

GOVERNANCE

How the Mountain States lead on regulatory reform, and what comes next

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Introduction

A growing leviathan of government red tape constrains American individuals and businesses, drains taxpayer purses, stifles economic progress and discourages self-reliance. If this makes you angry, you should probably avoid Pocatello, Idaho where it has been illegal to not smile since 1948 (though the existing law was out of humor, it remained on the books).¹

In all seriousness, states are the proving grounds for well-structured regulatory reform, with Idaho leading the way nationally. In the Mountain States, Idaho and Montana have led the way at the state-level in implementing the three essential pillars of regulatory reform: legislative oversight, executive responsibility, and judicial deference.^{1,1}

The governors and legislatures of Idaho and Montana recognize the critical necessity of adopting regulatory reform. Their examples of strong executive oversight of rulemaking, limiting bureaucracy and of legislative lawmaking stewardship has improved their state economies and fostered potential growth in the region.

“If left unchecked, government tends to grow, increase regulation, and encroach on our lives. My administration has been laser-focused on keeping government in check and preventing the proliferation of costly, ineffective, and outdated regulations.” Governor Brad Little, Idaho

“In Montana, we’ve been focused on cutting red tape to help more Montanans prosper by removing unnecessary, burdensome regulations. The results of our efforts are clear as Montana leads the nation in wage and job growth despite historic inflation brought about by the Biden-Harris administration.” – Governor Greg Gianforte, Montana

Given the work of Idaho and Montana, where do leaders in regulatory reform go from here? This policy paper overviews regulatory reform generally, looks at successful regulatory reform at the state level, recommends additional reforms that should be adopted at the state level, and identifies the state level policies that are adaptable at the federal level.

KEY INFORMATION COLUMN

Idaho has established the three essential pillars and become the least regulated state in the nation, bypassing South Dakota.

States are Critical Laboratories for Red Tape Reduction

For good reason, numerous reforms are thrown at the behemoths of government regulations, with some proving successful. But significant reductions in red tape in the past were extremely rare and always short lived. It often felt as if lawmakers were trying to shut the gate of regulatory overrun, after the bureaucratic horse has bolted. This is why the efforts made in Idaho, Montana, and other states to rein in the regulatory overrun are critical to the discussion on regulatory reform.

As states make long-lasting commitments to regulatory reform, effective strategies will be discovered. A beginning platform are the three essential pillars of regulatory reform: legislative oversight, executive responsibility, and judicial deference.^{5,6}

Idaho

As a leader in regulatory reform, Idaho has modeled effective red tape reduction over the last four years. Starting with executive responsibility through executive orders in 2019⁷, adopting legislative oversight in statute in 2023⁸ and 2024⁹, and reigning in judicial deference in 2024 to become one of 12 states that protect citizens from agencies,¹⁰ Idaho has established the three essential pillars and become the least regulated state in the nation, bypassing South Dakota.¹¹ The philosophy of zero-based regulations means that for each new regulation added there must be at least one regulation removed or significantly reduced. Agency oversight with the governor's Office of Management and Budget, regulatory sunsets, and legislative and executive approval of regulations has contributed to significant reductions in red tape and changed the routine. Once symbolic, the renewal of regulations in Idaho now go through an effective review.¹²

In August 2024, Governor Little of Idaho announced the 2024 fiscal year resulted in 466 pages of regulations removed from administrative code. Little said, "if left unchecked, government tends to grow, increase regulation, and encroach on our lives. My administration has been laser-focused on keeping government in check and preventing the proliferation of costly, ineffective, and outdated regulations. The proof is in the numbers."¹³ Those numbers show the Little administration has simplified or cut more than 95 percent of regulations since he took office in 2019.

