



# Zero-Based Regulation: A Step-by-Step Guide for States

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## Introduction

Government agencies have a natural tendency to accumulate regulations over time. To adapt a saying, regulations “rise like rockets but fall like feathers.”<sup>1</sup>

States are estimated to directly regulate approximately 20% of the American economy.<sup>2</sup> These regulations can stifle innovation, reduce economic growth, and create a confusing patchwork of requirements that makes it difficult for businesses and individuals to comply.<sup>3</sup> For that reason, new governors often make regulatory reform an early priority of their administrations. But given the sheer volume of existing regulations and the large number of executive-branch agencies with rule-making authority, it can be difficult to figure out how to even begin the reform process.

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The state of Idaho’s “zero-based regulation” program offers a useful model for achieving successful regulatory reform. The key lesson from Idaho’s experience is that, to catalyze statewide regulatory reform, governors first must understand that regulatory agencies have little inherent incentive to eliminate existing regulations, even when those regulations are known to be unnecessary or unworkable. Governors therefore have to construct a system to combat this inertia in order to make a measurable impact on reducing regulatory accumulation and burden.

Idaho’s zero-based regulation program combines four established elements of regulatory reform: sunset provisions, regulatory budgets, regulatory impact analyses, and independent reviews.<sup>4</sup> When consistently applied, these four elements flip the script on regulations. No longer do agencies have to expend significant effort to eliminate a regulation; rather, regulations are eliminated by default, and keeping a regulation requires agencies to affirmatively justify its costs relative to its benefits.

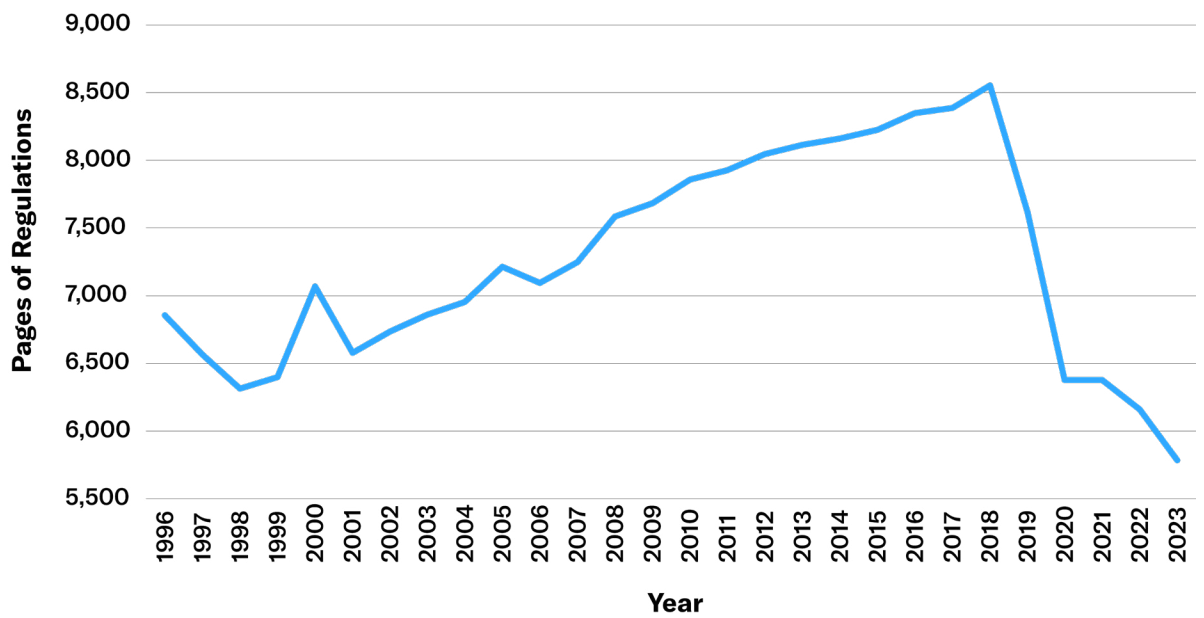


Zero-based regulation has allowed Idaho to eliminate thousands of pages of regulations and substantially reduce actual regulatory burden (**Figure 1**). According to accepted measures of regulatory burden, Idaho is now the least regulated state in the nation.<sup>5</sup>

This paper presents Idaho’s approach to reducing regulations statewide as a step-by-step guide to assist offices of other governors seeking to implement similar initiatives.<sup>6</sup> Importantly, zero-based regulation can largely be implemented through executive action, and thus can be done relatively quickly by a new administration, or it can be enshrined in state administrative law for more durable reform.<sup>7</sup> Zero-based regulation can be phased in piecemeal or adopted in full. Thus, states have many paths to regulatory reform, and elements of zero-based regulation may prove useful to a wide range of states.

**Figure 1**

**Number of Pages of Regulation in Idaho Administrative Code (1996–2023)**



Source: Author’s analysis of data from Idaho Office of the Governor, Division of Financial Management, Office of the Administrative Rules Coordinator, *Idaho Administrative Bulletin 24*, no. 5 (May 1, 2024).

## Overview of Zero-Based Regulation

Zero-based regulation is a twist on zero-based budgeting, which requires agencies to develop a new budget from scratch each budget cycle, with no presumption that the existing base budget is necessary.<sup>8</sup> Similarly, under zero-based regulation, Idaho state agencies must start anew with their regulations every five years and do so with the presumption that existing regulations are unnecessary.

The foundation for zero-based regulation is built by combining four regulatory-process reforms that have proved to be effective in some previous studies:<sup>9</sup>

1. **Sunset provisions.** A sunset provision is a clause that allows a regulation to expire on a certain date unless the agency takes action to renew the regulation prior to that date.
2. **Regulatory budgets.** A regulatory budget sets an overall cap on the volume of regulation (e.g., word count) for an agency and therefore forces the agency to identify and prioritize its most valuable regulations to stay within its volume allotment.<sup>10</sup>
3. **Regulatory impact analyses.** Regulatory impact analysis is a decision-support tool used before a new regulation is adopted; it requires the promulgating agency to provide certain information, such as a cost-benefit analysis or cross-jurisdictional comparison.
4. **OIRA-style independent reviews.** At the federal level, the Office of Information and Regulatory Affairs (OIRA) inside the Office of Management and Budget (OMB) provides an independent regulatory review, bringing fresh eyes to regulations developed by various agencies to ensure that they align with presidential priorities. Some states have created variations of OIRA.

