

115TH CONGRESS
1ST SESSION

H. R. 998

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—RETROSPECTIVE REGULATORY REVIEW COMMISSION

Sec. 101. In general.

TITLE II—REGULATORY CUT-GO

Sec. 201. Cut-go procedures.

Sec. 202. Applicability.

Sec. 203. OIRA certification of cost calculations.

TITLE III—RETROSPECTIVE REVIEW OF NEW RULES

Sec. 301. Plan for future review.

TITLE IV—JUDICIAL REVIEW

Sec. 401. Judicial review.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Definitions.

Sec. 502. Effective date.

6 **TITLE I—RETROSPECTIVE REGU-**
7 **LATORY REVIEW COMMIS-**
8 **SION**

9 **SEC. 101. IN GENERAL.**

10 (a) ESTABLISHMENT.—There is established a com-
11 mission, to be known as the “Retrospective Regulatory Re-
12 view Commission”, that shall review rules and sets of rules
13 in accordance with specified criteria to determine if a rule
14 or set of rules should be repealed to eliminate or reduce
15 the costs of regulation to the economy. The Commission

1 shall terminate on the date that is 5 years and 180 days
2 after the date of enactment of this Act or 5 years after
3 the date by which all Commission members' terms have
4 commenced, whichever is later.

5 (b) MEMBERSHIP.—

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

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

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

20 (A) CHAIR.—The President shall appoint
21 as the Chair of the Commission an individual
22 with expertise and experience in rulemaking,
23 such as past Administrators of the Office of In-
24 formation and Regulatory Affairs, past chair-
25 men of the Administrative Conference of the

1 United States, and other individuals with simi-
2 lar expertise and experience in rulemaking af-
3 fairs and the administration of regulatory re-
4 views.

5 (B) CANDIDATE LIST OF MEMBERS.—The
6 Speaker of the House of Representatives, the
7 Minority Leader of the House of Representa-
8 tives, the Majority Leader of the Senate, and
9 the Minority Leader of the Senate shall each
10 present to the President a list of candidates to
11 be members of the Commission. Such can-
12 didates shall be individuals learned in rule-
13 making affairs and, preferably, administration
14 of regulatory reviews. During the two-year pe-
15 riod prior to the inclusion of an individual on
16 a list of candidates under this subparagraph,
17 the individual may not have been a registered
18 lobbyist under the Lobbying Disclosure Act of
19 1995 (2 U.S.C. 1601 et seq.). The President
20 shall appoint 2 members of the Commission
21 from each list provided under this subpara-
22 graph, subject to the provisions of subpara-
23 graph (C).

24 (C) RESUBMISSION OF CANDIDATE.—The
25 President may request from the presenter of

1 the list under subparagraph (B) a new list of
2 one or more candidates if the President—

3 (i) determines that any candidate on
4 the list presented pursuant to subpara-
5 graph (B) does not meet the qualifications
6 specified in such subparagraph to be a
7 member of the Commission; and

8 (ii) certifies that determination to the
9 congressional officials specified in subpara-
10 graph (B).

11 (4) FINANCIAL DISCLOSURE REPORTS OF MEM-
12 BERS.—Each member of the Commission shall file
13 the financial disclosure reports required under title
14 I of the Ethics in Government Act of 1978 (5
15 U.S.C. App.) in accordance with the requirements of
16 such title.

17 (c) POWERS AND AUTHORITIES OF THE COMMIS-
18 SION.—

19 (1) MEETINGS.—The Commission may meet
20 when, where, and as often as the Commission deter-
21 mines appropriate, except that the Commission shall
22 hold public meetings not less than twice each year.
23 All meetings of the Commission shall be open to the
24 public.

1 (2) HEARINGS.—In addition to meetings held
2 under paragraph (1), the Commission may hold
3 hearings to consider issues of fact or law relevant to
4 the Commission’s work. Any hearing held by the
5 Commission shall be open to the public.

6 (3) ACCESS TO INFORMATION.—The Commis-
7 sion may secure directly from any agency informa-
8 tion and documents necessary to enable the Commis-
9 sion to carry out this Act. Upon request of the Chair
10 of the Commission, the head of that agency shall
11 furnish that information or document to the Com-
12 mission as soon as possible, but not later than two
13 weeks after the date on which the request was made.

14 (4) SUBPOENAS.—

15 (A) IN GENERAL.—The Commission may
16 issue subpoenas requiring the attendance and
17 testimony of witnesses and the production of
18 any evidence relating to the duties of the Com-
19 mission. The attendance of witnesses and the
20 production of evidence may be required from
21 any place within the United States at any des-
22 ignated place of hearing within the United
23 States.