⁵ "Three Essential Pillars of Regulatory Reform," Pacific Legal Foundation, available at https://pacificlegal.org/wp-content/uploads/2023/10/PLF380_3-Pillars-of-Reform.pdf

⁶ Cargill, Chris, "Pillars of regulatory reform and oversight," Mountain States Policy Center, November 2023, available at https://www.mountainstatespolicy.org/_files/ugd/f1dfe7_56ae3c452edb494eb2379a08353b968f.pdf

⁷ Corbin, Clark, "Little republishes administrative rules," Idaho Ed News, 19 June 2019, available at <https://www.idahoednews.org/news/little-republishes-administrative-rules/>

⁸ House Bill 206, 2023 Legislation, Idaho Legislature, available at <https://legislature.idaho.gov/sessioninfo/2023/legislation/h0206/>

⁹ House Bill 563, 2024 Legislation, Idaho Legislature, available at <https://legislature.idaho.gov/sessioninfo/2024/legislation/h0563/>

¹⁰ Norman, Brian, "VICTORY! Idaho Becomes Latest State to End Judicial Deference to Administrative State," Goldwater Institute, 29 March 2024, available at <https://www.goldwaterinstitute.org/victory-idaho-becomes-latest-state-to-end-judicial-deference-to-administrative-state/>

¹¹ Broughel, James, "Cutting Red Tape in the States: A Menu of Options," Mercatus Center George Mason University, Regulation Policy Briefs, 1 April 2022, available at <https://www.mercatus.org/research/policy-briefs/cutting-red-tape-states-menu-options>

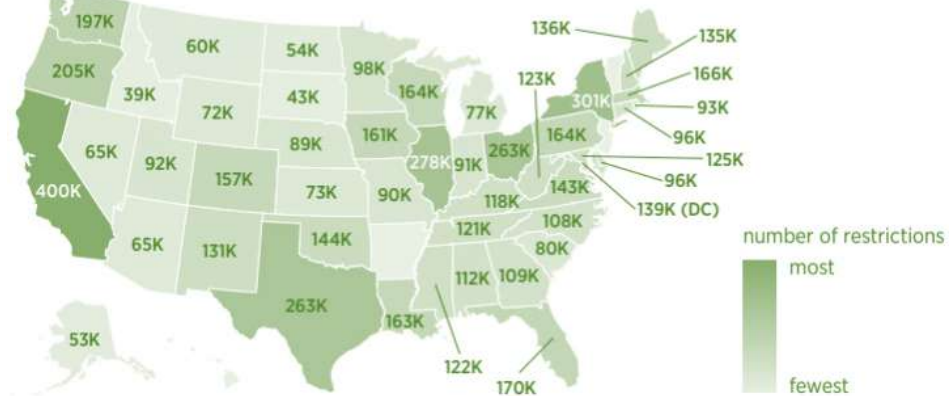
¹² Adams, Alex and Tim Frost, "Taking the REINS of the Administrative State," CATO Institute Regulation, Fall 2024, available at <https://www.cato.org/regulation/fall-2024/taking-reins-administrative-state>

¹³ "Gov. Little cuts more red tape, celebrates historic milestone in regulation reform," Office of the Governor Press Releases, 9 August 2024, available at <https://gov.idaho.gov/pressrelease/gov-little-cuts-more-red-tape-celebrates-historic-milestone-in-regulation-reform/>

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As of January 2024, Montana had reduced regulations by 16%. The agencies that participated in the initiative reduced regulatory burden by 2.8%, whereas non-participating agencies increased regulations by 2.5%.

State-level Regulatory Restrictions 2021



Montana

In January 2021, Governor Greg Gianforte of Montana issued an executive order creating the red tape relief advisory council to implement regulatory reform.¹⁴ As of January 2024, Montana had reduced regulations by 16%. The agencies that participated in the initiative reduced regulatory burden by 2.8%, whereas non-participating agencies increased regulations by 2.5%.¹⁵ In September 2024, the Mercatus Center listed Montana as the fourth least regulated in the nation, behind neighboring Idaho, South Dakota, and North Dakota.

