

## Constructing a Red Tape Reduction Executive Order

*James Broughel*

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The term “red tape” describes outdated, unnecessary, or otherwise excessively burdensome regulations that do more harm than good. Whereas some regulations are justified, red tape imposes unnecessary costs on society, is often regressive, slows economic growth, and limits upward mobility for the most disadvantaged in society.

Without the necessary procedures in place to constrain red tape, it gets out of hand. Regulators have incentives to write regulations, but very often they have little or no incentive to review or remove old regulations that have outlived their usefulness. Furthermore, regulations create constituencies that benefit from the regulations’ continued existence, and these constituencies fight to preserve regulations once enacted,<sup>1</sup> even when those regulations are causing problems. Because of these imbalances, more regulations generally get added to the lawbooks each year than are taken away, and as a result, the body of law in a jurisdiction grows larger and more complicated. This process, called regulatory accumulation, slows innovation and limits growth. Thus, it is critical that governments implement procedures to review and remove red tape that accumulates over time, lest the regulatory system and, by extension, the economy grow more sclerotic and dysfunctional.

One way to constrain red tape is through the issuance of a red tape reduction executive order, which is the focus of this policy brief. This report outlines six key steps of a successful red tape cutting reform,<sup>2</sup> as identified in previous research from the Mercatus Center at George Mason University.<sup>3</sup> Each of these steps is described in detail, and examples are presented in tables listing original sources where legislative or executive order language can be found that addresses the relevant step of the red tape cutting process. More detailed references to legal language are available in the source notes of the tables. This language should prove useful to governors, their staffs, and lawmakers who are interested in limiting red tape.

## ADOPT A SIMPLE MEASURE

Any effort to cut red tape should start with a measure of regulation so that reformers can track their progress. However, tradeoffs inevitably arise between simple and more complicated metrics.<sup>4</sup> A complicated measure, such as regulatory cost, could be hard to apply broadly to many policies, because very few policies have credible cost estimates. A more easily applied measure, however, may only roughly approximate the true regulatory burden. The optimal tradeoff might be to use simple measures applied broadly to as many laws as possible, but to supplement them with more complicated measures on a case-by-case basis (for example, for some of the largest individual regulations).

Some states, such as Idaho and Missouri,<sup>5</sup> have opted to measure regulatory restrictions, which are counted in the Mercatus Center’s State RegData dataset.<sup>6</sup> A restriction is an instance of terms such as “shall” or “must” in state law.<sup>7</sup> States such as Ohio and Oklahoma have also used variants of the regulatory restriction metric in their reforms (see table 1). Meanwhile, other states, such as Virginia, have tasked regulatory agencies with producing a manual count of all regulatory requirements on their books. This approach requires more time and effort to produce, because it involves reading through an agency’s policies, but may result in a metric that is less easy to manipulate than a keyword search and a more meaningful proxy for regulatory burden.

**Table 1. Examples of Simple Measures for Quantifying State or Provincial Regulations**

| JURISDICTION     | DESCRIPTION   |
|------------------|---|
| British Columbia | Uses “regulatory requirement” as its primary measure of regulation. <sup>a</sup> Government employees count the regulatory requirements in legislation, regulations, and policy documents, such as guidance documents.              |
| Manitoba         | Uses “regulatory requirement” as its primary measure of regulation. <sup>b</sup> Government employees count the regulatory requirements in legislation, regulations, and policy documents, such as guidance documents. <sup>c</sup> |
| Ohio             | Uses “regulatory restriction” as its primary measure of regulation. Regulatory restrictions are instances of the terms “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit.” <sup>d</sup>                             |
| Oklahoma         | Uses “regulatory restriction” as its primary measure of regulation. Regulatory restrictions are instances of the words “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit.” <sup>e</sup>                             |
| Virginia         | Uses “regulatory requirement” as its primary measure of regulation. Only the regulatory requirements in discretionary administrative regulations are counted. <sup>f</sup>  |

Note: The definition of “regulatory restriction” used by Ohio and Oklahoma differs slightly from the definition used for RegData.

Sources: <sup>a</sup> For British Columbia, “regulatory requirement” means “an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges.” Laura Jones, “Lessons from the British Columbia Model of Regulatory Reform” (Testimony before the House Committee on Oversight and Government Reform, Subcommittee on Healthcare, Benefits, and Administrative Rules and Subcommittee on Intergovernmental Affairs, Mercatus Center at George Mason University, Arlington, VA, September 27, 2018), 2.