24 (B) FAILURE TO OBEY A SUBPOENA.—If a
25 person refuses to obey a subpoena issued under

1 subparagraph (A), the Commission may apply
2 to a United States district court for an order
3 requiring that person to appear before the Com-
4 mission to give testimony, produce evidence, or
5 both, relating to the matter under investigation.
6 The application may be made within the judicial
7 district where the hearing is conducted or where
8 that person is found, resides, or transacts busi-
9 ness. Any failure to obey the order of the court
10 may be punished by the court as civil contempt.

11 (C) SERVICE OF SUBPOENAS.—The sub-
12 poenas of the Commission shall be served in the
13 manner provided for subpoenas issued by a
14 United States district court under the Federal
15 Rules of Civil Procedure for the United States
16 district courts.

17 (D) SERVICE OF PROCESS.—All process of
18 any court to which application is made under
19 subparagraph (B) may be served in the judicial
20 district in which the person required to be
21 served resides or may be found.

22 (d) PAY AND TRAVEL EXPENSES.—

23 (1) PAY.—

24 (A) MEMBERS.—Each member, other than
25 the Chair of the Commission, shall be paid at

1 a rate equal to the daily equivalent of the min-
2 imum annual rate of basic pay payable for level
3 IV of the Executive Schedule under section
4 5315 of title 5, United States Code, for each
5 day (including travel time) during which the
6 member is engaged in the actual performance of
7 duties vested in the Commission.

8 (B) CHAIR.—The Chair shall be paid for
9 each day referred to in subparagraph (A) at a
10 rate equal to the daily equivalent of the min-
11 imum annual rate of basic pay payable for level
12 III of the Executive Schedule under section
13 5314 of title 5, United States Code.

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

18 (e) DIRECTOR OF STAFF.—

19 (1) IN GENERAL.—The Commission shall ap-
20 point a Director.

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

25 (f) STAFF.—

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

5 (2) LIMITATIONS ON APPOINTMENT.—The Di-
6 rector may make such appointments without regard
7 to the provisions of title 5, United States Code, gov-
8 erning appointments in the competitive service, and
9 any personnel so appointed may be paid without re-
10 gard to the provisions of chapter 51 and subchapter
11 III of chapter 53 of that title relating to classifica-
12 tion and General Schedule pay rates, except that an
13 individual so appointed may not receive pay in ex-
14 cess of the annual rate of basic pay payable for GS-
15 15 of the General Schedule.

16 (3) AGENCY ASSISTANCE.—Following consulta-
17 tion with and upon request of the Chair of the Com-
18 mission, the head of any agency may detail any of
19 the personnel of that agency to the Commission to
20 assist the Commission in carrying out the duties of
21 the Commission under this Act.

22 (4) GAO AND OIRA ASSISTANCE.—The Comp-
23 troller General of the United States and the Admin-
24 istrator of the Office of Information and Regulatory
25 Affairs shall provide assistance, including the detail-

1 ing of employees, to the Commission in accordance
2 with an agreement entered into with the Commis-
3 sion.

4 (5) ASSISTANCE FROM OTHER PARTIES.—Con-
5 gress, the States, municipalities, federally recognized
6 Indian tribes, and local governments may provide as-
7 sistance, including the detailing of employees, to the
8 Commission in accordance with an agreement en-
9 tered into with the Commission.

10 (g) OTHER AUTHORITY.—

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

16 (2) PROPERTY.—The Commission may lease
17 space and acquire personal property to the extent
18 funds are available.

19 (h) DUTIES OF THE COMMISSION.—

20 (1) IN GENERAL.—The Commission shall con-
21 duct a review of the Code of Federal Regulations to
22 identify rules and sets of rules that collectively im-
23 plement a regulatory program that should be re-
24 pealed to lower the cost of regulation to the econ-
25 omy. The Commission shall give priority in the re-

1 view to rules or sets of rules that are major rules
2 or include major rules, have been in effect more than
3 15 years, impose paperwork burdens or unfunded
4 mandates that could be reduced substantially with-
5 out significantly diminishing regulatory effectiveness,
6 impose disproportionately high costs on entities that
7 qualify as small entities within the meaning of sec-
8 tion 601(6) of title 5, United States Code, or could
9 be strengthened in their effectiveness while reducing
10 regulatory costs. The Commission shall have as a
11 goal of the Commission to achieve a reduction of at
12 least 15 percent in the cumulative costs of Federal
13 regulation with a minimal reduction in the overall ef-
14 fectiveness of such regulation.