When these measures are combined and consistently enforced, the result is that typical regulatory inertia is inverted in two ways:

1. Elimination of regulations is the default. State agencies must work to justify the regulations that they intend to keep.
2. Less burdensome regulation is the default. The burden of proof is on those agencies attempting to justify a regulation more stringent than other jurisdictions have adopted.

**Table 1** compares zero-based regulation with the traditional model of regulation that exists in most states.

**Table 1**

**Comparison of Traditional Regulation vs. Zero-Based Regulation**

Variable	Traditional Regulation <sup>a</sup>	Zero-Based Regulation
Impetus for action	<ul style="list-style-type: none"> <li>• Regulation is sporadic and initiated at the discretion of the agency.</li> </ul>	<ul style="list-style-type: none"> <li>• Periodic review of regulation is triggered by a sunset provision.</li> <li>• Agencies must actively re-promulgate any regulation that they intend to keep.<sup>11</sup></li> </ul>



Type of change	<ul style="list-style-type: none"> <li>The agency layers incremental changes on top of the current baseline of existing regulations.</li> </ul>	<ul style="list-style-type: none"> <li>The agency performs a comprehensive review of all regulations.</li> <li>The review starts with the presumption that no current regulations are needed.</li> </ul>
Impact on existing rules	<ul style="list-style-type: none"> <li>Existing rules continue on autopilot and are presumed necessary.</li> <li>Accumulation occurs over time, with little incentive to review.</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory cuts are the default as rules expire with inaction.</li> <li>An agency wishing to keep a rule must actively promulgate it anew, requiring justification and approval through a regulatory impact analysis.</li> </ul>
Agency burden of proof for eliminating a regulation	<ul style="list-style-type: none"> <li>The agency needs to justify its intended cuts.</li> <li>In many cases, this leads to bureaucratic inertia and preference for the status quo.</li> </ul>	<ul style="list-style-type: none"> <li>The agency needs to justify what it intends to keep.</li> </ul>

<sup>a</sup> Based on author’s interpretation of James Broughel, “A 50-State Review of Regulatory Procedures,” Mercatus Center, 2022 and James Broughel, “Zero-Based Regulation,” Social Science Research Network, Nov. 9, 2020

While zero-based regulation can be achieved quickly through executive order, it is important to remember that most states do not have a unitary executive branch. States often elect multiple constitutional officers and sometimes have boards overseen by multiple constitutional officers. In such states, executive orders therefore may or may not apply to other separately elected constitutional officers, potentially leaving a gap for such regulations.<sup>12</sup>

Further, state rule-making authority is often vested in appointed boards or commissions, not agency heads. In Idaho, for example, more than 60 different agencies have rule-making authority.<sup>13</sup> In deciding whom to appoint to these positions, it is therefore critical for the governor to vet candidates to ensure that they share the governor’s regulatory philosophy.

Executing zero-based regulation is a multistep process that necessitates active engagement and collaboration between the governor’s office, the independent review agency, executive-branch agencies, the legislature, and the public.

### **Step 1: Shut Off or Slow the Issuance of New Regulations**

Given how long it takes an executive-branch agency to promulgate a new regulation, dozens of proposed regulations are likely under way when any new governor takes office.

A new governor can spend months playing defense, reviewing each of these proposed regulations midstream for conformity to administration policies, or the governor can simply shut off the spigot of new regulations by issuing a regulatory moratorium through executive order.

Shutting off or slowing the issuance of new regulations is a critical first step. It sets the tone for executive-branch agencies and conveys the governor's regulatory philosophy quickly.

A moratorium usually has off-ramps that allow agencies to move forward with new regulations in certain instances, such as:

1. To reduce or remove a regulatory burden
2. To remove obsolete, outdated, or unnecessary regulations
3. To comply with a new statutory requirement
4. To comply with a new court order
5. To prevent a substantiated and well-documented threat to public health, peace, or safety.<sup>14</sup>

It is important that agencies be able to petition for an exemption from the moratorium if they meet one of these off-ramps, but the governor's office should adopt President Reagan's principle of "trust but verify." For example, if an agency states that a new statutory requirement compels this rule, the governor's office should inquire: Which bill, specifically? Did the bill mandate the regulation or permit it? Does the bill sponsor agree with the need for the regulation? Is the proposed regulation the least restrictive means of accomplishing the statutory goal?

Idaho set clear expectations for agencies that new regulations should be limited to the allowable off-ramps. If an agency was granted the authority to move forward, it had to hold a public hearing and generally offset the new regulation by cutting an equivalent word count from other existing agency regulations in order to keep overall regulatory volume low.

A moratorium on rule-making allows for an orderly transition from traditional regulation to zero-based regulation. Further, rules moratoriums have proved to be bipartisan. Every new U.S. president, for example, has issued such a moratorium upon taking office in recent years.<sup>15</sup>

### **Step 2: Single, Statewide Sunset Date on All Regulations ("Pressure Washing")**

To achieve meaningful reductions in regulatory burden, states must move beyond slowing the issuance of new regulations. They have to tackle decades worth of accumulated regulations.

States can start with a sunset provision that applies to all existing regulations. In Idaho, we referred to this as a "pressure washing"—a quick purge of clearly outdated, duplicative, and unnecessary rules. The focus should be on a fast-paced effort to get rid of obsolete and unenforced regulations.

Idaho set a hard sunset date for all existing regulations on June 30, 2019.<sup>16</sup> All executive-branch agencies had to re-promulgate regulations that they intended to keep as temporary rules by this date in order for them to remain in full force and effect. If an agency chose not to re-promulgate a regulation, it simply expired on the sunset date by default, with no additional action necessary from the agency.