<sup>b</sup> For Manitoba, “regulatory requirement” means “a requirement in a regulatory instrument for a person to take an action in order to (a) access a program or service offered by the government or a government agency; (b) carry on business; or (c) participate in a regulated activity.” “Regulatory instrument” means “(a) a statute; (b) a regulation; or (c) a policy or form that is made or approved by the government or a government agency.” B. 22, 41st Leg., 2nd Sess. (Man. 2017).

<sup>c</sup> A 2020 report from the Manitoba government notes that “62% of all regulatory requirements in 2019-2020 are found in forms, 20% in policies, 12% in regulations and 6% in statutes.” Manitoba Government, Regulatory Accountability Secretariat, *Manitoba Regulatory Accountability Report*, September 2020, 7.

<sup>d</sup> H. B. 166, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>e</sup> Oklahoma Exec. Order No. 2020-03 (February 3, 2020).

<sup>f</sup> For Virginia, “regulatory requirement” means “any action required to be taken or information required to be provided in accordance with a statute or regulation in order to access government services or operate and conduct business.” H. B. 883, 2018 Reg. Sess. (Va. 2018).

Another benefit of a simple measure is that some jurisdictions, such as British Columbia, apply their measure to a broad range of policies beyond just regulation, including legislation and policy documents. Virginia, by contrast, focuses more narrowly on requirements in those administrative regulations that were within the discretion of the regulating agency to change and were not mandated by statute.

## CREATE A BASE INVENTORY

Just as a ship captain needs a compass, a red tape cutter needs a guide for his or her journey. If a president, governor, legislator, or regulator’s goal is to reduce regulation levels, then he or she needs to know the direction he or she is heading. An initial count of all the regulations on the books, using the measure identified in the previous section, is a critical first step. This initial count is sometimes referred to as a “base inventory,” and it tells reformers where they are and helps them get to where they want to go.

To produce a base inventory, an initial review must be conducted. As part of this review, it can be helpful to classify regulatory requirements or restrictions by whether they are mandated by state or federal law or exist at the discretion of the regulating agency. Ohio and Virginia have chosen to classify their regulations in this way when establishing their base inventories. Arizona’s five-year review process also requires classification of rules by whether they are mandatory or discretionary (see table 2).

| JURISDICTION | LANGUAGE AND DESCRIPTION  |
|--------------|---|
| Arizona      | Arizona statutes require a five-year review process, following which reviewers must report “Authorization of the rule by existing statutes.” <sup>a</sup> In subsequent reporting, this has been interpreted to mean identifying the original authority of regulations, including determining whether regulations are discretionary or if they are mandated by state or federal law. <sup>b</sup>   |
| Ohio         | “Not later than December 31, 2019, a state agency shall review its existing rules to identify rules having one or more regulatory restrictions that require or prohibit an action and prepare a base inventory of the regulatory restrictions in its existing rules.” Baseline catalogs must identify “Whether state or federal law expressly and specifically requires the agency to adopt the regulatory restriction or the agency adopted the regulatory restriction under the agency’s general authority.” <sup>c</sup> |
| Virginia     | “All executive branch agencies subject to the Administrative Process Act shall develop a baseline regulatory catalog and report their catalog data, and any specific federal or state mandates or statutory authority that require the regulations and associated regulatory requirements, to the Department [of Planning and Budget].” <sup>d</sup>  |

Sources: <sup>a</sup> ARIZ. REV. STAT. ANN. § 41-1056 (2020).

<sup>b</sup> James Broughel and Catherine Konieczny, “Regulator Discretion at the State Level: The Case of Arizona” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, June 2018).

<sup>c</sup> H. B. 166, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>d</sup> H. B. 883, 2018 Reg. Sess. (Va. 2018).

## SET A REDUCTION TARGET

To return to the ship analogy, a regulatory reform without a goal is like a captain sailing aimlessly without a destination in mind. Regulatory agencies involved in efforts to cut red tape need a goal so that they have something to aspire toward and so that they know when they have succeeded. Whereas it is ultimately a political decision as to what the appropriate goal should be, several factors can inform the decision as to how much red tape is the appropriate amount to cut.

