To require the periodic review and automatic termination of Federal regulations.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2011

Mr. HULTGREN introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, 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 require the periodic review and automatic termination of Federal regulations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Regulatory Sunset and Review Act of 2011”.

SEC. 2. PURPOSE.

The purposes of this Act are—

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

(2) to require agencies to consider the com-
ments of the public, the regulated community, and
the Congress regarding the actual costs and burdens
of rules being reviewed under this Act, and whether
the rules are obsolete, unnecessary, duplicative, con-
flicting, or otherwise inconsistent;

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

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

(5) to provide for a petition process that allows
the public and appropriate committees of the Con-
gress to request that other rules that are not signifi-
cant be reviewed in the same manner as significant
rules; and
(6) to require the Administrator to coordinate
and be responsible for sunset reviews conducted by
the agencies.

SEC. 3. REVIEW OF REGULATIONS.

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

(1) issue a final report under section 8(c)(2)
continuing such rule, or

(2) conduct a rulemaking in accordance with
section 8(d) to modify, consolidate with another rule,
or terminate such rule.

SEC. 4. RULES COVERED.

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

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

(2) is any other rule designated by the agency
which has jurisdiction over such rule or the Adminis-
trator under this Act for sunset review.

(b) SIGNIFICANT RULES.—For purposes of this Act,
a significant rule is a rule that the Administrator deter-
mines—
(1) has resulted in or is likely to result in an annual effect on the economy of $100,000,000 or more;

(2) is a major rule; or

(3) was issued pursuant to a significant regulatory action, as that term is defined in Executive order 12866 (as in effect on the first date that Executive order was in effect).

(c) PUBLIC PETITIONS.—

(1) IN GENERAL.—Any person adversely affected by a rule that is not a significant rule may submit a petition to the agency which has jurisdiction over the rule requesting that such agency designate the rule for sunset review. Such agency shall designate the rule for sunset review unless such agency determines that it would not be in the public interest to conduct a sunset review of the rule. In making such determination, such agency shall take into account the number and nature of other petitions received on the same rule and whether or not such petitions have been denied.

(2) FORM AND CONTENT OF PETITION.—A petition under paragraph (1)—

(A) shall be in writing, but is not otherwise required to be in any particular form; and
(B) shall identify the rule for which sunset review is requested with reasonable specificity and state on its face that the petitioner seeks sunset review of the rule.

(3) **Response required for noncomplying petitions.**—If an agency determines that a petition does not meet the requirements of this subsection, the agency shall provide a response to the petitioner within 30 days after receiving the petition, notifying the petitioner of the problem and providing information on how to formulate a petition that meets those requirements.

(4) **Decision within 90 days.**—Within the 90-day period beginning on the date of receiving a petition that meets the requirements of this subsection, the agency shall transmit a response to the petitioner stating whether the petition was granted or denied, except that the agency may extend such period by a total of not more than 30 days.

(5) **Petitions deemed granted for substantial inexcusable delay.**—A petition for sunset review of a rule is deemed to have been granted by an agency, and such agency is deemed to have designated the rule for sunset review, if a court finds there is a substantial and inexcusable delay,
beyond the period specified in paragraph (4), in not-
ifying the petitioner of the agency’s determination
to grant or deny the petition.

(6) Public Log.—Each agency shall maintain
a public log of petitions submitted under this sub-
section, that includes the status or disposition of
each petition.

(d) Congressional Requests.—

(1) In General.—An appropriate committee of
the Congress, or a majority of the majority party
members or a majority of nonmajority party mem-
bers of such committee, may request in writing that
the Administrator designate any rule that is not a
significant rule for sunset review. The Administrator
shall designate such rule for sunset review within 30
days after receipt of such request unless the Admin-
istrator determines that it would not be in the public
interest to conduct a sunset review of such rule.

(2) Notice of Denial.—If the Administrator
denies a congressional request under this subsection,
the Administrator shall transmit to the congressional
committee making the request a notice stating the
reasons for the denial.

(e) Publication of Notice of Designation for
Sunset Review.—After designating a rule under sub-
section (c) or (d) for sunset review, the agency or the Admin-
istrator shall promptly publish a notice of that design-
ification in the Federal Register.

SEC. 5. CRITERIA FOR SUNSET REVIEW.

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

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

SEC. 6. SUNSET REVIEW PROCEDURES.

