

Union Calendar No. 2

115TH CONGRESS
1ST SESSION

H. R. 998

[Report No. 115–14, Part I]

To provide for the establishment of a process for the review of rules and sets of rules, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2017

Mr. SMITH of Missouri (for himself and Mr. GOODLATTE) 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

FEBRUARY 21, 2017

Additional sponsors: Mr. SESSIONS and Mr. CHAFFETZ

FEBRUARY 21, 2017

Reported from the Committee on Oversight and Government Reform

FEBRUARY 21, 2017

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To provide for the establishment of a process for the review
of rules and sets of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Searching for and Cut-
 5 ting Regulations that are Unnecessarily Burdensome Act”
 6 or as the “SCRUB Act”.

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

Sec. 1. Short title.
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TITLE I—RETROSPECTIVE REGULATORY REVIEW COMMISSION

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8 **TITLE I—RETROSPECTIVE REGU-**
 9 **LATORY REVIEW COMMIS-**
 10 **SION**

11 **SEC. 101. IN GENERAL.**

12 (a) ESTABLISHMENT.—There is established a com-
 13 mission, to be known as the “Retrospective Regulatory Re-
 14 view Commission”, that shall review rules and sets of rules
 15 in accordance with specified criteria to determine if a rule

1 or set of rules should be repealed to eliminate or reduce
2 the costs of regulation to the economy. The Commission
3 shall terminate on the date that is 5 years and 180 days
4 after the date of enactment of this Act or 5 years after
5 the date by which all Commission members' terms have
6 commenced, whichever is later.

7 (b) MEMBERSHIP.—

8 (1) NUMBER.—The Commission shall be com-
9 posed of 9 members who shall be appointed by the
10 President and confirmed by the Senate. Each mem-
11 ber shall be appointed not later than 180 days after
12 the date of enactment of this Act.

13 (2) TERM.—The term of each member shall
14 commence upon the member's confirmation by the
15 Senate and shall extend to the date that is 5 years
16 and 180 days after the date of enactment of this Act
17 or that is 5 years after the date by which all mem-
18 bers have been confirmed by the Senate, whichever
19 is later.

20 (3) APPOINTMENT.—The members of the Com-
21 mission shall be appointed as follows:

22 (A) CHAIR.—The President shall appoint
23 as the Chair of the Commission an individual
24 with expertise and experience in rulemaking,
25 such as past Administrators of the Office of In-

1 formation and Regulatory Affairs, past chair-
2 men of the Administrative Conference of the
3 United States, and other individuals with simi-
4 lar expertise and experience in rulemaking af-
5 fairs and the administration of regulatory re-
6 views.

7 (B) CANDIDATE LIST OF MEMBERS.—The
8 Speaker of the House of Representatives, the
9 Minority Leader of the House of Representa-
10 tives, the Majority Leader of the Senate, and
11 the Minority Leader of the Senate shall each
12 present to the President a list of candidates to
13 be members of the Commission. Such can-
14 didates shall be individuals learned in rule-
15 making affairs and, preferably, administration
16 of regulatory reviews. The President shall ap-
17 point 2 members of the Commission from each
18 list provided under this subparagraph, subject
19 to the provisions of subparagraph (C).

20 (C) RESUBMISSION OF CANDIDATE.—The
21 President may request from the presenter of
22 the list under subparagraph (B) a new list of
23 one or more candidates if the President—

24 (i) determines that any candidate on
25 the list presented pursuant to subpara-

1 graph (B) does not meet the qualifications
2 specified in such subparagraph to be a
3 member of the Commission; and

4 (ii) certifies that determination to the
5 congressional officials specified in subpara-
6 graph (B).

7 (c) POWERS AND AUTHORITIES OF THE COMMIS-
8 SION.—

9 (1) MEETINGS.—The Commission may meet
10 when, where, and as often as the Commission deter-
11 mines appropriate, except that the Commission shall
12 hold public meetings not less than twice each year.
13 All meetings of the Commission shall be open to the
14 public.

