The Virginia Model: How the Commonwealth Built a Best-In-Class Regulatory System

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The Virginia Model: How the Commonwealth Built a Best-In-Class Regulatory System
Reeve T. Bull & Patrick McLaughlin

A little over three years ago, Virginia Governor Glenn Youngkin announced an ambitious plan to modernize regulations to lay the groundwork for economic growth and job creation.[1] Since that time, government reform has gone from a largely overlooked topic that was the subject of an occasional academic conference to one of the hottest topics in the national conversation. For example, the Department of Government Efficiency (or DOGE) has proven to be one of the most significant and press-worthy initiatives of President Trump's second term so far.

Although DOGE has dominated the press for months, its scope has remained fiscal in nature. To date, DOGE has focused primarily on achieving savings by cancelling contracts deemed unnecessary and by terminating federal employees deemed inessential. It has yet to train its focus on administrative law and the hard task of cutting regulatory burdens.

Yet as dire as the federal debt and deficit are, the rise of the regulatory state arguably offers an even better target for governmental reform—and not only at the federal level but also at the state and local levels of governance. In Virginia, regulatory modernization has been at the center of Governor Youngkin's reform efforts. When embarking upon its regulatory modernization initiative, Virginia began by recognizing that sensible regulations protect the health and safety of Commonwealth citizens, but excessive regulation undermine those same goals. Overregulation not only increases costs but also cripples small businesses, makes it harder for families to get ahead, and causes state employees to waste their time on useless compliance exercises rather than improving the lives of citizens.

Since Governor Youngkin began this initiative roughly three years ago, Virginia has achieved noteworthy results. The state is on pace to streamline 33 percent of the discretionary requirements in its regulations and to cut 50 percent of the words in its guidance documents, far exceeding the initial goal of cutting each by 25 percent.

According to the state's initial estimates, its regulatory reforms will save Virginia citizens over $1.2 billion per year. And those cost savings make the lives of everyday Virginians much easier. For example, deregulation and streamlining related to housing and building construction are estimated to shave $24,000 off the construction cost of a new house and enable construction professionals to work much faster.

This paper analyzes how Virginia has achieved those successes. It gives a history of the Virginia reforms, explores how the Virginia process is different from that adopted in any other state (or the federal government), and catalogues some of Virginia's most notable successes. It also describes the relevant economics literature on the consequences of regulatory accumulation and

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[1] Va. Exec. Directive No. 1 (Jan. 15, 2022), https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf.

the benefits of regulatory reform, as a way of better understanding the motivations of Virginia and other jurisdictions currently pursuing regulatory reform.

As other states consider ways in which they can streamline their regulatory burdens, and as federal DOGE potentially turns its sights to regulation (having already achieved tens of billions of dollars in savings in the personnel and contracting spaces), Virginia's successes provide a model that would-be reformers can emulate.

I. Origins and Brief History of the Virginia Office of Regulatory Management

Recognizing the importance of regulatory modernization, Governor Youngkin issued a call for reducing regulatory burdens by 25 percent on his very first day in office.[2] Executive Directive 1 created the general framework for achieving that goal.

Roughly six months into his term, Governor Youngkin then issued a second pronouncement, Executive Order 19, that set forth in greater detail how Virginia agencies would achieve his regulatory modernization goals. The specific components of the Governor's plan included:

- Creating an Office of Regulatory Management (ORM) to oversee all aspects of the Commonwealth's regulatory process
- Reviewing all regulations with the aim of reducing regulatory requirements by at least 25 percent by the end of the Administration
- Requiring that all regulations and guidance documents undergo a full benefit-cost analysis as well as targeted analyses considering their effects on local governments, families, and small businesses
- Ensuring that all regulations and guidance documents are posted on the Virginia Regulatory Town Hall website, regardless of whether they qualify for an exemption from the requirements of the Administrative Process Act (APA)
- Requiring all agencies to prepare an annual Unified Regulatory Plan (URP) that includes all regulations and guidance documents anticipated to be issued in the coming fiscal year
- Streamlining the permitting process to achieve a substantial shortening of the time required for approval or rejection

Andrew Wheeler, the former Administrator of the U.S. Environmental Protection Agency from 2019 through 2021, was appointed by the Governor to serve as the first Director of ORM. Reeve Bull, who formerly served as the Research Director of the Administrative Conference of the United States (and is the co-author of this article), was selected as Deputy Director. In March 2024, Mr. Wheeler left ORM to accept a position in the private sector, and Mr. Bull was sworn in as the Director of ORM.

