discretion to an
20 official in issuing the rule, with priority in
21 time given to those rules that were issued
22 under provisions that provide relatively
23 greater discretion;

24 (vi) the burden of reviewing each rule
25 on the reviewing agency; and

1 (vii) the need for orderly processing
2 and the timely completion of the sunset re-
3 views of existing rules.

4 (3) GROUPING OF RELATED RULES.—The Ad-
5 ministrator shall group related rules under para-
6 graph (2) (and designate other rules) for simulta-
7 neous sunset review based upon their subject matter
8 similarity, functional interrelationships, and other
9 relevant factors to ensure comprehensive and coordi-
10 nated review of redundant, overlapping, and con-
11 flicting rules and requirements. The Administrator
12 shall ensure simultaneous sunset reviews of covered
13 rules without regard to whether they were issued by
14 the same agency, and shall designate any other rule
15 for sunset review that is necessary for a comprehen-
16 sive sunset review whether or not such other rule is
17 otherwise a covered rule under this title.

18 (4) GUIDANCE.—The Administrator shall pro-
19 vide timely guidance to agencies on the conduct of
20 sunset reviews and the preparation of sunset review
21 notices and reports required by this title to ensure
22 uniform, complete, and timely sunset reviews and to
23 ensure notice and opportunity for public comment
24 consistent with section 207.

1 (5) REVIEW AND EVALUATION OF REPORTS.—

2 The Administrator shall review and evaluate each
3 preliminary and final report submitted by the agency
4 pursuant to this section. Within 90 days after re-
5 ceiving a preliminary report, the Administrator shall
6 transmit comments to the head of the agency re-
7 garding—

8 (A) the quality of the analysis in the re-
9 port, including whether the agency has properly
10 applied section 204;

11 (B) the consistency of the agency's pro-
12 posed action with actions of other agencies; and

13 (C) whether the rule should be continued
14 without change, modified, consolidated with an-
15 other rule, or terminated.

16 (b) AGENCY SUNSET REVIEW PROCEDURE.—

17 (1) SUNSET REVIEW NOTICE.—At least 2½
18 years before the review deadline under section
19 206(a) for a covered rule issued by an agency, the
20 agency shall—

21 (A) publish a sunset review notice in ac-
22 cordance with section 207(a) in the Federal
23 Register and, to the extent reasonable and
24 practicable, in other publications or media that

1 are designed to reach those persons most af-
2 fected by the covered rule; and

3 (B) request the views of the Administrator
4 and the appropriate committees of the Congress
5 on whether to continue without change, modify,
6 consolidate, or terminate the covered rule.

7 (2) PRELIMINARY REPORT.—In reviewing a cov-
8 ered rule, the agency shall—

9 (A) consider public comments and other
10 recommendations generated by a sunset review
11 notice under paragraph (1); and

12 (B) at least one year before the review
13 deadline under section 206(a) for the covered
14 rule, publish in the Federal Register, in accord-
15 ance with section 207(b), and transmit to the
16 Administrator and the appropriate committees
17 of the Congress a preliminary report.

18 (3) FINAL REPORT.—The agency shall consider
19 the public comments and other recommendations
20 generated by the preliminary report under para-
21 graph (2) for a covered rule, and shall consult with
22 the appropriate committees of the Congress before
23 issuing a final report. At least 90 days before the re-
24 view deadline of the covered rule, the agency shall
25 publish in the Federal Register, in accordance with

1 section 207(c)(2) or 207(d), and transmit a final re-
2 port to the Administrator and the appropriate com-
3 mittees of the Congress.

4 (4) OPEN PROCEDURES REGARDING SUNSET
5 REVIEW.—In any sunset review conducted pursuant
6 to this title, the agency conducting the review shall
7 make a written record describing the subject of all
8 contacts the agency or Administrator made with
9 non-governmental persons outside the agency relat-
10 ing to such review. The written record of such con-
11 tact shall be made available, upon request, to the
12 public.

13 (c) EFFECTIVENESS OF AGENCY RECOMMENDA-
14 TION.—If a final report under subsection (b)(3) rec-
15 ommends that a covered rule should be continued without
16 change, the covered rule shall be continued. If a final re-
17 port under subsection (b)(3) recommends that a covered
18 rule should be modified, consolidated with another rule,
19 or terminated, the rule may be modified, so consolidated,
20 or terminated in accordance with section 207(d).

21 (d) PRESERVATION OF INDEPENDENCE OF FEDERAL
22 BANK REGULATORY AGENCIES.—The head of any appro-
23 priate Federal banking agency (as that term is defined
24 in section 3(q) of the Federal Deposit Insurance Act (12
25 U.S.C. 1813(q)), the Federal Housing Finance Board, the

1 National Credit Union Administration, and the Office of
2 Federal Housing Enterprise Oversight shall have the au-
3 thority with respect to that agency that would otherwise
4 be granted under section 206(a)(2)(B) to the Adminis-
5 trator or other officer designated by the President.