Inspired by Gianforte’s red tape reductions via administrative rulemaking processes, agencies began proposing legislation that adopts permanent red tape relief. The three categories of permanent red tape reduction are based on the executive order:

- Especially Burdensome Impact on Small Business
- Repeal Unnecessary Regulation
- Modernize Outdated Regulations

In the 2023 Legislative Session (Montana’s Legislature meets bi-annually), 85 pieces of legislation were proposed to permanently adopt red tape relief. Of those bills, 40 were modernization, 32 were unnecessary regulations, and 13 were burdensome.¹⁶ Of these, more than 60 were passed.

Virginia

Red tape reductions in Virginia were a top priority for Governor Glenn Youngkin as he issued Executive Order 19 in June 2022, requiring Virginia agencies to achieve a 25% reduction in regulatory requirements.¹⁷ The efforts were based on an earlier 2018 pilot

¹⁴ “Executive Order Creating the Red Tape Relief Advisory Council to Implement Regulatory Reform,” State of Montana Office of the Governor, Executive Order No. 1-2021, 5 January 2021, available at <https://news.mt.gov/Governors-Office/documents/EO-1-2021.pdf>
¹⁵ Avery, Tanner, “Montana Red Tape Snapshot: 2024,” Frontier Institute, 16 January 2024, available at <https://frontierinstitute.org/reports/montana-red-tape-snapshot-2024/>
¹⁶ “Tracking Red Tape Relief in the 2023 Legislature,” Frontier Institute, 30 November 2022, available at <https://frontierinstitute.org/reports/tracking-red-tape-relief-in-the-2023-legislature/>
¹⁷ “Regulatory Reduction Guide,” Office of Regulatory Management, April 2023, available at <https://townhall.virginia.gov/misc/Regulatory%20Reduction%20Guide.pdf>

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A key focus of Virginia's efforts is transparency and accessibility. The cost-benefit analysis required has also been streamlined into a simple 10-page document that does not require a PhD economist.

The legislature should adopt a practice of a cyclical review of statutes, in addition to rulemaking. This would require agencies to conduct a cyclical review of all statutes to find outdated, unnecessary, or complicated laws.

program. Through the establishment of the Office of Regulatory Management, Virginia became one of four states with an oversight agency requiring a cost-benefit analysis of all regulations proposed. Before any rule is proposed, VA's ORM will review and provide feedback on all regulations, rather than waiting for the agency to propose a rule with unsupervised creation.

A key focus of Virginia's efforts is transparency and accessibility. The cost-benefit analysis required has also been streamlined into a simple 10-page document that does not require a PhD economist. The ORM treats reductions in requirements like reducing hours for certification, with a 33% credit towards cost reduction.¹⁸ Additionally, Youngkin's office has focused on ensuring a transparent process through town halls where citizens can contribute feedback and by creating a permitting dashboard that has reduced processing times by 70% - from more than 300 days to less than 100 days. Though different from Idaho, both states offer strategies for effectively cutting red tape.¹⁹

Lessons Learned from Red Tape Reduction

A frequent phrase on any farm with animals is, "SHUT THE GATE!" For anyone who has chased free and roaming livestock around a field, it is easy to understand the altruism. Leaving the proverbial gate (well-written statutes) wide open allows the bureaucracies free range to stampede away with the rule of law. Future reforms should focus on shutting the gate, putting the horse back into the corral, and keeping the gate closed.

Legislature needs to keep the gate closed by increasing stewardship of statutes

The legislature should adopt a practice of a cyclical review of statutes, in addition to rulemaking. This would require agencies to conduct a cyclical review of all statutes to find outdated, unnecessary, or complicated laws. Idaho has already led the way on cyclical rulemaking review, but it is important to review the source of the rules in the first place – the statutes. Once the statute review has been conducted, agencies would present findings and recommendations to the committees. This continued responsibility towards all statutes will keep the bureaucratic horse firmly locked behind the gate of well-written statutes.