15 (2) HEARINGS.—In addition to meetings held
16 under paragraph (1), the Commission may hold
17 hearings to consider issues of fact or law relevant to
18 the Commission's work. Any hearing held by the
19 Commission shall be open to the public.

20 (3) ACCESS TO INFORMATION.—The Commis-
21 sion may secure directly from any agency informa-
22 tion and documents necessary to enable the Commis-
23 sion to carry out this Act. Upon request of the Chair
24 of the Commission, the head of that agency shall
25 furnish that information or document to the Com-

1 mission as soon as possible, but not later than two
2 weeks after the date on which the request was made.

3 (4) SUBPOENAS.—

4 (A) IN GENERAL.—The Commission may
5 issue subpoenas requiring the attendance and
6 testimony of witnesses and the production of
7 any evidence relating to the duties of the Com-
8 mission. The attendance of witnesses and the
9 production of evidence may be required from
10 any place within the United States at any des-
11 ignated place of hearing within the United
12 States.

13 (B) FAILURE TO OBEY A SUBPOENA.—If a
14 person refuses to obey a subpoena issued under
15 subparagraph (A), the Commission may apply
16 to a United States district court for an order
17 requiring that person to appear before the Com-
18 mission to give testimony, produce evidence, or
19 both, relating to the matter under investigation.
20 The application may be made within the judicial
21 district where the hearing is conducted or where
22 that person is found, resides, or transacts busi-
23 ness. Any failure to obey the order of the court
24 may be punished by the court as civil contempt.

1 (C) SERVICE OF SUBPOENAS.—The sub-
2 poenas of the Commission shall be served in the
3 manner provided for subpoenas issued by a
4 United States district court under the Federal
5 Rules of Civil Procedure for the United States
6 district courts.

7 (D) SERVICE OF PROCESS.—All process of
8 any court to which application is made under
9 subparagraph (B) may be served in the judicial
10 district in which the person required to be
11 served resides or may be found.

12 (d) PAY AND TRAVEL EXPENSES.—

13 (1) PAY.—

14 (A) MEMBERS.—Each member, other than
15 the Chair of the Commission, shall be paid at
16 a rate equal to the daily equivalent of the min-
17 imum annual rate of basic pay payable for level
18 IV of the Executive Schedule under section
19 5315 of title 5, United States Code, for each
20 day (including travel time) during which the
21 member is engaged in the actual performance of
22 duties vested in the Commission.

23 (B) CHAIR.—The Chair shall be paid for
24 each day referred to in subparagraph (A) at a
25 rate equal to the daily equivalent of the min-

1 imum annual rate of basic pay payable for level
2 III of the Executive Schedule under section
3 5314 of title 5, United States Code.

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

8 (e) DIRECTOR OF STAFF.—

9 (1) IN GENERAL.—The Commission shall ap-
10 point a Director.

11 (2) PAY.—The Director shall be paid at the
12 rate of basic pay payable for level V of the Executive
13 Schedule under section 5316 of title 5, United
14 States Code.

15 (f) STAFF.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 the Director, with the approval of the Commission,
18 may appoint, fix the pay of, and terminate addi-
19 tional personnel.

20 (2) LIMITATIONS ON APPOINTMENT.—The Di-
21 rector may make such appointments without regard
22 to the provisions of title 5, United States Code, gov-
23 erning appointments in the competitive service, and
24 any personnel so appointed may be paid without re-
25 gard to the provisions of chapter 51 and subchapter

1 III of chapter 53 of that title relating to classifica-
2 tion and General Schedule pay rates, except that an
3 individual so appointed may not receive pay in ex-
4 cess of the annual rate of basic pay payable for GS-
5 15 of the General Schedule.