Shortly after opening its doors, ORM issued several official documents in service of the regulatory modernization initiatives announced in EO 19. In August 2022, ORM released its

[2] *Id.*

official Procedures for the Review of State Agency Regulations.[3] These formalized the process by which review of regulations and guidance documents would occur. Most regulations would undergo review by the Office of the Attorney General, the Department of Planning and Budget, the Secretary overseeing the agency issuing the regulation, and the Governor's Office in addition to review by ORM. So-called exempt regulations, which are not required to go through the full APA process, and guidance documents would undergo review by ORM and the Governor's Office.[4]

In December 2022, ORM released the Regulatory Economic Analysis Manual.[5] This Manual, which will be described in much greater detail in Section III below, serves the same role that Office of Management and Budget Circular A-4 does at the federal level: it sets forth the basic process by which agencies conduct economic analysis of their proposed regulations.

In April 2023, ORM released the Regulatory Reduction Guide.[6] It established the process for measuring existing regulatory requirements and then achieving a 25 percent reduction in those requirements by the end of the Youngkin Administration. It, too, is described in greater detail in Section III.

During this time, ORM has also undertaken a variety of other initiatives that have advanced its mission of modernizing Virginia's regulatory system. It has now issued three iterations of the URP, which catalogues all anticipated regulatory actions in the coming fiscal year. It has issued Procedures on Guidance, which explain what a guidance document is and direct agencies to avoid establishing regulatory requirements via guidance documents.[7] And it has launched the Virgina Permit Transparency (VPT) dashboard, a website that lists every permit application under consideration by Virginia agencies and provides a series of detailed Gantt charts reflecting each permit application's status.[8]

In its three years of existence, ORM has already achieved impressive results. It has cut or streamlined approximately 88,000 discretionary regulatory requirements and cut approximately 11.5 million words of guidance documents. This corresponds to 26.5 percent of the requirements in the Virginia Code and 47.9 percent of the words in all Virginia guidance documents.

ORM estimates that these changes save Virginia citizens over $1.2 billion per year. And their impacts are felt broadly across the Commonwealth. Regulatory reforms have removed $24,000

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[3] VA. OFF. OF REGUL. MGMT., PROCEDURES FOR THE REVIEW OF STATE AGENCY REGULATIONS (2022), https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf.
[4] Exempt regulations also would undergo review by the Office of the Attorney General.
[5] VA. OFF. OF REGUL. MGMT., REGULATORY ECONOMIC ANALYSIS MANUAL (2022), https://townhall.virginia.gov/UM/coord_resources/ORM%20Regulatory%20Economic%20Analysis%20Manual.pdf.
[6] VA. OFF. OF REGUL. MGMT., REGULATORY REDUCTION GUIDE (2023), https://townhall.virginia.gov/misc/Regulatory%20Reduction%20Guide.pdf.
[7] VA. OFF. OF REGUL. MGMT., PROCEDURES ON GUIDANCE (2023), https://townhall.virginia.gov/misc/ORM%20Procedures%20on%20Guidance%20October%202024.pdf.
[8] VIRGINIA PERMIT TRANSPARENCY (VPT), https://permits.virginia.gov/ (last visited June 11, 2025).

from the construction cost of a new house. The state has cut processing times for various professional licenses by 77 percent, which has saved hundreds of millions by allowing construction projects to proceed more quickly. And they have made life easier for both small businesses and some of Virginia's most vulnerable citizens, including foster families.