Agencies let scores of regulations expire, including a dress code for deputy state veterinarians from the 1960s, regulations for a type of “non-native phytophagous” snail that is not found in the state, rules for a lottery television game show that never aired, and hyper-specific requirements for female kickboxing uniforms.<sup>17</sup> The result was the quick elimination of 1,800 pages of regulations—reflecting an approximate 20% cut statewide.<sup>18</sup>

Because many of the regulations eliminated in the pressure washing are obsolete and unenforced, the direct benefits of this step might seem limited. But if staged properly, it can be an important driver of public awareness of regulatory reform efforts and can generate agency buy-in to the process of regulatory reform. Moreover, by clearing away the brush, it helps shine a brighter light on remaining regulations.

It was our experience that, in general, the older the regulation and the shorter the rule chapter, the more likely it could be eliminated at the pressure-washing stage. In addition, we found some common features of regulations that make them prime candidates to be edited or eliminated in the pressure-washing phase (Table 2).

**Table 2**

**Sample Pressure-Washing Edits for Agencies to Consider**

Pressure-Washing Edits	Description of Edit
Zombie programs and unenforced provisions	<ul style="list-style-type: none"> <li>• Programs that have never been implemented or that have ceased operation may be deleted.</li> <li>• For example, regulations for a grant program that has exhausted all available funding can be eliminated. If a new stream of funding becomes available, the regulation can be re-promulgated and updated for more recent circumstances.</li> </ul>
Orphan definitions	<ul style="list-style-type: none"> <li>• Terms that are not used in a rule chapter do not need to be defined and may be deleted.</li> <li>• We found many instances in which a term was defined because it was used at one point in time, but subsequent updates deleted its actual uses outside the definitions section.</li> </ul>
Duplication of statute	<ul style="list-style-type: none"> <li>• Statutes do not need to be duplicated verbatim in rule.</li> <li>• Some agencies attempted to make their rules a “one-stop shop” to aid licensees; given the advent of the Internet and more convenient access to statutes, this is unnecessary.</li> <li>• Duplication might lead to confusion as licensees search in vain for differences between rule and statute language.<sup>a</sup></li> </ul>

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Time-limited language	<ul style="list-style-type: none"> <li>• Rules that have time-specific language (e.g., “Beginning July 1, 1993, all licensees shall...”) should be updated.</li> <li>• Some rules may have grandfathered in certain licensees prior to a specific date; depending on the time elapsed, those with grandfathered status may now be obsolete.</li> </ul>
Internal policies	<ul style="list-style-type: none"> <li>• Internally facing directives to agency staff that are not binding on externally regulated parties need not be included in external regulations.</li> <li>• Rules should not be cluttered with internal policies, as it might be difficult for licensees to differentiate internal policies from external requirements.</li> </ul>
Cluster and consolidate similar rules	<ul style="list-style-type: none"> <li>• There may be multiple rule chapters addressing a similar topic of regulation.</li> <li>• Combining like chapters into a single chapter might improve the ability of regulated entities to comprehensively review their requirements.</li> <li>• For example, two separate rule chapters on illegal inducements for title insurers were consolidated into a single rule chapter.</li> </ul>

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<sup>a</sup> A similar situation arises when an agency incorporates by reference (IBR) federal law or some standard (e.g., a national building code). Some might contend that this is a superficial means of reducing word count while not actually changing any binding mandates on the public. That said, we see IBR as a means of reducing confusion with the regulated community by making it clear that the agency is following the federal law or standard, and individuals do not have to search for hours to see whether the state regulations deviate from either of these. A state can still create exceptions from the incorporated material.

The largest impediment to the widespread sunset provision in the pressure-washing step is practicality. All re-promulgated regulations have to be published in the state’s administrative bulletin—and thus Idaho’s June 2019 bulletin spanned 8,334 pages. The sunset date should be selected to provide sufficient time for the publishers of the state’s administrative bulletin to practically format and develop the larger-than-usual publication. States should explore surge capacity to help defray the staffing and workload burdens that a statewide sunset date will invariably place on the publisher.

At least one other state, Rhode Island, has successfully eliminated obsolete and unnecessary regulations through a one-time sunset date for all state regulations.<sup>19</sup> A 2016 bill established a January 1, 2019, sunset date, and agencies successfully eliminated or consolidated several hundred regulations in concert with this date.

If a statewide sunset date is perceived as too impractical, another option is to require a sunset provision on all new or amended regulations moving forward. In Florida, a 2019 memo to all agencies required a sunset of not more than five years on any new regulation. Such regulations could be renewed through the rule-making process “if it is determined the rule is still necessary.”<sup>20</sup>

In addition, a single-day event to eliminate obsolete regulations—even in the absence of a hard sunset—may be attempted. Florida held a “Deregathon” event in which professional licensing boards were asked to identify regulations that could immediately be eliminated.<sup>21</sup> Centering all agencies on a common regulatory goal and setting a single deadline to accomplish it can be a substitute for a sunset date if agencies are highly engaged.

### **Step 3: Establish a Baseline to Set a Regulatory Budget**

After picking the low-hanging fruit, the next step for states is to focus on tackling actual regulatory burden. To start, it is important to establish a baseline of what regulations remain and use this as a means of setting a volume-based regulatory budget.

There are many ways to quantify a regulatory baseline, each of which has advantages and disadvantages. Recently, there has been a growing push to quantify overall regulatory burden by markers of volume, such as word count or the number of restrictive terms (e.g., “shall,” “must,” “may not,” “prohibited,” and “required”).<sup>22</sup> Although they are simplistic, volume-based approaches provide an easy starting point for establishing a baseline regulatory burden. Research also suggests that these measures may track how business owners perceive regulatory burden.<sup>23</sup>

Idaho used overall word count and page count to establish its baseline, which are easy proxies for regulatory volume and can be calculated on Microsoft Word.