6 (3) AGENCY ASSISTANCE.—Following consulta-
7 tion with and upon request of the Chair of the Com-
8 mission, the head of any agency may detail any of
9 the personnel of that agency to the Commission to
10 assist the Commission in carrying out the duties of
11 the Commission under this Act.

12 (4) GAO AND OIRA ASSISTANCE.—The Comp-
13 troller General of the United States and the Admin-
14 istrator of the Office of Information and Regulatory
15 Affairs shall provide assistance, including the detail-
16 ing of employees, to the Commission in accordance
17 with an agreement entered into with the Commis-
18 sion.

19 (5) ASSISTANCE FROM OTHER PARTIES.—Con-
20 gress, the States, municipalities, federally recognized
21 Indian tribes, and local governments may provide as-
22 sistance, including the detailing of employees, to the
23 Commission in accordance with an agreement en-
24 tered into with the Commission.

25 (g) OTHER AUTHORITY.—

1 (1) EXPERTS AND CONSULTANTS.—The Com-
2 mission may procure by contract, to the extent funds
3 are available, the temporary or intermittent services
4 of experts or consultants pursuant to section 3109
5 of title 5, United States Code.

6 (2) PROPERTY.—The Commission may lease
7 space and acquire personal property to the extent
8 funds are available.

9 (h) DUTIES OF THE COMMISSION.—

10 (1) IN GENERAL.—The Commission shall con-
11 duct a review of the Code of Federal Regulations to
12 identify rules and sets of rules that collectively im-
13 plement a regulatory program that should be re-
14 pealed to lower the cost of regulation to the econ-
15 omy. The Commission shall give priority in the re-
16 view to rules or sets of rules that are major rules
17 or include major rules, have been in effect more than
18 15 years, impose paperwork burdens or unfunded
19 mandates that could be reduced substantially with-
20 out significantly diminishing regulatory effectiveness,
21 impose disproportionately high costs on entities that
22 qualify as small entities within the meaning of sec-
23 tion 601(6) of title 5, United States Code, or could
24 be strengthened in their effectiveness while reducing
25 regulatory costs. The Commission shall have as a

1 goal of the Commission to achieve a reduction of at
2 least 15 percent in the cumulative costs of Federal
3 regulation with a minimal reduction in the overall ef-
4 fectiveness of such regulation.

5 (2) NATURE OF REVIEW.—To identify which
6 rules and sets of rules should be repealed to lower
7 the cost of regulation to the economy, the Commis-
8 sion shall apply the following criteria:

9 (A) Whether the original purpose of the
10 rule or set of rules was achieved, and the rule
11 or set of rules could be repealed without signifi-
12 cant recurrence of adverse effects or conduct
13 that the rule or set of rules was intended to
14 prevent or reduce.

15 (B) Whether the implementation, compli-
16 ance, administration, enforcement, imposition of
17 unfunded mandates, or other costs of the rule
18 or set of rules to the economy are not justified
19 by the benefits to society within the United
20 States produced by the expenditure of those
21 costs.

22 (C) Whether the rule or set of rules has
23 been rendered unnecessary or obsolete, taking
24 into consideration the length of time since the
25 rule was made and the degree to which tech-

1 nology, economic conditions, market practices,
2 or other relevant factors have changed in the
3 subject area affected by the rule or set of rules.

4 (D) Whether the rule or set of rules is in-
5 effective at achieving the purposes of the rule or
6 set of rules.

7 (E) Whether the rule or set of rules over-
8 laps, duplicates, or conflicts with other Federal
9 rules, and to the extent feasible, with State and
10 local governmental rules.

11 (F) Whether the rule or set of rules has
12 excessive compliance costs, imposes unfunded
13 mandates, or is otherwise excessively burden-
14 some, as compared to alternatives that—

15 (i) specify performance objectives
16 rather than conduct or manners of compli-
17 ance;

18 (ii) establish economic incentives to
19 encourage desired behavior;

20 (iii) provide information upon which
21 choices can be made by the public;

22 (iv) incorporate other innovative alter-
23 natives rather than agency actions that
24 specify conduct or manners of compliance;
25 or

1 (v) could in other ways substantially
2 lower costs without significantly under-
3 mining effectiveness.