Virginia's reforms also promote government transparency. All regulations and guidance documents now appear on the Town Hall website and are accompanied by a full economic analysis.[9] The VPT dashboard now lists all multi-step permit and license applications issued across the Commonwealth. This added transparency has enhanced efficiency. The Department of Environmental Quality, for instance, has reduced its agency-wide average permit processing time by 65 percent since VPT was launched.[10]

And Virginia has been able to achieve all of this without cutting regulatory protections that are necessary for public health and safety or slowing down the regulatory process—a result that is consistent with anecdotal evidence from other jurisdictions that have successfully cut red tape.[11] Indeed, even as ORM has reviewed approximately 830 regulations and 1,260 guidance documents, it has actually *sped up* the executive branch review process by around 87 percent, reducing the average Governor's Office review time for regulatory actions from around 80 days to just under 10.

II. Motivations and Justifications for Regulatory Modernization

Regulatory modernization offers several important benefits. First, regulatory accumulation imposes significant costs on businesses, households, and the broader economy. Regulatory streamlining helps reverse the effects of those burdens.

Second, regulatory modernization promotes legal compliance. Federal and state legislatures have adopted a wide array of laws that aim to promote a more efficient, deliberative regulatory process. When agencies shortchange that process, a culture of shoddy compliance can take hold among regulators. Implementing a requirement for more robust economic analysis and creating an entity to oversee that analysis promotes more faithful adherence to relevant statutory mandates.

Finally, regulatory modernization promotes democracy. When key regulatory decisions are difficult to access or understand, the public's ability to participate meaningfully in the regulatory process is diminished. Simplifying the process and ensuring that it is open and transparent restores the public's role as a key player in shaping regulations.

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[9] VIRGINIA REGULATORY TOWN HALL, https://townhall.virginia.gov/ (last visited June 11, 2025).
[10] VA. DEP'T OF ENV'T QUALITY, VIRGINIA PERMITS TRANSPARENCY (VPT) AND PERMITTING ENHANCEMENT AND EVALUATION PLATFORM (PEEP), https://www.deq.virginia.gov/get-involved/virginia-permit-transparency-and-permitting-enhancement-and-evaluation-platform (last visited June 11, 2025).
[11] Laura Jones, *Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?*, MERCATUS CTR. AT GEORGE MASON UNIV. (2015), https://www.mercatus.org/research/research-papers/cutting-red-tape-canada-regulatory-reform-model-united-states.

A. The Effects of Regulatory Accumulation on Firms

Without a systematic approach to reviewing and removing outdated or redundant regulations, the steady buildup of government interventions eventually shows up in economic outcomes ranging from business activities such as investment decisions, startup rates, and productivity growth to household outcomes such as household income and consumer expenditure.

The downsides of regulatory accumulation are well documented. A study published in the *Review of Economic Dynamics* in 2020 showed that regulatory accumulation slows economic growth by nearly one percentage point annually.[12] Specifically, the study found that the buildup of federal regulations over time distorted business investment decisions, which, in the long run, are the drivers of innovation and productivity growth. As a consequence, regulatory accumulation creates a considerable drag on overall economic growth, amounting to an average reduction of 0.8 percentage point in the annual growth rate of the U.S. GDP. This seemingly small annual reduction has large implications. The slower economic growth caused by regulatory accumulation resulted in an economy that was $4 trillion smaller in 2012 than it could have been without such regulatory accumulation. That amount equaled about a quarter of the U.S. economy in 2012, which translates to a loss in real income of approximately $13,000 (in year 2012 dollars) for every American.[13] A similar study estimated the effect to be even larger, finding that regulatory accumulation slowed U.S. economic growth by as much as 2 percentage points annually.[14]

This line of research focuses on the totality of regulations and their cumulative effect, rather than the direct compliance and paperwork costs that are typically included in regulatory impact analyses produced by regulatory agencies. This is not to dismiss those direct compliance and paperwork costs—they often are large and noteworthy. For example, the Federal Trade Commission's (FTC) recent Hart-Scott-Rodino rules would have added 68 paperwork hours to the average HSR filing, according to the FTC's own estimate.[15] Because these filings require highly skilled and specialized law firms, that burden can easily reach more than $50,000 in additional paperwork costs per filing.