The governor’s executive order<sup>24</sup> then established a regulatory budget that set a target of a 20% word-count reduction per rule chapter relative to its calculated baseline. As agencies re-promulgated regulations on a regular schedule, each rule chapter was expected to meet this lower word-count target. Agencies therefore had an incentive to avoid new regulations and eliminate old ones.

One concern was that a volume-based regulatory budget would lead agencies to simply move legal requirements from regulation to guidance documents, circumventing the public input process established in the state’s Administrative Procedure Act. To combat this, Idaho adapted an executive order from the Trump administration, clarifying that guidance documents can only interpret existing law, not create new law.<sup>25</sup> Further, agency guidance documents were required to be posted on a single webpage so that they are more transparent for the public.<sup>26</sup>

Regulatory budgets have already been used by other governments. Ohio set a volume-based regulatory budget for state agencies through a statutory change.<sup>27</sup> Agencies are expected to reduce regulatory restrictions by 30% by June 30, 2025, or they will be limited in their ability to adopt new regulations unless certain conditions are met. The Trump administration issued an incremental regulatory budget, requiring agencies to adhere to a one-in, two-out policy to constrain what regulations could be issued.

### **Step 4: Tackle Substantive Regulatory Burden Through a Review Schedule and Regulatory Impact Analysis (“Spring Cleaning”)**

Unlike the pressure washing—where there is a high-octane effort to cut as many obsolete regulations as possible—substantive regulatory reform requires considerably more executive-branch agency deliberation and stakeholder engagement at regular intervals. We call this next phase the “spring cleaning” (Table 3).

In Idaho, agencies must periodically reexamine their regulations on a five-year basis and use a standardized regulatory impact analysis to guide and justify their policy choices. This prevents agencies from cutting regulations superficially to meet their volume targets established in the regulatory budget, while leaving regulations with the heaviest burdens in place. For agencies with multiple regulation chapters, approximately 20% of an agency’s rule chapters are scheduled for renewal in any given year, in order to provide more opportunities for public engagement.<sup>28</sup>

**Table 3**

**The Two Types of Zero-Based Regulation Review Processes**

	Pressure Washing	Regular Spring Cleaning
Goal	<ul style="list-style-type: none"> <li>• Quick purge of outdated, obsolete, and unnecessary rules</li> <li>• Reorganization and consolidation of chapters</li> <li>• Quick wins in targeted areas (e.g., occupational licensing)</li> </ul>	<ul style="list-style-type: none"> <li>• Optimize rules and ensure that the least restrictive alternative is chosen</li> </ul>
Frequency	<ul style="list-style-type: none"> <li>• One-time sunset event</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing review process</li> </ul>
Time frame of sunset	<ul style="list-style-type: none"> <li>• 6–12 months</li> </ul>	<ul style="list-style-type: none"> <li>• Periodic reviews every 5–8 years<sup>a</sup></li> </ul>
Analysis required	<ul style="list-style-type: none"> <li>• Quick analysis: Is keeping the rule worth the effort of re-promulgating and justifying?</li> </ul>	<ul style="list-style-type: none"> <li>• Complete a regulatory impact analysis to define the problem, summarize the evidence base, and explore alternatives with a focus on what other jurisdictions have done</li> </ul>
Focus	<ul style="list-style-type: none"> <li>• Large percentage cut</li> </ul>	<ul style="list-style-type: none"> <li>• Focus more on surgical extractions of burdensome barriers</li> </ul>

<sup>a</sup> Idaho established a five-year review schedule for all regulations through 2026. After this initial review is complete, the Idaho Legislature is stretching the review schedule to eight-year increments in the state’s Administrative Procedure Act.

Under this system, if agencies want to keep a regulation, they must re-promulgate it, review data on other jurisdictions, hold at least two public hearings on such regulations, and then both repeal and replace the existing rule.

Agencies are instructed to begin their renewal cycle with the presumption that no current regulations are needed and that issues are best addressed through market mechanisms. This is because regulations are often added incrementally over time, with little thought to what the ideal regulation would be if an agency were starting anew. A blank-slate philosophy combats this inertia by forcing agencies to put forth a fresh document.

To facilitate the spring cleaning, Idaho agencies must complete a standardized regulatory impact analysis form, the core elements of which are reviewed in **Table 4**. The regulatory impact analysis is designed to nudge agencies into making the least burdensome decisions possible.<sup>29</sup>

**Table 4**

**Regulatory Impact Analysis Required for Zero-Based Regulation**

Regulatory Impact Analysis Element	Required Documentation for Regulations
Legal authority	<ul style="list-style-type: none"> <li>Agencies must list the specific statute that the regulation is intended to interpret, prescribe, implement, or enforce.</li> <li>Agencies must say whether this statute mandates the specific regulation or whether it only grants broad discretionary rule-making authority.</li> </ul>
Problem that the regulation intends to solve	<ul style="list-style-type: none"> <li>Agencies must identify the problem that the rule intends to address and quantify the significance of that problem.</li> <li>Agencies must present evidence that the problem exists and list the market failures that warrant new regulatory action.</li> </ul>
Jurisdictional comparisons	<ul style="list-style-type: none"> <li>Agencies must summarize their proposed regulation relative to other states (border states and the two other least regulated states) and the federal government.</li> <li>Agencies must identify whether the proposed Idaho regulation is more stringent than any of these other states. If so, the agency must describe the evidence base or unique circumstances that justify the enhanced requirement.</li> </ul>
Evidence that the regulation will solve the problem	<ul style="list-style-type: none"> <li>Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information.</li> </ul>
Costs to various parties	<ul style="list-style-type: none"> <li>Agencies must quantify the financial cost of the regulation to state government, local governments, and businesses.</li> </ul>
Cumulative regulatory volume	<ul style="list-style-type: none"> <li>Agencies must calculate both the net word-count change and the change in restrictive words for this regulation relative to the prior one.</li> </ul>
Migration to statute	<ul style="list-style-type: none"> <li>Agencies must determine if the chapter should remain as a rule chapter or be moved into statute, taking into account the cost of publishing the rule, how frequently the rule has been updated in the past five years, and the potential benefits of having all related requirements in a single location in statute.</li> </ul>

Arguably the most important tenet of this review is the cross-jurisdictional comparison. Agencies must compare each proposed regulation with similar federal regulations, provisions in states bordering Idaho, and those in Alaska and South Dakota, which were selected because they are among the least regulated states, according to the Mercatus Center.<sup>30</sup> If the proposed regulation is more stringent than any of these comparators, the agency must describe the evidence base or unique circumstances that justify the enhanced requirement in Idaho.