4 (G) Whether the rule or set of rules inhib-
5 its innovation in or growth of the United States
6 economy, such as by impeding the introduction
7 or use of safer or equally safe technology that
8 is newer or more efficient than technology re-
9 quired by or permissible under the rule or set
10 of rules.

11 (H) Whether or not the rule or set of rules
12 harms competition within the United States
13 economy or the international economic competi-
14 tiveness of enterprises or entities based in the
15 United States.

16 (I) Whether or not the rule or set of rules
17 limits or prevents an agency from applying new
18 or emerging technologies to improve efficiency
19 and effectiveness of government.

20 (J) Whether the rule or set of rules harms
21 wage growth, including wage growth for min-
22 imum wage and part-time workers.

23 (K) Such other criteria as the Commission
24 devises to identify rules and sets of rules that
25 can be repealed to eliminate or reduce unneces-

1 sarily burdensome costs to the United States
2 economy.

3 (3) **METHODOLOGY FOR REVIEW.**—The Com-
4 mission shall establish a methodology for conducting
5 the review (including an overall review and discrete
6 reviews of portions of the Code of Federal Regula-
7 tions), identifying rules and sets of rules, and
8 classifying rules under this subsection and publish
9 the terms of the methodology in the Federal Reg-
10 ister and on the website of the Commission. The
11 Commission may propose and seek public comment
12 on the methodology before the methodology is estab-
13 lished.

14 (4) **CLASSIFICATION OF RULES AND SETS OF**
15 **RULES.**—

16 (A) **IN GENERAL.**—After completion of any
17 review of rules or sets of rules under paragraph
18 (2), the Commission shall classify each rule or
19 set of rules identified in the review to qualify
20 for recommended repeal as either a rule or set
21 of rules—

22 (i) on which immediate action to re-
23 peal is recommended; or

1 (ii) that should be eligible for repeal
2 under regulatory cut-go procedures under
3 title II.

4 (B) DECISIONS BY MAJORITY.—Each deci-
5 sion by the Commission to identify a rule or set
6 of rules for classification under this paragraph,
7 and each decision whether to classify the rule or
8 set of rules under clause (i) or (ii) of subpara-
9 graph (A), shall be made by a simple majority
10 vote of the Commission. No such vote shall take
11 place until after all members of the Commission
12 have been confirmed by the Senate.

13 (5) INITIATION OF REVIEW BY OTHER PER-
14 SONS.—

15 (A) IN GENERAL.—The Commission may
16 also conduct a review under paragraph (2) of,
17 and, if appropriate, classify under paragraph
18 (4), any rule or set of rules that is submitted
19 for review to the Commission by—

- 20 (i) the President;
- 21 (ii) a Member of Congress;
- 22 (iii) any officer or employee of a Fed-
23 eral, State, local or tribal government, or
24 regional governmental body; or
- 25 (iv) any member of the public.

1 (B) FORM OF SUBMISSION.—A submission
2 to the Commission under this paragraph
3 shall—

4 (i) identify the specific rule or set of
5 rules submitted for review;

6 (ii) provide a statement of evidence to
7 demonstrate that the rule or set of rules
8 qualifies to be identified for repeal under
9 the criteria listed in paragraph (2); and

10 (iii) such other information as the
11 submitter believes may be helpful to the
12 Commission’s review, including a state-
13 ment of the submitter’s interest in the
14 matter.

15 (C) PUBLIC AVAILABILITY.—The Commis-
16 sion shall make each submission received under
17 this paragraph available on the website of the
18 Commission as soon as possible, but not later
19 than 1 week after the date on which the sub-
20 mission was received.

