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**A 50-STATE REVIEW OF
REGULATORY PROCEDURES**

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Abstract

Regulatory agencies are delegated powers to execute statutory mandates. These powers vary widely across states in terms of how agencies are constrained by procedural requirements found in state Administrative Procedure Acts (APAs) and related statutory provisions and executive orders. Thus, there is a need for a comprehensive database detailing the way states regulate, as the process followed when implementing regulations can determine the outcomes those regulations produce, including their effectiveness. Differences in regulatory procedures across states can also inform efforts to reform regulatory procedures. This paper describes a novel database of agency rulemaking procedures drawn primarily from a review of the APAs of all 50 US states and provides some preliminary findings from the data. Metrics related to executive and legislative review of regulations, independent agency review, analytical requirements (such as small business impact statements, fiscal impact statements, or cost–benefit analysis), and periodic review requirements are captured. We anticipate that researchers will have many uses for the data set, including testing theories from the economics and public administration literatures about the causes and consequences of state regulation.

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A 50-State Review of Regulatory Procedures

Brian Baugus, Feler Bose, and James Broughel

Introduction

Numerous administrative agencies have been established in state governments to execute and enforce enacted statutes passed by legislatures. These agencies are frequently expected to interpret regulatory legislation and introduce rules that elaborate on or work out unspecified details of requirements found in law. Administrative rules have the force and effect of law themselves. Thus, a significant part of modern governance now constitutes agency actions that regulate commercial and consumer activity.

Delegating rulemaking powers to administrative agencies raises concerns about democratic accountability. Unelected civil servants interpret and implement the laws that elected legislators pass, which raises the question of how public administration can be accountable to voters. At the same time, regulator expertise and independence from short-term political pressures can have certain advantages over legislator-driven policymaking. In response to this tension, legislatures have enacted administrative procedures acts (APAs) to establish formal procedures that agencies must follow when enacting administrative rules. Administrative procedures are rules placed on executive agencies, usually by statute, to determine how agencies develop, implement, and enforce their policies. APAs, beyond setting procedures for agencies, also establish mechanisms for members of the public to participate and influence the rulemaking process and for the courts to oversee agencies to ensure they are acting within the confines of the laws that govern an agency.

Although procedures in each state share some common elements—for example, they generally include a commenting process, set up oversight mechanisms from legislative

committees or executive branch offices, and require some evidentiary basis for rules in the form of economic analysis—they also differ significantly from state to state. For example, some states have automatic sunsets (expiration dates) for regulations, some have analytical requirements to produce cost–benefit analysis, and some have legislative committees review new regulations. In addition to these differences, some states have established independent commissions to oversee rulemaking, some set triggers whereby rules with expected economic impacts over a certain threshold receive deeper scrutiny, and some set requirements to periodically review regulations for continuing need and effectiveness. Beyond legislatively mandated differences, executive branch officials also impose an array of procedural requirements through executive orders or similar actions, which exist alongside mandates found in the statutorily based state APAs.

This paper describes a novel data set of state administrative procedures. The data set is current as of December 2020 through mid-2021, depending on the state. We classify the variables in our data set in terms of six broad categories: the form of rulemaking in a state (including various notice requirements); whether there is an executive review process for new regulations; whether there is legislative review of new regulations; independent agency review of regulations; impact analysis requirements; and periodic review requirements. Within each of the categories, we capture a number of narrower, more detailed descriptors of agency rulemaking procedures.

One general conclusion drawn from this review is that there is considerable diversity among the states when it comes to regulatory institutions. Thus, the laboratories of democracy appear to be living up to their name. There is likely much to be learned from the states, especially given the relatively slow evolution of the federal rulemaking process, which has changed only

modestly over the 75 years since the passage of the federal APA.¹ Regulatory reform is a theme of most presidential administrations, most recently with President Biden’s memorandum on modernizing regulatory review (Biden, 2021). This data set should enable more research about the consequences of regulatory procedures to help inform current and future regulatory reform efforts.

This paper is organized as follows. Section 2 begins by providing a brief history of the passage of APAs in the United States. Although the state APAs share common influences with the federal APA and many were developed concurrently, some state APAs also preceded the federal APA and several were not enacted until decades later. In Section 3, we conduct a literature review of prior efforts to catalog state administrative procedures. Only a handful of previous efforts have sought to systematically document a wide range of state regulatory procedures. Moreover, these efforts have tended to be one-time in nature, whereas the intention for the present data set is for it to be updated periodically in order to provide better information for establishing causal inferences in empirical research. We also review empirical literature that catalogs specific regulatory procedures to study their impacts on various outcomes. Section 4 describes the methodology used for deciding which variables to include in the database and how the authors went about reviewing each state’s code. Section 5 provides a detailed description of the variables collected, as well as some preliminary findings, and Section 6 summarizes some overall takeaways from the review of state APAs. The final section concludes with suggestions for potential avenues of research using these data, which are available in the Appendix.

¹ The main changes to the federal administrative rulemaking process over the past 80 years include passage of the APA and the creation of an executive review process for regulations overseen by the Office of Management and Budget (OMB), which includes requirements for agencies to produce cost–benefit analyses. For more information on these pillars of the administrative rulemaking process, see Graham and Broughel (2014).

2. A Brief History of Administrative Procedure Acts

The federal APA in the United States has its origins in the New Deal, during which members of Congress were concerned about President Franklin Roosevelt's accumulating power and sought to place boundaries on the executive branch. One early attempt at passage of an APA, the Walter–Logan bill, was vetoed by President Roosevelt despite receiving large majorities and passing Congress in 1940. The Walter–Logan legislation was an attempt to limit administrative discretion by introducing procedural requirements and expanding the scope of judicial review over regulatory agencies (Metzger, 2017). One stated reason for Roosevelt's veto was that he had initiated a study for administrative agency reform and wanted to wait for the report to be finalized. Eventually, the Second World War came to occupy much of the federal government's time and resources, and so administrative procedure reforms were put on hold (Rabkin, 2020).

The issue returned to the fore, however, in 1946. By that time, World War II had ended and President Roosevelt was dead. Moreover, there were reduced Democratic majorities in Congress, and Harry Truman was, compared to Roosevelt, a politically weaker executive. These factors fueled fears among Democrats that a Republican president might be able to undo many of the New Deal reforms, and this concern led to greater political support for administrative process reform (McCubbins et al., 1999). The APA was eventually passed and signed by President Truman.

Also in 1946, the National Conference of Commissioners on Uniform State Laws (a private association of legal scholars and experts) finalized a Model State Administrative Procedure Act (MSAPA), providing guidance to the states on how to design their administrative procedures (National Conference of Commissioners on Uniform State Laws, 2010). The drafters of the federal APA had kept the creators of the model state APA abreast of their work (hence the coincident timing). The MSAPA was held in abeyance until a federal statute was agreed upon

and passed (Bonfield, 1986). Table 1 shows the year each state enacted its APA; this covers more than a 40-year time span. Nine states passed their own APA before the federal government.² North Dakota became the first state to adopt an APA when it enacted one in 1941.³ Although North Dakota has the distinction of being the first state to have a comprehensive administrative procedure statute, even prior to 1941 many states used legislation to impose procedural constraints or judicial oversight upon administrative agencies (Harris, 1953). The North Dakota statute was based partly on an early tentative draft of what became the 1946 MSAPA approved by the National Conference of Commissioners on Uniform State Laws (North Dakota Legislative Council, 2011).

The Uniform Law Commission is an organization established in 1892 with the purpose of providing nonpartisan legislation on critical topics in state statutory law. Its members are practicing attorneys, including judges, legislators, law professors, and legislative staff, while the aim of the organization is to promote uniformity of state laws in areas where uniformity is practical and desirable (Uniform Law Commission, 2021). The model legislation crafted in 1946 was not specifically modeled on any of the earliest adopting states, so as to accommodate a diversity of regulatory approaches and allow for changes in the remaining states.

² Minnesota's APA passed in 1946, the same year as the federal APA, but state passage occurred later that year.

³ 1941 N.D. LAWS, ch. 240, §§ 1–22 (currently N.D. CENT. CODE ch. 28-32).

Table 1: APA Adoption Year by State

State	Year Adopted	State	Year Adopted	State	Year Adopted	State	Year Adopted
ND	1941	AZ	1952	OK	1963	NC	1973
MI	1943	MA	1954	GA	1964	UT	1973
OH	1943	RI	1956	WV	1964	TN	1974
WI	1943	MD	1957	ID	1965	IL	1975
CT	1945	OR	1957	NV	1965	NY	1975
IN	1945	WY	1957	LA	1966	TX	1975
MO	1945	AK	1959	SD	1966	VA	1975
NE	1945	CO	1959	AR	1967	MS	1976
PA	1945	WA	1959	VT	1967	SC	1977
US	1946	DE	1960	NJ	1968	AL	1981
MN	1946	FL	1961	NM	1969	KS	1984
CA	1947	HI	1961	MT	1971	KY	1984
IA	1951	ME	1961	NH	1973		

Note: From de Figueiredo & Vanden Bergh (2004).

The passage of APAs in the states did not seem to follow much of a pattern other than that the first few states were midwestern or plains states. The APA of one early-adopting state, Wisconsin, was viewed by some as a good government or streamlining measure. One legal scholar noted around the time of passage:

There is little that is really new in this whole program; its novelty lies principally in the collection of all these matters into a single chapter of the statutes, whereas they were previously to be found either in scattered statutes applicable to particular agencies or in court decisions alone. (Hoyt, 1944, p. 214)

In the early-adopting state of Ohio, the General Assembly followed an approach similar to President Roosevelt's, creating an Administrative Law Commission in 1941 to study the state's administrative process (Jones, 1973), which eventually led to passage of Ohio's APA in 1943.

Before its own APA came into effect in 1946, Minnesota had no standard procedures for how agencies made rules or dealt with contested cases. Each agency established its own procedures, creating a patchwork of processes for the citizenry to track. The Minnesota legislature responded by establishing a variety of standardized practices, including public hearings and notice of new proposals (Beck, 2014). As will be discussed in more detail later, the

Minnesota APA is noteworthy for creating rulemaking procedures with some resemblance to *formal rulemaking* at the federal level, which involves trial-like hearing procedures, including oversight from an administrative law judge and the opportunity for individuals to present their own evidence or to cross-examine government witnesses.⁴ The federal APA allows for formal rulemaking, although it is rarely used, and *informal rulemaking* (also known as *notice-and-comment rulemaking*) has become the predominant way in which federal regulations are developed (Nielson, 2014). As the database in this article makes clear, informal rulemaking is also the dominant rulemaking process in the states, but Minnesota's procedures demonstrate that alternative procedural paradigms are possible.

Missouri enacted its APA in 1945. The Missouri APA was based on a draft version of the aforementioned MSAPA developed by the National Conference of Commissioners on Uniform State Laws, which provided the basic framework for many of the earliest adopting states (Bonfield, 1986). The conference drafted the MSAPA, in part, because of concerns that agencies were commingling legislative and judicial powers because they were empowered to write, enforce, and impose penalties for violations of rules. These constitutional concerns were voiced by the Missouri APA's drafters as well (Maxwell, 1990).

Despite the fact that Truman hailed from Missouri and it was one of the earliest adopting states, there is little evidence that his home state's actions had significant influence on his thoughts about federal reforms. There is some evidence of a partisan element to passage of state-level APAs. Empirical analysis has found two factors that predict the adoption of state-level APAs: (a) Democratic legislatures adopting them when they have a veto-proof majority and face a Republican governor and (b) Democratic legislative supermajorities or unified Democratic

⁴ See MINN. STAT. § 14.14 (2021) for information about hearing procedures in Minnesota rulemaking.

control when they fear a future loss of power (de Figueiredo & Vanden Bergh, 2004). Both findings provide an important caveat to theories portraying passage of APAs as largely apolitical, good-governance reforms. These findings are also consistent with the federal experience whereby Republicans in Congress tried to constrain President Roosevelt with binding administrative procedures, meeting initial Democratic resistance. Later, support came from Democrats when APA-like procedures were viewed as valuable for their ability to constrain a future Republican president from unraveling New Deal programs. Ultimately, this Democratic Party support ensured passage of the federal APA.