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

19 (A) Whether the original purpose of the
20 rule or set of rules was achieved, and the rule
21 or set of rules could be repealed without signifi-
22 cant recurrence of adverse effects or conduct
23 that the rule or set of rules was intended to
24 prevent or reduce.

1 (B) Whether the implementation, compli-
2 ance, administration, enforcement, imposition of
3 unfunded mandates, or other costs of the rule
4 or set of rules to the economy are not justified
5 by the benefits to society within the United
6 States produced by the expenditure of those
7 costs.

8 (C) Whether the rule or set of rules has
9 been rendered unnecessary or obsolete, taking
10 into consideration the length of time since the
11 rule was made and the degree to which tech-
12 nology, economic conditions, market practices,
13 or other relevant factors have changed in the
14 subject area affected by the rule or set of rules.

15 (D) Whether the rule or set of rules is in-
16 effective at achieving the purposes of the rule or
17 set of rules.

18 (E) Whether the rule or set of rules over-
19 laps, duplicates, or conflicts with other Federal
20 rules, and to the extent feasible, with State and
21 local governmental rules.

22 (F) Whether the rule or set of rules has
23 excessive compliance costs, imposes unfunded
24 mandates, or is otherwise excessively burden-
25 some, as compared to alternatives that—

1 (i) specify performance objectives
2 rather than conduct or manners of compli-
3 ance;

4 (ii) establish economic incentives to
5 encourage desired behavior;

6 (iii) provide information upon which
7 choices can be made by the public;

8 (iv) incorporate other innovative alter-
9 natives rather than agency actions that
10 specify conduct or manners of compliance;
11 or

12 (v) could in other ways substantially
13 lower costs without significantly under-
14 mining effectiveness.

15 (G) Whether the rule or set of rules inhib-
16 its innovation in or growth of the United States
17 economy, such as by impeding the introduction
18 or use of safer or equally safe technology that
19 is newer or more efficient than technology re-
20 quired by or permissible under the rule or set
21 of rules.

22 (H) Whether or not the rule or set of rules
23 harms competition within the United States
24 economy or the international economic competi-

1 tiveness of enterprises or entities based in the
2 United States.

3 (I) Whether or not the rule or set of rules
4 limits or prevents an agency from applying new
5 or emerging technologies to improve efficiency
6 and effectiveness of government.

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

10 (K) Whether the rule or set of rules is in
11 full compliance with the requirements of section
12 801(a)(1)(A) of title 5, United States Code.

13 (L) Whether, and the extent to which, the
14 repeal of the rule or set of rules would impact
15 public health.

16 (M) Such other criteria as the Commission
17 devises to identify rules and sets of rules that
18 can be repealed to eliminate or reduce unneces-
19 sarily burdensome costs to the United States
20 economy.

21 (3) METHODOLOGY FOR REVIEW.—The Com-
22 mission shall establish a methodology for conducting
23 the review (including an overall review and discrete
24 reviews of portions of the Code of Federal Regula-
25 tions), identifying rules and sets of rules, and

1 classifying rules under this subsection and publish
2 the terms of the methodology in the Federal Reg-
3 ister and on the website of the Commission. The
4 Commission may propose and seek public comment
5 on the methodology before the methodology is estab-
6 lished.

7 (4) CLASSIFICATION OF RULES AND SETS OF
8 RULES.—

9 (A) IN GENERAL.—After completion of any
10 review of rules or sets of rules under paragraph
11 (2), the Commission shall classify each rule or
12 set of rules identified in the review to qualify
13 for recommended repeal as either a rule or set
14 of rules—

15 (i) on which immediate action to re-
16 peal is recommended; or

17 (ii) that should be eligible for repeal
18 under regulatory cut-go procedures under
19 title II.

20 (B) DECISIONS BY MAJORITY.—Each deci-
21 sion by the Commission to identify a rule or set
22 of rules for classification under this paragraph,
23 and each decision whether to classify the rule or
24 set of rules under clause (i) or (ii) of subpara-
25 graph (A), shall be made by a simple majority

1 vote of the Commission. No such vote shall take
2 place until after all members of the Commission
3 have been confirmed by the Senate.