21 (i) NOTICES AND REPORTS OF THE COMMISSION.—

22 (1) NOTICES OF AND REPORTS ON ACTIVI-
23 TIES.—The Commission shall publish, in the Federal
24 Register and on the website of the Commission—

1 (A) notices in advance of all public meet-
2 ings, hearings, and classifications under sub-
3 section (h) informing the public of the basis,
4 purpose, and procedures for the meeting, hear-
5 ing, or classification; and

6 (B) reports after the conclusion of any
7 public meeting, hearing, or classification under
8 subsection (h) summarizing in detail the basis,
9 purpose, and substance of the meeting, hearing,
10 or classification.

11 (2) ANNUAL REPORTS TO CONGRESS.—Each
12 year, beginning on the date that is one year after
13 the date on which all Commission members have
14 been confirmed by the Senate, the Commission shall
15 submit a report simultaneously to each House of
16 Congress detailing the activities of the Commission
17 for the previous year, and listing all rules and sets
18 of rules classified under subsection (h) during that
19 year. For each rule or set of rules so listed, the
20 Commission shall—

21 (A) identify the agency that made the rule
22 or set of rules;

23 (B) identify the annual cost of the rule or
24 set of rules to the United States economy and

1 the basis upon which the Commission identified
2 that cost;

3 (C) identify whether the rule or set of rules
4 was classified under clause (i) or clause (ii) of
5 subsection (h)(4)(A);

6 (D) identify the criteria under subsection
7 (h)(2) that caused the classification of the rule
8 or set of rules and the basis upon which the
9 Commission determined that those criteria were
10 met;

11 (E) for each rule or set of rules listed
12 under the criteria set forth in subparagraph
13 (B), (D), (F), (G), (H), or (I) of subsection
14 (h)(2), or other criteria established by the Com-
15 mission under subparagraph (I) of such sub-
16 section under which the Commission evaluated
17 alternatives to the rule or set of rules that could
18 lead to lower regulatory costs, identify alter-
19 natives to the rule or set of rules that the Com-
20 mission recommends the agency consider as re-
21 placements for the rule or set of rules and the
22 basis on which the Commission rests the rec-
23 ommendations, and, in identifying such alter-
24 natives, emphasize alternatives that will achieve

1 regulatory effectiveness at the lowest cost and
2 with the lowest adverse impacts on jobs;

3 (F) for each rule or set of rules listed
4 under the criteria set forth in subsection
5 (h)(2)(E), the other Federal, State, or local
6 governmental rules that the Commission found
7 the rule or set of rules to overlap, duplicate, or
8 conflict with, and the basis for the findings of
9 the Commission; and

10 (G) in the case of each set of rules so list-
11 ed, analyze whether Congress should also con-
12 sider repeal of the statutory authority imple-
13 mented by the set of rules.

14 (3) FINAL REPORT.—Not later than the date
15 on which the Commission members' appointments
16 expire, the Commission shall submit a final report
17 simultaneously to each House of Congress summa-
18 rizing all activities and recommendations of the
19 Commission, including a list of all rules or sets of
20 rules the Commission classified under clause (i) of
21 subsection (h)(4)(A) for immediate action to repeal,
22 a separate list of all rules or sets of rules the Com-
23 mission classified under clause (ii) of subsection
24 (h)(4)(A) for repeal, and with regard to each rule or
25 set of rules listed on either list, the information de-

1 scribed in subparagraphs (A) through (F) of sub-
2 section (h)(2). This report may be included in the
3 final annual report of the Commission under para-
4 graph (2) and may include the Commission's rec-
5 ommendation whether the Commission should be re-
6 authorized by Congress.

