104TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPT. 104–284 Part 2

REGULATORY SUNSET AND REVIEW ACT OF 1995

NOVEMBER 7, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 994]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 994), the "Regulatory Sunset and Review Act of 1995," having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	8
Background and Need for Legislation	8
Committee Consideration	13
Vote of the Committee	13
Committee Oversight Findings	13
Committee on Government Reform and Oversight Findings	13
New Budget Authority and Tax Expenditures	14
Congressional Budget Office Estimate	14
Inflationary Impact Statement.	16
Section-by-Section Analysis and Discussion	16
Additional Views	26

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Sunset and Review Act of 1995".

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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 comments 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, conflicting, 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 assessment 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 Congress to request that other rules that are not significant 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 accordance 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 Administrator under this Act for sunset review.

(b) SIGNIFICANT RULES.—For purposes of this Act, a significant rule is a rule that the Administrator determines—

(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, as that term is defined in Executive Order 12291 (as in effect on the first date that Executive order was in effect); 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, whether or not they have already 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;

(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; and

(C) shall be accompanied by a $20 processing fee.

(3) RESPONSE REQUIRED FOR NONCOMPLYING PETITIONS.—If such agency determines that a petition does not meet the requirements of this subsection, such 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, such agency shall transmit a response to the petitioner stating whether the petition was granted or denied, except that such 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 such 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 notifying the petitioner of such agency's determination to grant or deny the petition.

(6) PUBLIC LOG.—Such agency shall maintain a public log of petitions submitted under this subsection, 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 members of such a 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 a request unless the Administrator 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 subsection (c) or (d) for sunset review, the agency or the Administrator shall promptly publish a notice of that designation 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 procedures required for that rule. For purposes of this section, the term "applicable requirements" includes any requirement for cost-benefit analysis and any requirement for standardized risk analysis and risk assessment.

(b) GOVERNING LAW.—If there is a conflict between such applicable requirements and an Act under which a rule was issued, the conflict shall be resolved in the same manner 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 inventory 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 sunset review for any other reason, and state the review deadline for each such rule.

(B) SUBSEQUENT LISTS.—After publication 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 Administrator 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 rules based on—

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

(ii) the extent of the cost of each rule 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 2½ years 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 Register 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 review 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) EXISTING 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 procedures or that compliance with the rule requires substantial capital investment, the 7-year period beginning on the date the rule takes effect.

(3) RULES COVERED PURSUANT TO PUBLIC PETITION OR CONGRESSIONAL REQUEST.—For any rule subject to sunset review pursuant to a public petition 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 designated the rule for sunset review.

(4) RELATED RULE DESIGNATED FOR REVIEW.—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 initial review deadline is the same as the review deadline 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 publishing notice thereof in the Federal Register that describes reasons why the temporary extension is necessary to respond to or prevent an emergency situation.

(c) DETERMINATIONS WHERE RULES HAVE BEEN AMENDED.—For purposes of this Act, if various provisions 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 (c)(3) or (c)(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.

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 OTHER LAW; SEVERABILITY.

(a) RELATIONSHIP TO APA.—Nothing in this Act is intended to supersede the provisions of chapters 5, 6, and 7 of title 5, United States Code.

(b) SEVERABILITY.—If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

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(c), more than 1 year after the period applicable to the rule under section 4(c)(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) 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.

(5) SUNSET REVIEW.—The term "sunset review" means a review of a rule under this Act.

SEC. 14. SUNSET OF THIS ACT.

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

PURPOSE AND SUMMARY

H.R. 994, "The Regulatory Sunset and Review Act of 1995," provides the framework for a scheduled reexamination of regulations (i.e., "rules") in an effort to eliminate or change those which no longer achieve the purpose for which they were issued. Further, it requires existing rules to be analyzed to ensure that they are authorized by law and that they conform to the requirements which would apply if they were issued as new rules.

The Act requires agencies periodically to review all significant rules (and other rules designated by the Administrator of the Office of Information and Regulatory Affairs) for possible modification, consolidation or termination. It also establishes a petition process by which the public and certain committees of Congress may request agencies to review other rules for the same purpose. For rules which are proposed for change or termination, this "sunset review" procedure is a prelude to the notice and comment process traditionally applied under the Administrative Procedure Act (APA), 5 U.S.C. § 553.

BACKGROUND AND NEED FOR THE LEGISLATION

Rulemaking by federal administrative agencies is one of the most important functions of the U.S. government. It delineates, clarifies, and refines Congress' work-product; it determines, to a very large extent, the specific legal obligations of individuals and regulated entities.

The history of rulemaking in the United States extends back to the first Congress, though bureaucracies with substantial organizational resources did not emerge until the end of the nineteenth century. The first modern regulatory agency, the Interstate Commerce Commission, was created in 1887 to regulate American railroads. In 1906, Congress enacted the Pure Food and Drug Act and created

the Federal Trade Commission in 1914. Today, the federal regulatory landscape is a vast field of acronyms (i.e., FDA, FTC, FCC, SEC, EPA, OSHA, CPSC, et al.) and federal regulation seems all-encompassing.

In 1946, Congress passed the Administrative Procedure Act (the "APA")[1] which established the basic framework of administrative law governing agency action, including rulemaking. The APA was the product of the struggle between interests that supported the programs of the New Deal and those that were concerned about the power given agencies during that period. The APA established minimum procedural requirements applicable to many types of agency proceedings—i.e., rulemakings (both formal and informal) and adjudications. The APA was intended to assure due process in the administrative law sphere for affected parties (individuals, small businesses, corporations, and State and local governments).