On January 15, 2025, Idaho Speaker of the House Mike Moyle announced a piece of legislation that would strive toward this recommendation. Recognizing that unnecessary statutes fuel excessive rulemaking, Moyle's recommendation would charge Idaho agencies with the task of identifying statutes that can be "cut or consolidated." Speaker Moyle said, "this bill takes the next step. It gives [agencies] the ability to help us to find out what we don't need so we can clean up those statutes."²⁰

¹⁸ Paris, Benjamin, "Virginia's Regulatory Reforms Are Role Model for Other States," The Heritage Foundation, 2 August 2023, available at <https://www.heritage.org/government-regulation/commentary/virginias-regulatory-reforms-are-role-model-other-states>

¹⁹ Adams, Alex J., and Reeve Bull, "Regulatory modernization: Lessons from Idaho and Virginia," The Federalist Society and Regulatory Transparency Project, 10 May 2024, available at <https://rtp.fedsoc.org/paper/regulatory-modernization-that-works-lessons-from-idaho-and-virginia/>

²⁰ Dawson, James, "Idaho lawmakers unveil their own 'DOGE' effort to cut state code books," Boise State Public Radio News, 16 January 2025, available at <https://www.boisestatepublicradio.org/politics-government/2025-01-16/idaho-doge-government-efficiency-red-tape>

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But at both federal and state levels, lawmakers too often delegate rulemaking authority to the executive branch, leading to bureaucratic overruns, judicial legislating from the bench, and sterilizing of legislative power.

The new code would be known as the Idaho Cleanup Act, which states a declaration of necessity as, *“The legislature recognizes the need for a comprehensive effort to review the Idaho Code for the purpose of eliminating bureaucracy.”*²¹

Legislatures need to shut the gate before the horse bolts through proper and thorough bill drafting

The legislature is a critical steward of red tape reduction. Through Article I of the Constitution of the United States, “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”²² The founding fathers envisioned a government where the people voted for those who made the laws. But at both federal and state levels, lawmakers too often delegate rulemaking authority to the executive branch, leading to bureaucratic overruns, judicial legislating from the bench, and sterilizing of legislative power. The vague lawmaking gives rise to a fourth branch of government taking shape – the bureaucracy.

Regulatory Impact Notice (RIN)

A long-lasting reduction in red tape is only possible when a legislative body places the commitments in statutes and upholds its responsibility with clear and concise laws, leaving little room or need for rulemaking. Substituting words like the agencies “may” make rules instead of “shall” or “must” is a first step in deterring unnecessary rule making. A more favorable step is to develop statutes that do not rely on rulemaking to flesh out the nuances of administration. This helps eliminate the need to expand rules and diminishes the risk of judicial prejudicial legislating from the bench.

A best practice for increasing the legislature’s stewardship of lawmaking is by adopting legislation requiring all future laws to include a Regulatory Impact Notice (RIN). Under this process, all bills introduced in either house of the legislature require a RIN along with a fiscal note. A yes/no checkbox on the bill will indicate if the bill confers any new rulemaking authority to a state agency. A RIN can contain the following notice:²³

“This regulatory impact notice is a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review.”

Cost/Benefit Analysis of Rulemaking

The executive branch also has a role to play in shutting the gate through agency rulemaking oversight, similar to Virginia’s Office of Regulatory Management or Idaho’s delegation of rulemaking authority to an in-agency delegate. Rules should be supervised, evaluated, and discouraged from adding burden to the citizenry. Adopting a specific guideline in statute for cost/benefit analysis is an important practice for both

²¹ “House Bill No. 14,” Legislature of the State of Idaho, available at <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2025/legislation/H0014.pdf>

²² Constitution of the United States, Article I, available at <https://constitution.congress.gov/constitution/article-1/>

²³ Manley, Jim, Idaho Regulatory Impact Notice Bill, Pacific Legal Foundation, Recommendation

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The executive branch should only make rules with extreme discretion, consideration of costs and benefits, and discussion of impact and need. The states should also leave authority for rule review accessible to the legislature.

the legislature and the executive branch. The cost/benefit analysis of each proposed rule should include²⁴:

any health, safety, or welfare costs and benefits
estimated primary or direct benefits
estimated cost savings or financial benefits to society
estimated compliance costs for citizens or regulated entities
estimated secondary or indirect costs
estimated effect on state revenue
estimated effect on state expenditures, including estimated administrative expenses
estimated opportunity cost, including the opportunity cost of compliance, as a result of removal of private capital from the market
sources consulted
key assumptions and sources of uncertainty
an examination of alternative options

Legislative and executive branches need to put the bureaucratic horse back in the corral

The growth of bureaucracy seems to be an inevitable cost of government business, but this reality should be paired with an increased scrutiny of the need for more rules. The executive branch should only make rules with extreme discretion, consideration of costs and benefits, and discussion of impact and need. The states should also leave authority for rule review accessible to the legislature.

An analysis of state regulatory review found that 7 states have no executive review process and 43 states have some form, of those only 31 review all the rules. Reviews are conducted by governors (ID, VA), attorney general (VA), Lieutenant Governor (none of the 3), Budget/Management Department (VA, ID), other executive branch department reviews (ID, MT).

An important part of executive review includes temporary rulemaking on an as-needed basis. Best practices would ensure the statutes identify the governor as actively involved in the process and oversight of temporary rule changes. The governor should also be transparent in the need, dates, and explanations for any temporary rules.²⁵

Just as with executive review, most states (43) have some form of legislative overview. These states mostly rely on a standing committee or a rules review committee. In Idaho, a standing committee reviews the rules and then the full chamber has veto power to reform the rule, without the governor’s signature. In Virginia, the standing committee reviews the rule, and the full chamber does not. But the full chamber still can veto the new rules, with the governor’s signature. Montana has a standing committee for rule review, but with no authority to oppose the rule once proposed and adopted through informal rulemaking.²⁶

²⁴ Manley, Jim, Idaho Cost Benefit Analysis Bill, Pacific Legal Foundation, Recommendation
²⁵ Manley, Jim, Idaho Temporary Rules Bill, Pacific Legal Foundation, Recommendation
²⁶ Baugus, Brian, Feler Bose, James Broughel, “A 50-State Review of Regulatory Procedures,” Mercatus Center George Mason University, Mercatus Working Paper, April 2022, available at <https://www.mercatus.org/research/working-papers/50-state-review-regulatory-procedures>

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Idaho's long-standing utilization of legislative review of administrative rules gives evidence that a federal REINS Act would prove a success for all taxpayers, businesses, and the national economy.

How state level policies can help federal regulatory reform

The REINS Act

Congressional Republicans have proposed the Regulations from the Executive in Need of Scrutiny (REINS) Act. The REINS Act is an attempt to wrest back lawmaking from the fourth branch of government and the executive. Republican lawmakers have reiterated the need to have congressional oversight on regulatory authority.

Idaho's long-standing utilization of legislative review of administrative rules gives evidence that a federal REINS Act would prove a success for all taxpayers, businesses, and the national economy. Even before Governor Little's implementation of zero-based regulation and utilizing sunset clauses on a cyclical basis, Idaho's legislative review slowed the promulgation of new regulation. (The new zero-based regulation and use of cyclical sunsets has decreased the burden of outdated and redundant old regulations). From 2010 to 2019, proposed rule dockets were fully or partially rejected 5.20% annually, on average, while governor vetoes were less than 1%.

A CATO analysis of these years of regulatory rulemaking found that even Idaho's part-time legislature could conduct regulatory review of new legislation within their 75 to 90-day session.²⁷ On average, the committees completed the review of new rules within 32 calendar days from the start of the legislative session. At least 94% of rules were still approved annually even with legislative review. Idaho has also clarified in statute that soft law, like guidance documents, cannot be used to subvert the legislative oversight of rulemaking.

State and federal rulemaking across the country would benefit from a REINS Act with required legislative approval of new rulemaking.