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

6 (A) IN GENERAL.—The Commission may
7 also conduct a review under paragraph (2) of,
8 and, if appropriate, classify under paragraph
9 (4), any rule or set of rules that is submitted
10 for review to the Commission by—

- 11 (i) the President;
12 (ii) a Member of Congress;
13 (iii) any officer or employee of a Fed-
14 eral, State, local or tribal government, or
15 regional governmental body; or
16 (iv) any member of the public.

17 (B) FORM OF SUBMISSION.—A submission
18 to the Commission under this paragraph
19 shall—

- 20 (i) identify the specific rule or set of
21 rules submitted for review;
22 (ii) provide a statement of evidence to
23 demonstrate that the rule or set of rules
24 qualifies to be identified for repeal under
25 the criteria listed in paragraph (2); and

1 (iii) such other information as the
2 submitter believes may be helpful to the
3 Commission's review, including a state-
4 ment of the submitter's interest in the
5 matter.

6 (C) PUBLIC AVAILABILITY.—The Commis-
7 sion shall make each submission received under
8 this paragraph available on the website of the
9 Commission as soon as possible, but not later
10 than 1 week after the date on which the sub-
11 mission was received.

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

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

16 (A) notices in advance of all public meet-
17 ings, hearings, and classifications under sub-
18 section (h) informing the public of the basis,
19 purpose, and procedures for the meeting, hear-
20 ing, or classification; and

21 (B) reports after the conclusion of any
22 public meeting, hearing, or classification under
23 subsection (h) summarizing in detail the basis,
24 purpose, and substance of the meeting, hearing,
25 or classification.

1 (2) ANNUAL REPORTS TO CONGRESS.—Each
2 year, beginning on the date that is one year after
3 the date on which all Commission members have
4 been confirmed by the Senate, the Commission shall
5 submit a report simultaneously to each House of
6 Congress detailing the activities of the Commission
7 for the previous year, and listing all rules and sets
8 of rules classified under subsection (h) during that
9 year. For each rule or set of rules so listed, the
10 Commission shall—

11 (A) identify the agency that made the rule
12 or set of rules;

13 (B) identify the annual cost of the rule or
14 set of rules to the United States economy and
15 the basis upon which the Commission identified
16 that cost;

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

20 (D) identify the criteria under subsection
21 (h)(2) that caused the classification of the rule
22 or set of rules and the basis upon which the
23 Commission determined that those criteria were
24 met;

1 (E) for each rule or set of rules listed
2 under the criteria set forth in subparagraph
3 (B), (D), (F), (G), (H), or (I) of subsection
4 (h)(2), or other criteria established by the Com-
5 mission under subparagraph (I) of such sub-
6 section under which the Commission evaluated
7 alternatives to the rule or set of rules that could
8 lead to lower regulatory costs, identify alter-
9 natives to the rule or set of rules that the Com-
10 mission recommends the agency consider as re-
11 placements for the rule or set of rules and the
12 basis on which the Commission rests the rec-
13 ommendations, and, in identifying such alter-
14 natives, emphasize alternatives that will achieve
15 regulatory effectiveness at the lowest cost and
16 with the lowest adverse impacts on jobs;

17 (F) for each rule or set of rules listed
18 under the criteria set forth in subsection
19 (h)(2)(E), the other Federal, State, or local
20 governmental rules that the Commission found
21 the rule or set of rules to overlap, duplicate, or
22 conflict with, and the basis for the findings of
23 the Commission; and

24 (G) in the case of each set of rules so list-
25 ed, analyze whether Congress should also con-

1 sider repeal of the statutory authority imple-
2 mented by the set of rules.

3 (3) FINAL REPORT.—Not later than the date
4 on which the Commission members' appointments
5 expire, the Commission shall submit a final report
6 simultaneously to each House of Congress summa-
7 rizing all activities and recommendations of the
8 Commission, including a list of all rules or sets of
9 rules the Commission classified under clause (i) of
10 subsection (h)(4)(A) for immediate action to repeal,
11 a separate list of all rules or sets of rules the Com-
12 mission classified under clause (ii) of subsection
13 (h)(4)(A) for repeal, and with regard to each rule or
14 set of rules listed on either list, the information de-
15 scribed in subparagraphs (A) through (F) of sub-
16 section (h)(2). This report may be included in the
17 final annual report of the Commission under para-
18 graph (2) and may include the Commission's rec-
19 ommendation whether the Commission should be re-
20 authorized by Congress.