By the 1970's, however, the continued expansion of the number of federal agencies, the scope of their statutory mandates, and the rules by which they regulated business generated a new round of criticism. Since then, five consecutive U.S. presidents have attempted to impose some restrictive criteria on the agency rulemaking process. In 1974 and 1976 respectively, President Ford imposed an "Inflationary Impact Analysis" on regulations, and then an "Economic Impact Analysis" on the rulemaking process.[2] In 1978, President Carter called for "Economic Impact Statements" on regulations,[3] and in 1981, President Reagan in his order on "Federal Regulation" required that a regulatory impact analysis be completed on all major rules before they could be issued.[4] The Reagan Executive Order greatly emphasized cost/benefit analysis and directed agencies (to the extent permitted by law) not to promulgate rules unless the potential benefits to society outweigh the potential costs. Most recently, in 1993, President Clinton imposed a "Regulatory Planning Review" on the rulemaking process.[5] Each of these executive orders were directed at evaluating and limiting the dramatic growth of federal regulations.

Due to the inherent limited authority of executive orders and the belief that the executive branch had failed to effectively discipline the rulemaking process, legislative efforts to curb the growth of federal regulations were initiated in the 1970's and 1980's. For example, on two occasions in the early 1980's, the House Judiciary Committee acted favorably on comprehensive regulatory reform legislation. These bills were: the "Regulation Reform Act of 1980" (H.R. 3263; H.Rept. 96–1393) and the "Regulatory Procedure Act of 1982" (H.R. 746; H. Rept. 97–435). Both of these proposals would have amended the Administrative Procedure Act so as to make regulations more cost effective, to improve regulatory planning and management, and to ensure periodic review of existing rules. The review of rules provisions contained in those bills are particularly relevant to our consideration of H.R. 994, because they required

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[1] 5 U.S.C. §§ 551–559, 701–706.

[2] Executive Order No. 11821, 3 C.F.R. 926 (1971–1975 compilation) and Executive Order No. 11949, 3 C.F.R. 161 (1976).

[3] Executive Order No. 12044, 43 Fed. Reg. 12661 (1978).

[4] Executive Order No. 12291, 3 C.F.R. 127 (1981). President Bush continued to enforce Executive Order 12291 during his Administration.

[5] Executive Order No. 12866, 58 Fed. Reg. 51735 (1993).

each agency to establish a schedule for the review of each "major rule" within its jurisdiction within six months after the date of enactment. Agencies were required to set dates for the completion of such reviews; no review date could be set more than 10 years after the publication of the final review schedule.

In this Congress, as part of the Republican "Contract with America," the Judiciary Committee acted favorably on the "Regulatory Reform and Relief Act" (H.R. 926). That measure, which passed the House of Representatives by a 415 to 15 vote, amended the existing Regulatory Flexibility Act so as to allow judicial review in certain circumstances and required that agencies complete a regulatory impact analysis when promulgating major rules. Those provisions were subsequently included in the "Job Creation and Wage Enhancement Act of 1995" (H.R. 9).

Despite two decades of Presidential efforts to slow the proliferation of federal regulations, the total number of rules in effect grows each year. For example, the Office of Management and Budget (OMB) estimates that it reviews approximately 1,300 final rules for issuance each year. Consequently, H.R. 994 is directed at reducing the number of duplicative or unnecessary regulations now on the books and at discouraging unnecessary rules in the future.

Specifically, H.R. 994 establishes a sunset review process by which existing rules may be revised or terminated. The Act requires the Administrator of the Office of Information and Regulatory Affairs (OIRA) at OMB to identify significant and other federal rules for inclusion in the review process. Each such rule is scheduled for review within either four, five, six or seven years from enactment of the Act. The legislation also provides a petition process through which the public or appropriate committees of Congress may request that additional rules be scheduled for review.

The Committee on Government Reform and Oversight, to which H.R. 994 was also referred, reported the bill with amendments. This Committee has included many of those provisions in its amendment. However, the Judiciary Committee felt that the sunset review process would be strengthened and further legitimized by specifically requiring the application of the procedures of the Administrative Procedure Act.

Currently, regulations are proposed, adopted, amended, and terminated under the procedure governed by the APA. H.R. 994 as reported by the Government Reform and Oversight Committee would allow for major changes in rules or the termination of existing rules without going through this process. The Judiciary Committee determined that the sunset review process should be conducted consistent with the APA.

The APA was enacted in 1946 so as to enable outside affected parties—individuals, businesses, unions, and non-profit groups—to have an opportunity for input into the formulation of federal regulations before they were adopted. For 50 years the APA has meant "due process" in federal administrative law, and we have 50 years of court interpretations of its provisions.

The core rulemaking procedures of the APA remain the same today as they appeared in 1946. The Act brought consistency and regularity to the issuance of federal rules, and gave the public a voice in the development of these non-statutory legal requirements.

The benefits of this single minimum procedural code, binding on all agencies, are substantial. At the very least, the APA simplifies government and assures adequate protection for private rights. It makes it easier for individuals to deal with the many different agencies of the government and to ascertain their procedural rights and the various agencies' procedural duties. It avoids the duplication of effort that is involved when each agency independently solves procedural problems common to them all. But perhaps the most important role of the APA is to serve as a guide to and check upon administrative officials in the exercise of their discretionary powers. No more satisfactory way can be found of minimizing abuses and instilling public confidence in the legitimacy of the process under which their rights are defined. Due to that legal history, the public and the business community, in particular, are aware of their rights and obligations under federal rulemaking procedure, and of the availability of judicial review regarding specific agency determinations.

The APA is "user friendly" because its requirements and procedures are well understood by the agencies and by outside, affected parties as well. The statute specifies each step of the rulemaking process in considerable detail, and the courts have extensively interpreted the meaning of its terms and provisions.

For example, the requirements of what has to go into a "notice of proposed rulemaking" are clear. It delineates with precision the scope of the proceeding and the factors which will be considered therein.