Ohio has more than 100,000 more regulatory restrictions than the average state, according to State RegData.<sup>8</sup> In response to this information, Ohio legislators proposed a 30 percent reduction (see table 3), which would have put its number of regulatory restrictions closer to that of the average state and also nearer to its close competitor Pennsylvania.<sup>9</sup>

This 30 percent reduction goal is similar to goals in other jurisdictions, most notably British Columbia (33 percent),<sup>10</sup> Kentucky (30 percent),<sup>11</sup> Missouri (33 percent),<sup>12</sup> and Oklahoma (25 percent).<sup>13</sup> Thus, it seems that many governments believe that cutting regulation by somewhere near one-third is a realistic goal. Rhode Island cut its regulations by 31 percent in terms of rule pages,<sup>14</sup> and Idaho and Missouri cut their regulatory restrictions by 37 percent and 30 percent, respectively,<sup>15</sup> so these goals may not be out of reach.

Another factor to consider is whether the reduction target should apply broadly across the whole government or whether each agency should have to meet a unique target. States such as Idaho and Missouri have achieved substantial reductions in their regulatory codes, but the reductions vary greatly by agency. If a single, across-the-board reduction is too blunt a tool, a reduction tar-

**Table 3. Examples of Regulatory Reduction Targets**

| JURISDICTION | TARGET   |
|--------------|--|
| Florida*     | 35 percent <sup>a</sup>                                  |
| Mississippi* | 30 percent (pilot program at four agencies) <sup>b</sup> |
| Oklahoma     | 25 percent <sup>c</sup>                                  |
| Ohio*        | 30 percent <sup>d</sup>                                  |
| Virginia     | 25 percent (pilot program at two agencies) <sup>e</sup>  |

\* Introduced in legislation but, as of early 2021, not passed into law.

Sources: <sup>a</sup> “The committee may not approve an exemption request or a rule replacement request that provides fewer than two rules for repeal or replacement until the total number of rules is 35 percent below the regulatory baseline.” H. B. 729, Reg. Sess. (Fla. 2020).

<sup>b</sup> “Each pilot agency shall amend or repeal regulations, rules or guidance documents in its base inventory as necessary to reduce the total number of regulatory requirements by thirty percent (30%).” H. B. 1422, Reg. Sess. (Miss. 2020).

<sup>c</sup> “Whenever an agency proposes one (1) new restriction through the permanent rulemaking process, it shall identify at least two (2) existing regulatory restrictions to be revoked (1-in-2-out) until the total number of regulatory restrictions is 25% percent below the regulatory baseline.” Oklahoma Exec. Order No. 2020-03 (February 3, 2020).

<sup>d</sup> “A state agency shall amend or rescind rules identified in its base inventory of regulatory restrictions as necessary to reduce the total number of regulatory restrictions by thirty per cent, according to the following schedule: (a) A ten per cent reduction not later than December 31, 2020; (b) A twenty per cent reduction not later than December 31, 2021; and (c) The thirty per cent reduction not later than December 31, 2022.” S. B. 1, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>e</sup> “Each pilot agency shall also initiate reforms, through a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 25 percent reduction of the regulations and regulatory requirements contained in its baseline regulatory catalog.” H. B. 883, 2018 Reg. Sess. (Va. 2018).

get could be an average goal that is exceeded at some agencies but not at others. Or there could be a process for agencies to explain why they should be exempt from meeting the target.<sup>16</sup> In either case, some kind of oversight body may need to possess the authority to determine which agencies need to cut and by how much and when exemptions should be allowed. This idea will be discussed in the next section.

Some states, such as Virginia, have targets that apply only to discretionary regulations—that is, regulations that can be amended or repealed without further legislative changes. If agencies fail to meet their reduction goals, Virginia law provides that a one-in, two-out provision will be considered as a backup (see table 3).<sup>17</sup>

### **CREATE AN OVERSIGHT AUTHORITY**

Regulatory agencies may try to game the red tape cutting process in several ways. First, they may claim that certain regulations are being repealed as a result of a red tape review, when in fact the same rules would have been repealed even in absence of any such review. Second, agencies may try to combine rules or requirements, for example, by eliminating instances of “shall” and “must” in regulatory language, without changing the substance of requirements. Third, they may try to incorporate by reference certain regulations. This means that text is removed from state laws, but a citation is left in the text to other laws, so that the result is less text but no change in legal requirements.

