

116TH CONGRESS
1ST SESSION

S. 441

To require each agency to repeal or amend 2 or more rules before issuing or amending a rule.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2019

Mr. SULLIVAN introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require each agency to repeal or amend 2 or more rules before issuing or amending a rule.

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 “Regulations Endanger
5 Democracy Act of 2019” or the “RED Tape Act of 2019”.

6 **SEC. 2. REPEAL OF RULES REQUIRED BEFORE ISSUING OR**

7 **AMENDING RULE.**

8 (a) **DEFINITIONS.**—In this section—

1 (1) the term “agency” has the meaning given
2 the term in section 551 of title 5, United States
3 Code;

4 (2) the term “covered rule” means a rule of an
5 agency that causes a new financial or administrative
6 burden on businesses in the United States or on the
7 people of the United States, as determined by the
8 head of the agency;

9 (3) the term “rule”—

10 (A) has the meaning given the term in sec-
11 tion 551 of title 5, United States Code; and

12 (B) includes—

13 (i) any rule issued by an agency pur-
14 suant to an Executive order or Presidential
15 memorandum; and

16 (ii) any rule issued by an agency due
17 to the issuance of a memorandum, guid-
18 ance document, bulletin, or press release
19 issued by an agency; and

20 (4) the term “Unified Agenda” means the Uni-
21 fied Agenda of Federal Regulatory and Deregulatory
22 Actions.

23 (b) PROHIBITION ON ISSUANCE OF CERTAIN
24 RULES.—

25 (1) IN GENERAL.—An agency may not—

1 (A) issue a covered rule that does not
2 amend or modify an existing rule of the agency,
3 unless—

4 (i) the agency has repealed 2 or more
5 existing covered rules of the agency; and

6 (ii) the cost of the covered rule to be
7 issued is less than or equal to the cost of
8 the covered rules repealed under clause (i),
9 as determined and certified by the head of
10 the agency; or

11 (B) issue a covered rule that amends or
12 modifies an existing rule of the agency, un-
13 less—

14 (i) the agency has repealed or amend-
15 ed 2 or more existing covered rules of the
16 agency; and

17 (ii) the cost of the covered rule to be
18 issued is less than or equal to the cost of
19 the covered rules repealed or amended
20 under clause (i), as determined and cer-
21 tified by the head of the agency.

22 (2) APPLICATION.—Paragraph (1) shall not
23 apply to the issuance of a covered rule by an agency
24 that—

1 (A) relates to the internal policy or prac-
2 tice of the agency or procurement by the agen-
3 cy; or

4 (B) is being revised to be less burdensome
5 to decrease requirements imposed by the cov-
6 ered rule or the cost of compliance with the cov-
7 ered rule.

8 (c) CONSIDERATIONS FOR REPEALING RULES.—In
9 determining whether to repeal a covered rule under sub-
10 paragraph (A)(i) or (B)(i) of subsection (b)(1), the head
11 of the agency that issued the covered rule shall consider—

12 (1) whether the covered rule achieved, or has
13 been ineffective in achieving, the original purpose of
14 the covered rule;

15 (2) any adverse effects that could materialize if
16 the covered rule is repealed, in particular if those
17 adverse effects are the reason the covered rule was
18 originally issued;

19 (3) whether the costs of the covered rule out-
20 weigh any benefits of the covered rule to the United
21 States;

22 (4) whether the covered rule has become obso-
23 lete due to changes in technology, economic condi-
24 tions, market practices, or any other factors; and

1 (5) whether the covered rule overlaps with a
2 covered rule to be issued by the agency.

3 (d) PUBLICATION OF COVERED RULES IN UNIFIED
4 AGENDA.—

5 (1) REQUIREMENTS.—Each agency shall, on a
6 semiannual basis, submit jointly and without delay
7 to the Office of Information and Regulatory Affairs
8 for publication in the Unified Agenda a list con-
9 taining—

10 (A) each covered rule that the agency in-
11 tends to issue during the 6-month period fol-
12 lowing the date of submission;

13 (B) each covered rule that the agency in-
14 tends to repeal or amend in accordance with
15 subsection (b) during the 6-month period fol-
16 lowing the date of submission; and

17 (C) the cost of each covered rule described
18 in subparagraphs (A) and (B).

19 (2) PROHIBITION.—An agency may not issue a
20 covered rule unless the agency complies with the re-
21 quirements under paragraph (1).

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