For example, if an Idaho licensing board requires 20 hours of continuing education for a given occupation but the Montana licensing board requires only 15 hours, Idaho should default to 15 hours, unless the board can justify why Idaho licensees need five additional hours of training. Similarly, if Idaho requires continuing education to be completed in person and Montana does not, there is a rebuttable presumption that the live training requirement is not needed. In both cases, the burden of proof is on the entity proposing the enhanced requirement (e.g., more hours and live training).

The result is that the least restrictive regulation becomes the default. Some might contend that this leads to a regulatory race to the bottom; but this is not accurate. Instead, it is a race to the level of regulation that the agency can credibly support with evidence.

By leveraging cross-jurisdictional comparisons, spring cleaning focuses on substantive changes to regulations. But at a state level, each of these changes is likely more of a single than a home run. In addition, the scope of reform is heavy on occupational licensing, given the primary role of states regulating this area. Such edits can make a meaningful difference for the professions involved and the consumers they serve, even if they are unlikely to grab major headlines. Examples of spring-cleaning edits appear in **Table 5**.

**Table 5**

**Representative Examples of Spring-Cleaning Edits**

Type of Spring-Cleaning Edit	Specific Regulation Example
Reduce barriers to entry into a licensed profession	Added an apprenticeship pathway for water-operator licenses in lieu of formal college education
Ease burden of licensure renewal	Reduced continuing education requirements for professions like nursing and plumbing
Remove duplicative licensure requirements	Moved to a single license for outdoor guides rather than requiring licensure for every outfitter that the guide works for; consolidated 17 commercial motor vehicle permits into eight permits
Expand professional scope of practice	Enabled occupational therapists to perform some duties previously limited to physical therapists; expanded pharmacist prescriptive authority
Empower business ownership	Removed the requirement that a plumber have two years of journeyman experience to own his own business
Limit supervision requirements on a licensed profession	Removed the limit on the number of physician assistants that may be overseen by a physician; expanded the duties that may be delegated to a dental assistant
Expand consumer choice	Eliminated the prohibition on selling alcoholic beverages at college sporting events; removed barriers to telehealth, enabling broader access to health-care services and access to specialists
Liberate academic institutions	Removed the requirement for the board of nursing to review and approve curriculum of nursing programs and deferred to existing accreditation pathways
Improve customer service	Eliminate written notification requirements for beef cattle animal-feeding operations when verbal confirmation is sufficient
Enhance interstate commerce	Remove state-specific grades for apples, ensuring that the state grading system used for apples is consistent with those grades used nationwide
Improve hunting opportunities	Broadened hunting to include crossbows for upland game-bird take

Virginia has also demonstrated success with regulatory impact analysis.<sup>31</sup> The state has released a comprehensive manual for economic analysis focused on the net benefits as well as impacts on local partners, families, and small businesses.

**Step 5: Create an OIRA-Style Independent Review System**

In Idaho, regulatory authority was decentralized across more than 60 organizations. This included separately elected constitutional officers, executive-branch agencies, appointed boards and commissions, and quasi-governmental agricultural commodity councils. Further, within these organizations, rule-making was often fragmented across multiple divisions, bureaus, and program areas.

Without centralized coordination, each agency conceivably lacks understanding of how its rule-making adds to a cumulative statewide regulatory burden. Previous research has shown that regulatory reform efforts are least effective when there is not an adequate centralized oversight mechanism.<sup>32</sup>

Therefore, Idaho created two levels of oversight and accountability: statewide (e.g., a specific agency tasked with comprehensively overseeing all regulations from any of the 60 agencies in Idaho with rule-making authority); and within each agency (e.g., a Rules Review Officer within an agency who is tasked with overseeing an individual agency’s rule-making activity).

The Idaho Division of Financial Management (DFM) was chosen to provide statewide oversight through OIRA-style independent review. DFM is analogous to the federal OMB in its roles and functions. Agencies submit budget requests, proposed legislation, strategic plans, and performance measurement reports to DFM, so it already served as a central clearinghouse for many executive-branch functions.

DFM performs several statewide oversight roles under zero-based regulation, summarized in **Table 6**. Responsibility for oversight ultimately falls on the DFM administrator, but an additional full-time position was added as a point person on regulatory oversight. In addition, DFM has three full-time personnel to publish the state’s administrative bulletin.

**Table 6**

**Statewide Oversight Roles in Idaho: Division of Financial Management (DFM)**

Role	Description
Enforcer	<ul style="list-style-type: none"> <li>Ensure that all agencies follow the required procedures of zero-based regulation established by executive order (e.g., completion of paperwork, holding two public hearings).</li> </ul>
Gatekeeper	<ul style="list-style-type: none"> <li>Coordinate with governor’s policy staff on screening proposed rule content for conformity to the governor’s policies and priorities.</li> </ul>
Trainer	<ul style="list-style-type: none"> <li>Train agency Rules Review Officers (RROs) on governor’s policy preferences and expectations under zero-based regulation.</li> <li>Identify cross-cutting areas for agencies to focus on.</li> </ul>