Each of these actions is not in the spirit of a sincere red tape reduction effort. As such, an oversight authority is needed to ensure that regulatory cuts are substantive. This authority could be a commission created by the governor or the legislature, as existed in Illinois and New Jersey in the past (see table 4). Or it could be a state agency like the state budget department in Idaho or Virginia.

Personnel matter too. In New Jersey and Illinois, red tape commissions have been populated mostly with political personnel, some of whom have been legislators or legislators’ designees. In Idaho, the director of the Division of Financial Management has overseen reforms, and in Virginia this job has been performed by the Department of Planning and Budget, which is overseen by the secretary of finance. Idaho has also established rules review officers within each department, people whose specific mission is to “undertake a critical and comprehensive review of the agency’s administrative rules to identify costly, ineffective, or outdated regulations.”<sup>18</sup>

Whoever is put in charge should produce annual reports on the progress of reforms. Reporting should track the amount of regulation by department or agency, include stories of problematic regulations that have been repealed (which is useful for communicating the results of reforms to the public), and recommend laws to be modified in order to enact further reforms. Reporting helps build a narrative about what is being accomplished by reforms and documents successes and challenges for the historical record.

| Table 4. Examples of Regulatory Oversight Bodies |   |
|--|---|
| JURISDICTION                                     | OVERSIGHT BODY  |
| Idaho  | Division of Financial Management; rules review officers within agencies. <sup>a</sup> |
| Illinois   | Illinois Competitiveness Council <sup>b</sup>   |
| Manitoba   | Regulatory Accountability Committee <sup>c</sup>                                      |
| New Jersey                                       | Red Tape Review Group (later replaced by Red Tape Review Commission) <sup>d</sup>     |
|  | Government Efficiency and Regulatory Review Commission. <sup>*e</sup>                 |
| Ohio   | Joint Committee on Agency Rule Review <sup>*f</sup>                                   |
| Virginia   | Secretary of Finance; Department of Planning and Budget. <sup>g</sup>                 |

\* Introduced in legislation but, as of early 2021, not passed into law.

Sources: <sup>a</sup> New rule requests are approved by the Division of Financial Management, the state's budget office. The Division of Financial Management "shall produce an annual report to the Governor's office outlining the progress made in eliminating burdensome regulations and streamlining state government." Each executive department must "designate an existing employee of the agency as its Rules Review Officer (RRO) to undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations." Idaho Exec. Order No. 2019-02 (January 21, 2019).

<sup>b</sup> Illinois Exec. Order No. 2016-13 (October 17, 2016).

<sup>c</sup> Regulatory Accountability Act, C.C.S.M., c. R65 (Can.).

<sup>d</sup> New Jersey Exec. Order No. 3 (January 20, 2010); New Jersey Exec. Order No. 41 (September 23, 2010).

<sup>e</sup> Assemb. B. 4810, 219th Leg., First Ann. Sess. (N.J. 2020).

<sup>f</sup> S. B. 1, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>g</sup> "The Department, under the direction of the Secretary of Finance, shall administer a three-year regulatory reduction pilot program beginning July 1, 2018, and ending July 1, 2021." "The Secretary of Finance shall report annually to the Speaker of the House and the Chairman of the Senate Rules Committee no later than October 1, 2019, and October 1, 2020, on the progress of the regulatory reduction pilot program established pursuant to this act." H. B. 883, 2018 Reg. Sess. (Va. 2018).

New Jersey may exemplify a best practice in regulatory oversight and reporting. In 2010, the governor established a bipartisan commission to oversee the effort to reduce red tape, and he took steps to ensure a bipartisan makeup of the commission. The quality of reporting from the commission was quite high,<sup>19</sup> and many of the recommendations in commission reports were later taken up by the legislature and adopted into law.<sup>20</sup> This reform has been judged to be so successful it inspired legislation introduced in late 2020 that would create a permanent, bipartisan Government Efficiency and Regulatory Review Commission that would review all proposed and adopted rules as well as governors' executive orders and issue annual reports to the governor and the legislature.

