115TH CONGRESS  
1ST SESSION  
H. R.  

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  

Mr. Smith of Missouri introduced the following bill; which was referred to the Committee on ______.  

A BILL  

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

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

SECTION 1. SHORT TITLE.  

This Act may be cited as the “Searching for and Cutting Regulations that are Unnecessarily Burdensome Act” or as the “SCRUB Act”.  

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TITLE I—RETROSPECTIVE REGULATORY REVIEW COMMISSION

SEC. 101. IN GENERAL.

(a) ESTABLISHMENT.—There is established a commission, to be known as the “Retrospective Regulatory Review Commission”, that shall review rules and sets of rules in accordance with specified criteria to determine if a rule or set of rules should be repealed to eliminate or reduce the costs of regulation to the economy. The Commission shall terminate on the date that is 5 years and 180 days after the date of enactment of this Act or 5 years after the date by which all Commission members’ terms have commenced, whichever is later.

(b) MEMBERSHIP.—

(1) NUMBER.—The Commission shall be composed of 9 members who shall be appointed by the
President and confirmed by the Senate. Each member shall be appointed not later than 180 days after the date of enactment of this Act.

(2) TERM.—The term of each member shall commence upon the member’s confirmation by the Senate and shall extend to the date that is 5 years and 180 days after the date of enactment of this Act or that is 5 years after the date by which all members have been confirmed by the Senate, whichever is later.

(3) APPOINTMENT.—The members of the Commission shall be appointed as follows:

(A) CHAIR.—The President shall appoint as the Chair of the Commission an individual with expertise and experience in rulemaking, such as past Administrators of the Office of Information and Regulatory Affairs, past chairmen of the Administrative Conference of the United States, and other individuals with similar expertise and experience in rulemaking affairs and the administration of regulatory reviews.

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

(C) Resubmission of candidate.—The
President may request from the presenter of
the list under subparagraph (B) a new list of
one or more candidates if the President—

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

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

(e) Powers and Authorities of the Commis-
sion.—
(1) MEETINGS.—The Commission may meet when, where, and as often as the Commission determines appropriate, except that the Commission shall hold public meetings not less than twice each year. All meetings of the Commission shall be open to the public.

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

(3) ACCESS TO INFORMATION.—The Commission may secure directly from any agency information and documents necessary to enable the Commission to carry out this Act. Upon request of the Chair of the Commission, the head of that agency shall furnish that information or document to the Commission as soon as possible, but not later than two weeks after the date on which the request was made.

(4) SUBPOENAS.—

(A) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to the duties of the Commission. The attendance of witnesses and the
production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(B) FAILURE TO OBEY A SUBPOENA.—If a person refuses to obey a subpoena issued under subparagraph (A), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(C) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

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

(d) **Pay and Travel Expenses.**—

(1) **Pay.**—

(A) **Members.**—Each member, other than the Chair of the Commission, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) **Chair.**—The Chair shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) **Travel Expenses.**—Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) **Director of Staff.**—
(1) IN GENERAL.—The Commission shall appoint a Director.

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

(f) STAFF.—

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

(2) LIMITATIONS ON APPOINTMENT.—The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–15 of the General Schedule.

(3) AGENCY ASSISTANCE.—Following consultation with and upon request of the Chair of the Commission, the head of any agency may detail any of
the personnel of that agency to the Commission to
assist the Commission in carrying out the duties of
the Commission under this Act.

(4) GAO AND OIRA ASSISTANCE.—The Comptroller General of the United States and the Administrator of the Office of Information and Regulatory Affairs shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(5) ASSISTANCE FROM OTHER PARTIES.—Congress, the States, municipalities, federally recognized Indian tribes, and local governments may provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(g) OTHER AUTHORITY.—

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

(2) PROPERTY.—The Commission may lease space and acquire personal property to the extent funds are available.
(h) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall conduct a review of the Code of Federal Regulations to identify rules and sets of rules that collectively implement a regulatory program that should be repealed to lower the cost of regulation to the economy. The Commission shall give priority in the review to rules or sets of rules that are major rules or include major rules, have been in effect more than 15 years, impose paperwork burdens or unfunded mandates that could be reduced substantially without significantly diminishing regulatory effectiveness, impose disproportionately high costs on entities that qualify as small entities within the meaning of section 601(6) of title 5, United States Code, or could be strengthened in their effectiveness while reducing regulatory costs. The Commission shall have as a goal of the Commission to achieve a reduction of at least 15 percent in the cumulative costs of Federal regulation with a minimal reduction in the overall effectiveness of such regulation.

(2) NATURE OF REVIEW.—To identify which rules and sets of rules should be repealed to lower the cost of regulation to the economy, the Commission shall apply the following criteria:
(A) Whether the original purpose of the rule or set of rules was achieved, and the rule or set of rules could be repealed without significant recurrence of adverse effects or conduct that the rule or set of rules was intended to prevent or reduce.

(B) Whether the implementation, compliance, administration, enforcement, imposition of unfunded mandates, or other costs of the rule or set of rules to the economy are not justified by the benefits to society within the United States produced by the expenditure of those costs.