There is simply no good reason to conduct the sunset review process outside the parameters of the APA. If H.R. 994 were to create an alternative process with respect to public notice and comment, that would not ensure the participation of the public in the same manner as provided under the APA. The APA requires that the agency respond to every substantive issue raised in the public comments. This is much different from a mere requirement that the decisionmaker "consider" public comments.

The establishment of the sunset review process outside of the normal APA process would lead to an inconsistency in treatment for rules that are newly promulgated and those that are already in effect. This is directly contrary to the stated goal of H.R. 994, which is to ensure that existing rules continue only if they meet all the requirements now applicable to the issuance of new rules.

Due to the similarities in terminology between the sunset review and the APA, there will naturally be debate as to whether the meaning given those terms under the APA applies to provisions of the sunset review process as reported by the Government Reform and Oversight Committee. The uncertainty this creates will undoubtedly lead to lawsuits challenging the interpretation of particular words, clauses and provisions. As with all ancillary litigation, this will serve to delay the implementation of sunset review, thereby negating the benefits of the legislation's "streamlining" intent. It creates the very real risk that courts will interpret the sunset review procedure in a manner vastly different from, and inconsistent, with requirements under the APA. Judicial review of both procedural and substantive rulings under sunset reform will thus interject another opportunity for disruption and delay. By contrast,

the standards of review under the APA are well settled, clear and understood.

In order to conform the sunset review process with the public notice and comment procedures of the APA, in the Judiciary Committee Chairman Hyde offered an en bloc amendment that was adopted by a unanimous voice vote. The principal thrust of the Hyde amendment was to insure that prior to any change in a rule or termination of a rule, the normal APA rulemaking process would be utilized. Thus, as reported by the Judiciary Committee, there could be no automatic termination of a covered rule. Instead, to the extent a rule was proposed for change or termination, a rulemaking procedure would be required at the conclusion of the sunset review process.

Consistent with this change, the Committee replaced the term "termination date" with "review deadline" throughout the bill. This makes it clear that the end result of the sunset review process will either be the issuance of a notice of proposed rulemaking or a sunset review report concluding that no change in the rule is required. Instead, the review deadline is the time by which the agency must propose to continue, modify, consolidate with another rule, or terminate a rule. If the rule is to be modified, consolidated or terminated, the agency must publish a notice of proposed rulemaking and conduct a rulemaking proceeding under 5 U.S.C. § 553.

Second, the Judiciary Committee amendment provides that a public petition for review of a rule will be reviewed by the agency which promulgated the rule. The Committee believes that the agency is better suited than the Administrator of OIRA to make this determination, because the agency has the expertise and familiarity with its own rules, and can better weigh the impact of review of the rule on agency operations.

This amendment also brings the public petition process in conformance with the analogous provision of the APA, 5 U.S.C. § 553(e), in that it internalizes the petition process within the agency. The APA provision allows the public to petition an agency for the issuance, amendment, or repeal of a current rule. H.R. 994 expands on this right by requiring that the agency respond to the petition within a particular time frame.

Third, the Judiciary Committee amendment alters the standard of review under which the agency, in the case of public petitions, or the Administrator, in the case of Congressional petitions, must decide whether a rule should be designated for sunset review. It does this by applying the standard of "in the public interest." The Committee was concerned that an "unreasonable" standard would not afford the agencies and the Administrator with sufficient discretion regarding public and Congressional petition requests.

In applying a public interest test, consideration will be given to a variety of factors, including the agency's available resources and whether granting a petition or petitions will interfere with their ability to review regulations of real concern. Thus, it might not be "unreasonable" to request that a particular rule be included for review, but its inclusion might not be "in the public interest."

It is important that the sunset review process result in real substantive change that will withstand court challenge. The Judiciary

Committee amendments will ensure this, while at the same time guaranteeing meaningful public participation in the process.

COMMITTEE CONSIDERATION

When it was first introduced, H.R. 994 was referred to both the Judiciary Committee and the Committee on Government Reform and Oversight. It was referred to the Judiciary Committee because of its jurisdiction under House rule X(j)(2) with respect to administrative practice and procedure, which includes the Administrative Procedure Act and the federal regulatory process in general.

The Government Reform and Oversight Committee reported H.R. 994 with amendments on July 18, 1995. Its committee report was filed on October 19. At that point, the Parliamentarian extended the Judiciary Committee's original referral until November 3, 1995.

On October 31, 1995, the Committee met in open session to consider the bill for markup. An en bloc amendment was offered by Chairman Hyde to make H.R. 994 consistent with the standard Federal rulemaking procedures set forth in the Administrative Procedure Act (APA). The bill, as reported by the Government Reform and Oversight Committee, would codify a review and sunset procedure, but it would do so outside the framework of the APA. The Hyde amendment conforms this sunset review process with the public notice and comment requirements of the existing APA. Consequently, no rule could be amended or terminated unless the agency goes through the normal public notice and comment requirements of the APA. Under the Hyde amendment, the sunset review procedure will identify those rules that should be altered, consolidated or in fact terminated, and the "tried and true" procedures of the APA will be the final step in implementing that result. The Hyde en bloc amendment was adopted by unanimous voice vote. The Committee also adopted by voice vote an amendment by Mr. Conyers, which would require an agency conducting a sunset review to identify and make public the subject of all contacts made with non-governmental persons relating to the review.

VOTE OF THE COMMITTEE

The Committee on the Judiciary met in open session on October 31, 1995. After adopting two amendments by voice vote, it ordered H.R. 994, as amended, favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 994, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 3, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 994, the Regulatory Sunset and Review Act of 1995, as ordered reported by the House Committee on the Judiciary on October 31, 1995. We estimate that enactment of this bill would result in additional costs to the federal government of at least $4 million annually, assuming appropriation of the necessary funds. This estimate assumes the Administration would use the broad discretion it would be granted under the bill to decide which regulations need to have a sunset review and that an average of at least 50 regulations would undergo such reviews each year.