21 (j) REPEAL OF REGULATIONS; CONGRESSIONAL
22 CONSIDERATION OF COMMISSION REPORTS.—

23 (1) IN GENERAL.—Subject to paragraph (2)—
24 (A) the head of each agency with authority
25 to repeal a rule or set of rules classified by the

Commission under subsection (h)(4)(A)(i) for immediate action to repeal and newly listed as such in an annual or final report of the Commission under paragraph (2) or (3) of subsection (i) shall repeal the rule or set of rules as recommended by the Commission within 60 days after the enactment of a joint resolution under paragraph (2) for approval of the recommendations of the Commission in the report; and

(B) the head of each agency with authority to repeal a rule or set of rules classified by the Commission under subsection (h)(4)(A)(ii) for repeal and newly listed as such in an annual or final report of the Commission under paragraph (2) or (3) of subsection (i) shall repeal the rule or set of rules as recommended by the Commission pursuant to section 201, following the enactment of a joint resolution under paragraph (2) for approval of the recommendations of the Commission in the report.

(2) CONGRESSIONAL APPROVAL.—

(A) IN GENERAL.—No head of an agency described in paragraph (1) shall be required by this Act to carry out a repeal listed by the

1 Commission in a report transmitted to Congress
2 under paragraph (2) or (3) of subsection (i)
3 until a joint resolution is enacted, in accordance
4 with the provisions of subparagraph (B), ap-
5 proving such recommendations of the Commis-
6 sion for repeal.

7 (B) TERMS OF THE RESOLUTION.—For
8 purposes of paragraph (A), the term “joint res-
9 olution” means only a joint resolution which is
10 introduced after the date on which the Commis-
11 sion transmits to the Congress under paragraph
12 (2) or (3) of subsection (i) the report con-
13 taining the recommendations to which the reso-
14 lution pertains, and—

15 (i) which does not have a preamble;

16 (ii) the matter after the resolving
17 clause of which is only as follows: “That
18 Congress approves the recommendations
19 for repeal of the Retrospective Regulatory
20 Review Commission as submitted by the
21 Commission on _____”, the blank
22 space being filled in with the appropriate
23 date; and

24 (iii) the title of which is as follows:

25 “Approving recommendations for repeal of

1 the Retrospective Regulatory Review Com-
2 mission.”.

3 (3) REISSUANCE OF RULES.—

4 (A) NO SUBSTANTIALLY SIMILAR RULE TO
5 BE REISSUED.—A rule that is repealed under
6 paragraph (1) or section 201 may not be re-
7 issued in substantially the same form, and a
8 new rule that is substantially the same as such
9 a rule may not be issued, unless the reissued or
10 new rule is specifically authorized by a law en-
11 acted after the date of the joint resolution ap-
12 proving the Commission’s recommendation to
13 repeal the original rule.

14 (B) AGENCY TO ENSURE AVOIDANCE OF
15 SIMILAR DEFECTS.—An agency, in making any
16 new rule to implement statutory authority pre-
17 viously implemented by a rule repealed under
18 paragraph (1) or section 201, shall ensure that
19 the new rule does not result in the same ad-
20 verse effects of the repealed rule that caused
21 the Commission to recommend to Congress the
22 latter’s repeal and will not result in new adverse
23 effects of the kind described in the criteria
24 specified in or under subsection (h).

25 (k) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There are authorized to be
2 appropriated such sums as may be necessary to the
3 Commission to carry out this Act, not to exceed
4 \$30,000,000.

5 (2) AVAILABILITY.—Any sums appropriated
6 under the authorization contained in this section
7 shall remain available, without fiscal year limitation,
8 until the earlier of the date that such sums are ex-
9 pended or the date of the termination of the Com-
10 mission.

11 (1) WEBSITE.—

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

14 (A) uses current information technology to
15 make records available on the website;

16 (B) provides information in a standard
17 data format; and

18 (C) receives and publishes public com-
19 ments.

20 (2) PUBLISHING OF INFORMATION.—Any infor-
21 mation required to be made available on the website
22 established pursuant to this Act shall be published
23 in a timely manner and shall be accessible by the
24 public on the website at no cost.

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

6 (4) PUBLIC COMMENTS.—The Commission shall
7 publish on the website all public comments and sub-
8 missions.

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

13 (m) APPLICABILITY OF THE FEDERAL ADVISORY
14 COMMITTEE ACT.—

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

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

24 (3) SUBCOMMITTEE.—Any subcommittee of the
25 Commission shall be treated as the Commission for

1 purposes of the Federal Advisory Committee Act (5
2 U.S.C. App.).