7 (j) REPEAL OF REGULATIONS; CONGRESSIONAL
8 CONSIDERATION OF COMMISSION REPORTS.—

9 (1) IN GENERAL.—Subject to paragraph (2)—

10 (A) the head of each agency with authority
11 to repeal a rule or set of rules classified by the
12 Commission under subsection (h)(4)(A)(i) for
13 immediate action to repeal and newly listed as
14 such in an annual or final report of the Com-
15 mission under paragraph (2) or (3) of sub-
16 section (i) shall repeal the rule or set of rules
17 as recommended by the Commission within 60
18 days after the enactment of a joint resolution
19 under paragraph (2) for approval of the rec-
20 ommendations of the Commission in the report;
21 and

22 (B) the head of each agency with authority
23 to repeal a rule or set of rules classified by the
24 Commission under subsection (h)(4)(A)(ii) for
25 repeal and newly listed as such in an annual or

1 final report of the Commission under paragraph
2 (2) or (3) of subsection (i) shall repeal the rule
3 or set of rules as recommended by the Commis-
4 sion pursuant to section 201, following the en-
5 actment of a joint resolution under paragraph
6 (2) for approval of the recommendations of the
7 Commission in the report.

8 (2) CONGRESSIONAL APPROVAL.—

9 (A) IN GENERAL.—No head of an agency
10 described in paragraph (1) shall be required by
11 this Act to carry out a repeal listed by the
12 Commission in a report transmitted to Congress
13 under paragraph (2) or (3) of subsection (i)
14 until a joint resolution is enacted, in accordance
15 with the provisions of subparagraph (B), ap-
16 proving such recommendations of the Commis-
17 sion for repeal.

18 (B) TERMS OF THE RESOLUTION.—For
19 purposes of paragraph (A), the term “joint res-
20 olution” means only a joint resolution which is
21 introduced after the date on which the Commis-
22 sion transmits to the Congress under paragraph
23 (2) or (3) of subsection (i) the report con-
24 taining the recommendations to which the reso-
25 lution pertains, and—

- 1 (i) which does not have a preamble;
- 2 (ii) the matter after the resolving
3 clause of which is only as follows: “That
4 Congress approves the recommendations
5 for repeal of the Retrospective Regulatory
6 Review Commission as submitted by the
7 Commission on _____”, the blank
8 space being filled in with the appropriate
9 date; and
- 10 (iii) the title of which is as follows:
11 “Approving recommendations for repeal of
12 the Retrospective Regulatory Review Com-
13 mission.”.

14 (3) REISSUANCE OF RULES.—

15 (A) NO SUBSTANTIALLY SIMILAR RULE TO
16 BE REISSUED.—A rule that is repealed under
17 paragraph (1) or section 201 may not be re-
18 issued in substantially the same form, and a
19 new rule that is substantially the same as such
20 a rule may not be issued, unless the reissued or
21 new rule is specifically authorized by a law en-
22 acted after the date of the joint resolution ap-
23 proving the Commission’s recommendation to
24 repeal the original rule.

1 (B) AGENCY TO ENSURE AVOIDANCE OF
2 SIMILAR DEFECTS.—An agency, in making any
3 new rule to implement statutory authority pre-
4 viously implemented by a rule repealed under
5 paragraph (1) or section 201, shall ensure that
6 the new rule does not result in the same ad-
7 verse effects of the repealed rule that caused
8 the Commission to recommend to Congress the
9 latter’s repeal and will not result in new adverse
10 effects of the kind described in the criteria
11 specified in or under subsection (h).

12 (k) AUTHORIZATION OF APPROPRIATIONS.—

13 (1) IN GENERAL.—There are authorized to be
14 appropriated such sums as may be necessary to the
15 Commission to carry out this Act, not to exceed
16 \$30,000,000.

17 (2) AVAILABILITY.—Any sums appropriated
18 under the authorization contained in this section
19 shall remain available, without fiscal year limitation,
20 until the earlier of the date that such sums are ex-
21 pended or the date of the termination of the Com-
22 mission.