3. Literature Review

3.1 Previous Research Cataloging State Administrative Procedures

A small body of prior research exists that catalogs the various regulatory procedures among the U.S. states. One of the earliest comparative analyses of state APAs was in 1952, when six states were examined (Heady, 1952). After a long gap, two additional papers surveyed 49 state APAs (excluding Kansas), looking at the nature and extent of constraints placed on rulemaking, such as whether a state has legislative or executive review or veto, requires economic impact analysis, or has annual reviews of existing regulations (Renfrow et al., 1986; Renfrow & Houston, 1987). These papers also included a restrictiveness index, which in this case was a simple sum of the number of procedural constraints. One interesting finding from these studies is that states with more professional state legislators have more restrictive APAs.

In the 1990s, the National Association on Administrative Rules Review (NAARR) compiled comprehensive data on rulemaking procedures from 49 states (excluding Rhode Island) on the basis of a survey of state legislatures (NAARR, 1996). Questions fell into three categories, primarily with “yes” and “no” answers. The categories included administrative rule

promulgation, administrative rule review and oversight, and challenges to administrative rules, with a total of 26 questions, with some questions subdivided further.

Schwartz (2010) also attempted to comprehensively catalog state administrative procedures. Of the studies reviewed here, the Schwartz study is probably closest to our own research effort. Like our study, it captured procedures related to executive review, legislative review, independent review, impact analysis, and periodic review. However, our study remains novel in several ways. First, our data are more recent, which is important because a number of states have implemented regulatory reform measures in recent years (Broughel, 2019; Shapiro, 2021). Second, Schwartz (2010) included a subjective valuation scheme that gave letter grades to states according to adherence to certain guiding principles. Although we do capture whether certain procedures are present in a state or not, we do not make any value judgments about the desirability of certain processes. That said, the data here could easily be used for that purpose—for example, to produce a scorecard.

More recently, the Ballotpedia group, a nonprofit digital encyclopedia of American politics and elections, conducted a review of administrative procedures in the states. A project titled “Five Pillars of the Administrative State: A 50-State Survey” includes a spreadsheet detailing the different states’ rulemaking processes.⁵ The Ballotpedia data have a definite legal focus, emphasizing factors such as the burden of proof placed on agencies during adjudication. The Ballotpedia website (<https://ballotpedia.org>), although useful, does not offer a methodological section explaining data collection methods or a description of why certain variables were included or excluded from the data. We have also found some discrepancies when comparing

⁵ The spreadsheet is available at https://docs.google.com/spreadsheets/d/1Trl4xvDVz_HvUzKFIznAK5LbfD1sRmqpoESqEQw1HgU/edit#gid=137883275.

data from our own study with data from the Ballotpedia project. To offer a few examples, we find 17 states have sunset provisions for regulations, whereas Ballotpedia finds 11 states have sunsets and two states have conditional sunsets. Similarly, Ballotpedia finds 16 states do not have “something like a regulatory review body.” However, we find that seven states have no form of legislative review and seven states have no system of executive branch regulatory review. Just two states—New Mexico and Delaware—have no formal system of regulatory review at all (either legislative or executive; in addition, Mississippi’s executive review applies only to occupational licensing regulations and is relatively new), according to our data. Ballotpedia data say Kansas has no form of regulatory review, whereas we find it has both legislative and executive review procedures in place via statute. In short, there appear to be substantial differences between the data presented here and the data Ballotpedia has cataloged, distinguishing our data from theirs. We will not attempt to explain the differences except to say that they probably have to do with methodological approaches used to capture the data. See Section 4 for the methods employed in this study.

Shapiro and Borie-Holtz (2015) created a data set for 28 states that included factors such as legislative review, executive review, and impact analysis. The authors found that legislative review and impact analysis do not affect the number of regulations passed. Executive review dampens the number of regulations only if there is a Republican governor. Further, the requirement for agencies to complete rulemaking within a certain period of time seems to affect the amount of rulemaking that occurs in states.

Aside from the studies mentioned, there appear to be few other efforts to conduct a systematic review of state administrative procedures. The present research improves upon these prior efforts in several ways. First, we catalog a number of variables that, to our knowledge, have

not been included in prior schemata. These include the extent to which preproposal requirements exist, the degree to which the outputs of economic analysis are required to inform the decision to regulate, and the presence of regulatory pay-as-you-go (PAYGO) requirements, such as a one-in, one-out requirement or a one-in, two-out requirement. These have gained popularity in recent years, likely because of a provision established under Executive Order 13771 (Trump, 2017). The present data set also identifies the degree to which specific elements of economic analysis are required and reviewed to an extent likely not previously captured. A limitation of our data is that we make no effort to catalog the extent to which procedures are enforced, complied with, or likely to be effective, although future research or future iterations of this data set could improve on the data set in this way—for example, by including measures of quality. We have opted not to do so here on the basis that we wanted to avoid allowing subjective elements to enter the classification system.

3.2 Other Relevant Studies

Empirical studies that rely on data like those gathered in the last subsection also exist, as do studies that collect data on a narrower subset of administrative procedures in order to study a specific procedural issue. These studies provide useful examples of how data like those presented in this article can be used to inform future research. Further, with more years of data, more sophisticated empirical work can be completed.

Hahn (2000a) uses survey data from the NAARR, as well as interviews and information from state APAs, executive orders, and state reports, to conduct an analysis of regulatory oversight procedures in the states. Hahn finds that several states have taken steps to improve regulations by creating oversight mechanisms similar to the Office of Management and Budget's (OMB's) regulatory review process at the federal level, or, alternatively, by requiring cost–

benefit analysis for regulations. However, that study also found that, because of a lack of proper funding and guidance, some reform efforts appear to have been more symbolic than substantive.

Grady and Simon (2002) use NAARR data to find that the 1994 elections, which shifted power toward Republicans at the federal and state level, resulted in many state legislatures' placing more restrictions on bureaucracies. Sobel and Dove (2016) used the Schwartz (2010) data from all 50 states to find that sunset provisions and fiscal impact statements for regulations are associated with lower levels of regulation in a state.

Woods (2009) surveys 991 agency directors in 15 states about the extent of the influence of external actors in the rulemaking process, finding that public notification and access requirements, in particular, appear to help various interests (including interest groups, but also courts, other agencies, and the governor) affect the content of rules. A follow-up study by Woods (2018) using some of the same data suggests that requirements for economic analysis (e.g., cost-benefit analysis, economic impact statements) reduce the influence of elected political officials. In addition, Woods (2015) explores how legislative and gubernatorial rule review powers impact environmental compliance costs.

Finally, Poggione and Reenock (2009) explore the effects of legislative rule review on various legislative responses in terms of agency oversight tactics. Boushey and McGrath (2017) look at proposed and adopted regulations at the state level for the years 1990 to 2010 and conclude that states with part-time citizen legislatures demonstrate more policymaking in the executive branch as amateur politicians rely more heavily on agency professionalism.

All told, the literature on classifying state administrative procedures, as well as the literature relying on these data or novel data of a similar kind, is rather modest. In this sense, our study fills an important research gap that can facilitate future empirical research. As noted earlier, we also

plan to periodically update these data so as to provide a panel data set that tracks procedures over time,⁶ and we note that the Schwartz (2010) data and the Council of State Governments' NAARR data are similar enough to that presented here that the data sets could potentially be merged to enable better causal inference in empirical research. With better measures of administrative procedures, the effects of these processes could be better understood and could reveal opportunities for improving governing institutions in the future.

4. Methodology

The following methodology was employed for collecting and compiling the data in the state administrative procedure database. First, the authors developed a preliminary list of variables they believed would be useful to academics and policymakers interested in the effects of regulatory procedures. The preliminary list included procedures targeted by regulatory reform efforts in the United States over the past several decades, which have largely focused on increasing oversight of administrative agencies (e.g., through executive, independent, or legislative review), requiring a stricter evidence base for rules (e.g., through analysis), or requiring retrospective review or analysis of rules (e.g., through periodic review requirements). Given that the three authors all are economists, it could be argued that these variables will be of most interest to economists studying regulation, although we envision the data will also be useful to administrative law and public administration scholars.

⁶ We considered retroactively collecting data from past years as well. However, many states do not have electronic versions of their historical statutes. This means we would have had to obtain physical copies of states' statutes in many cases, a task which stretched beyond the resources available for this study. Locating historical executive orders could also prove difficult. Nevertheless, future research could improve on the data presented here by extending them backward in time.

In order to ensure the list was comprehensive and useful, we consulted five regulatory experts in June and July 2019 for feedback on the preliminary list of variables. The list was then updated in response to the feedback received. Next, a research assistant located each state's APA online. To guarantee that the information reviewed was current and accurate, we consulted only official state sources. In all cases, either official state government websites were consulted or an officially sanctioned third-party website, such as LexisNexis, was used.⁷

Once state APAs were identified, two of the lead researchers and a research assistant reviewed each state's APA, capturing data for the variables identified to be of interest. After this initial review was completed, the third lead researcher and a different research assistant conducted an extensive quality assurance review, which consisted of double-checking all of the first team's work against the state APAs. Next, all three lead researchers, along with one of the research assistants, wrote short, two- to three-page reports for each state, summarizing the state's administrative process using the data collected during the earlier reviews. Then, one of the lead researchers double-checked these synopses against the database and the state APAs. Corrections were made to the data set when needed during the time when these state-specific reports were written and double-checked. Finally, experts who had relevant regulatory expertise were identified in each state, and these experts were asked to review the synopses. Usually, these experts were current state officials, or former officials, who worked in state government in a role related to the rulemaking process. In several cases, academics, attorneys, or individuals at a state policy organization or trade association with expertise in rulemaking were consulted. When changes were made to the state reports following the consultations, the database was updated to

⁷ In some cases, the LexisNexis version of the state code is the only sanctioned version of the code that a state government has online, and hence there is no option but to consult the website of a private third party.

reflect the changes. The state reports are available as supplementary files to this article and can be used to identify the original statutory or executive order requirements corresponding with the information found in the data tables.

The review followed a multistep process that involved multiple researchers, research assistants, and rounds of double-checking and quality-assurance review. The information collected in this study is considered to be up to date as of the date the synopses were returned by the state-level officials. These reviews were completed during the months of December 2020 through July 2021, depending on the state. The corresponding date for each state is available in the supplementary files.

As noted earlier, the plan is for the researchers involved in this effort to update the data going forward, once every few years, so that a comprehensive time series of state administrative procedures can be cataloged. That effort will expand the cross-section of regulatory procedures presented here into panel data. Thus, the present article should be understood as more than a one-time data collection effort. Rather, it is best thought of as introducing a project intended to be an ongoing effort to evaluate state regulatory procedures.

5. Variables

The data set is divided into six categories: form of rulemaking and notice requirements, executive review of rules, legislative review of rules, independent agency review of rules, impact analysis requirements, and periodic review. This section summarizes each of the variables collected under these six overarching categories and explains the coding for each variable so that the scores can be understood. Most of the variables throughout the data set are binary variables that demonstrate whether a particular procedure is present in a state or not. Tables including the data collected in each category are available in the Appendix.

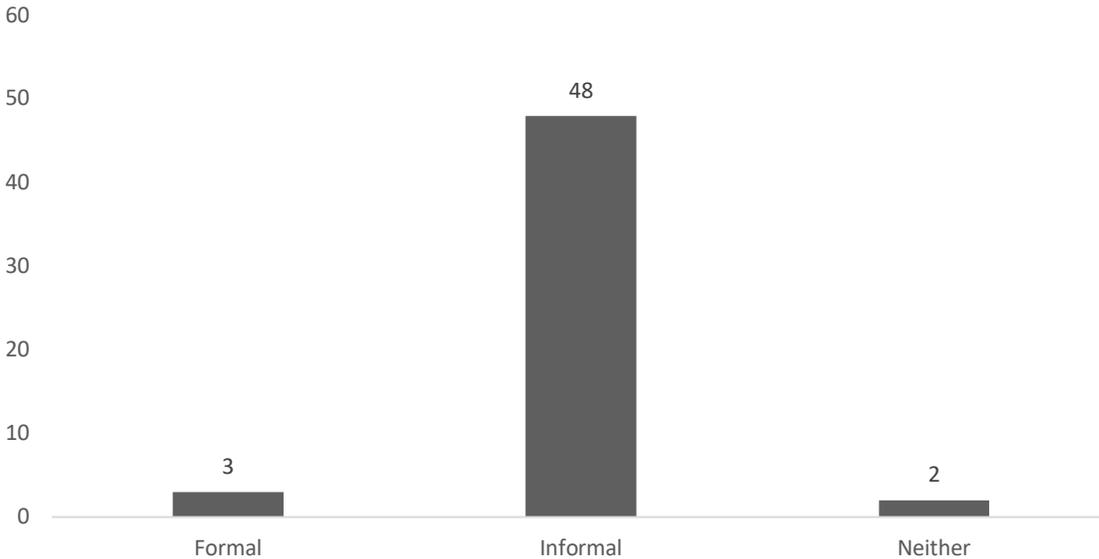
5.1 Form of Rulemaking and Notice Requirements

The first item collected was whether a state has a formal or an informal rulemaking process. The terms *formal* and *informal rulemaking* come from the federal process in which two methods of rulemaking are available to agencies (Nielson, 2014). *Formal rulemaking* refers to a process whereby rules emerge from a trial-like procedure, usually involving a hearing overseen by an administrative law judge, and there is a burden of proof to be met, a ban on *ex parte* communications, and the possibility for witnesses, including government officials, to be called and cross-examined. *Informal rulemaking*, by contrast, is the process according to which a rule is proposed and undergoes a public comment period before being finalized by the agency. The term *informal rulemaking* is somewhat of a misnomer because notice-and-comment rulemaking is the primary manner in which rules are adopted at both the state and federal levels and is highly formalized in the sense of being prescribed by law. The two forms of rulemaking are not mutually exclusive either, so a single state could have both options available for regulators (just as both options are available at the federal level in the United States).