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Nudger	<ul style="list-style-type: none"> <li>• Provide chapter-specific goals to an agency, usually in the form of a targeted word-count percentage reduction.</li> <li>• Provide initial copyedits to each agency to reduce word count and ensure better consistency across rule chapters.</li> <li>• Suggest areas where an agency’s rules may be eliminated.</li> </ul>
Publisher	<ul style="list-style-type: none"> <li>• Publish the official Idaho Administrative Bulletin monthly, which is the state equivalent to the Federal Register and contains the official text of proposed rules and accompanying documentation.</li> <li>• Provide forms and templates to assist agencies in formal rule-making actions.</li> </ul>
Tracker and promoter	<ul style="list-style-type: none"> <li>• Measure the baseline statewide regulatory burden.</li> <li>• Apprise governor of progress toward deregulation goals.</li> <li>• Work with governor’s communications team to periodically publicize success stories.</li> </ul>

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DFM has several responsibilities, but arguably its primary and most important role is to ensure that proposed regulations align with the governor’s priorities. DFM screens proposed regulations with governor’s office staff prior to publication in the state’s administrative bulletin so that proposals incompatible with gubernatorial preferences are stopped before they build the momentum that creates pressure for approval.<sup>33</sup>

DFM also plays a crucial role in facilitating consistency across state regulations. For example, a licensing board might not be aware that most other licensing boards stopped reviewing and approving individual college programs and have instead deferred to accrediting-body decisions. An agency might not know that its rules for contested case hearings duplicate verbatim procedures that are already required by the attorney general’s office regulations.<sup>34</sup> In each of these cases, the statewide oversight mechanism can provide a critical role in supporting agencies and nudging them to cut red tape.

While statewide oversight mechanisms are critical, regulatory reform requires the active engagement of individual state agencies. Thus, a second layer of accountability was established within each agency. A Rules Review Officer (RRO) was designated by the agency director to provide oversight within each agency, similar to what DFM provides statewide. RROs were not newly hired positions; rather, agency directors designated an existing employee to take on this role.

Selecting an RRO was often a balancing act. Some subject-matter expertise is needed with respect to the agency’s regulations, but too much expertise may beget complacency and a belief that the existing regulations are already optimized. It is important for agencies to avoid RROs who have significant pride of authorship in existing regulations.

RROs attended training hosted by DFM on gubernatorial priorities and expectations regarding the zero-based regulation process. RROs then translated this vision to the various divisions, bureaus, and programs with rule-making authority within their agency. For example, two of the overall statewide priorities were eliminating any advisory committees that were created solely by regulation and removing unnecessary state-specific licensure exams, which reduce license portability across

state lines. RROs would see whether these were present in their agency’s regulations and work with the appropriate units of their organizations to eliminate these regulations, unless there was a compelling reason for them to be maintained. Their responsibilities are summarized in **Table 7**.

**Table 7**

**Intra-Agency Oversight Roles in Idaho: Rules Review Officers (RROs)**

Role	Description
Supporter	<ul style="list-style-type: none"> <li>• Support DFM and the governor’s office in implementing zero-based regulation across all units of their agency.</li> <li>• Attend DFM trainings for RROs on governor’s policy preferences and expectations under zero-based regulation.</li> </ul>
Scheduler	<ul style="list-style-type: none"> <li>• Suggest the orderly schedule of review for all regulations within their agency’s purview. Each agency had to review approximately 20% of its rule chapters annually, and RROs submitted this schedule to DFM.</li> </ul>
Liaison	<ul style="list-style-type: none"> <li>• Serve as a point of contact for DFM and members of the public on all agency-specific questions regarding regulations.</li> <li>• Ensure that regulatory impact analysis is completed properly.</li> </ul>
Reviewer	<ul style="list-style-type: none"> <li>• Navigate agency-specific nuances to regulations (e.g., knowing which ones require federal agency approval and which require additional state-specific information requirements).</li> <li>• Review rules for areas suggested by DFM for the purposes of statewide consistency, and make changes where appropriate.</li> </ul>

RROs would occasionally identify regulations that should be eliminated but encountered resistance from their appointed board members or industry stakeholders. DFM often played a supportive role to take some of the pressure off the RRO in championing such a change.

Having points of accountability both statewide and within each agency provided an organized oversight structure that led to success in mobilizing the governor’s priorities into action.

## Special Considerations

### **A. Facilitating Public Engagement and Transparency**

Even as reform seeks to reduce the quantity and burden of existing regulation, it is important to remember that each current regulation was, at some point, important to some stakeholder. Creating a process to ensure public transparency and engage stakeholders is critical. Idaho took two steps to instill public confidence in the zero-based regulation process.

First, through executive order, the governor required that agencies hold at least two public hearings on all regulations in their review year, so that any interested stakeholder may provide input. This requirement exceeded the state's Administrative Procedure Act, which required agencies to hold a single public hearing only if a certain threshold of public requests was met.

Second, Idaho launched a new website called Townhall Idaho,<sup>35</sup> which lists all upcoming agency meetings, with meeting notices, agendas, meeting materials, and direct links to those meetings with a virtual participation option. Further, citizens can use a subscription manager to receive push notifications when specific agencies post new meeting notices or amend their agendas. Townhall Idaho includes an audit trail, documenting changes to meeting notices. Townhall Idaho will be built out to require every regulatory hearing to have a virtual participation option and require video archiving of the meeting.

### ***B. Engaging the State Legislature in Regulatory Reform***

Regulatory reform is often seen as solely the purview of the executive branch of government, given that regulations are issued by executive-branch agencies. But every regulation must first be authorized by statutes passed by the legislature. Indeed, each year, dozens of bills are passed that compel the issuance of new regulations or the modification of existing ones.

**Table 8** outlines several roles that legislatures can play in order to facilitate regulatory reform. Most important, legislatures should periodically reexamine the need for the overlaying statutes that compel regulations. Executive-branch agencies that are actively seeking to reduce regulatory burdens may think that they are tinkering when the more substantive restrictions are found in statute.

For example, if the legislature requires a license to practice in a profession that has a dubious case for licensure, the executive-branch agency may still play a role in limiting barriers to entry into the profession, easing the mobility of licensure across state lines, and limiting continuing education requirements, among other modest parameters. But the need for any license in the first place comes from the legislature's statute and is not under the purview of the executive-branch agency.