6 **SEC. 206. REVIEW DEADLINES FOR COVERED RULES.**

7 (a) IN GENERAL.—

8 (1) EXISTING SIGNIFICANT RULES.—For a sig-
9 nificant rule in effect on the date of the enactment
10 of this Act, the initial review deadline is the last day
11 of the 4-year, 5-year, 6-year, or 7-year period begin-
12 ning on the date of the enactment of this Act, as
13 specified by the Administrator under section
14 205(a)(2)(A). For any significant rule that 6 months
15 after the date of enactment is not assigned to such
16 a group specified under section 205(a)(2)(A), the
17 initial review deadline is the last day of the 4-year
18 period beginning on the date of enactment of this
19 Act.

20 (2) NEW SIGNIFICANT RULES.—For a signifi-
21 cant rule that first takes effect after the date of the
22 enactment of this Act, the initial review deadline is
23 the last day of either—

24 (A) the 3-year period beginning on the
25 date the rule takes effect; or

1 (B) if the Administrator determines as
2 part of the rulemaking process that the rule is
3 issued pursuant to negotiated rulemaking pro-
4 cedures or that compliance with the rule re-
5 quires substantial capital investment, the 7-year
6 period beginning on the date the rule takes ef-
7 fect.

8 (3) RULES COVERED PURSUANT TO PUBLIC PE-
9 TITION OR CONGRESSIONAL REQUEST.—For any rule
10 subject to sunset review pursuant to a public peti-
11 tion under section 203(c) or a congressional request
12 under section 203(d), the initial review deadline is
13 the last day of the 3-year period beginning on—

14 (A) the date the agency or Administrator
15 so designates the rule for review; or

16 (B) the date of issuance of a final court
17 order that the agency is deemed to have des-
18 ignated the rule for sunset review.

19 (4) RELATED RULE DESIGNATED FOR RE-
20 VIEW.—For a rule that the Administrator designates
21 under section 205(a)(3) for sunset review because it
22 is related to another covered rule and that is
23 grouped with that other rule for simultaneous re-
24 view, the initial review deadline is the same as the
25 review deadline for that other rule.

1 (b) TEMPORARY EXTENSION.—The review deadline
2 under subsection (a) for a covered rule may be extended
3 by the Administrator for not more than 6 months by pub-
4 lishing notice thereof in the Federal Register that de-
5 scribes reasons why the temporary extension is necessary
6 to respond to or prevent an emergency situation.

7 (c) DETERMINATIONS WHERE RULES HAVE BEEN
8 AMENDED.—For purposes of this title, if various provi-
9 sions of a covered rule were issued at different times, then
10 the rule as a whole shall be treated as if it were issued
11 on the later of—

12 (1) the date of issuance of the provision of the
13 rule that was issued first; or

14 (2) the date the most recent review and revision
15 of the rule under this title was completed.

16 **SEC. 207. SUNSET REVIEW NOTICES AND AGENCY REPORTS.**

17 (a) SUNSET REVIEW NOTICE.—The sunset review
18 notice under section 205(b)(1) for a rule shall—

19 (1) request comments regarding whether the
20 rule should be continued without change, modified,
21 consolidated with another rule, or terminated;

22 (2) if applicable, request comments regarding
23 whether the rule meets the applicable Federal cost-
24 benefit and risk assessment criteria; and

1 (3) solicit comments about the past implemen-
2 tation and effects of the rule, including—

3 (A) the direct and indirect costs incurred
4 because of the rule, including the net reduction
5 in the value of private property (whether real,
6 personal, tangible, or intangible), and whether
7 the incremental benefits of the rule exceeded
8 the incremental costs of the rule, both generally
9 and regarding each of the specific industries
10 and sectors it covers;

11 (B) whether the rule as a whole, or any
12 major feature of it, is outdated, obsolete, or un-
13 necessary, whether by change of technology, the
14 marketplace, or otherwise;

15 (C) the extent to which the rule or infor-
16 mation required to comply with the rule dupli-
17 cated, conflicted, or overlapped with require-
18 ments under rules of other agencies;

19 (D) in the case of a rule addressing a risk
20 to health or safety or the environment, what the
21 perceived risk was at the time of issuance and
22 to what extent the risk predictions were accu-
23 rate;

24 (E) whether the rule unnecessarily im-
25 peded domestic or international competition or

1 unnecessarily intruded on free market forces,
2 and whether the rule unnecessarily interfered
3 with opportunities or efforts to transfer to the
4 private sector duties carried out by the Govern-
5 ment;