Manitoba is another jurisdiction that exemplifies a best practice in oversight and reporting. Manitoba's Regulatory Accountability Committee of Cabinet ensures compliance with the province's red tape reduction law. Annual reports from the Regulatory Accountability Secretariat show counts of regulatory requirements, broken down by whether requirements come from forms, policies, regulations, or statutes. Counts are also broken down by agency.<sup>21</sup>

Reporting provides transparency on the size and scope of the regulatory state. Therefore, reporting should be ongoing and should continue even after a reduction target is met. In fact, reporting could be a useful reform in its own right, even if not tied to explicit reduction goals. If it is not politically feasible to implement a red tape cutting reform today, instituting a reporting requirement will make red tape reduction easier in the future when reform is more politically feasible.

## ESTABLISH A PROCESS

One aspect of human nature is resistance to change. As such, regulators are likely to initially resist any change to their routine. However, small changes to the rulemaking process can help motivate regulators and change the culture at agencies so that regular review of old rules becomes a part of regulators’ everyday jobs.

One such process change is a one-in, two-out requirement, whereby for every new rule added to the books, two are removed. Such a policy has several benefits. First, it communicates to regulators that they should be prioritizing reducing burdens over adding new burdens. Therefore, it instructs them to change their focus. Second, it encourages retrospective review of old regulations. Third, over time the policy can change the culture at regulatory agencies such that regular review of existing rules becomes a part of the regulatory culture. Finally, a one-in, two-out requirement is easy for the public to understand, making it a useful rhetorical device to communicate that reducing red tape is a priority of the government. A one-in, two-out policy has been implemented in places such as Idaho, Ohio, and Oklahoma (see table 5).

Other process changes worth considering include building sunset provisions into regulations or mandating the repeal of rule chapters in the code on a set time schedule. The former approach was taken by Governor Rick DeSantis of Florida. In late 2019 he issued a letter to agency heads

**Table 5. Examples of Process Changes to Encourage Culture Change at Agencies**

| JURISDICTION                               | PROCESS   |
|--|---|
| Idaho                                      | One-in, two-out <sup>a</sup>  |
|  | Periodic rule repeal, combined with retrospective analysis <sup>a</sup> |
| Oklahoma                                   | One-in, two-out <sup>b</sup>  |
| Ohio                                       | One-in, two-out <sup>c</sup>  |
| Florida                                    | Mandated sunset provisions for new rules <sup>d</sup>                   |
| US Department of Health and Human Services | Mandated sunset provisions for new and existing rules <sup>e</sup>      |

Sources: <sup>a</sup> “At least two existing rules to be repealed or significantly simplified, or a statement clearly and thoroughly stating why existing rules cannot be simplified or eliminated.” Idaho Exec. Order No. 2019-02 (January 21, 2019). “[The Division of Financial Management] shall ensure the volume of rules that are reviewed by the agencies in any given year is such that the public can engage and provide meaningful input in any individual rulemaking, with approximately twenty percent (20-percent) of rule chapters subject to review each year.” “Prior to the agency review date established by DFM, each agency must publish a notice of proposed rulemaking in accordance with the provisions of the Idaho Administrative Procedure Act . . . to repeal the existing rule chapter. The agency must finalize the chapter repeal as a pending rule for legislative review during the legislative session that coincides with the agency review date.” “The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized, whether those benefits justify the costs of the rule, and whether there are less restrictive alternatives to accomplish the benefits.” Idaho Exec. Order No. 2020-01 (January 16, 2020).

<sup>b</sup> “Whenever an agency proposes one (1) new restriction through the permanent rulemaking process, it shall identify at least two (2) existing regulatory restrictions to be revoked (1-in-2-out) until the total number of regulatory restrictions is 25% percent below the regulatory baseline.” Oklahoma Exec. Order No. 2020-03 (February 3, 2020).

<sup>c</sup> “Beginning on the effective date of this section and ending on June 30, 2023, a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. The state agency may not satisfy this section by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.” H. B. 166, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>d</sup> “All agencies must include a sunset provision in all proposed or amended rules unless otherwise directed by applicable law. The sunset provision may not exceed five years unless otherwise required by existing statute.” Letter from Ron DeSantis, Governor of Florida, to Governor’s Agency Heads (Nov. 11, 2019) (on file with author).