But when considering the opportunity cost of regulations—and how they distort business investments and the innovation and growth that comes from those investments—the total cost of regulations is substantially greater than the sum of the projected compliance costs when each

[12] Bentley Coffey et al., *The Cumulative Cost of Regulations*, 38 REV. OF ECON. DYNAMICS 1, 1-21 (2020)..
[13] *Id.*
[14] John Dawson & John Seater, *Federal Regulation and Aggregate Economic Growth*. 18 J. OF ECON. GROWTH 131, 131–177 (2013).
[15] FTC Premerger Notification; Reporting and Waiting Period Requirements, 16 C.F.R. §801, 803 (2024), https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements.

regulation is analyzed on its own. Indeed, forgone innovation eventually makes compliance and paperwork costs seem relatively trivial in comparison.

Research also shows that regulatory accumulation disproportionately burdens small businesses—including the startups that are often the fountainheads of innovation—and that this burden grows at an increasing rate as regulation accumulates (i.e., the negative effect of each new regulation grows larger as the stock of regulation grows larger).[16]

There are other reasons to be concerned about regulatory accumulation. Scholarship from the fields of psychology, economics, and organizational science suggests that people are more likely to make mistakes and are less motivated and able to comply when they are required to follow too many rules simultaneously.[17] For example, one study found that the growth in regulation in the nuclear power industry actually reduced safety.[18] New regulations distracted workers from their most important duties. In such circumstances, it became harder for workers to focus on averting the greatest risks, as an increasing share of their attention was diverted to recalling all the rules they were supposed to follow.

B. The Effects of Regulatory Accumulation on Households

Regulatory accumulation also has direct and indirect impacts on American households, especially households with lower incomes. By creating barriers that limit the ability of new individuals or companies to enter a market, regulatory accumulation can raise prices, slow wage growth, and diminish economic opportunities for low-income workers.

Regulation typically increases the production costs of goods, and these costs are passed on to the consumer in the form of higher prices. A study published in 2017 combined data from the Bureau of Labor Statistics, the Bureau of Economic Analysis, and the RegData database to study the relationship between prices and consumer choices.[19] It found that a 10 percent increase in total regulation leads to a nearly 1 percent increase in consumer prices. Furthermore, they found that the effects of these price increases are regressive: The poorest income groups experience the highest proportional increases in the prices they pay. This is consistent with spending patterns broken down by income level. Low-income households tend to spend a greater portion of their incomes on necessities such as utilities, food, and healthcare. Unfortunately, these goods also tend to be more regulated than other consumer and household goods.

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[16] Dustin Chambers et al., *Regulation, Entrepreneurship, and Firm Size*,61 J. OF REGUL. ECON. 108, 108–134 (2022).
[17] Patrick A. McLaughlin, *How Regulatory Overload Can Make Americans Less Safe,* MERCATUS CTR. AT GEORGE MASON UNIV. (2018).
[18] Michael Lavérie & Roger Flandrin, *Relations Between the Safety Authority and the Nuclear Power Plant Operators*, 127 NUCLEAR ENG'G AND DESIGN 215, 215–18 (1991).
[19] Dustin Chambers, et al., *How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulatio*n, 180 PUB. CHOICE 1, 1–34 (2017).

It is perhaps not surprising, then, that regulatory accumulation also has a positive statistical relationship with poverty rates; as regulation grows, poverty rates also tend to rise.[20] Regulatory accumulation can also contribute to income inequality as wage growth shifts from low-income workers to compliance-related workers such as managers, lawyers, and accountants.[21] Indeed, a recent study found that a higher incidence of federal regulations on a state's economy *causes* greater income inequality (as opposed to merely being correlated therewith).[22]

C. The Economic Effects of Deregulation

Several subnational jurisdictions have reversed or at least slowed regulatory accumulation over the past two decades. Considering the mounting evidence on the harms of regulatory accumulation, some states have implemented regulatory reform initiatives designed to identify and weed out red tape that had accumulated over the years. We can look to some of these subnational reforms to learn about the economic effects of deregulation.