Virtually all states have an informal notice-and-comment rulemaking process. However, we find two states, Michigan and New Mexico, which we do not classify as having informal rulemaking because of a lack of requirement to accept public comments. We classify three states as having formal rulemaking. Minnesota was mentioned earlier. However, two other states, South Carolina and Delaware, have highly formalized hearing procedures that could be considered as allowing for formal rulemaking or, alternatively, as constituting *hybrid rulemaking* (Williams, 1975), which adopts elements of both formal and informal rulemaking procedures. It may be the case that all three of these states do not employ these procedures to the fullest extent permitted by law. Nevertheless, because we understand their procedures as allowing for formal

rulemaking or something similar, we count them in that category for our purposes. Figure 1 summarizes the rulemaking procedures of the states.

Figure 1: States with Formal, Informal, or Neither Procedure for Rulemaking



Source: Authors' determinations. *Note.* States can have both formal and informal procedures.

Because most states rely on notice-and-comment rulemaking, we spend most of our attention cataloging how those procedures work. Some states have in place requirements for preproposal notices, which are documents published in the state register notifying interested parties that a rule is likely to be proposed in the near future. Sometimes this notification sets off a process of stakeholder engagement prior to a rule being proposed. Some states' proposed rules are subject to an automatic expiration date, meaning that if the rule is not finalized within a certain time frame, the regulatory agency must re-propose the rule before it may be adopted. We also capture whether a regulator must identify the statutory authority under which the regulation is being adopted during the rulemaking process. This information may appear in the rulemaking

notice published in the state register or elsewhere—for example, as part of an impact analysis document.

Table 2 lists the variables we collected as part of classifying a state’s form of rulemaking and related notice requirements. Most variables are binary variables. The data for the variables in Table 2 appear in Table A-1 in the Appendix.

Table 2: Form of Rulemaking and Notice Requirements (Key)

Variable	Coding
Has formal rulemaking	(1 = yes, 0 = no)
Has informal rulemaking	(1 = yes, 0 = no)
Minimum comment period length	(days)
Preproposal notice requirement	(1 = yes, 0 = no)
Expiration on proposed rules	(1 = yes, 0 = no)
If yes, how long?	(days)
Statutory authority disclosure	(1 = yes, 0 = no)

Source: Authors’ determinations.

5.2 Executive Review of Regulations

The data set next includes whether any executive branch official has a role in reviewing new regulations. It is worth noting that, unlike the federal government, in which there is a unitary executive and all federal agencies operate under the direction of the president, many states have several constitutional officers in the executive branch of government who are subject to independent election.

First, it was ascertained whether a state has an executive review process at all. Seven states have no executive review process, and 43 states have some form of executive review. The review variable was coded as to whether it applied to all rules or some subset of rules. Note that “all rules” in this case refers to all rules that are within the scope of the state APA. It is not uncommon for some executive branch departments to be exempt from a state’s APA; for example, a state lottery commission or education department may have the ability to enact rules

under special authority. Similarly, most states have fast-track procedures for temporary, emergency regulations that circumvent certain procedures. We ignore these exceptions, as we are interested in whether reviews occur systematically for most permanent regulations, as opposed to on an ad hoc basis or only for some subclass of regulations. For example, some states target review procedures at occupational licensing regulations or regulations with impacts on small businesses, whereas regulations more generally may avoid the same level of scrutiny in those states.

Next, if there was a factor that triggered review, such as an economic threshold—for example, the regulation is estimated to cost in excess of \$1 million—or a rule having a small business impact, this was captured. In some cases, requirements for review came from an executive order or directive rather than a statute. Executive actions include letters to agency heads (e.g., Texas), directives, or formal regulations (e.g., Wyoming’s secretary of state). States were also coded according to which executive branch official or body was reviewing regulations, including the governor (which includes a governor’s policy office), lieutenant governor, attorney general, the state budget department (or equivalent), or a different executive branch department (e.g., commerce department). Some states (e.g., Nevada) require agency heads to approve regulations, which was counted as a form of executive branch department review (in essence, the same agency reviews its own rules). In addition to capturing which official’s office conducts reviews, we examined the nature of these reviews, including whether the review focused on the legal authority for the regulation, the economic impact of the regulation, or the fiscal impact on state revenues or expenditures.

Note that many states require new rules to undergo a review by the secretary of state, who often is in charge of managing the compilation of the state administrative code or state register.

Secretary of state review was not collected in the data set because that review nearly universally focused on formatting issues rather than on matters of legal or policy substance. One exception is Mississippi, where the secretary of state leads the Occupational Licensing Review Commission, which consists of several other executive branch officials and is therefore captured in our data under other categories. In Oregon, the secretary of state has special powers to audit agencies, which in theory could give the secretary authority to audit rulemaking, although this does not appear to currently occur in practice. We are open to reconsidering including a secretary of state variable in future iterations of the data set, but to do so, we would need a method for distinguishing substantive from nonsubstantive reviews.

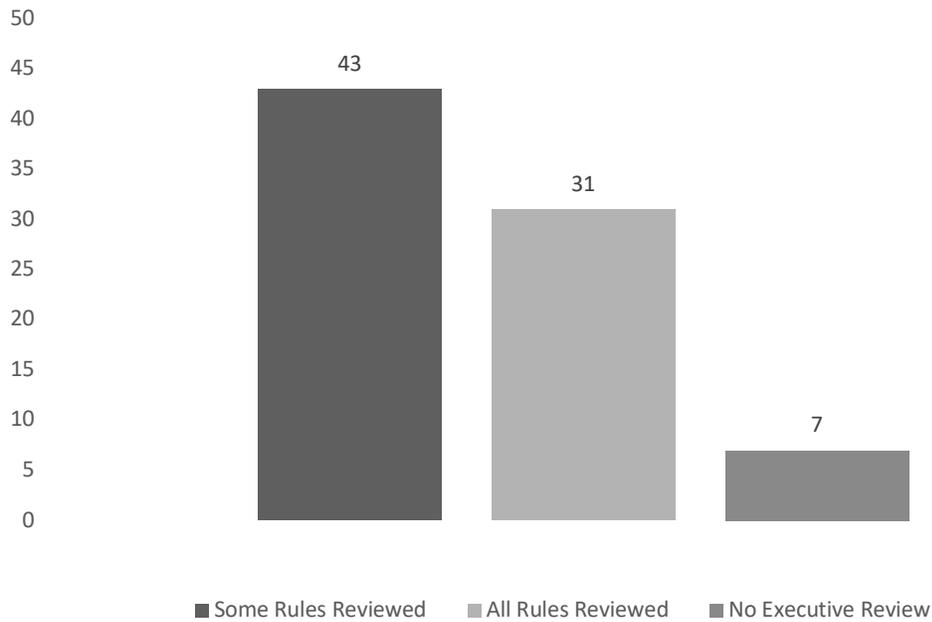
Table 3 summarizes the factors considered as part of executive branch reviews of regulations. Figures 2 and 3 summarize some key findings, and the data for the variables in Table 3, which are all binary variables, appear in Table A-2 in the Appendix.

Table 3: Executive Review of Regulations

Variable	Coding
Is executive review in place?	(1 = yes, 0 = no)
Does it apply to all rules?	(1 = yes, 0 = no)
Is there an economic threshold that triggers the review?	(1 = yes, 0 = no)
Does small business impact trigger the review?	(1 = yes, 0 = no)
Is there any other threshold that triggers the review?	(1 = yes, 0 = no)
Is the review required via executive action (as opposed to in statute—“yes” can mean both)?	(1 = yes, 0 = no)
Attorney general review	(1 = yes, 0 = no)
Governor or governor’s policy office review	(1 = yes, 0 = no)
Lieutenant governor review	(1 = yes, 0 = no)
Budget/management department review	(1 = yes, 0 = no)
Other executive branch department review	(1 = yes, 0 = no)
Scope of review	
Review for legality	(1 = yes, 0 = no)
Review for economic impact	(1 = yes, 0 = no)
Review for fiscal impact	(1 = yes, 0 = no)

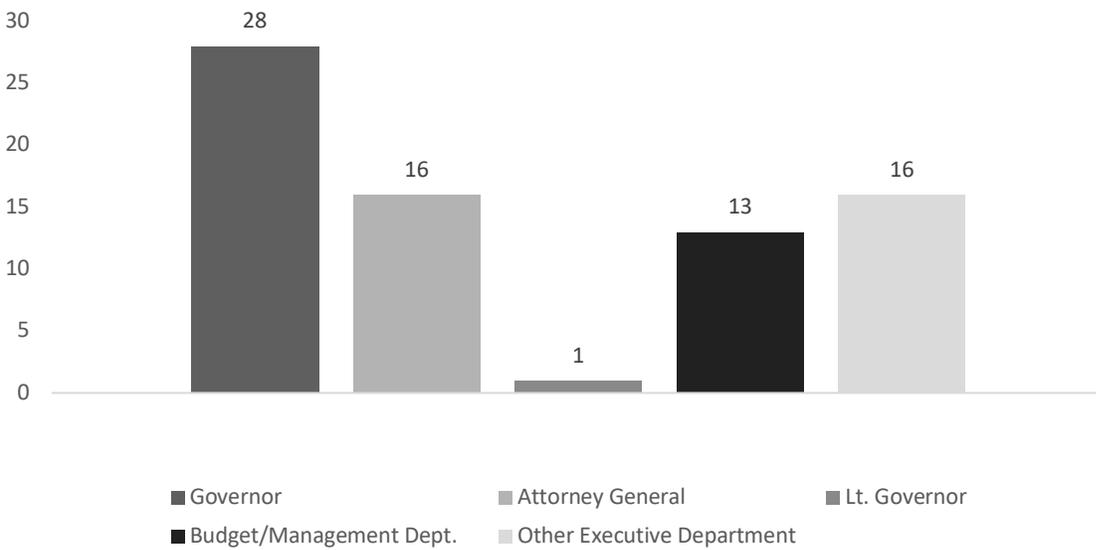
Source: Authors’ determinations.

Figure 2: States with Executive Review of Regulations



Source: Authors' determinations.

Figure 3: Who Conducts Executive Review?



Source: Authors' determinations.

5.3 Legislative Review of Regulations

As with executive branch review, review of new regulations by the legislature can vary significantly by state. It can range from the legislature having essentially no role in the rulemaking process after passage of enabling legislation, to having significant review powers, including veto authority over new regulations. Review can come from a committee or the entire legislature, which sometimes can vote down regulations on a fast-track basis or in other cases must affirmatively approve final rules before they can go into effect.

First, we catalog whether a state has any legislative review functions. As with executive review, most states have such functions, with only seven states having no form of legislative review. Next, we classify whether review applies to “all regulations,” using the same definition as that described related to executive review (i.e., this definition excludes emergency rules or rules not subject to the state APA).

Committees that review regulations can be either a standing committee with subject matter jurisdiction over the area being regulated or a joint House-Senate legislative committee with authority over reviewing administrative rules generally. Alternatively, sometimes each chamber has an administrative rules committee. Joint House-Senate or separate administrative rules committees across chambers are considered rule review committees for the purpose of this data set because their focus is on administrative rules generally, rather than on a particular area of policy, such as health or transportation.