<sup>e</sup> US Department of Health and Human Services, Securing Updated and Necessary Statutory Evaluations Timely, 86 Fed. Reg. 5694 (January 19, 2021).

directing them to build sunset provisions into regulations going forward. The US Department of Health and Human Services also finalized a regulation in early 2021 that builds sunset provisions into the agency’s titles in the *Code of Federal Regulations*. A key difference between these two strategies is that the Florida order mandates that sunset provisions be built into new rules going forward, whereas the federal regulation inserts a sunset provision into the department’s rule titles such that the provision was attached to existing regulations as well.

Idaho has taken a third approach, which is requiring periodic repeal of regulations (referred to as “zero-based regulation”). Through an executive order in 2020, Governor Brad Little required that approximately 20 percent of rule chapters be reviewed each year and that agencies be required to repeal regulatory chapters under their purview as part of these reviews. If the agencies want to replace the rules, they will have to refile chapters as new regulations and justify them with accompanying economic analysis.

## CAP THE CODE

Once a reduction target is met, it is critical that regulatory agencies do not return to business as usual. The natural tendency in government is for the volume of regulation to grow. A final cap is needed to lock in successes that are achieved and to maintain the reduction going forward. A cap also helps promote a permanent change in the culture of government, not just a temporary one.

Regulatory caps can come in several forms (see table 6). First, a one-in, two-out policy that may have accompanied a reduction goal can be converted into a one-in, one-out cap after the reduc-

**Tables 6. Examples of Regulatory Caps**

| JURISDICTION                      | TYPE OF CAP   |
|-----------------------------------|---|
| Executive Office of the President | Cost cap <sup>a</sup>   |
| Idaho                             | Burden cap (may be interpreted as word cap) <sup>b</sup>  |
| Ohio*                             | One-in, one-out cap on restrictions (implemented after reduction target is achieved) <sup>c</sup> |
| Texas                             | One-in, one-out cap on burdens <sup>d</sup>   |

\* Introduced in legislation but, as of early 2021, not passed into law.

Sources: <sup>a</sup> “[A]ny new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” Exec. Order No. 13771, 82 Fed. Reg. 9339 (February 3, 2017).

<sup>b</sup> “The new rule chapter that the agency finalizes must reduce the overall regulatory burden, or remain neutral, as compared to the previous rule chapter.” Idaho Exec. Order No. 2020-01 (January 16, 2020).

<sup>c</sup> “Effective January 1, 2023, the number of regulatory restrictions in this state shall not exceed a number of regulatory restrictions determined by the joint committee on agency rule review in accordance with this section . . . A state agency may not adopt a rule if by adopting the rule the state agency would cause the number of regulatory restrictions to exceed the state limit as determined by the joint committee.” S. B. 1, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>d</sup> “[A] state agency may not adopt a proposed rule for which the fiscal note for the notice . . . states that the rule imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date of the proposed rule the state agency: (1) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (2) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule.” H. B. 1290, 85th Leg., Reg. Sess. (Tex. 2017).



tion target is met. This was the approach taken in British Columbia, for example.<sup>22</sup> A cap could be placed on the costs agencies impose. The Trump administration used this approach, and it seems to have been fairly successful at preventing regulatory creep. Texas also has a one-in, one-out requirement, where the relevant offset is measured in terms of cost. Idaho, after a year of one-in, two-out, imposed a cap on regulatory burden. In practice this may mean that a cap is placed on the total number of words an agency can have in its rules.

## **CONCLUSION**

This policy brief has identified a series of best practices associated with creating a successful red tape cutting reform, and it provides examples of legal language that have been used in previous regulatory reforms, language which may prove useful to governors, regulators, and legislators. Notably, most of the actions described here can be implemented through executive actions, although legislative solutions will surely prove more binding and more enduring.

Each of the steps presented here are important, though jurisdictions should have flexibility to implement each aspect of reform in a way that meets their unique needs and circumstances. Owing to resource constraints, some states might adopt a very simple measure, such as regulatory restrictions, whereas others might choose a more complex one, such as regulatory requirements or costs. Some states might apply reforms broadly to all regulations and policy documents currently in existence; others might focus narrowly on discretionary regulations to start or perhaps home in on a small number of problem agencies as part of a pilot program. Some states might opt for an aggressive reduction target on the order of 30 percent or more; other states might set more modest goals.

Whatever approach a state ultimately chooses, reforms should be transparent, be subject to oversight, and have specific goals from the outset such that the public can monitor progress. Every state should have procedures for constraining red tape. This policy brief has offered a road map for how to do it.