6 (F) whether, and to what extent, the rule
7 imposed unfunded mandates on, or otherwise
8 affected, State and local governments;

9 (G) whether compliance with the rule re-
10 quired substantial capital investment and
11 whether terminating the rule on the next review
12 deadline would create an unfair advantage to
13 those who are not in compliance with it;

14 (H) whether the rule constituted the least
15 cost method of achieving its objective consistent
16 with the criteria of the Act under which the
17 rule was issued, and to what extent the rule
18 provided flexibility to those who were subject to
19 it;

20 (I) whether the rule was worded simply
21 and clearly, including clear identification of
22 those who were subject to the rule;

23 (J) whether the rule created negative unin-
24 tended consequences;

1 (K) the extent to which information re-
2 quirements under the rule can be reduced; and

3 (L) the extent to which the rule has con-
4 tributed positive benefits, particularly health or
5 safety or environmental benefits.

6 (b) PRELIMINARY REPORTS ON SUNSET REVIEWS.—

7 The preliminary report under section 205(b)(2) on the
8 sunset review of a rule shall request public comments and
9 contain—

10 (1) specific requests for factual findings and
11 recommended legal conclusions regarding the appli-
12 cation of section 204 to the rule, the continued need
13 for the rule, and whether the rule duplicates func-
14 tions of another rule;

15 (2) a request for comments on whether the rule
16 should be continued without change, modified, con-
17 solidated with another rule, or terminated; and

18 (3) if consolidation or modification of the rule
19 is recommended, suggestions for the proposed text of
20 the consolidated or modified rule.

21 (c) FINAL REPORTS ON SUNSET REVIEWS.—

22 (1) IN GENERAL.—A final report under section
23 205(b)(3) on the sunset review of a rule shall—

24 (A) contain the factual findings and legal
25 conclusions of the agency conducting the review

1 regarding the application of section 204 to the
2 rule and the agency's proposed recommendation
3 as to whether the rule should be continued
4 without change, modified, consolidated with an-
5 other rule, or terminated;

6 (B) in the case of a rule that the agency
7 proposes to continue without change, so state;

8 (C) in the case of a rule that the agency
9 proposes to modify or consolidate with another
10 rule, contain—

11 (i) a notice of proposed rulemaking
12 under section 553 of title 5, United States
13 Code, or under other statutory rulemaking
14 procedures required for that rule; and

15 (ii) the text of the rule as so modified
16 or consolidated; and

17 (D) in the case of a rule that the agency
18 proposes to terminate, contain a notice of pro-
19 posed rulemaking for termination consistent
20 with paragraph (3)(A).

21 (2) FINAL REPORT PUBLISHED IN THE FED-
22 ERAL REGISTER.—A final report under section
23 205(b)(3) shall be published in the Federal Register.

24 (d) RULEMAKING.—In the case of a final report on
25 a rule described in subparagraphs (C) or (D) of subsection

1 (c)(1), the final report shall be published in the Federal
2 Register and its publication shall constitute publication of
3 the notice required by subsection (c)(1)(C)(i). After publi-
4 cation of a final report on a rule described in subpara-
5 graphs (C) or (D) of subsection (c)(1) on a sunset review
6 of a rule, the agency which conducted such review shall
7 conduct the rulemaking which is called for in such report.

8 **SEC. 208. DESIGNATION OF AGENCY REGULATORY REVIEW**
9 **OFFICER.**

10 The head of each agency shall designate an officer
11 of the agency as the Regulatory Review Officer of the
12 agency. The Regulatory Review Officer of an agency shall
13 be responsible for the implementation of this title by the
14 agency and shall report directly to the head of the agency
15 and the Administrator with respect to that responsibility.

16 **SEC. 209. RELATIONSHIP TO OTHER LAW.**

17 Nothing in this title is intended to supersede the pro-
18 visions of chapters 5, 6, and 7 of title 5, United States
19 Code.

20 **SEC. 210. EFFECT OF TERMINATION OF A COVERED RULE.**

21 (a) EFFECT OF TERMINATION, GENERALLY.—If a
22 covered rule is terminated pursuant to this title—

23 (1) this title shall not be construed to prevent
24 the President or an agency from exercising any au-

1 thority that otherwise exists to implement the stat-
2 ute under which the rule was issued;

3 (2) in an agency proceeding or court action be-
4 tween an agency and a non-agency party, the rule
5 shall be given no conclusive legal effect but may be
6 submitted as evidence of prior agency practice and
7 procedure; and

8 (3) this title shall not be construed to prevent
9 the continuation or institution of any enforcement
10 action that is based on a violation of the rule that
11 occurred before the effectiveness of the rule termi-
12 nated.