The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to H.R. 994.

Bill purpose: H.R. 994 would require the Administrator of the office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) to categorize all existing regulations that would be covered by this bill into one of four groups. Regulations in each group would be subject to a sunset review to determine whether rules should be altered or terminated. Regulations in the first group would have to be reviewed four years after enactment of H.R. 994. Regulations in groups two through four would have to be reviewed in the fifth, sixth, and seventh years following enactment of H.R. 994. New regulations that would be covered by the bill would have to be reviewed three years after they take effect, but certain new rules that involve either negotiated rulemakings or large capital investments would not require review for seven years.

H.R. 994 would apply to all existing regulations and future new rules that are estimated to have an annual impact on the economy of $100 million or more, or would:

Result in a major increase in costs or prices for consumers, industries, governments, or geographic regions;

Have significant adverse effects on competition, employment, investment, productivity, innovation, or international competitiveness of U.S. enterprises;

Change the budgetary impact of entitlements, grants, user fees, or loan programs; or

Have an adverse affect on the environment, public health, or safety.

Moreover, Congressional committees and citizens could petition federal agencies to request that other rules be reviewed according to the procedures specified in this bill. If the agencies find such petitions to be in the public interest, then they would also carry out the sunset reviews requested by these petitions.

Starting two and one-half years before the expiration of any rule, agencies would have to issue notice to the public and to the Congress of the sunset review, and would solicit comments concerning the cost and effectiveness of the rule. The agencies would then make preliminary and final reports on whether to extend, modify, or consolidate the rule, and would respond to public and Congressional comments.

H.R. 994 does not require that all existing or new rules be subject to a cost/benefit test or risk assessment review. Under section 5 of the bill, however, cost/benefit analyses and risk assessment reviews would be required to extend, modify, or consolidate existing rules if subsequent legislation were to require this kind of regulatory analysis for all new rules.

Section 13 of H.R. 994 would exclude a rule from the sunset provisions if it:

Relates to a military or foreign affair function of the United States;

Concerns agency organization, management, or personnel matters;

Is reviewed and usually modified each year (or more frequently), or if it is reviewed regularly and usually modified based on changing economic or seasonal conditions;

Grants an approval, license, permit, registration, or similar authority; grants or recognizes an exemption or relieves a restriction; is necessary to permit new or improved applications of technology; allows the manufacture, distribution, sale, or use of a substance or product; or

Is necessary for the enforcement of a Federal criminal law.

Estimated budgetary impact: Existing formal regulations are collected in about 6,800 parts of the Code of Federal Regulations (CFR). Approximately 1,400 parts of the CFR would be exempt from review because they relate to agency organization, management, personnel matters, or the military or foreign affairs functions of the government. We estimate that most of the remaining 5,400 parts of the CFR would not be covered by this bill, because they are already regularly reviewed, are necessary to enforce Federal Criminal laws, or involve approvals, licenses, permits and registrations. The Administration would have broad discretion in determining which rules would be covered by the provisions of H.R. 994 and, thus, in deciding how many reviews would be conducted.

Enacting H.R. 994 would increase federal costs, subject to appropriation of the necessary amounts, because the bill would require agencies to conduct regulatory reviews that they do not perform under current law. While the number of sunset reviews that would be conducted under the bill is uncertain, CBO believes that relatively few sunset reviews would be required because the Adminis-

tration would have broad discretion over choosing rules for review, and in deciding which rules would be exempt from review.

Based on information from regulatory agencies, CBO believes that the average cost of reviewing an individual rule, as required by H.R. 994, would be small. We estimate that for most rules the cost of publishing a sunset review notice, soliciting public comments, and making preliminary and final recommendations in response to these comments would average about $75,000 per review. CBO cannot predict how the Administration would use discretion granted under this bill to determine which rules should have a sunset review, but assuming that an average of at least 50 rules would be reviewed annually, we estimate the bill would cost at least $4 million per year.

Previous estimate: On August 14, 1995, CBO prepared a cost estimate for H.R. 994 as ordered reported by the House Committee on Government Reform and Oversight on July 18, 1995. CBO estimated that the costs associated with this version of the bill also would be at least $4 million annually. This version of H.R. 994 is similar to that ordered reported by the Judiciary Committee. The one major difference between the two versions relates to whether rules would automatically expire if not reviewed. Such automatic terminations could occur under the version of H.R. 994 approved by the Committee on Government Reform and Oversight, not under the version approved by the Committee on the Judiciary. This estimate assumes that the difference in sunset provisions would not significantly affect the cost of conducting sunset reviews.

State and local costs: CBO believes that H.R. 994 would not impose enforceable duties on state or local governments, nor would its enactment result in direct costs to these entities. CBO anticipates that most federal rule changes prompted by the bill would not require modification of procedures or regulations by states or localities, although these entities may choose to do so. Any costs or savings to state and local governments associated with enactment of H.R. 994 would be considered indirect.

If you wish further details on this estimate, we will be pleased to provide them. The staff contacts are Mark Grabowicz and Karen McVey (for state and local costs).

Sincerely,

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

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 994 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Sec. 1—Short title

Section 1 states that this Act may be cited as the "Regulatory Sunset and Review Act of 1995."

Sec. 2—Purpose

This legislation establishes a procedure whereby agencies will review existing regulations to determine whether they should be continued without change, modified, consolidated with another rule, or terminated. In performing these "sunset reviews," the agency must consider comments from affected parties—the public, the regulated community, and Congress. The Act also recognizes the right of the public and Congress to petition for the inclusion of particular rules in the sunset review process.