**Table 8**

**Regulatory Reform Roles for the Legislature**

Role	Description
Review overlaying statutes	<ul style="list-style-type: none"> <li>Periodically reexamine the need for the overlaying statutes that compel regulations.</li> <li>Regulatory reform is naturally constrained by the requirements of such statutes.</li> </ul>
Stop compelling new regulations	<ul style="list-style-type: none"> <li>Be wary of passing bills that command the issuance of new regulations.</li> <li>Use permissive regulatory language in bills instead of mandatory language (e.g., “the agency may adopt regulations as may be necessary to implement the provisions of this section,” as opposed to “the agency shall adopt regulations...”).</li> <li>We found several examples of regulations that agencies deemed unnecessary, but the ability to eliminate them was clouded by a statutory mandate to adopt the regulation.</li> </ul>
Memorialize long-standing regulations in statute	<ul style="list-style-type: none"> <li>Regulations often start as an area where more time and stakeholder input are needed to sort out the granular implementation details.</li> <li>In areas where regulations have been on the books for years without modification, they may be candidates to memorialize in statute and remove from regulation.</li> <li>Doing so has the benefit of creating a one-stop shop in statute and reducing the chance that a future executive branch will increase the regulatory burden without legislative oversight.</li> <li>Idaho legislation requires agencies to report on whether rules should be moved to statute, taking into account the frequency of rule chapter updates in the prior five years.<sup>36</sup></li> </ul>
Review regulations for legislative intent	<ul style="list-style-type: none"> <li>Establish a process for the legislature to review regulations adopted by executive-branch agencies.</li> <li>Establish the ability to reject regulations that deviate from legislative intent.</li> </ul>
Codify process reforms	<ul style="list-style-type: none"> <li>Codify critical regulatory-process reforms from relevant executive orders into the state’s Administrative Procedure Act to ensure long-lasting reform across gubernatorial administrations.</li> </ul>

**C. Providing Support from the Governor’s Executive Office**

The greatest determinant of success of a regulatory reform initiative is the level of proactivity of the executive-branch agencies. Agencies are ultimately responsible for developing the regulatory impact analysis required under the spring-cleaning step, which serves as the basis for identifying areas of focus for regulatory reform.

Why, then, does regulatory reform not often happen organically from agencies, absent an external push from the governor’s office? Meaningful regulatory reform will naturally raise the ire of stakeholder groups from time to time, and it is much easier for an executive-branch agency to avoid this contention. After all, government employees rarely get into trouble for what they *don’t* do.

Key roles of the governor’s office are outlined in **Table 9**. Roles should include routine and direct gubernatorial involvement, e.g., discussion in cabinet meetings, one-on-one meetings with agency directors, state-of-the-state addresses, and periodic media events. Regulatory reform should be a key messaging theme woven across speeches and social media throughout the governor’s term.

**Table 9**

**Regulatory Reform Roles for the Governor’s Executive Office**

Role	Description
Messenger	<ul style="list-style-type: none"> <li>• Communicate regulatory reform as a priority.</li> <li>• Reinforce regulatory reform in cabinet meetings and other discussions with agency directors.</li> <li>• Embed regulatory reform metrics into agency performance reports or strategic plans.</li> <li>• Ensure clarity of goal: reduce both regulatory volume and burden.</li> </ul>
Supporter	<ul style="list-style-type: none"> <li>• Support agencies that are following the zero-based regulation process and making sound, evidence-based decisions on their prospective analysis forms.</li> </ul>
Promoter	<ul style="list-style-type: none"> <li>• Periodically publicize success stories.</li> <li>• Recognize agencies that achieve the most success with “Golden Scissors” awards presented by the governor.</li> </ul>
Appointer	<ul style="list-style-type: none"> <li>• Appoint individuals to boards and commissioners who share the governor’s regulatory philosophy.</li> </ul>

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## Conclusion

Zero-based regulation has proved successful in making Idaho the least regulated state in the country, according to Mercatus Center metrics. The key elements of Idaho's success are changing the defaults, both to make regulation elimination the default and for the least restrictive regulation to be the default, while also activating agencies to lead the reform.

While this report attempts to lay out a step-by-step process to achieve zero-based regulation, no process occurs without a hitch. Indeed, in Idaho, some of the steps presented here were not achieved in chronological order or executed strongly at times. There are many paths to regulatory reform, and there is no single right way to accomplish it. The key for states is to keep moving toward the ultimate goal and to identify the elements that work for them to decrease administrative burdens.

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## Endnotes

- <sup>1</sup> The phrase is adapted from a saying about gas prices. See, e.g., Mike Walden, “Why Do Gas Prices Go ‘Up Like a Rocket but Down Like a Feather?’ Economist Says...,” WRAL TechWire, Mar. 24, 2022.
- <sup>2</sup> See Paul Teske, *Regulation in the States* (Washington, DC: Brookings Institution Press, 2004).
- <sup>3</sup> See John W. Dawson and John J. Seater, “Federal Regulation and Aggregate Economic Growth,” *Journal of Economic Growth* 18, no. 2 (June 2013): 137–77.
- <sup>4</sup> Idaho Executive Department, “Executive Order No. 2020-01: Zero-Based Regulation.”
- <sup>5</sup> See James Broughel and Patrick McLaughlin, “Quantifying Regulation in US States with State RegData 2.0,” Mercatus Center, Aug. 31, 2020.
- <sup>6</sup> The step-by-step approach to deregulation is adapted and expanded from James Broughel, “A Step-by-Step Guide to Using Mercatus Tools to Reduce State Regulation Levels,” Mercatus Center, April 2017.
- <sup>7</sup> Some scholars have questioned the futility of executive regulatory reform, given the short-lasting nature of executive orders and their susceptibility to regime change. See, e.g., Stuart Shapiro, “The Impossibility of Legislative Regulatory Reform and the Futility of Executive Regulatory Reform,” *George Mason Law Review* 28, no. 2 (Winter 2021): 717–32; Matthew Nolan and Jonathan Wolfson, “National Regulatory Reform: Progress Rankings Report 2023,” Cicero Institute, August 2023. But Idaho’s experience shows that executive reforms can later become enshrined in the state’s Administrative Procedure Act, and thus executive action alone may catalyze long-term reform.
- <sup>8</sup> See James Broughel, “Zero-Based Regulation,” Social Science Research Network, Nov. 9, 2020.
- <sup>9</sup> See Russell S. Sobel, “State Regulatory Review: A 50-State Analysis of Effectiveness,” Mercatus Center, 2012; James Broughel, “A 50-State Review of Regulatory Procedures,” Mercatus Center, 2022.
- <sup>10</sup> A regulatory budget could also be established based on business costs or social costs, but the practicality of this is limited, given the paucity of economists in state government agencies.
- <sup>11</sup> Per the executive order, regulations are to be reviewed on five-year cycles. Generally, agencies must not engage in updates outside this five-year cycle.
- <sup>12</sup> In Idaho, regulations had been issued by three separately elected constitutional officers: the attorney general, the secretary of state, and the treasurer. These regulations represented just 17 chapters out of 736 total chapters statewide—or just 2% of total regulations—presenting a minor gap in oversight relative to the statewide regulatory burden.
- <sup>13</sup> For convenience, this report uses the term “agency” to refer to any cabinet-level department, board, commission, or any other entity with rule-making authority.

- <sup>14</sup> As one example of a rules moratorium, see Arizona Executive Order 2020-02, “Moratorium on Rulemaking to Promote Job Creation and Economic Development.”
- <sup>15</sup> See, e.g., the “regulatory freeze” issued by the Biden and Trump administrations: Ronald A. Klain, Assistant to the President and Chief of Staff, “Regulatory Freeze Pending Review,” 86 Fed. Reg. 7424 (Jan. 20, 2021); Reince Priebus, Assistant to the President and Chief of Staff, “Regulatory Freeze Pending Review,” 82 Fed. Reg. 8346 (Jan. 20, 2017).
- <sup>16</sup> To accomplish this, Idaho invoked for the first time a provision in the state’s Administrative Procedure Act (APA) that required the legislature to renew all existing regulations; since they were not legislatively extended, they had a sunset date of June 30, 2019, unless action was taken to extend a regulation. Without this APA provision, a sunset could have alternatively been established by executive order by requiring agencies to repeal and replace regulations by a certain date, similar to Executive Order 2020-01.
- <sup>17</sup> We found that it was important to stakeholders to keep a running list of what was allowed to expire and the rationale for expiration. This helped to mitigate concerns that substantive edits were being made through a fast-paced sunset process.
- <sup>18</sup> See Keith Ridler, “Idaho Governor: Idaho Is Least-Regulated State,” *Seattle Times*, Dec. 4, 2019.
- <sup>19</sup> See National Governors Association, “Learning from State Regulatory Streamlining Efforts,” July 1, 2022. Arizona introduced legislation that would have established a sunset for all regulations in existence prior to the effective date of the act, though it failed to pass; see AZ SB 1211 (2020 session).
- <sup>20</sup> See Ron DeSantis, Governor of Florida, memo to agency heads, Nov. 11, 2019.
- <sup>21</sup> Office of the Governor of Florida, “Governor Ron DeSantis Announces ‘Florida Deregathon’ Event,” press release, Jan. 24, 2019.
- <sup>22</sup> Measured using RegData; states such as Ohio use a slightly different set of terms.
- <sup>23</sup> See Stuart Shapiro and Debra Borie-Holtz, *The Politics of Regulatory Reform* (New York: Routledge, 2014).
- <sup>24</sup> Idaho, “Executive Order 2020-01: Zero-Based Regulation.”
- <sup>25</sup> Idaho, “Executive Order Number 2020-02: Transparency in Agency Guidance Documents,” <https://gov.idaho.gov/wp-content/uploads/2020/01/eo-2020-02.pdf>.
- <sup>26</sup> E.g., see the Idaho State Department of Agriculture, <https://agri.idaho.gov/main/i-need-to-see-lawsrules/isda-guidance>.
- <sup>27</sup> See James Broughel, “The Regulatory Budget in Theory and Practice: Lessons from the U.S. States,” <https://administrativestate.gmu.edu/wp-content/uploads/2022/08/Broughel-FINAL.pdf>.
- <sup>28</sup> Some flexibility is granted in exempting or delaying certain regulations. For example, many state-level environmental rules exist because of partial preemption at the federal level. Depending on the regulatory philosophy of the presidential administration at the time, it may be unwise to reopen such chapters for review by an adverse federal agency.



## Zero-Based Regulation: A Step-by-Step Guide for States

- <sup>29</sup> See template form: [https://adminrules.idaho.gov/rulemaking\\_templates/ZBR%20Prospective%20Analysis%20Template%20Fillable.pdf](https://adminrules.idaho.gov/rulemaking_templates/ZBR%20Prospective%20Analysis%20Template%20Fillable.pdf)
- <sup>30</sup> See James Broughel et al., “Quantifying Regulation in the United States,” Mercatus Center, Nov. 13, 2019.
- <sup>31</sup> Benjamin Paris, “Virginia’s Regulatory Reforms Are Role Model for Other States,” Heritage Foundation, Aug. 2, 2023.
- <sup>32</sup> Robert W. Hahn, “State and Federal Regulatory Reform: A Comparative Analysis,” *Journal of Legal Studies* 29, no. S2 (June 2000): 873–912.
- <sup>33</sup> It is ideal that this occurs prior to the state’s equivalent of a notice of proposed rule-making. If language is published prior to policy clearance, it is more difficult to engage.
- <sup>34</sup> In 2024, these regulations moved to the Idaho Office of Administrative Hearings.
- <sup>35</sup> See <https://townhall.idaho.gov>
- <sup>36</sup> See House Bill 563 (2024): <https://legislature.idaho.gov/sessioninfo/2024/legislation/H0563/>