Federal Executive Actions to Limit Regulation Growth

The first Trump Administration issued two significant Executive Orders regarding regulatory reform. Issued on January 30, 2017, Executive Order 13771 was known as the "2-for-1" rule. Directing executive branch regulatory agencies to cut two existing rules for each new rule issued, EO 13771 also required agencies to offset any costs imposed by new rules while operating under a regulatory cost cap. The "2-for-1" requirement shares many similarities with Idaho's zero-based regulation. Idaho's success with executive deterrents to rule promulgation is a reassuring example to the second Trump administration to re-adopt this rule.

Executive Order 13777, issued on February 24, 2017, required agencies to assign a Regulatory Reform Officer to oversee the implementation of EO 13771 and to see the stated goals are achieved. The formation of the regulatory reform officer is reflected in the efforts in Virginia to establish a 25% decrease in regulations, with the oversight of the Office of Regulatory Management. Virginia's streamlined economic impact analysis

²⁷ Adams, Alex and Tim Frost, "Taking the REINS of the Administrative State," CATO Institute Regulation, Fall 2024, available at <https://www.cato.org/regulation/fall-2024/taking-reins-administrative-state#conclusion>

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For Idaho, the successful reduction in the administrative code from 8,553 to 5,318 pages is a notable achievement and the further adoption of statutes by the legislature strengthens these reforms.

(EIA, also known as their cost-benefit analysis) is an excellent model for the next executive administration to adopt into their stated goals.²⁸

Conclusion

What are the next steps forward for states that are already leading the efforts for regulatory reduction? For Idaho, the successful reduction in the administrative code from 8,553 to 5,318 pages is a notable achievement and the further adoption of statutes by the legislature strengthens these reforms. The next step forward is to increase the legislature's responsibility and obligation to shut the gate on runaway rulemaking. These reforms could include:

1. Adopt a cyclical legislative review of statutes identifying and eliminating or reducing unnecessary, duplicative, or excessively burdensome laws, that are contributing to unneeded rulemaking.
2. Require all new statutes to include a Regulatory Impact Notice (RIN).
 - a. While also adopting a legislative practice of using words that the agencies "may" instead of "shall" or "must." Lawmakers should be encouraged to draft legislation that is rarely reliant on rulemaking, with language that doesn't rely on bureaucracy to flesh out the laws.
3. Clarify the specific requirements of a cost/benefit analysis. Adopting specific guidance of how the analysis is conducted, what it will include, an ensuring the process is simple to conduct, without needing a PhD in economics.
4. Specify the governor's role in temporary rule making, ensuring executive oversight of the temporary rules and mandating transparency in addressing the need for such rules.

Idaho and Montana's regulatory reform efforts are something of which to be proud. Strong economies and high population growth are just some of the benefits that come when a state focuses on reducing regulatory burden, so that businesses and individuals can achieve more without the bureaucratic horse stampeding across their path. Other states and the federal government should take note of the lessons learned from Idaho and Montana and watch their efforts as they continue to improve their already-leading position.

²⁸ "President Trump's Regulatory Executive Orders," Columbian College of Arts and Sciences, Regulatory Studies Center, available at <https://regulatorystudies.columbian.gwu.edu/president-trumps-regulatory-executive-orders>

ABOUT THE AUTHOR

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Madi holds a master's degree in Agricultural and Resource Economics from Colorado State University as well as a B.S. in Environmental Economics, Policy, and Management from Oregon State University.

She is the former Director for the Initiative on Agriculture at Washington Policy Center, one of the first free market think tanks in the nation to launch a focus on Agriculture.

Before joining WPC, she worked for Ag Association Management in Tri-Cities, Washington, working with growers and industry across Washington, Oregon, and Idaho. She also spent two years as an associate of The Context Network. Her time involved working as a business analyst on various agriculture projects in production, wholesale, retail, and policy Ag sectors. She was also a wildland firefighter for four summers.

Madi's work has been published in the Idaho Statesman, The Capital Press, Tri-City Herald, and the Spokesman-Review. She is the author of several children's books that are part of MSPC's *Free Markets are for Everyone* campaign.