23 (l) WEBSITE.—

24 (1) IN GENERAL.—The Commission shall estab-
25 lish a public website that—

1 (A) uses current information technology to
2 make records available on the website;

3 (B) provides information in a standard
4 data format; and

5 (C) receives and publishes public com-
6 ments.

7 (2) PUBLISHING OF INFORMATION.—Any infor-
8 mation required to be made available on the website
9 established pursuant to this Act shall be published
10 in a timely manner and shall be accessible by the
11 public on the website at no cost.

12 (3) RECORD OF PUBLIC MEETINGS AND HEAR-
13 INGS.—All records of public meetings and hearings
14 shall be published on the website as soon as possible,
15 but not later than 1 week after the date on which
16 such public meeting or hearing occurred.

17 (4) PUBLIC COMMENTS.—The Commission shall
18 publish on the website all public comments and sub-
19 missions.

20 (5) NOTICES.—The Commission shall publish
21 on the website notices of all public meetings and
22 hearings at least one week before the date on which
23 such public meeting or hearing occurs.

24 (m) APPLICABILITY OF THE FEDERAL ADVISORY
25 COMMITTEE ACT.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this Act, the Commission shall be subject to
3 the provisions of the Federal Advisory Committee
4 Act (5 U.S.C. App.).

5 (2) ADVISORY COMMITTEE MANAGEMENT OFFI-
6 CER.—The Commission shall not be subject to the
7 control of any Advisory Committee Management Of-
8 ficer designated under section 8(b)(1) of the Federal
9 Advisory Committee Act (5 U.S.C. App.).

10 (3) SUBCOMMITTEE.—Any subcommittee of the
11 Commission shall be treated as the Commission for
12 purposes of the Federal Advisory Committee Act (5
13 U.S.C. App.).

14 (4) CHARTER.—The enactment of the SCRUB
15 Act shall be considered to meet the requirements of
16 the Commission under section 9(e) of the Federal
17 Advisory Committee Act (5 U.S.C. App.).

18 (n) DEFINITION.—In this section, the term “un-
19 funded mandate” has the meaning given the term “Fed-
20 eral mandate” in section 421(6) of the Congressional
21 Budget Act of 1974 (2 U.S.C. 658(6)).

22 **TITLE II—REGULATORY CUT-GO**

23 **SEC. 201. CUT-GO PROCEDURES.**

24 (a) IN GENERAL.—Except as provided in section
25 101(j)(2)(A) or section 202, an agency, when the agency

1 makes a new rule, shall repeal rules or sets of rules of
2 that agency classified by the Commission under section
3 101(h)(4)(A)(ii), such that the annual costs of the new
4 rule to the United States economy is offset by such re-
5 peals, in an amount equal to or greater than the cost of
6 the new rule, based on the regulatory cost reductions of
7 repeal identified by the Commission.

8 (b) ALTERNATIVE PROCEDURE.—An agency may, al-
9 ternatively, repeal rules or sets of rules of that agency
10 classified by the Commission under section
11 101(h)(4)(A)(ii) prior to the time specified in subsection
12 (a). If the agency so repeals such a rule or set of rules
13 and thereby reduces the annual, inflation-adjusted cost of
14 the rule or set of rules to the United States economy, the
15 agency may thereafter apply the reduction in regulatory
16 costs, based on the regulatory cost reductions of repeal
17 identified by the Commission, to meet, in whole or in part,
18 the regulatory cost reduction required under subsection
19 (a) of this section to be made at the time the agency pro-
20 mulgates a new rule.

21 (c) ACHIEVEMENT OF FULL NET COST REDUC-
22 TIONS.—

23 (1) IN GENERAL.—Subject to the provisions of
24 paragraph (2), an agency may offset the costs of a
25 new rule or set of rules by repealing a rule or set

1 of rules listed by the Commission under section
2 101(h)(4)(A)(ii) that implement the same statutory
3 authority as the new rule or set of rules.