13 (b) EFFECT ON DEADLINES.—

14 (1) IN GENERAL.—Notwithstanding subsection
15 (a), any deadline for, relating to, or involving any
16 action dependent upon, any rule terminated under
17 this title is suspended until the agency that issued
18 the rule issues a new rule on the same matter, un-
19 less otherwise provided by a law.

20 (2) DEADLINE DEFINED.—In this subsection,
21 the term “deadline” means any date certain for ful-
22 filling any obligation or exercising any authority es-
23 tablished by or under any Federal rule, or by or
24 under any court order implementing any Federal
25 rule.

1 **SEC. 211. JUDICIAL REVIEW.**

2 (a) IN GENERAL.—A denial or substantial inexcus-
3 able delay in granting or denying a petition under section
4 203(c) shall be considered final agency action subject to
5 review under section 702 of title 5, United States Code.
6 A denial of a congressional request under section 203(d)
7 shall not be subject to judicial review.

8 (b) TIME LIMITATION ON FILING A CIVIL ACTION.—
9 Notwithstanding any other provisions of law, an action
10 seeking judicial review of a final agency action under this
11 title may not be brought—

12 (1) in the case of a final agency action denying
13 a public petition under section 203(c) or continuing
14 without change, modifying, consolidating, or termi-
15 nating a covered rule, more than 30 days after the
16 date of that agency action; or

17 (2) in the case of an action challenging a delay
18 in deciding on a petition for a rule under section
19 203(c), more than 1 year after the period applicable
20 to the rule under section 203(c)(4).

21 (c) AVAILABILITY OF JUDICIAL REVIEW UNAF-
22 FECTED.—Except to the extent that there is a direct con-
23 flict with the provisions of this title, nothing in this title
24 is intended to affect the availability or standard of judicial
25 review for agency regulatory action.

1 **SEC. 212. DEFINITIONS.**

2 In this title:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Office of In-
5 formation and Regulatory Affairs in the Office of
6 Management and Budget.

7 (2) AGENCY.—The term “agency” has the
8 meaning given that term in section 551(1) of title 5,
9 United States Code.

10 (3) APPROPRIATE COMMITTEE OF THE CON-
11 GRESS.—The term “appropriate committee of the
12 Congress” means, with respect to a rule, each stand-
13 ing committee of Congress having authority under
14 the rules of the House of Representatives or the
15 Senate to report a bill to amend the provision of law
16 under which the rule is issued.

17 (4) RULE.—

18 (A) IN GENERAL.—Subject to subpara-
19 graph (B), the term “rule” means any agency
20 statement of general applicability and future ef-
21 fect, including agency guidance documents, de-
22 signed to implement, interpret, or prescribe law
23 or policy, or describing the procedures or prac-
24 tices of an agency, or intended to assist in such
25 actions, but does not include—

1 (i) regulations or other agency state-
2 ments issued in accordance with formal
3 rulemaking provisions of sections 556 and
4 557 of title 5, United States Code, or in
5 accordance with other statutory formal
6 rulemaking procedures required for such
7 regulations or statements;

8 (ii) regulations or other agency state-
9 ments that are limited to agency organiza-
10 tion, management, or personnel matters;

11 (iii) regulations or other agency state-
12 ments issued with respect to a military or
13 foreign affairs function of the United
14 States;

15 (iv) regulations, statements, or other
16 agency actions that are reviewed and usu-
17 ally modified each year (or more fre-
18 quently), or are reviewed regularly and
19 usually modified based on changing eco-
20 nomic or seasonal conditions;

21 (v) regulations or other agency actions
22 that grant an approval, license, permit,
23 registration, or similar authority or that
24 grant or recognize an exemption or relieve
25 a restriction, or any agency action nec-

1 necessary to permit new or improved applica-
2 tions of technology or to allow the manu-
3 facture, distribution, sale, or use of a sub-
4 stance or product; and

5 (vi) regulations or other agency state-
6 ments that the Administrator certifies in
7 writing are necessary for the enforcement
8 of the Federal criminal laws.

9 (B) SCOPE OF A RULE.—For purposes of
10 this title, each set of rules designated in the
11 Code of Federal Regulations as a part shall be
12 treated as one rule. Each set of rules that do
13 not appear in the Code of Federal Regulations
14 and that are comparable to a part of that Code
15 under guidelines established by the Adminis-
16 trator shall be treated as one rule.

17 (5) SUNSET REVIEW.—The term “sunset re-
18 view” means a review of a rule under this title.

19 **SEC. 213. EFFECTIVE DATE.**

20 This title shall take effect on the date of the enact-
21 ment of this Act.

1 **SEC. 214. SUNSET OF THIS TITLE.**

2 This title shall have no force or effect after the 10-
3 year period beginning on the date of the enactment of this
4 Act.

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