## **ABOUT THE AUTHOR**

James Broughel is a senior research fellow at the Mercatus Center at George Mason University. Broughel has a PhD in economics from George Mason University. He is also an adjunct professor at the Antonin Scalia Law School at George Mason University.

## NOTES

1. Mancur Olson, *The Rise and Decline of Nations* (New Haven, CT: Yale University Press, 1982).
2. Whereas not discussed at length in this policy brief, the preamble to a red tape executive order can also be important, as it helps set the stage for why an executive order is needed to address this problem. For an example of a preamble that constitutes a best practice, see New Mexico Exec. Order No. 2018-055 (December 18, 2018).
3. James Broughel, “A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, April 2017).
4. For example, the Trump administration chose to use a relatively complicated metric—regulatory cost—as part of its regulatory reduction efforts that began in 2017. This notably limited the scope of the reform. See James Broughel and Laura Jones, “Effective Regulatory Reform: What the United States Can Learn from British Columbia” (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, September 2018).
5. Idaho Exec. Order No. 2019-02 (January 21, 2019); Missouri Exec. Order No. 17-03 (January 10, 2017). Note that Idaho has also relied heavily on word counts.
6. QuantGov (website), accessed December 3, 2020, <http://www.quantgov.org>.
7. In State RegData, regulatory restrictions are defined as instances of the words and phrases “shall,” “must,” “may not,” “prohibited,” and “required,” which can signify legal constraints and obligations. Restrictions can also occur in legal text for other purposes, such as for definitional purposes. At times, restrictions may relate to government employees rather than the private sector.
8. James Broughel, Patrick A. McLaughlin, and Michael Kotrous, “Quantifying Regulation in the US States” Mercatus Center at George Mason University, November 13, 2019.
9. For example, according to one article, “Ohio Senate President Larry Obhof today announced the Senate passage of a Senate Bill 1, which he said would eliminate outdated, unnecessary government red tape and bring Ohio’s regulatory environment more in-line with national averages.” “Bill Aimed at Reducing Red Tape Requirements on Business Clears Ohio Senate,” *Richland Source*, May 9, 2019. Sen. Obhof has also said, “We don’t need 100,000 more regulations than other states.” J.D. Davidson, “Ohio Senate President: Regulatory Reform Most Sweeping in Ohio Modern History,” *Center Square*, December 3, 2020.
10. Laura Jones, “Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?” (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, November 2015).
11. Matt Bevin, “State Red Tape Initiative’s Goal Is to Reduce Regs by 30 Percent,” *Paducah Sun*, August 22, 2016.
12. “State Agencies Still Considering Rules Cutbacks,” *News Tribune*, January 14, 2019.
13. “Oklahoma to Reduce Business Requirements to Promote Growth,” *Associated Press*, January 10, 2020.
14. Rhode Island Office of the Governor, “Governor Raimondo Announces Largest Successful Regulatory Reform Effort in State History,” press release, October 15, 2018, <https://www.ri.gov/press/view/34428>.
15. Kofi Ampaabeng et al., “A Policymaker’s Guide to State RegData 2.0” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2020).
16. This is the approach taken in Ohio’s H. B. 115 (2019), for example.
17. “If, by October 1, 2021, the program has achieved less than a 25 percent total reduction in regulations and regulatory requirements across both pilot agencies, either by initiating rulemaking actions or other streamlining actions, then the Secretary of Finance shall report on the feasibility and effectiveness of implementing a 2-for-1 regulatory budget providing that for every one new regulatory requirement, two existing regulatory requirements of equivalent or greater burden must be streamlined, repealed, or replaced for a period not to exceed three years.” H. B. 883, 2018 Reg. Sess. (Va. 2018).
18. Idaho Exec. Order No. 2019-02 (January 21, 2019).

19. For several examples of the Red Tape Review Commission's reports, see Red Tape Review Commission, *Red Tape Review Commission Findings and Recommendations*, February 2012; Red Tape Review Commission, *Red Tape Review Commission Findings and Recommendations*, April 30, 2014.
20. James Broughel, "Cutting Red Tape in the Garden State: New Jersey's Regulatory Reform Program under Governor Chris Christie" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2018).
21. Manitoba Regulatory Accountability Secretariat, *Manitoba Regulatory Accountability Report*, September 2020.
22. Jones, "Cutting Red Tape in Canada."