The intent of this review process is to ensure that rules continued in effect in any form meet all the legal requirements applicable to new rules, including federal cost/benefit and risk assessment requirements. In the event that it is determined that repeal or other changes in the rule are appropriate, the Act ensures that the procedures set forth in the Administrative Procedure Act (5 U.S.C. §§ 551–559) will be followed to achieve that result.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget is given responsibility for coordinating and overseeing the sunset review process.

Sec. 3—Review of regulations

Section 3 provides for the implementation of recommendations generated by the sunset review process. It specifies that upon completion of review of each covered rule, the agency which has jurisdiction over the rule shall issue a notice of proposed rulemaking and conduct a rulemaking in accordance with section 8(d). The exception is where the agency proposes to continue the rule without change; in that circumstance, no rulemaking proceeding is required.

Sec. 4—Rules covered

Section 4(a) describes the rules which must be reviewed under the Act. A "covered rule" is: (1) a rule the Administrator of OIRA determines is a "significant rule" under section 4(b); or (2) "any other rule" designated by the Administrator for sunset review.

Section 4(b) sets forth the criteria which the Administrator shall use in determining whether a rule is "significant." A "significant rule" is one the Administrator determines (1) has resulted in or is likely to result in an annual effect on the economy of $100 million or more; (2) is a major rule as that term was defined in Executive Order 12291 (on the date it became effective); or (3) was issued pursuant to a significant regulatory action, as that term is defined in Executive Order 12866.

Sections 4 (c) and (d) describe a procedure whereby the general public and appropriate Committees of Congress may request that a rule be designated for review under the Act. Of course, interested persons already have the right to petition for the issuance, amendment, or repeal of a rule under the Administrative Procedure Act. 5 U.S.C. § 553(e). Section 4(c) requires the agency to respond to these requests. Specifically, paragraph (1) allows a person who is adversely affected by a non-significant rule to request that the agency which has jurisdiction over the rule designate the rule for review. The agency is to designate the rule for review unless it de-

termines that it would not be in the public interest to conduct such a review of the rule. Under the public interest test, the agencies will need to consider a variety of factors, including their available resources and whether granting a petition or petitions will interfere with their ability to review regulations of real concern. The agencies will also need to consider whether the addition of rules to the review process will impair their ability to fulfill their core obligations. Together with the deferential standard of judicial review that applies under existing law to such determinations, the agency will have broad discretion to grant or deny public petitions.

Paragraph (2) regulates the form and content of a petition by a member of the public under paragraph (1). First, the petition must be in writing, although it is not required to be in any particular form. Second, the petition shall identify with reasonable specificity the rule for which sunset review is requested, and affirmatively state that the petitioner seeks sunset review of the rule. The Committee expects that the petitioner will include a showing of the nature and extent of the rule's adverse effect on the petitioner and why review would be in the public interest. Finally, the petition must be accompanied by a $20 processing fee.

In the event that the agency determines that a petition does not satisfy the procedural requirements of paragraphs (1) and (2), paragraph (3) requires the agency to notify the petitioner of the deficiency in the petition and provide information on how it might be cured. This response must be provided to the petitioner within 30 days of receipt of the defective petition.

Paragraph (4) establishes the timeframe for issuing decisions under this subsection. Within 90 days after receiving a procedurally proper petition, the agency is to transmit a response to the petitioner stating whether the petition is granted or not. The agency may extend this 90 day period for a total of no more than 30 days. If the agency fails to issue a decision on a petition within the period described in paragraph (4), and a court finds that the delay in ruling is substantial and inexcusable, paragraph (5) provides that the petition is deemed to have been granted. Pursuant to paragraph (6), the agency shall maintain a public log of petitions submitted under this subsection, that includes the status or disposition of each petition.

Section 4(d) establishes a procedure whereby an appropriate committee of Congress, or a majority of the majority or non-majority party members of such a committee, may request in writing that the Administrator designate a non-significant rule for sunset review. The rule requested shall be designated for review within 30 days unless the Administrator determines that it would not be in the public interest to conduct a sunset review of that rule. In the event that review of a rule is denied under paragraph (1), paragraph (2) requires the Administrator to transmit to the requesting committee a notice stating the reasons for the denial.

After designating a rule for review under section 4(c) or (d), the agency or Administrator shall, in accordance with subsection (e), promptly publish a notice of that designation in the Federal Register.

Sec. 5—Criteria for sunset review

Section 5(a) establishes the criteria for agencies to consider during the sunset review process. Each agency must analyze covered rules so as to determine whether or not they are authorized by law and meet all the statutory requirements that would apply if it were issued as a new rule. These applicable requirements include any statutory requirements for cost/benefit analysis, risk analysis and risk assessment.

In the event that there is an conflict between the requirements referenced in subsection (a) and the law pursuant to which the rule was issued, subsection (b) provides that the conflict is to be resolved in the same manner as it would be if the rule were a new rule.

Sec. 6—Sunset review procedures

Section 6(a) sets forth the functions of the Administrator under the Sunset and Review Act. Paragraph (1) governs the Administrator's duty to provide a notice of rules subject to review. Within six months after enactment, the Administrator must conduct an inventory of existing rules and publish a first list of covered rules. This list shall group each significant rule in accordance with paragraph (2) and state the review deadline for each such rule. Other rules designated for review must also be listed, and the deadline by which the review of each rule shall be completed. An updated list of covered rules shall be issued at least annually, specifying the review deadline for each.