4 (2) **LIMITATION.**—When using the authority
5 provided in paragraph (1), the agency must achieve
6 a net reduction in costs imposed by the agency’s
7 body of rules (including the new rule or set of rules)
8 that is equal to or greater than the cost of the new
9 rule or set of rules to be promulgated, including,
10 whenever necessary, by repealing additional rules of
11 the agency listed by the Commission under section
12 101(h)(4)(A)(ii).

13 **SEC. 202. APPLICABILITY.**

14 An agency shall no longer be subject to the require-
15 ments of sections 201 and 203 beginning on the date that
16 there is no rule or set of rules of the agency classified
17 by the Commission under section 101(h)(4)(A)(ii) that has
18 not been repealed such that all regulatory cost reductions
19 identified by the Commission to be achievable through re-
20 peal have been achieved.

21 **SEC. 203. OIRA CERTIFICATION OF COST CALCULATIONS.**

22 The Administrator of the Office of Information and
23 Regulatory Affairs of the Office of Management and
24 Budget shall review and certify the accuracy of agency de-
25 terminations of the costs of new rules under section 201.

1 The certification shall be included in the administrative
2 record of the relevant rulemaking by the agency promul-
3 gating the rule, and the Administrator shall transmit a
4 copy of the certification to Congress when it transmits the
5 certification to the agency.

6 **TITLE III—RETROSPECTIVE**
7 **REVIEW OF NEW RULES**

8 **SEC. 301. PLAN FOR FUTURE REVIEW.**

9 When an agency makes a rule, the agency shall in-
10 clude in the final issuance of such rule a plan for the re-
11 view of such rule by not later than 10 years after the date
12 such rule is made. Such a review, in the case of a major
13 rule, shall be substantially similar to the review by the
14 Commission under section 101(h). In the case of a rule
15 other than a major rule, the agency's plan for review shall
16 include other procedures and standards to enable the
17 agency to determine whether to repeal or amend the rule
18 to eliminate unnecessary regulatory costs to the economy.
19 Whenever feasible, the agency shall include a proposed
20 plan for review of a proposed rule in its notice of proposed
21 rulemaking and shall receive public comment on the plan.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) IMMEDIATE REPEALS.—Agency compliance with section 101(j) of this Act shall be subject to judicial review under chapter 7 of title 5, United States Code.

(b) CUT-GO PROCEDURES.—Agency compliance with title II of this Act shall be subject to judicial review under chapter 7 of title 5, United States Code.

(c) PLANS FOR FUTURE REVIEW.—Agency compliance with section 301 shall be subject to judicial review under chapter 7 of title 5, United States Code.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. DEFINITIONS.

In this Act:

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

(2) COMMISSION.—The term “Commission” means the Retrospective Regulatory Review Commission established under section 101.

(3) MAJOR RULE.—The term “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose—

1 (A) an annual cost on the economy of
2 \$100,000,000 or more, adjusted annually for
3 inflation;

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

8 (C) significant adverse effects on competi-
9 tion, employment, investment, productivity, in-
10 novation, or on the ability of United States-
11 based enterprises to compete with foreign-based
12 enterprises in domestic and export markets; or

13 (D) significant impacts on multiple sectors
14 of the economy.

15 (4) RULE.—The term “rule” has the meaning
16 given that term in section 551 of title 5, United
17 States Code.

18 (5) SET OF RULES.—The term “set of rules”
19 means a set of rules that collectively implements a
20 regulatory authority of an agency.

21 **SEC. 502. EFFECTIVE DATE.**

22 This Act and the amendments made by this Act shall
23 take effect beginning on the date of the enactment of this
24 Act.

Union Calendar No. 2

115TH CONGRESS
1ST Session

H. R. 998

[Report No. 115-14, Part I]

A BILL

To provide for the establishment of a process for the review of rules and sets of rules, and for other purposes.

FEBRUARY 21, 2017

Reported from the Committee on Oversight and
Government Reform

FEBRUARY 21, 2017

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed