



POLICY SPOTLIGHT

Rolling Back the Regulatory Burden in the States

REEVE BULL | OCTOBER 2023

Regulations can deliver important public benefits, but overregulation can stifle innovation and economic growth. The challenge for policymakers is to find a way to roll back unnecessary regulatory restrictions while preserving necessary public protections. Governor Glenn Youngkin of the Commonwealth of Virginia has developed an innovative approach that can serve as a model for other states pursuing regulatory process reform. It builds on—and improves on—existing best practices. As implemented by the state’s recently created Office of Regulatory Management (ORM), the key feature of the new approach is its comprehensive nature—full benefit-cost analysis for new regulations and a 25 percent regulatory requirement reduction.

CHALLENGES THAT MUST BE ADDRESSED

The cumulative effects of thousands of regulatory restrictions can be overwhelming. Small businesses in particular have found it virtually impossible to navigate the modern regulatory thicket, with many choosing to close or never launch rather than incur the considerable costs of achieving full compliance or risk violating the law. The resulting loss in market dynamism can never be measured (and is not accounted for in traditional benefit-cost analysis), but its effects are very real.

The fundamental question to ask when considering a regulation is this: Does it do more good than harm? Regulatory economic analysis ensures that the answer is yes for new regulations. And Governor Youngkin’s 25 percent reduction target provides incentives for

agencies to review existing regulations to ensure that the answer is yes for those regulations as well.

Virginia has addressed these issues through regulatory analysis and regulatory streamlining. In the process, the state has provided a blueprint for regulatory modernization nationwide.

APPLYING THE PRINCIPLES OF REGULATORY ANALYSIS

Regulators have long sought to calculate the benefits and costs inherent in regulatory interventions. Their approach, however, has not typically been comprehensive. For instance, many state agencies consider only specific aspects of a rule’s economic effects without conducting a full benefit-cost analysis.

Under Youngkin EO 19, Virginia now requires agencies to conduct a full economic analysis of their regulatory actions, which includes a complete benefit-cost

analysis as well as an analysis of a regulation's effects on small businesses, local governments, and families. It has also tasked the ORM with reviewing all agency regulations and their associated economic analyses.

REGULATORY STREAMLINING

Reformers seeking to right-size government regulations have had to confront three main questions:

- Should agencies focus on reducing discrete regulations, requirements within regulations, or monetary costs that regulations impose?
- Should regulations be capped at a set level, or should they be reduced over time?
- How can regulators ensure that agencies do not exploit loopholes, for example, by swapping two trivial regulations for one massive one?

To address the problem, Virginia has implemented a regulatory budget that includes the following:

- embracing a 25 percent regulatory reduction target—and providing guidance to agencies on how to reach it;
- focusing on regulatory requirements (including “musts” and “shalls”) rather than the total number of regulations or their cumulative costs; and
- providing partial credit for agencies that show how their actions produce cost savings.

Undergirding these reforms is the principle of transparency. All regulations are now available on the Virginia Regulatory Town Hall website, and the regulatory reform process has been designed to facilitate public understanding and input.

FURTHER READING

1. Reeve T. Bull, “A New Approach to Regulatory Budgeting in Virginia,” *The Regulatory Review*, May 29, 2023.
2. Reeve T. Bull, “Virginia’s Model: The Commonwealth Leads the Way on State Regulatory Modernization,” *Washington Legal Foundation*, July 13, 2023.
3. Reeve T. Bull, “Battling Overregulation in State Courts,” (Mercatus Research Paper, Mercatus Center at George Mason University, Arlington, VA, May 2023).
4. Susan E. Dudley, “Making State Level Regulation More Accountable,” *Forbes*, January 3, 2023.
5. Andrew Wheeler and Reeve Bull, “Virginia Is Leading the Way on Accountability,” *Richmond Times Dispatch*, January 29, 2023.

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