(C) Whether the rule or set of rules has been rendered unnecessary or obsolete, taking into consideration the length of time since the rule was made and the degree to which technology, economic conditions, market practices, or other relevant factors have changed in the subject area affected by the rule or set of rules.

(D) Whether the rule or set of rules is ineffective at achieving the purposes of the rule or set of rules.

(E) Whether the rule or set of rules overlaps, duplicates, or conflicts with other Federal
rules, and to the extent feasible, with State and
local governmental rules.

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

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

(ii) establish economic incentives to
encourage desired behavior;

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

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

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

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

(H) Whether or not the rule or set of rules harms competition within the United States economy or the international economic competitiveness of enterprises or entities based in the United States.

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

(J) Whether the rule or set of rules harms wage growth, including wage growth for minimum wage and part-time workers.

(K) Such other criteria as the Commission devises to identify rules and sets of rules that can be repealed to eliminate or reduce unnecessarily burdensome costs to the United States economy.

(3) METHODOLOGY FOR REVIEW.—The Commission shall establish a methodology for conducting the review (including an overall review and discrete reviews of portions of the Code of Federal Regulations), identifying rules and sets of rules, and classifying rules under this subsection and publish
the terms of the methodology in the Federal Register and on the website of the Commission. The Commission may propose and seek public comment on the methodology before the methodology is established.

(4) Classification of rules and sets of rules.—

(A) In general.—After completion of any review of rules or sets of rules under paragraph (2), the Commission shall classify each rule or set of rules identified in the review to qualify for recommended repeal as either a rule or set of rules—

(i) on which immediate action to repeal is recommended; or

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

(B) Decisions by majority.—Each decision by the Commission to identify a rule or set of rules for classification under this paragraph, and each decision whether to classify the rule or set of rules under clause (i) or (ii) of subparagraph (A), shall be made by a simple majority vote of the Commission. No such vote shall take
place until after all members of the Commission
have been confirmed by the Senate.

(5) Initiation of review by other persons.—

(A) In general.—The Commission may
also conduct a review under paragraph (2) of,
and, if appropriate, classify under paragraph
(4), any rule or set of rules that is submitted
for review to the Commission by—

(i) the President;

(ii) a Member of Congress;

(iii) any officer or employee of a Fed-
eral, State, local or tribal government, or
regional governmental body; or

(iv) any member of the public.

(B) Form of submission.—A submission
to the Commission under this paragraph
shall—

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

(ii) provide a statement of evidence to
demonstrate that the rule or set of rules
qualifies to be identified for repeal under
the criteria listed in paragraph (2); and
(iii) such other information as the submitter believes may be helpful to the Commission’s review, including a statement of the submitter’s interest in the matter.

(C) Public Availability.—The Commission shall make each submission received under this paragraph available on the website of the Commission as soon as possible, but not later than 1 week after the date on which the submission was received.

(i) Notices and Reports of the Commission.—

(1) Notices of and reports on activities.—The Commission shall publish, in the Federal Register and on the website of the Commission—

(A) notices in advance of all public meetings, hearings, and classifications under subsection (h) informing the public of the basis, purpose, and procedures for the meeting, hearing, or classification; and

(B) reports after the conclusion of any public meeting, hearing, or classification under subsection (h) summarizing in detail the basis, purpose, and substance of the meeting, hearing, or classification.
(2) ANNUAL REPORTS TO CONGRESS.—Each year, beginning on the date that is one year after the date on which all Commission members have been confirmed by the Senate, the Commission shall submit a report simultaneously to each House of Congress detailing the activities of the Commission for the previous year, and listing all rules and sets of rules classified under subsection (h) during that year. For each rule or set of rules so listed, the Commission shall—

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

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

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

(D) identify the criteria under subsection (h)(2) that caused the classification of the rule or set of rules and the basis upon which the Commission determined that those criteria were met;
(E) for each rule or set of rules listed under the criteria set forth in subparagraph (B), (D), (F), (G), (H), or (I) of subsection (h)(2), or other criteria established by the Commission under subparagraph (I) of such subsection under which the Commission evaluated alternatives to the rule or set of rules that could lead to lower regulatory costs, identify alternatives to the rule or set of rules that the Commission recommends the agency consider as replacements for the rule or set of rules and the basis on which the Commission rests the recommendations, and, in identifying such alternatives, emphasize alternatives that will achieve regulatory effectiveness at the lowest cost and with the lowest adverse impacts on jobs;

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

(G) in the case of each set of rules so listed, analyze whether Congress should also con-
sider repeal of the statutory authority implemented by the set of rules.

(3) Final Report.—Not later than the date on which the Commission members’ appointments expire, the Commission shall submit a final report simultaneously to each House of Congress summarizing all activities and recommendations of the Commission, including a list of all rules or sets of rules the Commission classified under clause (i) of subsection (h)(4)(A) for immediate action to repeal, a separate list of all rules or sets of rules the Commission classified under clause (ii) of subsection (h)(4)(A) for repeal, and with regard to each rule or set of rules listed on either list, the information described in subparagraphs (A) through (F) of subsection (h)(2). This report may be included in the final annual report of the Commission under paragraph (2) and may include the Commission’s recommendation whether the Commission should be reauthorized by Congress.