(a) FUNCTIONS OF THE ADMINISTRATOR.—

(1) NOTICE OF RULES SUBJECT TO REVIEW.—

(A) INVENTORY AND FIRST LIST.—Within 6 months after the date of the enactment of
this Act, the Administrator shall conduct an in-
ventory of existing rules and publish a first list
of covered rules. The list shall—

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

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

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

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

(A) STAGGERED REVIEW.—The Adminis-
trator shall assign each significant rule in effect
on the date of enactment of this Act to one of
4 groups established by the Administrator to
permit orderly and prioritized sunset reviews,
and specify for each group an initial review
deadline in accordance with section 7(a)(1).
(B) Prioritizations.—In determining which rules shall be given priority in time in that assignment, the Administrator shall consult with appropriate agencies, and shall prioritize rule based on—

(i) the grouping of related rules in accordance with paragraph (3);

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

(iii) consideration of the views of regulated persons, including State and local governments;

(iv) whether a particular rule has recently been subject to cost-benefit analysis and risk assessment, with priority in time given to those rules that have not been subject to such analysis and assessment;

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

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

(vii) the need for orderly processing and the timely completion of the sunset reviews of existing rules.

(3) GROUPING OF RELATED RULES.—The Administrator shall group related rules under paragraph (2) (and designate other rules) for simultaneous sunset review based upon their subject matter similarity, functional interrelationships, and other relevant factors to ensure comprehensive and coordinated review of redundant, overlapping, and conflicting rules and requirements. The Administrator shall ensure simultaneous sunset reviews of covered rules without regard to whether they were issued by the same agency, and shall designate any other rule for sunset review that is necessary for a comprehensive sunset review whether or not such other rule is otherwise a covered rule under this Act.

(4) GUIDANCE.—The Administrator shall provide timely guidance to agencies on the conduct of sunset reviews and the preparation of sunset review notices and reports required by this Act to ensure
uniform, complete, and timely sunset reviews and to ensure notice and opportunity for public comment consistent with section 8.

(5) Review and evaluation of reports.—The Administrator shall review and evaluate each preliminary and final report submitted by the agency pursuant to this section. Within 90 days after receiving a preliminary report, the Administrator shall transmit comments to the head of the agency regarding—

(A) the quality of the analysis in the report, including whether the agency has properly applied section 5;

(B) the consistency of the agency’s proposed action with actions of other agencies; and

(C) whether the rule should be continued without change, modified, consolidated with another rule, or terminated.

(b) Agency sunset review procedure.—

(1) Sunset review notice.—At least 30 months before the review deadline under section 7(a) for a covered rule issued by an agency, the agency shall—

(A) publish a sunset review notice in accordance with section 8(a) in the Federal Reg-
ister and, to the extent reasonable and practicable, in other publications or media that are designed to reach those persons most affected by the covered rule; and

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

(2) PRELIMINARY REPORT.—In reviewing a covered rule, the agency shall—

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

(B) at least 1 year before the review deadline under section 7(a) for the covered rule, publish in the Federal Register, in accordance with section 8(b), and transmit to the Administrator and the appropriate committees of the Congress a preliminary report.

(3) FINAL REPORT.—The agency shall consider the public comments and other recommendations generated by the preliminary report under paragraph (2) for a covered rule, and shall consult with the appropriate committees of the Congress before issuing a final report. At least 90 days before the re-
view deadline of the covered rule, the agency shall publish in the Federal Register, in accordance with section 8(c)(2) or 8(d), and transmit a final report to the Administrator and the appropriate committees of the Congress.

(4) Open procedures regarding sunset review.—In any sunset review conducted pursuant to this Act, the agency conducting the review shall make a written record describing the subject of all contacts the agency or Administrator made with non-governmental persons outside the agency relating to such review. The written record of such contact shall be made available, upon request, to the public.

(c) Effectiveness of agency recommendation.—If a final report under subsection (b)(3) recommends that a covered rule should be continued without change, the covered rule shall be continued. If a final report under subsection (b)(3) recommends that a covered rule should be modified, consolidated with another rule, or terminated, the rule may be modified, so consolidated, or terminated in accordance with section 8(d).

(d) Preservation of independence of Federal bank regulatory agencies.—The head of any appropriate Federal banking agency (as that term is defined
in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the Federal Housing Finance Board, the National Credit Union Administration, and the Office of Federal Housing Enterprise Oversight shall have the authority with respect to that agency that would otherwise be granted under section 7(a)(2)(B) to the Administrator or other officer designated by the President.

SEC. 7. REVIEW DEADLINES FOR COVERED RULES.

(a) IN GENERAL.—For purposes of this Act, the review deadline of a covered rule is as follows:

(1) Existent significant rules.—For a significant rule in effect on the date of the enactment of this Act, the initial review deadline is the last day of the 4-year, 5-year, 6-year, or 7-year period beginning on the date of the enactment of this Act, as specified by the Administrator under section 6(a)(2)(A). For any significant rule that 6 months after the date of enactment is not assigned to such a group specified under section 6(a)(2)(A), the initial review deadline is the last day of the 4-year period beginning on the date of enactment of this Act.

(2) New significant rules.—For a significant rule that first takes effect after the date of the enactment of this Act, the initial review deadline is the last day of either—
(A) the 3-year period beginning on the
date the rule takes effect, or

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

(3) RULES COVERED PURSUANT TO PUBLIC PE-
tition or Congressional Request.—For any rule
subject to sunset review pursuant to a public peti-
tion under section 4(c) or a congressional request
under section 4(d), the initial review deadline is the
last day of the 3-year period beginning on—

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

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

(4) RELATED RULE DESIGNATED FOR RE-
VIEW.—For a rule that the Administrator designates
under section 6(a)(3) for sunset review because it is
related to another covered rule and that is grouped
with that other rule for simultaneous review, the ini-
tial review deadline is the same as the review dead-
line for that other rule.

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

(e) Determinations Where Rules Have Been
Amended.—For purposes of this Act, if various provi-
sions of a covered rule were issued at different times, then
the rule as a whole shall be treated as if it were issued
on the later of—

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

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

SEC. 8. SUNSET REVIEW NOTICES AND AGENCY REPORTS.

(a) Sunset Review Notices.—The sunset review
notice under section 6(b)(1) for a rule shall—

(1) request comments regarding whether the
rule should be continued without change, modified,
consolidated with another rule, or terminated;
(2) if applicable, request comments regarding whether the rule meets the applicable Federal cost-benefit and risk assessment criteria; and

(3) solicit comments about the past implementation and effects of the rule, including—

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

(B) whether the rule as a whole, or any major feature of it, is outdated, obsolete, or unnecessary, whether by change of technology, the marketplace, or otherwise;

(C) the extent to which the rule or information required to comply with the rule duplicated, conflicted, or overlapped with requirements under rules of other agencies;

(D) in the case of a rule addressing a risk to health or safety or the environment, what the perceived risk was at the time of issuance and
to what extent the risk predictions were accurate;

(E) whether the rule unnecessarily impeded domestic or international competition or unnecessarily intruded on free market forces, and whether the rule unnecessarily interfered with opportunities or efforts to transfer to the private sector duties carried out by the Government;

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

(G) whether compliance with the rule required substantial capital investment and whether terminating the rule on the next review deadline would create an unfair advantage to those who are not in compliance with it;

(H) whether the rule constituted the least cost method of achieving its objective consistent with the criteria of the Act under which the rule was issued, and to what extent the rule provided flexibility to those who were subject to it;
(I) whether the rule was worded simply and clearly, including clear identification of those who were subject to the rule;

(J) whether the rule created negative unintended consequences;

(K) the extent to which information requirements under the rule can be reduced; and

(L) the extent to which the rule has contributed positive benefits, particularly health or safety or environmental benefits.

(b) Preliminary Reports on Sunset Reviews.—The preliminary report under section 6(b)(2) on the sunset review of a rule shall request public comments and contain—

(1) specific requests for factual findings and recommended legal conclusions regarding the application of section 5 to the rule, the continued need for the rule, and whether the rule duplicates functions of another rule;

(2) a request for comments on whether the rule should be continued without change, modified, consolidated with another rule, or terminated; and

(3) if consolidation or modification of the rule is recommended, suggestions for the proposed text of the consolidated or modified rule.
(c) Final Reports on Sunset Reviews.—The report under section 6(b)(3) on the sunset review of a rule shall—

(1) contain the factual findings and legal conclusions of the agency conducting the review regarding the application of section 5 to the rule and the agency’s proposed recommendation as to whether the rule should be continued without change, modified, consolidated with another rule, or terminated;

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

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

(A) a notice of proposed rulemaking under section 553 of title 5, United States Code or under other statutory rulemaking procedures required for that rule, and

(B) the text of the rule as so modified or consolidated; and

(4) in the case of a rule that the agency proposes to terminate, contain a notice of proposed rulemaking for termination consistent with paragraph (3)(A).
A final report described in paragraph (2) shall be published in the Federal Register.

(d) Rulemaking.—The final report under subsection (c)(3) or (c)(4) shall be published in the Federal Register and its publication shall constitute publication of the notice required by subsection (c)(3)(A). After publication of the final report under subsection (e)(3) or (e)(4) on a sunset review of a rule, the agency which conducted such review shall conduct the rulemaking which is called for in such report.

(e) Legislative Recommendations.—In any case in which the head of an agency determines that a rule in a final report under subsection (e)(3) or (e)(4) cannot be changed, modified, or consolidated with another rule without legislative action, such head shall include in such final report a description of what legislative changes are required to implement the recommendations in such final report with regard to such rule.

SEC. 9. DESIGNATION OF AGENCY REGULATORY REVIEW OFFICERS.

The head of each agency shall designate an officer of the agency as the Regulatory Review Officer of the agency. The Regulatory Review Officer of an agency shall be responsible for the implementation of this Act by the
agency and shall report directly to the head of the agency
and the Administrator with respect to that responsibility.

SEC. 10. RELATIONSHIP TO THE ADMINISTRATIVE PROCEDURE ACT.

Nothing in this Act is intended to supersede the provisions of chapters 5, 6, and 7 of title 5, United States Code.

SEC. 11. EFFECT OF TERMINATION OF A COVERED RULE.

(a) Effect of Termination, Generally.—If a covered rule is terminated pursuant to this Act—

(1) this Act shall not be construed to prevent the President or an agency from exercising any authority that otherwise exists to implement the statute under which the rule was issued;

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

(3) this Act shall not be construed to prevent the continuation or institution of any enforcement action that is based on a violation of the rule that occurred before the effectiveness of the rule terminated.

(b) Effect on Deadlines.—
(1) IN GENERAL.—Notwithstanding subsection (a), any deadline for, relating to, or involving any action dependent upon, any rule terminated under this Act is suspended until the agency that issued the rule issues a new rule on the same matter, unless otherwise provided by a law.

(2) DEADLINE DEFINED.—In this subsection, the term “deadline” means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal rule, or by or under any court order implementing any Federal rule.

SEC. 12. JUDICIAL REVIEW.

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

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

(1) in the case of a final agency action denying a public petition under section 4(c) or continuing
without change, modifying, consolidating, or terminating a covered rule, more than 30 days after the date of that agency action; or

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

(c) Availability of Judicial Review Unaffected.—Except to the extent that there is a direct conflict with the provisions of this Act, nothing in this Act is intended to affect the availability or standard of judicial review for agency regulatory action.

SEC. 13. DEFINITIONS.

In this Act:

(1) Administrator.—The term “Administrator” means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

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

(3) Appropriate Committee of the Congress.—The term “appropriate committee of the Congress” means, with respect to a rule, each standing committee of Congress having authority under
the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(4) **MAJOR RULE.**—The term “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget finds has resulted in or is likely to result in—

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

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

(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.

(5) **RULE.**—

(A) **GENERAL RULE.**—Subject to subparagraph (B), the term “rule” means any agency statement of general applicability and future effect, including agency guidance documents, designed to implement, interpret, or prescribe law
or policy, or describing the procedures or practices of an agency, or intended to assist in such actions, but does not include—

(i) regulations or other agency statements issued in accordance with formal rulemaking provisions of sections 556 and 557 of title 5, United States Code, or in accordance with other statutory formal rulemaking procedures required for such regulations or statements;

(ii) regulations or other agency statements that are limited to agency organization, management, or personnel matters;

(iii) regulations or other agency statements issued with respect to a military or foreign affairs function of the United States;

(iv) regulations, statements, or other agency actions that are reviewed and usually modified each year (or more frequently), or are reviewed regularly and usually modified based on changing economic or seasonal conditions;

(v) regulations or other agency actions that grant an approval, license, permit,
registration, or similar authority or that grant or recognize an exemption or relieve a restriction, or any agency action necessary to permit new or improved applications of technology or to allow the manufacture, distribution, sale, or use of a substance or product; and

(vi) regulations or other agency statements that the Administrator certifies in writing are necessary for the enforcement of the Federal criminal laws.

(B) Scope of a rule.—For purposes of this Act, each set of rules designated in the Code of Federal Regulations as a part shall be treated as one rule. Each set of rules that do not appear in the Code of Federal Regulations and that are comparable to a part of that Code under guidelines established by the Administrator shall be treated as one rule.

(6) Sunset review.—The term “sunset review” means a review of the rule under this Act.
1 SEC. 14. SUNSET OF THIS ACT.
2
3 This Act shall have no force or effect after the 10-year period beginning on the date of the enactment of this Act.