In some states, these committees review all regulations. In others, they review regulations on a case-by-case basis as the committee sees fit. In some cases, the review committee is required to hold a hearing. Sometimes it has veto power over regulations. In other cases, the review committee can only make nonbinding recommendations. Sometimes committees can introduce legislation before the entire legislature, which, if passed by both chambers, strikes

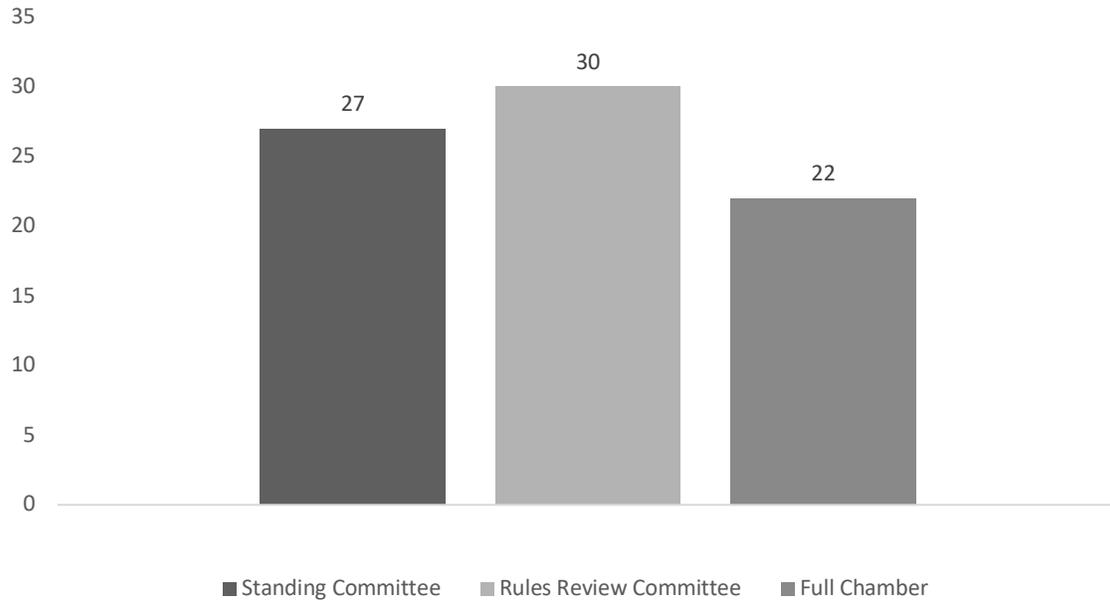
down a regulation. Sometimes the joint resolutions voted on by the entire legislature require the governor’s signature, but not always. (Those resolutions that do not require the governor’s signature are sometimes labeled *concurrent resolutions*.) Other times the legislature must affirmatively approve regulations. For example, this is the case for most permanent rules in West Virginia. In Florida and Wisconsin, regulations with economic impacts over a certain threshold must be affirmatively approved by the legislature. Table 4 lists the legislative review functions that were cataloged as part of the data set. Figures 4 and 5 summarize some key findings about the legislative role in rulemaking, and the data for the variables listed in Table 4 appear in Table A-3 in the Appendix.

Table 4: Legislative Review of Regulations

Variable	Coding
Is legislative review in place?	(1 = yes, 0 = no)
Does the review apply to all rules?	(1 = yes, 0 = no)
Is the review conducted by a standing committee?	(1 = yes, 0 = no)
Is a legislative hearing required?	(1 = yes, 0 = no)
Is there a rule review committee?	(1 = yes, 0 = no)
Does the full legislature have review authority?	(1 = yes, 0 = no)
Strength of review	
If the review is by a committee, does it have veto power?	(1 = yes, 0 = no)
Does the full legislature have veto power?	(1 = yes, 0 = no)
Do the legislature’s actions require executive approval?	(1 = yes, 0 = no)
Must a rule be affirmatively approved by the full legislature?	(1 = yes, 0 = no)
Is there an economic threshold that triggers a requirement for affirmative legislative approval?	(1 = yes, 0 = no)

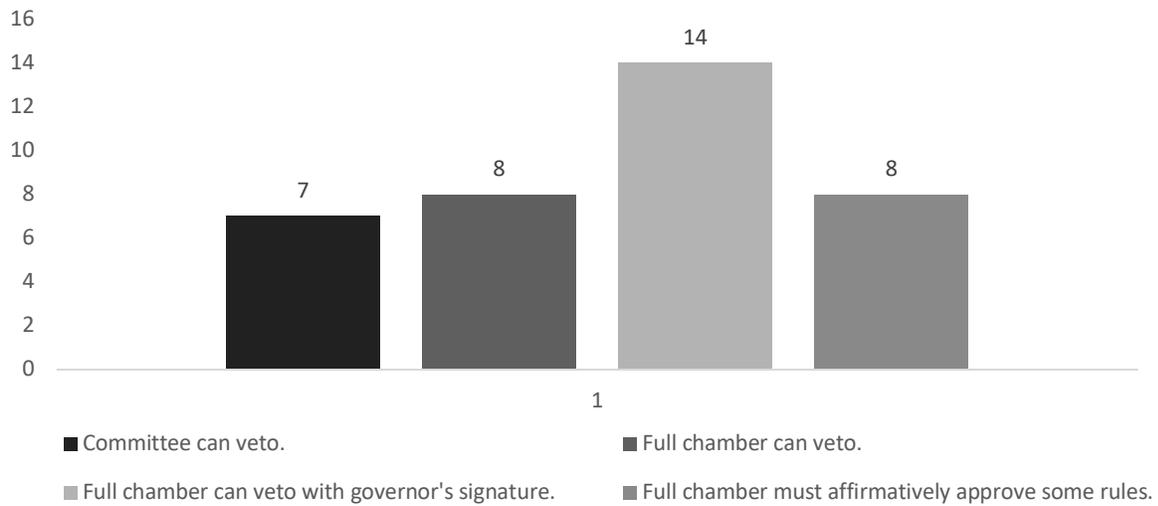
Source: Authors’ determinations.

Figure 4: Which Legislative Body Is Involved in Rulemaking?



Source: Authors' determinations.

Figure 5: What Can the Legislature Do?



Source: Authors' determinations.

5.4 Independent Agency Review

In some states, a proposed rule must be reviewed by an independent entity. The degree to which such an entity is truly independent of the executive or legislative branch can be debated. In most cases, we counted a situation as a form of independent review if the review body had a special structure that distinguished it from a typical executive branch department. A prime example would be the Independent Regulatory Review Commission in Pennsylvania, which enjoys significant independence from both the legislature and the governor. Alternatively, some states have commissions populated by members of both the executive and legislative branches of government, such that the composition of the review body spans multiple branches of government. This was counted as independent as well, despite the fact that in some cases these bodies are nominally part of some executive branch department (e.g., a state commerce department). As noted, Mississippi has an Occupational Licensing Review Commission with several executive branch officials on the commission. This was counted as executive review because all of the officials on the commission are part of the executive branch, but one could arguably consider it a form of independent review, given the unique structure of the commission. Sometimes members of the private sector also had a role on these independent commissions (e.g., South Carolina).

The structure and process of independent agency reviews sometimes is outlined outside of the state APA in a separate statute. Thus, our data set is not strictly limited to APA criteria, as should already be evidenced by the inclusion of executive orders in the executive review category.

In total, 13 states have some form of independent agency review, making the practice less common among the states than executive or legislative review. A number of these independent review bodies have a specific focus on regulations with an impact on small businesses, although

sometimes other economic factors trigger review. Some of these entities have the ability to veto regulations or return them to the agency or delay implementation for a substantial time. The elements of independent agency review cataloged in our data are captured in Table 5. The data for the variables listed in Table 5 appear in Table A-4 in the Appendix.

Table 5: Independent Agency Review

Variable	Coding
Is this review in place?	(1 = yes, 0 = no)
Does it apply to all rules?	(1 = yes, 0 = no)
Is there an economic threshold that triggers the review?	(1 = yes, 0 = no)
Is there a small business threshold that triggers the review?	(1 = yes, 0 = no)
Does the independent agency have veto power?	(1 = yes, 0 = no)
Can the independent agency return a rule for modification or amendment?	(1 = yes, 0 = no)
Can it delay a rule and require further review?	(1 = yes, 0 = no)
Does it review impact analysis (e.g., cost–benefit analysis)?	(1 = yes, 0 = no)

Source: Authors' determinations.

5.5 Impact Analysis Requirements

Analysis can play an important role in the administrative rulemaking process by ensuring policies are evidence based. The most common forms of regulatory analysis found in states are analysis of regulatory impacts on state revenues and expenditures (sometimes called *fiscal notes*), cost–benefit analysis reports, and regulatory flexibility analyses (also known as *small business impact statements*). The names of these types of analyses can vary from state to state, but these are by far the most common types. Some states, most notably New Jersey, have numerous other kinds of impact analysis requirements as well; for example, New Jersey has an agriculture industry impact statement, a smart growth development impact statement, and a racial and ethnic community criminal justice impact statement, among others.

In each state, we first identified whether any economic analysis is required. Just two states (Wyoming and Georgia) have no economic analysis requirements at all, meaning economic

analysis requirements are widespread across the states. Note that no effort was made to assess the quality of analysis. Moreover, some states nominally have economic analysis requirements that may not be complied with in practice. For example, New Mexico required regulatory analysis via an executive order in 2018. The extent to which the order is currently being complied with is unclear, especially because the governor who instituted the order subsequently left office. Nevertheless, because the executive order was in place at the time our review was conducted, the state was classified as having an impact analysis requirement.⁸

We identified whether the analysis applies broadly to all permanent rules or whether it applies to a subset of rules, such as when an economic threshold is met. We also coded whether analysis is required for rules with impacts on small businesses. When analyses are required, we coded whether requirements are in place via legislation or executive order. Because some states have multiple forms of analysis, a state can have analysis required by both legislation and executive order. We also looked at whether specific elements of analysis are required, including whether the analysis must identify the problem or market failure a regulation is addressing; include alternatives to the proposed regulation; or look at budgetary effects, compliance costs, employment effects, or parties affected by the regulation (i.e., distributional effects). We also cataloged whether a cost–benefit analysis is required.

In addition to these elements, we identified who was responsible for producing the analysis. This was intended to ascertain the degree of independence between the analysts conducting program evaluation and those tasked with creation and implementation of programs. Some states,

⁸ A similar example is the executive review process in Alabama. Alabama set up a voluntary review process for regulations from boards and commissions via an executive order in 2015. The governor who implemented the order is no longer in office, and it is unclear whether the order is still followed. Nevertheless, Alabama was counted as having executive review because the order was on the books at the time our review occurred.

such as New Hampshire, have analysis produced in legislative offices, whereas most states have analysis produced by the agencies that are regulating. Virginia has a separate executive branch office that produces the analysis. West Virginia has a newly created legislative office responsible for regulatory analysis.

Finally, some states have what we call *use-of-analysis requirements*, meaning that agencies must choose a certain regulatory option from among the alternatives analyzed. These include choosing the option in a cost–benefit analysis that provides the greatest net benefits or the most cost-effective or least burdensome alternative or simply showing that the regulation produces benefits in excess of costs. In general, these use-of-analysis requirements are fairly rare, as is evident from Figure 7. Table 6 lists the analytical requirements captured in the data. Figure 6 illustrates who is producing regulatory analysis in the states, and Figure 7 illustrates how the analysis is required to be used. The data for the variables listed in Table 6 appear in Table A-5 in the Appendix.

5.6 Periodic Review

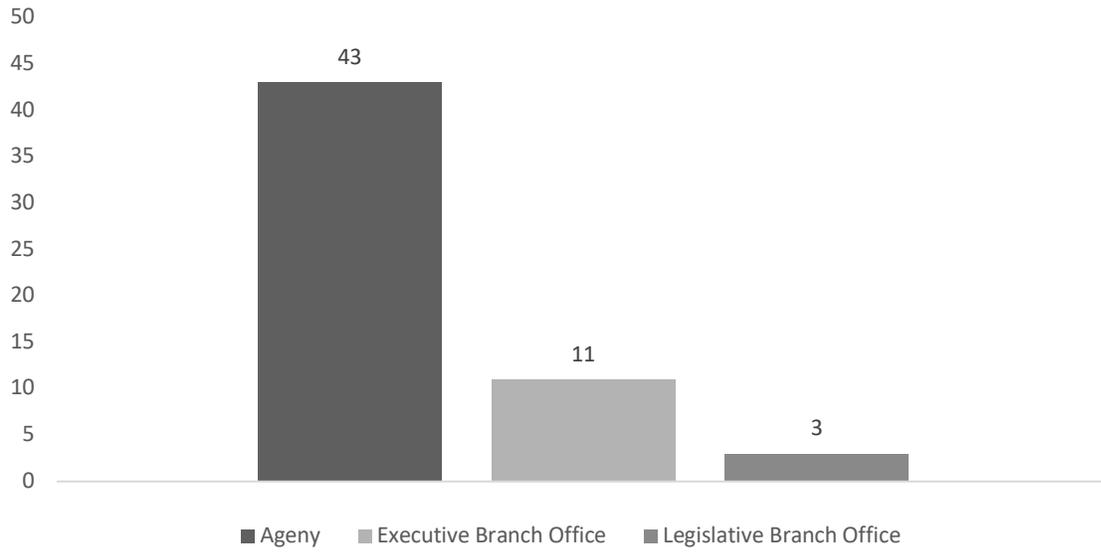
Periodic reviews help keep regulations current. There are many ways in which such a review can take place. Reviews can be left to the discretion of the regulators or could be required on a set schedule. Review might be triggered when a legislator or a member of the public petitions an agency to bring attention to a regulation in need of updating, or it may be triggered by an automatic expiration date attached to a regulation (i.e., a sunset provision). Not including petition procedures (which we count separately), 42 states have some form of periodic review requirement.

Table 6: Impact Analysis Requirements

Variable	Coding
Is impact analysis required?	(1 = yes, 0 = no)
Do all rules require analysis?	(1 = yes, 0 = no)
Is there an economic trigger for analysis?	(1 = yes, 0 = no)
Is a small business analysis required?	(1 = yes, 0 = no)
Is such an analysis required via executive order rather than legislation?	(1 = yes, 0 = no)
Is analysis required by legislation?	(1 = yes, 0 = no)
Elements of analysis	
Is the analysis required to consider problem/need for regulation/market failure?	(1 = yes, 0 = no)
Is the analysis required to consider alternatives?	(1 = yes, 0 = no)
Is the analysis required to consider budgetary effects?	(1 = yes, 0 = no)
Is the analysis required to consider compliance costs?	(1 = yes, 0 = no)
Is the analysis required to consider the impact on the labor market/jobs?	(1 = yes, 0 = no)
Is there a distributional analysis requirement?	(1 = yes, 0 = no)
Is the analysis required to consider impacts on competition?	(1 = yes, 0 = no)
Is the analysis required to include a cost–benefit analysis?	(1 = yes, 0 = no)
Who conducts analysis?	
Does the regulating agency conduct the analysis?	(1 = yes, 0 = no)
Does an executive branch or independent office external to the regulating agency conduct the analysis?	(1 = yes, 0 = no)
Does the legislative branch/independent office conduct the analysis?	(1 = yes, 0 = no)
Use of analysis	
Is the rule required to maximize net benefits?	(1 = yes, 0 = no)
Is the rule required to have benefits that exceed costs?	(1 = yes, 0 = no)
Must the agency choose the lowest-cost alternative/most cost-effective alternative?	(1 = yes, 0 = no)

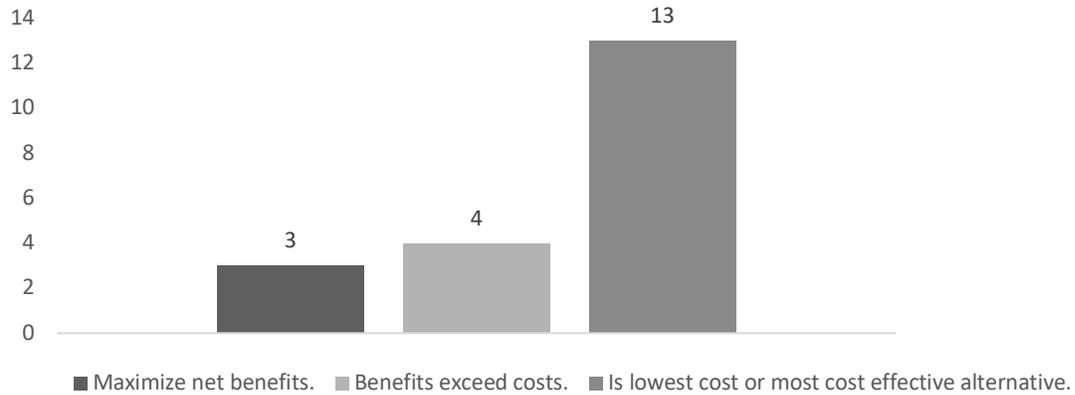
Source: Authors' determinations.

Figure 6: Who Produces Regulatory Analysis in the States?



Source: Authors' determinations.

Figure 7: Requirements for Analysis to Be Used



Source: Authors' determinations.

Reviews also take place according to different timelines. Some states have procedures for reviewing all regulations on an annual basis, whereas in other states the schedule for review can be a decade or longer. Two states in our data set have multiple review processes that span different timelines. In North Carolina, there is an annual review process agencies must follow to identify rules that are unnecessary or unduly burdensome, and there is also a separate 10-year sunset review process overseen by the state Rules Review Commission. Similarly, in New Mexico, rules are reviewed every 5 years to ensure that they are minimizing impacts on small businesses while achieving state objectives. Meanwhile, there is also a more general requirement to review and update regulations every 3 years. For states with two review procedures with different time schedules, we record two estimates of the time frame, with each separated by a slash mark (/).

We looked at the criteria evaluated as part of the review, including whether agencies must assess the current need for the regulation, the legal basis for the rule, or whether the regulation is discretionary or mandated by state or federal regulation.⁹ Additional metrics captured include that some states require all regulations to be reviewed at the same time, whereas others have a staggered process, whereby a portion of the regulations on the books is reviewed during any particular review interval. Some states, such as North Dakota, have a fast-track process for removal of regulations. This usually involves an agency petitioning a legislative committee to authorize the repeal or partial repeal of a rule, which can then be exempt from some ordinary administrative procedures.¹⁰

⁹ *Discretionary* means that the regulatory agency may rescind or amend the regulation without a change to existing state or federal law.

¹⁰ In 2021, Oklahoma created a fast-track process for the removal of regulations. This reform was not included in the current data set because the provision had not yet gone into effect when this review was completed. See Okla. S.B. 913 (2021).

One common form of periodic review involves sunset provisions, whereby regulations automatically expire unless they either are reviewed or are otherwise reauthorized in some manner. We cataloged whether a state has a sunset provision, how long the sunset term is, and who is tasked with the responsibility of reauthorizing expiring rules (the agency or legislature). Seventeen states have some form of sunset provision for regulations.

Finally, some states impose caps on regulatory activity through the implementation of the regulatory budget equivalent of a PAYGO requirement. For example, one or more regulations might have to be removed or identified for removal for each new rule that is proposed or added. We count this as a periodic review requirement for the inclusion of the look-back provision when implementing new rules. Some states have required such provisions via an executive order (e.g., Oklahoma). When a state has a regulatory PAYGO provision but it has not been implemented through an executive order, the states can be assumed to have it in place via statute (e.g., Ohio, Texas). Table 7 presents periodic review requirements and their corresponding coding. The data for the variables listed in Table 7 appear in Table A-6 in the Appendix.

Table 7: Periodic Review Requirements

Variable	Coding
Is this review in place?	(1 = yes, 0 = no)
Does it apply to all rules?	(1 = yes, 0 = no)
How often are rules reviewed?	(years)
Criteria for review	
Does the review assess the continued need for rule?	(1 = yes, 0 = no)
Does the review assess the current legal basis for the rule?	(1 = yes, 0 = no)
Does the review assess whether regulations are discretionary or required by law?	(1 = yes, 0 = no)
Review process	
Is there a fast-track repeal process?	(1 = yes, 0 = no)
Can someone petition the agency to review rules?	(1 = yes, 0 = no)
Sunset review	
Does the state have a regulatory sunset provision?	(1 = yes, 0 = no)
What is the sunset term?	(years)
Do all rules expire at once?	(1 = yes, 0 = no)
Do rules have staggered expiration?	(1 = yes, 0 = no)
Does the agency have reauthorization authority?	(1 = yes, 0 = no)
Does the legislature have reauthorization authority?	(1 = yes, 0 = no)
Regulatory PAYGO requirement	(1 = yes, 0 = no)
Executive order	(1 = yes, 0 = no—which means legislative requirement when a PAYGO rule is present)

Source: Authors' determinations.

6. Observations About the Data

We make a few initial observations about the data described in Section 5 and presented in the Appendix. The first is that informal notice-and-comment rulemaking is the predominant approach taken in the states, although two states do not require notice-and-comment rulemaking. Minnesota is the only state that seems to use a process akin to formal rulemaking for many of its regulatory actions, although two states, Delaware and South Carolina, have processes that on paper appear as though they could be interpreted as allowing formal rulemaking. Eleven states have preproposal notice requirements for regulations, and 43 require statutory authority disclosure for new rules. Only 20 states attach expiration dates to proposals, limiting the time that can elapse before proposed rules are finalized.

Forty-three states have some form of executive review of regulations. This suggests that although executive review is present in the majority of cases, it is not universal, because 14% of states do not have it, even via an executive order, which could be issued by a governor at any time. Twenty-eight states have some form of governor's review, and 13 states have a review conducted by the state OMB. Eight states have OMB review and governor review, so 17 states have neither OMB nor governor's office review. This finding is interesting because at the federal level, such review is often viewed as a way to ensure presidential preferences are reflected in policy (Shamoun & Yandle, 2016). The fact that 34% of states have no similar review suggests that governors' preferences may be less represented in state policy than presidents' preferences are reflected in federal policy. Moreover, the OMB review process is considered one of the pillars of the federal administrative state (Graham & Broughel, 2014), so it is notable that many states have opted not to structure their administrative procedures with this kind of review in place.

In 21 states, reviews include a focus on regulations' legality. In 22 states, reviews consider economic effects (again, with some overlaps). In just 12 states, there is a review of fiscal effects. These findings are notable in comparison to Hahn's (2000a) finding that "the oversight entity generally focuses on issues related to the legality of the rule, such as statutory authority and adherence to proper procedures" (p. 877). This suggests that over the past 20 years, reviews may have evolved toward focusing on economic factors, which are now at least as prominent as reviews of a rule's legality.

Forty-three states have some form of legislative review. Thirty states have a rule review committee that reviews regulations (31 when Oklahoma, which established a Joint Committee on Administrative Rules in September 2021, outside the window of this study, is included). Twenty-

seven states have standing committees that review regulations within their area of jurisdiction, and 22 states have some form of procedure that allows the full legislative chamber to nullify regulations (in 14 cases, the consent of the governor is required, but this leaves eight instances, or about a third of the 22 states with legislative nullification of regulations, without the consent of the executive). An additional eight states require affirmative approval from the legislature before at least some regulations can go into effect.

Thus, although regulatory review at the federal level has been dominated by activity in the executive branch, there is much more emphasis on legislative review at the state level; however, there is a considerable amount of executive review that occurs in states, too. Moreover, in 32 states, legislative review applies to *all* administrative rules promulgated through ordinary, permanent rulemaking procedures. This is something that is hard to imagine at the federal level, given the large number of regulations finalized each year and the other competing priorities of Congress.

Just 13 states have some form of independent agency review of regulations, meaning the phenomenon is by no means the norm but is also not uncommon. In only three states (Rhode Island, Pennsylvania, and North Carolina) does this independent review apply to all rules. Six of the 13 states have a small business emphasis to their review. Louisiana's Occupational Licensing Review Commission is the only entity with veto power over the regulations it reviews.

A full 48 states have impact analysis requirements, meaning analysis requirements are almost universal. Only Wyoming and Georgia do not have these requirements. As already noted, we do not delve into the quality of the analysis, although the authors' own anecdotal experiences, along with prior literature (e.g., Hahn, 2000a; Schwartz, 2010), lead us to suspect that the analysis conducted is rudimentary when compared with the regulatory impact analyses produced

at the federal level. That said, states have gone further in other ways than the federal government has when it comes to impact analysis requirements. At the federal level, only economically significant rules require a full regulatory impact analysis and OMB review, and this requirement comes via an executive order. Yet, 35 states require analysis for all regulations, and only eight states have impact analysis requirements implemented via executive order, whereas 46 states have legislatively mandated analysis. This suggests that, except perhaps in limited cases in which judicial review might be ruled out by statute,¹¹ inadequate analysis may be a fertile area for challenging state regulations in court. Twenty states have an economic threshold that triggers analysis (similar to the federal government’s \$100 million threshold that defines economic significance and thereby triggers a regulatory impact analysis). Thirty-five states require some form of small business analysis.

Requirements to consider the problem being addressed (34 states), alternatives (40 states), fiscal effects (41 states), and compliance costs (44 states) are all very common. Some form of cost–benefit analysis is required in 33 states, and distributional factors are addressed in 34 states’ analyses. Eleven states have an executive office that produces analysis independently of the agency creating the regulation. However, in these cases, the separate analysis is usually an additional form of analysis or supplementary analysis to the agency’s analysis. Only in Virginia is the analysis generally produced by an independent executive branch office. Three states have a legislative office that produces analysis (New Hampshire, Utah, West Virginia). Thirteen states require agencies to select the lowest-cost or most cost-effective alternative. Four states require benefits to exceed costs, and three require agencies to maximize net benefits. The small number

¹¹ An example of a statute that prohibits judicial review of provisions in the law is the federal Congressional Review Act, which states, “No determination, finding, action, or omission under this chapter shall be subject to judicial review.” 5 U.S.C. § 805.

of states with use-of-analysis requirements like these suggests that, in addition to potentially having room to improve in terms of the quality of analysis, state agencies may have room to improve with respect to how analysis is used to inform rulemakings.

Finally, 42 states have periodic review requirements (not counting the opportunity to petition the state government to review certain regulations, which 36 states have). Of these, 30 states require all permanent rules enacted through APA processes to be periodically reviewed. As part of reviews, 23 states require the continuing need for the rule to be assessed, 14 require the legal basis to be determined, and three states require the original authority for the regulation to be determined (e.g., whether the regulation is discretionary or not). Four states have a fast-track repeal process for removing regulations (Oklahoma is a fifth, given legislation that passed in 2021, but is outside the window of this study).

Seventeen states have sunset provisions of one form or another. The length of the sunset period varies from 1 to 12 years. In states with 1-year reviews, the review might be better thought of as a form of legislative review of new regulations (as opposed to a periodic review requirement) because the primary intention of the review is likely to inject legislative oversight soon after a regulation is enacted. Four states with sunsets have all regulations expire at once, and 12 have staggered reviews (Vermont applies sunsets on an ad hoc basis). Eleven states grant agencies discretion to reauthorize regulations, and six grant the discretion to the legislature. Five states have some form of regulatory PAYGO provision. In three states, this has been instituted via executive order (in the remaining two cases, the provisions were legislatively implemented).

7. Conclusion

There are some limitations to the current study that should be noted. First, we do not address emergency regulations or, more generally, regulations enacted outside of ordinary rulemaking

procedures. For example, West Virginia has a number of different categories of rules, including legislative exempt, interpretative, and emergency rules. Second, we do not make an effort to assess the quality of analysis or the rigor of review. This would introduce an element of subjectivity into the analysis that may prove informative, but we leave it up to future research to take these data and amend the metrics to assess quality or rigor. Third, we do not consider sunset reviews or sunrise processes for entire agencies, boards, or commissions. Sometimes the term *sunset review* is used in a manner that does not distinguish sunset processes for agencies and boards from sunset processes for regulations. Our focus is on sunset reviews for regulations only, not the entities that produce regulations. Relatedly, some states have a review process for regulations of occupations, which we consider, but this is not the same as reviews of the boards and commissions that regulate professions.

Fourth, in the core data we do not consider the extent to which provisions are enforced or the degree to which requirements on paper might diverge from how the process actually works in practice. We simply catalog whether certain procedures exist in a state or not, on the basis of the state APA and, in some cases, other sections of the statutory code or governors' executive orders. The issue of de facto versus de jure procedures does come up in the supplementary state reports, however. For example, since 2017, Wisconsin has had a process whereby regulations may be indefinitely objected to by a committee in the legislature. We learned from our communications with state-level officials that the indefinite objection provision has only been used once as of September 2021. Similarly, Oregon has an independent review body on paper that does not seem to be used in practice. The state-by-state reports are able to provide a higher level of detail about these enforcement issues than the raw data in the Appendix. That said, we do not claim that the supplementary reports are comprehensive in this regard, but merely that they add context.

We see a number of lines of potential research that could be conducted using the data on state-level regulatory procedures. First, one could produce research on the power balance between the executive and legislative branches of government. Second, comparisons among the states and between the states' and the federal rulemaking processes could be conducted. Third, researchers could explore the quality of analysis across states, as well as which procedures lead to improved analysis. This would be in the spirit of regulatory scorecards or report cards created in the past (Ellig & Fike, 2016; Ellig & McLaughlin, 2012; Hahn, 2000b). Fourth, the data could be used to explore the association between specific rulemaking procedures and various outcome variables of interest, including ease of doing business, public health outcomes, environmental quality, mortality, economic growth, or other factors. Fifth, one could explore the effects of various procedures on the overall amount of regulation, given that in recent years, better metrics of regulation have been developed at the state level (e.g., Bailey et al., 2021; Staples et al., in press). Rossi (2006) also offers several suggestions for directions for future research, including asking why states choose to reform their regulatory procedures and what the effects of model APAs, and the various changes to those model acts, have been over time.

We believe that the potential uses of these data are many and that researchers should therefore find these data helpful as they investigate the causes and consequences of administrative rulemaking across the various states and beyond.

References

- Bailey, J., Broughel, J., & McLaughlin, P. (2021). Larger polities are more regulated. *Journal of Public Finance and Public Choice*, 36(2), 233–243.
<https://doi.org/10.1332/251569121X16153644407322>
- Beck, G. (2014). The origins of the Minnesota Administrative Procedure Act (APA). In G. A. Beck & M. Konar-Steenberg (Eds.), *Minnesota administrative procedure* (3rd ed., ch. 1.2).
- Biden, J. R., Jr. (2021). *Memorandum on modernizing regulatory review*. The White House.

- Bonfield, A. E. (1986). The federal APA and state administrative law. *Virginia Law Review*, 72(2), 297–336.
- Boushey, G. T., & McGrath, R. J. (2017). Experts, amateurs, and bureaucratic influence in the American states. *Journal of Public Administration Research and Theory*, 27(1), 85–103. <https://doi.org/10.1093/jopart/muw038>.
- Broughel, J. (2019). The mighty waves of regulatory reform: Regulatory budgets and the future of cost–benefit analysis. *Business, Entrepreneurship & Tax Law Review*, 3(2), 206–223.
- Ellig, J., & Fike, R. (2016). Regulatory process, regulatory reform, and the quality of regulatory impact analysis. *Journal of Benefit-Cost Analysis*, 7(3), 523–559.
- Ellig, J., & McLaughlin, P. A. (2012). The quality and use of regulatory analysis in 2008. *Risk Analysis: An International Journal*, 32(5), 855–880.
- de Figueiredo, R. J. P., Jr., & Vanden Bergh, R. G. (2004). The political economy of state-level administrative procedure acts. *The Journal of Law and Economics*, 47(2), 569–588. <https://doi.org/10.1086/422980>
- Grady, D. O., & Simon, K. M. (2002). Political restraints and bureaucratic discretion: The case of state government rule making. *Politics & Policy*, 30, 646–679.
- Graham, J. D., & Broughel, J. (2014). Stealth regulation: Addressing agency evasion of OIRA and the Administrative Procedure Act. *Harvard Journal of Law and Public Policy, Federalist Edition*, 1(1), 30–54.
- Hahn, R. W. (2000a). State and federal regulatory reform: A comparative analysis. *Journal of Legal Studies*, 29(52), 873–912.
- Hahn, R. W. (2000b). Regulatory reform: Assessing the government’s numbers. In Robert W. Hahn, *Reviving regulatory reform: A global perspective*, 32 (AEI-Brookings).
- Harris, W. R. (1953). Administrative practice and procedure: Comparative state legislation. *Oklahoma Law Review*, 6(1), 29–64.
- Heady, F. (1952). State administrative procedure laws: An appraisal. *Public Administration Review*, 12, 10–20.
- Hoyt, R. M. (1944). The Wisconsin Administrative Procedure Act. *Wisconsin Law Review*, 4, 214–239.
- Jones, G. R. (1973). A survey of the Ohio Administrative Procedures Act. *Cleveland State Law Review*, 22(2), 320–337.
- Maxwell, S. J. (1990). Redefining the contested case in the Missouri Administrative Procedure Act: A call for legislative action comments. *Missouri Law Review*, 55(4), 975–1004.

- McCubbins, M. D., Noll, R. G., & Weingast, B. R. (1999). The political origins of the Administrative Procedure Act. *The Journal of Law, Economics, and Organization*, 15(1), 180–217.
- Metzger, G. (2017). *The Administrative Procedure Act: An introduction*. Retrieved from Administrative Procedure Act training hosted by the American Constitution Society, Brennan Center for Justice, Poverty & Race Research Action Council, and AARP Foundation. <https://prprac.org/pdf/APA.summary.ProfMetzger.pdf>
- National Association on Administrative Rules Review (NAARR). (1996). *Administrative Rules Review Directory and Survey, 1996–1997*, Thompson Legal Publishing.
- National Conference of Commissioners on Uniform State Laws. (2010). Revised model state administrative procedure act. Retrieved from <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=3ab796d4-9636-d856-48e5-b638021eb54d>
- Nielson, A. (2014). In defense of formal rulemaking. *Ohio State Law Review*, 75(2), 237–292.
- North Dakota Legislative Council. (2011). Administrative rules review: Background memorandum. Document 13.9007.0100. <https://www.legis.nd.gov/files/resource/committee-memorandum/13.9007.01000.pdf>
- Poggione, S. J., & Reenock, C. (2009). Political insulation and legislative interventions: The impact of rule review. *State Politics & Policy Quarterly*, 9(4), 456–485. <https://doi.org/10.1177/153244000900900404>
- Rabkin, J. (2020). The origins of the APA: Misremembered and forgotten views. *George Mason Law Review*, 28(2), 547–572.
- Renfrow, P. D., & Houston, D. J. (1987). A comparative analysis of rulemaking provisions in state administrative procedure acts. *Policy Studies Review*, 6, 657–665.
- Renfrow, P. D., West, W. F., & Houston, D. J. (1986). Rulemaking provisions in state administrative procedure acts. *Public Administration Quarterly*, 9, 357–381.
- Rossi, J. (2006). Politics, institutions, and administrative procedure: What exactly do we know from the empirical study of state-level APAs, and what more can we learn? *Administrative Law Review*, 58(4), 961–980.
- Schwartz, J. A. (2010). *52 Experiments with regulatory review: The political and economic inputs into state rulemakings*. Institute for Policy Integrity, New York University School of Law.
- Shamoun, D. Y., & Yandle, B. (2016). Asserting presidential preferences in a regulatory review bureaucracy. *Public Choice*, 166, 87–111. <https://doi.org/10.1007/s11127-016-0316-9>
- Shapiro, S. (2021). The impossibility of legislative regulatory reform and the futility of executive regulatory reform. *George Mason Law Review*, 28(2), 717–732.

- Shapiro, S., & Borie-Holtz, D. (2015). *The politics of regulatory reform*. Routledge.
- Sobel, R. S., & Dove, J. A. (2016). Analyzing the effectiveness of state regulatory review. *Public Finance Review* 44(4), 446–477.
- Staples, A. J., Chambers, D., & Malone, T. (in press). How many regulations does it take to get a beer? The geography of beer regulations. *Regulation & Governance*.
<https://doi.org/10.1111/rego.12403>
- Trump, D. J. (2017). Exec. Order No. 13771: *Reducing regulation and controlling regulatory costs*.
- Uniform Law Commission. (2021). *About us*. <https://www.uniformlaws.org/aboutulc/overview>.
- Williams, S. F. (1975). “Hybrid rulemaking” under the Administrative Procedure Act: A legal and empirical analysis. *The University of Chicago Law Review*, 42(3), 401–456.
- Woods, N. D. (2009). Promoting participation? An examination of rulemaking notification and access procedures. *Public Administration Review*, 69(3), 518–530.
<https://doi.org/10.1111/j.1540-6210.2009.01997.x>
- Woods, N. D. (2015). Separation of powers and the politics of administrative rule review. *State Politics and Policy Quarterly*, 15(3), 345–365. <https://doi.org/10.1177/1532440015588151>
- Woods, N. D. (2018). Regulatory analysis procedures and political influence on bureaucratic policymaking. *Regulation & Governance*, 12(2), 299–313.
<https://doi.org/10.1111/rego.12139>

Appendix: Data

Table A-1: Form of Rulemaking and Notice Requirements (Data)

State	Has formal rulemaking	Has informal rulemaking	Minimum comment period length (days)	Preproposal notice requirement	Expiration on proposed rules	If yes, how long? (days)	Statutory authority disclosure
AL	0	1	35	0	0	0	0
AK	0	1	0	0	0	0	1
AZ	0	1	30	0	1	365	0
AR	0	1	30	0	0	0	0
CA	0	1	45	0	1	365	1
CO	0	1	0	1	1	180	1
CT	0	1	30	0	0	0	1
DE	1	1	30	0	0	0	1
FL	0	1	0	1	0	0	1
GA	0	1	0	0	0	0	1
HI	0	1	0	0	0	0	1
ID	0	1	21	1	0	0	1
IL	0	1	0	1	1	365	1
IN	0	1	0	1	1	365	1
IA	0	1	20	0	1	180	1
KS	0	1	60	0	0	0	1
KY	0	1	30	0	0	0	1
LA	0	1	20	0	1	365	1
ME	0	1	30	0	1	120	1
MD	0	1	30	0	0	0	1
MA	0	1	0	0	0	0	1
MI	0	0	0	1	0	0	1
MN	1	1	30	1	1	180	1
MS	0	1	25	0	0	0	1
MO	0	1	30	0	1	90	1
MT	0	1	28	0	1	180	1

Table A-1 (continued)

State	Has formal rulemaking	Has informal rulemaking	Minimum comment period length (days)	Preproposal notice requirement	Expiration on proposed rules	If yes, how long? (days)	Statutory authority disclosure
NE	0	1	0	0	0	0	0
NV	0	1	0	0	0	0	1
NH	0	1	0	0	0	0	1
NJ	0	1	0	0	0	0	1
NM	0	0	0	0	0	0	1
NY	0	1	0	0	0	0	1
NC	0	1	60	0	1	365	1
ND	0	1	10	0	0	0	1
OH	0	1	0	0	0	0	0
OK	0	1	30	0	0	0	1
OR	0	1	0	1	0	0	1
PA	0	1	30	0	1	730	1
RI	0	1	30	0	1	180	1
SC	1	1	30	1	1	365	1
SD	0	1	10	0	1	60	0
TN	0	1	0	0	0	0	1
TX	0	1	30	0	1	180	1
UT	0	1	30	0	1	120	1
VT	0	1	7	1	0	0	1
VA	0	1	30	0	0	0	0
WA	0	1	20	0	0	0	1
WV	0	1	30	0	0	0	1
WI	0	1	0	1	1	900	1
WY	0	1	45	0	1	75	1

Source: Various state statutes; authors' determinations.

Table A-2: Executive Review of Regulations (Data)

State	Is this review in place?	All rules	Economic trigger for review	Small business trigger	Other trigger	Required via executive action	Attorney general review	Governor review	Lieutenant governor review	Budget/ mgmt. department review	Executive branch department review	Review for legality	Review for economic effects	Review of fiscal impacts
AL	1	0	0	0	1	1	0	1	0	0	0	0	0	0
AK	1	1	0	0	0	0	1	1	1	0	0	1	0	0
AZ	1	1	0	0	0	0	1	1	0	0	0	1	1	0
AR	1	1	0	0	0	1	0	1	0	0	0	0	1	0
CA	1	1	0	0	0	0	0	1	0	1	1	1	1	1
CO	1	1	0	0	0	0	1	0	0	0	1	1	1	1
CT	1	1	0	0	0	1	1	1	0	1	0	1	0	0
DE	0	0	0	0	0	0	0	0	0	0	1	0	0	0
FL	1	1	0	1	0	1	0	1	0	0	0	0	1	0
GA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HI	1	1	0	0	0	1	1	1	0	1	1	0	1	0
ID	1	1	0	0	0	1	0	1	0	1	1	1	1	1
IL	0	0	0	0	0	0	0	0	0	0	0	0	0	0
IN	1	1	1	0	0	1	1	1	0	1	0	1	1	1
IA	1	1	0	0	0	0	0	1	0	0	0	1	0	0
KS	1	1	0	0	0	0	1	0	0	1	0	1	1	1
KY	1	0	0	0	1	0	0	1	0	0	0	0	0	0
LA	1	0	0	0	1	0	0	1	0	0	0	0	0	0
ME	1	1	0	0	0	0	1	0	0	0	0	1	0	0
MD	1	1	0	1	1	0	1	1	0	0	1	1	1	0
MA	1	0	0	0	0	1	0	0	0	1	0	0	1	0
MI	1	1	0	0	0	1	0	0	0	1	1	0	1	0
MN	1	0	0	0	1	0	0	1	0	0	0	0	0	0
MS	1	0	0	0	1	0	1	1	0	0	0	0	1	0
MO	1	1	0	0	0	1	0	1	0	0	0	0	0	0
MT	1	1	0	0	0	0	0	0	0	0	1	1	0	0
NE	1	1	0	0	0	0	1	1	0	0	0	1	1	1
NV	1	0	0	1	0	0	0	0	0	0	1	0	1	0
NH	1	0	0	0	0	0	1	0	0	0	0	0	0	0
NJ	1	1	0	0	0	0	0	0	0	0	1	0	0	0

Table A-2 (continued)

State	Is this review in place?	All rules	Economic trigger for review	Small business trigger	Other trigger	Required via executive action	Attorney general review	Governor review	Lieutenant governor review	Budget/ mgmt. department review	Executive branch department review	Review for legality	Review for economic effects	Review of fiscal impacts
NM	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NY	1	0	1	0	0	0	0	0	0	0	1	1	0	0
NC	1	0	1	0	0	0	0	0	0	1	0	0	1	1
ND	1	1	0	0	0	0	1	0	0	0	0	1	0	0
OH	1	0	0	1	1	0	0	1	0	0	0	0	1	0
OK	1	1	0	1	0	1	0	1	0	0	1	0	1	1
OR	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PA	1	1	0	0	0	1	1	1	0	1	1	1	1	1
RI	1	1	0	0	0	1	0	1	0	1	0	0	1	0
SC	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SD	1	1	0	0	0	0	0	0	0	1	1	0	0	1
TN	1	1	0	0	0	0	1	0	0	0	0	1	0	0
TX	1	0	0	0	0	1	0	1	0	0	0	0	1	1
UT	1	1	0	0	0	1	0	1	0	0	0	1	0	0
VT	1	1	0	0	0	0	0	0	0	0	1	0	0	0
VA	1	1	0	0	0	1	1	1	0	1	0	1	1	1
WA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
WV	1	1	0	0	0	1	0	1	0	0	0	0	0	0
WI	1	1	0	0	0	0	0	1	0	0	1	1	0	0
WY	1	1	0	0	0	1	0	1	0	0	0	1	0	0

Source: Various state statutes; authors' determinations.

Table A-3: Legislative Review of Regulations (Data)

State	Is this review in place?	All rules	Standing committee	Legislative hearing required	Rule review committee	Full chamber	Committee has veto power	Full chamber has veto power	If yes, is governor's signature required?	Full chamber must affirmatively approve	Economic threshold
AL	1	1	0	1	1	0	1	1	1	0	0
AK	1	0	1	0	0	0	0	0	0	0	0
AZ	1	0	0	0	1	0	0	0	0	0	0
AR	1	1	1	0	1	0	1	0	0	0	0
CA	0	0	0	0	0	0	0	0	0	0	0
CO	1	1	0	0	1	1	0	1	1	1	0
CT	1	1	1	0	1	1	1	1	0	0	0
DE	0	0	0	0	0	0	0	0	0	0	0
FL	1	1	1	0	1	1	0	0	0	1	1
GA	1	1	1	1	0	1	0	1	1	0	0
HI	0	0	0	0	0	0	0	0	0	0	0
ID	1	0	1	0	0	1	0	1	0	1	0
IL	1	1	0	0	1	1	1	1	0	0	0
IN	1	0	0	0	1	0	0	0	0	0	0
IA	1	0	1	0	1	1	0	1	0	0	0
KS	1	1	0	0	1	0	0	0	0	0	0
KY	1	1	1	1	1	0	0	0	0	0	0
LA	1	1	1	0	0	1	0	1	0	0	0
ME	1	0	1	0	0	1	0	1	1	1	0
MD	1	1	0	0	1	0	0	0	0	0	0
MA	0	0	0	0	0	0	0	0	0	0	0
MI	1	1	1	0	1	1	0	1	1	0	0
MN	1	0	1	0	0	0	0	0	0	0	0
MS	0	0	0	0	0	0	0	0	0	0	0
MO	1	1	0	0	1	1	0	1	1	0	0
MT	1	1	1	0	0	0	0	0	0	0	0
NE	1	1	1	0	0	0	0	0	0	0	0
NV	1	1	0	0	1	0	1	0	0	0	0
NH	1	1	1	0	1	1	0	1	1	0	0
NJ	1	1	1	0	0	0	0	1	0	0	0

Table A-3 (continued)

State	Is this review in place?	All rules	Standing committee	Legislative hearing required	Rule review committee	Full chamber	Committee has veto power	Full chamber has veto power	If yes, is governor's signature required?	Full chamber must affirmatively approve	Economic threshold
NM	0	0	0	1	0	0	0	0	0	0	0
NY	1	0	0	0	1	0	0	0	0	0	0
NC	1	0	0	0	0	1	0	1	1	0	0
ND	1	1	0	0	1	0	1	0	0	0	0
OH	1	1	0	0	1	1	0	1	0	0	0
OK	1	1	1	0	1	1	0	1	1	0	0
OR	1	0	1	0	1	0	0	0	0	0	0
PA	1	1	1	0	0	1	0	1	1	0	0
RI	0	0	0	0	0	0	0	0	0	0	0
SC	1	1	1	0	0	1	0	1	1	0	0
SD	1	1	0	0	1	0	0	0	0	0	0
TN	1	1	0	1	1	1	0	0	0	1	0
TX	1	1	1	0	0	0	0	0	0	0	0
UT	1	1	1	0	1	1	0	0	0	1	0
VT	1	1	1	0	1	0	0	0	0	0	0
VA	1	0	1	0	1	0	0	1	1	0	0
WA	1	1	0	0	1	0	0	0	0	0	0
WV	1	1	1	0	1	1	0	1	0	1	0
WI	1	1	1	0	1	1	1	1	1	1	1
WY	1	1	1	0	1	1	0	1	1	0	0

Source: Various state statutes; authors' determinations.

Table A-4: Independent Agency Review (Data)

State	Is this review in place?	All rules	Economic threshold	Small business threshold	Does agency have veto power?	Can it return rules?	Can it delay rules?
AL	0	0	0	0	0	0	0
AK	0	0	0	0	0	0	0
AZ	0	0	0	0	0	0	0
AR	0	0	0	0	0	0	0
CA	0	0	0	0	0	0	0
CO	0	0	0	0	0	0	0
CT	0	0	0	0	0	0	0
DE	0	0	0	0	0	0	0
FL	0	0	0	0	0	0	0
GA	0	0	0	0	0	0	0
HI	0	0	0	0	0	0	0
ID	0	0	0	0	0	0	0
IL	0	0	0	0	0	0	0
IN	1	0	0	1	0	0	0
IA	0	0	0	0	0	0	0
KS	0	0	0	0	0	0	0
KY	0	0	0	0	0	0	0
LA	1	0	1	0	1	1	1
ME	0	0	0	0	0	0	0
MD	0	0	0	0	0	0	0
MA	0	0	0	0	0	0	0
MI	0	0	0	0	0	0	0
MN	1	0	0	0	0	0	1
MS	1	0	0	1	0	0	0
MO	1	0	1	1	0	0	0
MT	0	0	0	0	0	0	0
NE	0	0	0	0	0	0	0
NV	0	0	0	0	0	0	0
NH	0	0	0	0	0	0	0
NJ	0	0	0	0	0	0	0
NM	1	0	0	1	0	0	0
NY	0	0	0	0	0	0	0

Table A-4 (continued)

State	Is this review in place?	All rules	Economic threshold	Small business threshold	Does agency have veto power?	Can it return rules?	Can it delay rules?
NC	1	1	0	0	0	1	1
ND	0	0	0	0	0	0	0
OH	0	0	0	0	0	0	0
OK	1	0	1	0	0	0	0
OR	1	0	0	0	0	0	0
PA	1	1	0	0	0	0	1
RI	1	1	0	0	0	0	0
SC	1	0	1	1	0	0	0
SD	0	0	0	0	0	0	0
TN	0	0	0	0	0	0	0
TX	0	0	0	0	0	0	0
UT	0	0	0	0	0	0	0
VT	0	0	0	0	0	0	0
VA	0	0	0	0	0	0	0
WA	0	0	0	0	0	0	0
WV	0	0	0	0	0	0	0
WI	1	0	0	1	0	0	0
WY	0	0	0	0	0	0	0

Source: Various state statutes; authors' determinations.

Table A-5: Impact Analysis Requirements

State	Is there any analysis requirement?	All rules	Economic trigger	Small business analysis	Required via executive order	Required via legislation	Consider problem/need for regulation/market failure	Consider alternatives	Consider budgetary effects	Consider compliance costs	Consider job impact
AL	1	0	1	1	0	1	1	1	1	1	1
AK	1	0	1	0	0	1	0	0	1	0	0
AZ	1	1	0	1	0	1	1	1	1	1	1
AR	1	1	1	0	0	1	1	1	1	1	0
CA	1	1	1	0	0	1	0	1	1	1	1
CO	1	0	0	1	0	1	1	1	1	1	1
CT	1	1	1	1	1	1	1	1	1	1	1
DE	1	0	1	1	0	1	1	1	0	1	0
FL	1	0	1	1	1	1	0	1	1	1	1
GA	0	0	0	0	0	0	0	0	0	1	0
HI	1	1	0	1	1	1	1	1	1	1	0
ID	1	1	1	0	1	1	1	1	1	1	0
IL	1	0	0	1	0	1	0	1	0	1	1
IN	1	1	1	1	0	1	0	1	1	1	0
IA	1	1	1	1	0	1	1	1	1	1	1
KS	1	1	1	0	0	1	0	0	1	1	0
KY	1	1	0	0	0	1	1	0	1	1	0
LA	1	1	0	1	0	1	1	1	1	1	1
ME	1	0	1	1	0	1	1	1	1	1	1
MD	1	1	0	1	0	1	1	1	1	0	0
MA	1	1	0	1	1	1	1	1	1	1	0
MI	1	1	0	1	0	1	1	1	1	1	0
MN	1	1	0	0	0	1	1	1	1	1	0
MS	1	1	1	1	0	1	1	1	1	1	0
MO	1	0	1	1	0	1	0	1	1	1	0
MT	1	0	0	1	0	1	0	1	1	0	0
NE	1	1	0	0	0	1	1	0	1	1	0
NV	1	1	0	1	0	1	1	1	1	0	0
NH	1	1	0	1	0	1	0	0	1	1	0
NJ	1	1	0	1	0	1	1	1	0	1	1

Table A-5 (continued)

State	Is there any analysis requirement?	All rules	Economic trigger	Small business analysis	Required via executive order	Required via legislation	Consider problem/need for regulation/market failure	Consider alternatives	Consider budgetary effects	Consider compliance costs	Consider job impact
NM	1	0	0	0	1	0	1	1	0	1	0
NY	1	1	0	1	0	1	1	1	1	1	1
NC	1	0	1	0	0	1	1	1	1	1	0
ND	1	0	1	1	0	1	0	1	1	0	0
OH	1	1	0	0	0	1	1	0	1	1	0
OK	1	1	0	1	0	1	1	1	1	1	0
OR	1	1	0	1	0	1	0	1	1	1	0
PA	1	1	0	0	1	1	1	1	1	1	0
RI	1	1	0	1	1	1	1	1	0	1	1
SC	1	1	1	1	0	1	1	1	1	1	1
SD	1	1	0	1	0	1	1	1	1	1	0
TN	1	1	1	1	0	1	0	1	1	1	0
TX	1	1	1	1	0	1	0	1	1	1	1
UT	1	1	0	1	0	0	1	0	1	1	0
VT	1	1	0	1	0	1	1	1	0	1	0
VA	1	1	0	1	0	1	0	1	1	1	1
WA	1	0	1	1	0	1	1	1	0	1	1
WV	1	1	0	0	0	1	1	0	1	1	0
WI	1	1	0	1	0	1	1	1	1	1	1
WY	0	0	0	0	0	0	0	0	0	0	0

Table A-5 (continued from last column on p. 54)

State	Distributional analysis	Consider impact on competition	Cost-benefit analysis	Agency conducts analysis	Executive branch office conducts analysis	Legislative branch office conducts analysis	Maximize net benefits	Benefits must exceed costs	Lowest-cost alternative chosen/most cost-effective
AL	1	1	1	1	0	0	1	0	1
AK	0	0	0	1	0	0	0	0	0
AZ	1	1	1	0	1	0	0	1	1
AR	0	0	1	1	0	0	0	0	0
CA	1	0	1	1	0	0	0	0	1
CO	1	1	1	1	0	0	0	0	0
CT	1	0	1	1	0	0	0	0	0
DE	1	0	0	1	0	0	0	0	0
FL	1	1	1	1	0	0	1	0	1
GA	0	0	0	0	0	0	0	0	0
HI	1	0	0	1	0	0	0	0	0
ID	0	0	1	1	0	0	0	0	0
IL	1	0	1	1	1	0	0	0	0
IN	0	0	1	1	1	0	0	0	1
IA	1	1	1	1	0	0	0	0	1
KS	1	0	1	1	1	0	0	0	1
KY	1	0	1	1	0	0	0	0	0
LA	1	1	1	1	0	0	0	0	0
ME	1	0	1	1	0	0	0	0	0
MD	1	0	1	1	1	0	0	0	0
MA	0	1	1	1	0	0	0	1	0
MI	1	1	1	1	0	0	0	0	1
MN	1	0	0	1	0	0	0	0	0
MS	0	0	1	1	0	0	0	0	0
MO	1	0	0	1	0	0	0	0	0
MT	1	0	1	1	0	0	0	0	0
NE	1	0	0	0	0	0	0	0	0
NV	0	0	1	1	0	0	0	0	0
NH	0	0	1	0	0	1	0	0	0
NJ	1	0	0	1	0	0	0	0	0

Table A-5 (continued from last column on p. 54)

State	Distributional analysis	Consider impact on competition	Cost-benefit analysis	Agency conducts analysis	Executive branch office conducts analysis	Legislative branch office conducts analysis	Maximize net benefits	Benefits must exceed costs	Lowest-cost alternative chosen/most cost-effective
NM	0	0	1	0	0	0	0	0	1
NY	1	0	1	1	0	0	0	0	1
NC	1	0	1	1	1	0	0	0	0
ND	1	0	0	1	0	0	0	0	0
OH	0	0	0	1	0	0	0	0	0
OK	1	0	1	1	0	0	0	0	0
OR	0	0	0	1	0	0	0	0	0
PA	1	1	1	1	1	0	0	1	0
RI	1	0	1	1	0	0	0	0	1
SC	1	1	1	1	1	0	1	0	1
SD	1	0	0	1	1	0	0	0	0
TN	1	1	0	1	0	0	0	0	0
TX	0	0	1	1	0	0	0	0	0
UT	1	0	0	1	0	1	0	0	0
VT	1	0	1	1	0	0	0	0	0
VA	1	0	0	0	1	0	0	0	0
WA	0	0	1	1	0	0	0	1	1
WV	0	0	0	1	0	1	0	0	0
WI	1	1	1	1	1	0	0	0	0
WY	0	0	0	0	0	0	0	0	0

Source: Various state statutes; authors' determinations.

Table A-6: Periodic Review Requirements

State	Is there periodic review?	All rules	How often	Assess need for rule	Assess legal basis	Discretionary/mandated by law	Fast-track repeal	Sunset provision	Sunset term (years)	All rules expire at once	Staggered expiration	Agency reauthorization	Legislative reauthorization	Petition to review rules		Executive order
			are rules reviewed (years)?											PAYGO		
AL	1	1	5	0	0	0	0	0	0	0	0	0	0	1	0	0
AK	1	1	1	1	0	0	0	0	0	0	0	0	0	1	0	0
AZ	1	1	5	1	1	1	0	1	0	0	1	1	0	1	1	1
AR	1	1	12	1	1	0	1	1	12	0	1	1	1	1	0	0
CA	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
CO	1	1	0	1	0	0	0	1	1	0	1	0	1	1	0	0
CT	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
DE	1	1	4	0	0	0	0	0	0	0	0	0	0	1	0	0
FL	0	0	0	0	0	0	0	1	5	0	1	1	0	1	0	0
GA	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
HI	1	0	2	0	1	0	0	0	0	0	0	0	0	1	0	0
ID	1	1	1	0	0	0	0	1	1	1	1	1	1	1	1	1
IL	1	1	5	0	0	0	0	1	0	0	0	0	0	0	0	0
IN	1	1	7	0	1	0	0	1	7	0	1	1	0	1	0	0
IA	1	1	5	1	1	0	0	0	0	0	0	0	0	1	0	0
KS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
KY	1	0	7	0	1	0	0	1	7	0	1	1	0	1	0	0
LA	1	0	6	0	0	0	0	0	0	0	0	0	0	1	0	0
ME	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
MD	1	1	8	1	1	1	0	0	0	0	0	0	0	0	0	0
MA	1	1	12	1	0	0	0	0	0	0	0	0	0	1	0	0
MI	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
MN	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
MS	1	1	5	1	0	0	0	0	0	0	0	0	0	1	0	0
MO	1	1	5	1	0	0	0	1	5	0	1	1	0	1	0	0
MT	1	1	2	0	0	0	0	0	0	0	0	0	0	1	0	0
NE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NV	1	1	10	0	0	0	0	0	0	0	0	0	0	0	0	0
NH	1	1	10	0	0	0	0	1	10	0	1	1	0	1	0	0
NJ	1	1	7	0	0	0	0	1	7	0	1	1	0	1	0	0
NM	1	1	3/5	1	0	0	0	0	0	0	0	0	0	1	0	0
NY	1	1	5	1	1	0	0	0	0	0	0	0	0	0	0	0
NC	1	1	1/10	1	0	0	0	1	10	0	1	0	0	0	0	0

Table A-6 (continued)

State	Is there periodic review?	All rules	How often are rules reviewed (years)?	Assess need for rule	Assess legal basis	Discretionary/mandated by law	Fast-track repeal	Sunset provision	Sunset term (years)	All rules expire at once	Staggered expiration	Agency reauthorization	Legislative reauthorization	Petition to review rules	PAYGO	Executive order
ND	1	0	0	0	0	0	1	0	0	0	0	0	0	1	0	0
OH	1	1	5	1	0	0	0	0	0	0	0	0	0	0	1	0
OK	1	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1
OR	1	1	5	1	1	1	0	0	0	0	0	0	0	1	0	0
PA	1	0	0	1	1	0	0	0	0	0	0	0	0	1	0	0
RI	1	1	5	1	0	0	0	1	5	1	0	1	0	0	0	0
SC	1	1	5	1	0	0	0	0	0	0	0	0	0	1	0	0
SD	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
TN	1	0	0	0	0	0	0	1	1	1	0	0	1	1	0	0
TX	1	1	4	1	0	0	0	0	0	0	0	0	0	0	1	0
UT	1	1	5	1	1	0	0	1	1	1	0	0	1	0	0	0
VT	1	0	6	0	0	0	0	1	1	0	0	0	0	1	0	0
VA	1	1	4	1	1	0	1	0	0	0	0	0	0	1	0	0
WA	1	0	0	1	1	0	0	0	0	0	0	0	0	1	0	0
WV	1	1	5	1	0	0	0	1	5	0	1	0	1	0	0	0
WI	1	1	2	1	1	0	1	0	0	0	0	0	0	1	0	0
WY	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0

Source: Various state statutes; authors' determinations.