(j) Repeal of Regulations; Congressional Consideration of Commission Reports.—

(1) In General.—Subject to paragraph (2)—

(A) the head of each agency with authority 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
Commission in a report transmitted to Congress under paragraph (2) or (3) of subsection (i) until a joint resolution is enacted, in accordance with the provisions of subparagraph (B), approving such recommendations of the Commission for repeal.

(B) TERMS OF THE RESOLUTION.—For purposes of paragraph (A), the term “joint resolution” means only a joint resolution which is introduced after the date on which the Commission transmits to the Congress under paragraph (2) or (3) of subsection (i) the report containing the recommendations to which the resolution pertains, and—

(i) which does not have a preamble;

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

(iii) the title of which is as follows: “Approving recommendations for repeal of
the Retrospective Regulatory Review Commission.’’.

(3) Reissuance of Rules.—

(A) No substantially similar rule to be reissued.—A rule that is repealed under paragraph (1) or section 201 may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution approving the Commission’s recommendation to repeal the original rule.

(B) Agency to ensure avoidance of similar defects.—An agency, in making any new rule to implement statutory authority previously implemented by a rule repealed under paragraph (1) or section 201, shall ensure that the new rule does not result in the same adverse effects of the repealed rule that caused the Commission to recommend to Congress the latter’s repeal and will not result in new adverse effects of the kind described in the criteria specified in or under subsection (h).

(k) Authorization of Appropriations.—
IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to the Commission to carry out this Act, not to exceed $30,000,000.

AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until the earlier of the date that such sums are expended or the date of the termination of the Commission.

WEBSITE.—

1) IN GENERAL.—The Commission shall establish a public website that—

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

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

(C) receives and publishes public comments.

2) PUBLISHING OF INFORMATION.—Any information required to be made available on the website established pursuant to this Act shall be published in a timely manner and shall be accessible by the public on the website at no cost.
(3) **Record of Public Meetings and Hearings.**—All records of public meetings and hearings shall be published on the website as soon as possible, but not later than 1 week after the date on which such public meeting or hearing occurred.

(4) **Public Comments.**—The Commission shall publish on the website all public comments and submissions.

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

(m) **Applicability of the Federal Advisory Committee Act.**—

(1) **In General.**—Except as otherwise provided in this Act, the Commission shall be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(2) **Advisory Committee Management Officer.**—The Commission shall not be subject to the control of any Advisory Committee Management Officer designated under section 8(b)(1) of the Federal Advisory Committee Act (5 U.S.C. App.).

(3) **Subcommittee.**—Any subcommittee of the Commission shall be treated as the Commission for
purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

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

(n) DEFINITION.—In this section, the term “unfunded mandate” has the meaning given the term “Federal mandate” in section 421(6) of the Congressional Budget Act of 1974 (2 U.S.C. 658(6)).

TITLE II—REGULATORY CUT-GO

SEC. 201. CUT-GO PROCEDURES.

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

(b) ALTERNATIVE PROCEDURE.—An agency may, alternatively, repeal rules or sets of rules of that agency classified by the Commission under section 101(h)(4)(A)(ii) prior to the time specified in subsection...
(a). If the agency so repeals such a rule or set of rules and thereby reduces the annual, inflation-adjusted cost of the rule or set of rules to the United States economy, the agency may thereafter apply the reduction in regulatory costs, based on the regulatory cost reductions of repeal identified by the Commission, to meet, in whole or in part, the regulatory cost reduction required under subsection (a) of this section to be made at the time the agency promulgates a new rule.

(c) ACHIEVEMENT OF FULL NET COST REDUCTIONS.—

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

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

**SEC. 202. APPLICABILITY.**

An agency shall no longer be subject to the requirements of sections 201 and 203 beginning on the date that there is no rule or set of rules of the agency classified by the Commission under section 101(h)(4)(A)(ii) that has not been repealed such that all regulatory cost reductions identified by the Commission to be achievable through repeal have been achieved.

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

The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget shall review and certify the accuracy of agency determinations of the costs of new rules under section 201. The certification shall be included in the administrative record of the relevant rulemaking by the agency promulgating the rule, and the Administrator shall transmit a copy of the certification to Congress when it transmits the certification to the agency.

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

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

When an agency makes a rule, the agency shall include in the final issuance of such rule a plan for the re-
view of such rule by not later than 10 years after the date
such rule is made. Such a review, in the case of a major
rule, shall be substantially similar to the review by the
Commission under section 101(h). In the case of a rule
other than a major rule, the agency’s plan for review shall
include other procedures and standards to enable the
agency to determine whether to repeal or amend the rule
to eliminate unnecessary regulatory costs to the economy.
Whenever feasible, the agency shall include a proposed
plan for review of a proposed rule in its notice of proposed
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 compli-
ance 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—

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

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

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-
based enterprises to compete with foreign-based enterprises in domestic and export markets; or

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

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

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

SEC. 502. EFFECTIVE DATE.

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