The grouping of significant rules contained in the Administrator's initial list shall be governed by the provisions of paragraph (2). These rules are to be divided into four groups, consideration of which is to be staggered in accordance with section 7(a)(1). The Administrator is directed to give priority to certain types of rules, including those which impose the greatest cost, those which have not previously been subject to cost/benefit analysis and risk assessment, and those which were issued under statutes that provide relatively greater discretion to an official in issuing the rule. Consideration shall also be given to the grouping of related rules, the views of regulated persons (including State and local governments), the burden of reviewing each rule on the reviewing agency, and the need for orderly processing and the timely completion of the sunset reviews of existing rules. In determining these priorities, the Administrator is to consult with the agencies which have jurisdiction over the rules under consideration.

Section 6(a)(3) provides for simultaneous sunset review of related rules. The Administrator is to group related rules under paragraph (2) based on their subject matter similarity, functional interrelationships, and other relevant factors, in order to ensure a comprehensive and coordinated review of overlapping and conflicting rules. Rules shall be grouped without regard to whether the same agency issued the rules. The Administrator is also given the discretion to designate any other rule for sunset review that is necessary to achieve a comprehensive sunset review. This designation can occur whether or not that rule is otherwise a covered rule under this Act.

The Administrator is to provide timely guidance to agencies on how to conduct sunset reviews and the preparation of sunset review notices and reports. This guidance is necessary so as to ensure uniform, complete, and timely sunset reviews, and to ensure notice and opportunity for public comment consistent with section 8.

Paragraph (5) provides that the Administrator shall review and evaluate each preliminary and final report submitted by an agency. Within 90 days after receiving a preliminary report, the Administrator shall transmit comments to the head of the agency regarding the quality of the analysis in the report, including: whether the agency has properly applied the review criteria in section 5; the consistency of the agency's proposed action with actions of other agencies; and whether the rule should be continued without change, modified, consolidated with another rule, or terminated.

Section 6(b) describes the agency review process. Section 6(b)(1) provides that, at least two and one-half years before the review deadline for each rule, the reviewing agency must publish a sunset review notice, and request the views of the Administrator and the appropriate Congressional committees.

For each rule, an agency shall issue a preliminary report at least one year before the review deadline. In its review of the rule, the agency shall consider public comments and other recommendations generated by the notice issued under paragraph (1). The preliminary report shall be published in the Federal Register in accordance with section 8(b) and transmitted to the Administrator and the appropriate Congressional committees.

Prior to issuing its final report, the agency must consider the public comments and other recommendations generated by the preliminary report. At that point, it must again consult with the appropriate congressional committees. At least 90 days prior to the review deadline for the covered rule, the agency must publish its final report in the Federal Register in accordance with section 8(d) and transmit it to the Administrator and to the appropriate congressional committees. In addition, an agency conducting a sunset review shall make a written record describing the identity and subject of all contacts the agency or the Administrator made with nongovernmental persons outside the agency relating to that review. In accordance with section 6(b)(4), that written record shall be made available, upon request, to the public.

Section 6(c) provides that if a final report recommends that a covered rule be continued without change, it shall be continued. If a final report recommends that a covered rule be modified, consolidated with another rule, or terminated, the rule may be modified, consolidated or terminated in accordance with section 8(d).

Section 6(d) preserves the independence of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Comptroller of the Currency, the Federal Housing Finance Board, the National Credit Union Administration, and the Office of Federal Housing Enterprise Oversight by providing that such agencies shall exercise the authority of the Administrator or other officer designated by the President, for purposes of section 7(a)(2)(B). These agencies

shall conduct a sunset review of their rules consistent with the provisions of this legislation.

Sec. 7—Review deadlines for covered rules

Section 7 specifies the deadlines by which review of covered rules must be concluded. For significant rules in effect on the date of enactment, the initial review deadline for the rule depends upon the group to which it is assigned. Section 7(a)(1) creates four groups, which shall have review deadlines 4 years, 5 years, 6 years, and 7 years from the date of enactment of the Act. For any significant rule which has not been assigned to a group six months after the date of enactment, the initial review deadline will be 4 years from the date of enactment.

With regard to significant rules that first take effect after the date of enactment of this Act, the initial review deadline will be three years after the new rule takes effect. Section 7(a)(2)(B) provides an exception to this general rule: if the Administrator determines that the rule was issued pursuant to negotiated rulemaking procedures or that compliance with the rule requires substantial capital investment, its initial review date shall be seven years after it takes effect.

For rules subject to sunset review as a result of a public petition under section 4(c) or a congressional request under section 4(d), section 7(a)(3) specifies that the initial review deadline is 3 years from the date the rule is designated for sunset review. Under section 7(a)(4), if the Administrator designates a rule for sunset review because it is related to another covered rule, the review deadline is the same as that for the rule with which it is grouped.

Section 7(b) authorizes the temporary extension of the review deadline for up to six months. The Administrator may make this extension by publishing a notice in the Federal Register that describes the reasons why the temporary extension is necessary to respond to or prevent an emergency situation.

When a rule has been amended or parts of it have been promulgated at different times, section 7(c) provides the means to determine the date of issuance of the rule. If an agency issued various provisions of a covered rule at different times, then the rule as a whole shall be treated as if it were issued on the latter of either (1) the date the agency issued the first portion of the rule, or (2) the date the most recent review and revision under this Act was completed.

Sec. 8—Sunset review notices and agency reports

Section 8(a) lists the elements that must be contained in sunset review notices. It must request comments regarding whether the rule should be continued without change, modified, consolidated with another rule, or terminated. If applicable, it must also request comments regarding whether the rule meets the current statutory federal cost/benefit and risk assessment criteria. Finally, it must 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, and whether the incremental benefits of the rule exceeded the incremental costs of the rule, both generally and with regard to the

specific industries and sectors covered by the rule; (B) whether the rule as a whole or any of its major features are outdated, obsolete, or unnecessary due to changes in technology, the marketplace, or otherwise; (C) the extent to which the rule or information required to comply with the rule duplicates, conflicts, or overlaps with requirements under rules of other agencies; (D) in the case of a rule addressing a risk to health, safety, or the environment, what the perceived risk was at the time the agency issued the rule and whether 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 is 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 can be reduced; and (L) the extent to which the rule has contributed positive benefits, particularly health or safety or environmental benefits.

