Capitol Leaders

Understanding How to Adapt Key Regulatory Reform Policies for Your State

Regulations from the Executive in Need of Scrutiny (REINS)

Option One: Economic Threshold

Economic thresholds determine which regulations rise to the level of legislative scrutiny. Only the most costly or impactful rules, those exceeding a defined economic impact, trigger a required vote of approval by the legislature before taking effect.

- Example: Wisconsin regulations exceeding an estimated $10 million over two years must be approved by the legislature before being implemented.
- Example: The Kansas legislature must approve any regulations costing $1 million during its first five years.

Option Two: No Economic Threshold

In this model, every regulation, no matter its projected economic impact, must be reviewed and approved by the legislature before taking effect. This approach gives lawmakers full visibility and authority over all agency rulemaking, ensuring consistent accountability but potentially increasing the volume of measures requiring review and deliberation. CAUTION: Be careful not to overwhelm the legislature.

- Example: West Virginia's Legislative Rule-Making Review Committee, comprising 6 senators and 6 delegates, must review all regulations and make recommendations. The regulation must pass a vote of the full legislature before being implemented.

Option Three: JCRAR/JAPC States

In these states, proposed regulations are reviewed by a Joint Committee on Administrative Rules (often called JCRAR or JAPC), rather than the full legislature. This structure centralizes oversight within a smaller, bipartisan group of legislators who specialize in regulatory review. The committee evaluates whether rules align with legislative intent, exceed statutory authority, or impose unnecessary burdens, allowing for more technical and timely oversight without requiring a full legislative vote on every rule. CAUTION: Beware of the legislative veto (*Evers v. Marklein*, 2015 WI 36).

- Example: Florida agencies must submit proposed rules to the JAPC, which consults with relevant legislative standing committees, reviewing the rules for legal authority, necessity, and cost. If JAPC objects to a rule, the agency must drop or modify that rule. If they do not, JAPC may recommend legislation to block or change it.

- Example: Wisconsin's Legislative Council reviews proposed rules, after which the rules are sent to legislative committees in each chamber and the Joint Committee for Review of Administrative Rules. The committees can object to the rules, and JCRAR can block rules indefinitely unless it is passed in a bill.

Judicial Deference

Option One: Court Decision

Courts are prohibited from giving deference to agency interpretations of law or regulation. Instead, judges must independently interpret statutes without presuming the agency's view to be correct.

- Example: The U.S. Supreme Court's *Loper Bright* ruling overturned the Chevron doctrine, which stated that courts should refer to an agency's interpretation of a regulation when there was ambiguity in the language.
- Example: In *Mitchell v. University of NC Board of Governors*, the North Carolina Supreme Court ruled that judges do not defer to an agency's interpretation of their own regulations.

Option Two: Mandate Via Statute

Under this approach, state law would explicitly prohibit courts from deferring to agency interpretations of statutes or regulations. Judges must independently interpret the law without presuming the agency's position to be correct.

- Example: A 2024 Idaho bill eliminated the state's practice of judicial deference. It also mandated that courts make their considerations without bias to executive agencies.

Option Three: Mandate Court Review Methods

This approach directs courts, through explicit statutory language, on the standards they must apply when reviewing agency interpretations.

- Example: The Tennessee legislature passed a simple, two-sentence law that instructs courts to (1) interpret laws and regulations fairly and independently and (2) interpret them in a way that limits government authority if the law is still ambiguous after using all the normal methods of interpretation.

Periodic Review & Sunset Provisions

Option One: Sunset Provisions

Under this approach, all regulations include an expiration, or "sunset," date, often every five, seven, or ten years, unless they are reauthorized by the legislature or the relevant agency through a formal review process. This ensures that outdated or unnecessary rules are regularly revisited and either renewed, revised, or repealed, promoting continual accountability and reducing long-term regulatory accumulation.

- Example: All Colorado rules expire after a year if the legislature does not reauthorize them.

Option Two: State Agency Review
Rather than automatically expiring individual regulations, this approach requires regular, structured reviews of entire state agencies to determine whether they should continue to exist and how effectively they fulfill their missions.

- Example: Texas has a 12-year review cycle for its state agencies. Nonpartisan public forums are held to review the necessity of the agencies' continued existence.

Option Three: Retroactive Review
Agencies are required to retrospectively review regulations every ten years to determine whether they are disproportionately harming small businesses. This model emphasizes ongoing self-evaluation by requiring agencies to look back at existing regulations on a fixed schedule, typically every ten years, to assess their real-world impact.

- Example: At the federal level, the Regulatory Flexibility Act requires agencies to periodically review existing regulations to assess their impact on small businesses. However, because the law lacks a true sunsetting mechanism or enforceable consequence for failing to complete these reviews, many agencies simply overlook the requirement.