3 (4) CHARTER.—The enactment of the SCRUB
4 Act shall be considered to meet the requirements of
5 the Commission under section 9(c) of the Federal
6 Advisory Committee Act (5 U.S.C. App.).

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

11 **TITLE II—REGULATORY CUT-GO**

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

13 (a) IN GENERAL.—Except as provided in section
14 101(j)(2)(A) or section 202, an agency, when the agency
15 makes a new rule, shall repeal rules or sets of rules of
16 that agency classified by the Commission under section
17 101(h)(4)(A)(ii), such that the annual costs of the new
18 rule to the United States economy is offset by such re-
19 peals, in an amount equal to or greater than the cost of
20 the new rule, based on the regulatory cost reductions of
21 repeal identified by the Commission.

22 (b) ALTERNATIVE PROCEDURE.—An agency may, al-
23 ternatively, repeal rules or sets of rules of that agency
24 classified by the Commission under section
25 101(h)(4)(A)(ii) prior to the time specified in subsection

1 (a). If the agency so repeals such a rule or set of rules
2 and thereby reduces the annual, inflation-adjusted cost of
3 the rule or set of rules to the United States economy, the
4 agency may thereafter apply the reduction in regulatory
5 costs, based on the regulatory cost reductions of repeal
6 identified by the Commission, to meet, in whole or in part,
7 the regulatory cost reduction required under subsection
8 (a) of this section to be made at the time the agency pro-
9 mulgates a new rule.

10 (c) ACHIEVEMENT OF FULL NET COST REDUC-
11 TIONS.—

12 (1) IN GENERAL.—Subject to the provisions of
13 paragraph (2), an agency may offset the costs of a
14 new rule or set of rules by repealing a rule or set
15 of rules listed by the Commission under section
16 101(h)(4)(A)(ii) that implement the same statutory
17 authority as the new rule or set of rules.

18 (2) LIMITATION.—When using the authority
19 provided in paragraph (1), the agency must achieve
20 a net reduction in costs imposed by the agency's
21 body of rules (including the new rule or set of rules)
22 that is equal to or greater than the cost of the new
23 rule or set of rules to be promulgated, including,
24 whenever necessary, by repealing additional rules of

1 the agency listed by the Commission under section
2 101(h)(4)(A)(ii).

3 **SEC. 202. APPLICABILITY.**

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

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

12 The Administrator of the Office of Information and
13 Regulatory Affairs of the Office of Management and
14 Budget shall review and certify the accuracy of agency de-
15 terminations of the costs of new rules under section 201.
16 The certification shall be included in the administrative
17 record of the relevant rulemaking by the agency promul-
18 gating the rule, and the Administrator shall transmit a
19 copy of the certification to Congress when it transmits the
20 certification to the agency.

21 **TITLE III—RETROSPECTIVE**
22 **REVIEW OF NEW RULES**

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

24 When an agency makes a rule, the agency shall in-
25 clude in the final issuance of such rule a plan for the re-

1 view of such rule by not later than 10 years after the date
2 such rule is made. Such a review, in the case of a major
3 rule, shall be substantially similar to the review by the
4 Commission under section 101(h). In the case of a rule
5 other than a major rule, the agency's plan for review shall
6 include other procedures and standards to enable the
7 agency to determine whether to repeal or amend the rule
8 to eliminate unnecessary regulatory costs to the economy.
9 Whenever feasible, the agency shall include a proposed
10 plan for review of a proposed rule in its notice of proposed
11 rulemaking and shall receive public comment on the plan.

12 **TITLE IV—JUDICIAL REVIEW**

13 **SEC. 401. JUDICIAL REVIEW.**

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

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

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

1 **TITLE V—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 501. DEFINITIONS.**

4 In this Act:

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

8 (2) COMMISSION.—The term “Commission”
9 means the Retrospective Regulatory Review Commis-
10 sion established under section 101.

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

15 (A) an annual cost on the economy of
16 \$100,000,000 or more, adjusted annually for
17 inflation;

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

22 (C) significant adverse effects on competi-
23 tion, employment, investment, productivity, in-
24 novation, or on the ability of United States-

1 based enterprises to compete with foreign-based
2 enterprises in domestic and export markets; or
3 (D) significant impacts on multiple sectors
4 of the economy.

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

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

11 **SEC. 502. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall
13 take effect beginning on the date of the enactment of this
14 Act.

 Passed the House of Representatives March 1,
2017.

Attest:

Clerk.

115TH CONGRESS
1ST SESSION

H. R. 998

AN ACT

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