Section 8(b) specifies the contents of preliminary reports prepared pursuant to section 6(b)(2). These reports must request public comments and contain: 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; a request for comments on whether the rule should be continued without change, modified, consolidated with another rule, or terminated; and, if the agency recommends consolidation or modification of the rule, suggestions for the proposed text of the consolidated or modified rule.

Section 8(c) specifies the contents of final reports. Final reports must contain the factual findings and legal conclusions of the agency 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. In the case of a rule that the agency proposes to continue without change, the report shall so state. In the case of a rule that the agency proposes to modify, or consolidate with another rule, it must contain a notice of proposed rulemaking specifying the details of that proposal under 5 U.S.C. § 553 or under other statutory rulemaking procedures required for that particular rule (such as under the Magnuson-Moss Warranty Federal Trade Improvement Act, Pub. L. 93–637, 15 U.S.C. § 57a). The notice of proposed rulemaking shall also include the text of the rule as so modified or consolidated. In the case of a rule that the agency

proposes to terminate, it must contain a notice of proposed rulemaking for termination consistent with subsection (c)(3)(A).

The final report shall be published in the Federal Register; except where the final proposal was to continue the rule, section 8(d) provides that this shall constitute publication of the notice of proposed rulemaking under subsection (c)(3)(A). After its publication, the agency which conducted the sunset review shall conduct the rulemaking which is the subject of that notice.

Sec. 9—Designation of agency Regulatory Review Officers

The head of each agency shall designate an agency official as the Regulatory Review Officer of the agency. The Regulatory Review Officer shall be responsible for the implementation of the Sunset and Review Act by the agency and shall report directly to the head of the agency and to the Administrator with regard to its implementation.

Sec. 10—Relationship to other law; severability

Section 10(a) makes clear that nothing in this legislation is intended to supersede the provisions of chapters 5 through 7 of title 5 of the United States Code. As previously noted, section 8(d) specifically requires that the rulemaking procedures of the Administrative Procedure Act be used if a rule is proposed to be modified, consolidated with another rule, or terminated. The Act is not intended to preclude an agency from commencing a rulemaking proceeding at any time (for example, prior to a review deadline) to modify or terminate a rule. Nor is it intended to interfere with an agency's authority to conduct a regulatory flexibility analysis under Chapter 6 of title 5. Section 10(b) provides for the severability of the various provisions of the Sunset and Review Act in the event that any portion or the application of any portion to any person or circumstance is held invalid. In such a case, the remainder of the Act, or the application of such provisions to other persons and circumstances, shall not be affected.

Sec. 11—Effect of termination of covered rule

Section 11(a) addresses the effect of a termination of a covered rule. Section 11(a)(1) clarifies that the Act shall not prevent the President or an agency from exercising any authority that otherwise exists to implement the underlying statute that provided the legal authority for the rule. Paragraph (2) provides that, in any agency proceeding or court action between an agency and a non-agency party, a terminated rule shall be given no conclusive legal effect, but may be submitted as evidence of prior agency practice and procedure. Section 11(a)(3) allows an agency to invoke a terminated rule in an enforcement action that is based on conduct that occurred while the rule was in effect. It provides that the 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 rule terminated.

Section 11(b) provides for tolling of any regulatory deadline relating to a rule terminated under this Act. The tolling continues until a new rule is issued, unless otherwise provided by law. Paragraph (2) defines the term deadline for purposes of this subsection.

Sec. 12—Judicial review

Section 12(a) provides that a denial or substantial inexcusable delay in granting or denying a petition under section 4(c) shall be considered final agency action and subject to review under 5 U.S.C. § 702. Denial of a congressional request under section 4(d) is not subject to judicial review.

Section 12(b) establishes a time limitation for seeking judicial review of a final agency action under this Act. In the case of a final agency action denying a public petition under section 4(c) or modifying, consolidating, or terminating a covered rule, an action may not be brought more than 30 days after the date the agency issues the final rule. In the case of a final agency action proposing to continue a rule, an action may not be brought more than 30 days after publication of the final report. In the case of an action challenging a delay in deciding on a petition for inclusion of a rule under section 4(c), an action for judicial review of a final agency action may not be brought more than one year after the period applicable to the rule under section 4(c)(4).

Section 12(c) clarifies that the Congress does not intend to affect the availability or standard of judicial review for agency regulatory action except as otherwise expressly provided in this legislation.

Sec. 13—Definitions

This section sets forth the definition of various terms contained within the Act.

"Administrator" is defined as the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

The term "agency" has the meaning given that term in section 551(l) of title 5, United States Code.

The term "appropriate committee of the Congress" is defined, with respect to a rule, as each standing committee of Congress having authority to report a bill to amend the provision of law under which the rule is issued.

Section 13(4)(A) states the definition of a rule. Subject to certain generic exclusions, the term "rule" is defined to mean any agency statement of general applicability and future effect, including agency guidance document, 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.

The Act also recognizes the following exceptions to the general definition of a "rule," because their sunset review would not further the purpose of the legislation:

(i) Formal rulemaking pursuant to 5 U.S.C. §§ 556 and 557 or other statutory formal rulemaking proceedings;

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

(iii) Regulations or other agency statements related 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, registration, or similar authority, or that grant or recognize an exemption or other actions relieving 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.

Section 13(4)(B) provides that each set of rules designated in the Code of Federal Regulations (CFR) as a "part" or each set of rules that is comparable to a "part" in the CFR shall be treated as one rule.

The term "sunset review" means a review of a rule under the Sunset and Review Act.

Sec. 14 of this Act

Section 14 provides that the Sunset and Review Act will have no force or effect after the ten-year period beginning on the date of the enactment of this Act.

ADDITIONAL VIEWS

We agree with the goals of H.R. 994: agencies should be forced to thoroughly reassess the continued need for and cost-effectiveness of their regulations on a regular basis. No one benefits from outdated or conflicting regulations and they should not linger on the books to frustrate the efforts of small business people and other hardworking Americans.

However, we had serious reservations about the bill as reported by the House Government Reform and Oversight Committee. Instead of simply requiring agencies to ensure that their rules are not outdated, obsolete, unnecessary, or cost-inefficient, it set out a maze of burdensome requirements that mirrored the worst of our bureaucratic process. And if an agency was unable to accomplish this review by the arbitrary deadlines, the regulation—regardless of whether it was an essential health and safety protection or IRS tax guidance that had been relied on by generations of taxpayers without controversy—would automatically expire.

According to Sally Katzen, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, who testified before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform and Oversight:

> * * * the need to review existing regulations is not in dispute—we agree on the objective. The President has taken strong steps to initiate just such a comprehensive review of existing regulations. The issue is how to do it and continue doing it in the most effective way.
>
> Regrettably, we do not believe H.R. 994 is an effective way of proceeding. This bill starts with a sound idea—but it is openended in scope, excessively rigid, and at times contradictory in the criteria for review; piles on so much paperwork in such short time periods that it is unworkable; and fundamentally changes the relative roles of public notice and comment, and judicial review.

Some of our concerns were allayed by the Committee's adoption of Chairman Hyde's amendment which conformed the sunset review process with the Administrative Procedure Act. As the Chairman noted at Committee markup, there is simply no good reason to create a new notice and comment procedure for the sunset review process when we already have an established body of law in place that has been interpreted by the courts, and relied on by the public, for over 50 years. Under the Hyde amendment, rules would not expire automatically. Rather, rules identified for termination by a scheduled sunset review would meet their end through the established procedures of the APA. This procedure will ensure a thor-

ough and orderly review and that decisions are made consistent with a public record.

We are pleased with the direction taken by the majority and hope that we will be able to work together in a bi-partisan fashion to create a workable piece of legislation. To do this, however, requires additional changes as H.R. 994 still suffers from serious flaws.

One major flaw is that the bill sweeps virtually every rule into a costly "one-size fits all" bureaucratic and cumbersome process that is itself not cost-effective. While there are rules that merit this intensive scrutiny, many rules do not. The definition of "rule" sweeps in agency guidance documents and any statement describing the procedures or practices of an agency. A provision tucked away in Section 13 of the bill requires that all rules designated in the Code of Federal Regulations as a part, as well as each set of rules not in the CFR but that are comparable to a part in the CFR, be treated as a single rule. This provision vitiates the thresholds for "significant rules" established in Section 4. For example, all SEC regulations of mutual funds would be classified as a major rule because they are contained in the same CFR part—each though many of the regulations are individually very minor.

Yet, every one of these minor rules will have to be screened for consistency with set review criteria—which may or may not be applicable—at a level of analysis that will withstand judicial review.

Review of existing regulations makes sense. But such review should be targeted at regulations that need to be revised. Requiring agencies to devote the same amount of resources to reviewing effective and non-controversial regulations as they devote to problematic ones is a waste of taxpayer dollars.

It may also save taxpayer dollars and make more sense to require agencies to set time tables that correspond to current reauthorization cycles. For example, Secretary of Education Richard Riley pointed out in a letter to the Ranking Member of the Government Reform and Oversight Committee, Congresswoman Cardiss Collins, that the Department of Education already reviews existing regulations each time Congress reauthorizes education programs, which are on a four year authorization cycle: "Because the review and reporting provisions in H.R. 994 would be unlikely to coincide with the Department's reauthorization driven review cycle, the bill would require the Department to expend a tremendous amount of time and resources without benefit to the public."

Likewise, as Commerce Committee Chairman Bliley noted in a letter to the Speaker of the House, Congress has frequently adopted statutes establishing a specific sequence for the issuance and review of regulations. He concluded that "H.R. 994 would conflict with these sequencing provisions in several ways."

The instability generated by this process may actually be detrimental even to regulated entities. It may create a bias towards short-term compliance solutions, even where a long-term method would be more cost-effective. The acting chairman of the Nuclear Regulatory Commission wrote that he believes the bill would be detrimental to business and the regulated community:

> The NRC has many regulations which have been in place for some time and have been accepted by the nuclear

> industry with no current controversy surrounding their use. Continual reevaluation of these regulations could cause instability, as operating nuclear reactors in particular might be concerned about continually changing requirements. This could lead, paradoxically, to a situation where legislation which is intended to promote private sector business activity would instead have the opposite effect upon the regulated community.

The NRC expects to incur $170,000 per year in printing costs alone as a result of this bill.

Finally, we are disappointed that the Committee did not adopt the amendment offered by Rep. Lofgren, that would have protected regulations that if allowed to expire could result in death or serious injury or illness to humans or irreparable harm to private property or the environment. The bill already exempts regulations that relax restrictions or that authorize the sale, use or distribution of a product from sunset review. Surely, regulations that protect the safety of our citizens should be accorded the same treatment.

The goals of H.R. 994 are admirable, but the methodology remains flawed. Although amendments adopted by the Judiciary Committee represent a much needed step in the right direction, we believe this legislation still needs improvement. We are hopeful that this can be done in a sensible, bi-partisan manner.

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