One of the first subnational jurisdictions to enact a broad deregulatory policy was the Canadian province of British Columbia, which in 2001 recognized a need to cut some of the regulatory red tape that had built up over years.[23] British Columbia's groundbreaking red-tape reduction initiative succeeded in reducing the quantity of regulations on its books by about 40 percent within three years.[24] Perhaps because it was one of the first broad red tape reduction efforts that succeeded, the British Columbia approach is also the one that scholars have studied the most. A recent study on the topic, using a difference-in-differences research design with a synthetic control, found that deregulation caused the province's economic growth rate to increase by over one percentage point, converting British Columbia from economic laggard to leader in just a few years.[25]

The states that have enacted successful regulatory reforms have primarily adopted two similar approaches: targeted red-tape reductions and regulatory budgets. The former—a targeted reduction—typically involves developing a quantitative measurement of accumulated regulation and then setting an explicit target for reduction, such as 25 percent or 30 percent relative to the initial baseline. The latter—regulatory budgeting—comes in a variety of forms, but it also

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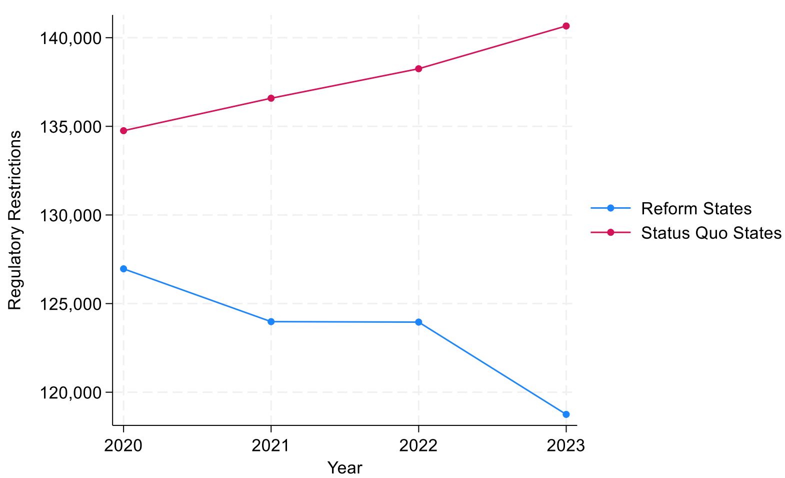
[20] Dustin Chambers et al., *Regulation and Poverty: An Empirical Examination of the Relationship Between the Incidence of Federal Regulation and the Occurrence of Poverty Across the US States,* 180 PUB. CHOICE, 131,131-144 (2019).
[21] James B. Bailey et al., *Regressive Effects of Regulation on Wages*, 180 PUB. CHOICE 91, 91-103 (2018); Dustin Chambers et al., *Barriers to Prosperity: The Harmful Impact of Entry Regulations on Income Inequality*,180 PUB. CHOICE 165, 165-190 (2019); Sean Mulholland, *Stratification by Regulation: Are Bootleggers and Baptists Skill-Biased?*, 180 PUB. CHOICE 105, 105-130 (2019).
[22] Sanchari Choudhury, *The Causal Effect of Regulation on Income Inequality Across the US States*, 80 EUR. J. OF POL. ECON. [ADD STARTING PAGE #], [ADD PIN CITE] (2023).
[23] Jones, *supra* note 11.
[24] Bentley Coffey & Patrick A. McLaughlin, *Regulation and Economic Growth: Evidence from British Columbia's Experiment in Regulatory Budgeting,* MERCATUS CTR. AT GEORGE MASON UNIV., (2021).
[25] *Id.*

typically requires first coming up with a quantitative metric of total regulatory burden and then tracking changes as new regulations are made or old regulations are modified or eliminated.

These approaches are effective, as the data in figure 1 show (using data from the State RegData project).[26] Those states that do not have a robust process in place for reviewing old regulations (Status Quo States) tend to accumulate more and more regulations over time, whereas those states that have a proactive review process in place (Reform States) have reversed that process. For this comparison, Reform States include those that have reduced regulatory restrictions by at least five percent since the first year the state was included in State RegData and had made some sort of policy announcement related to the red-tape reduction efforts. The states that qualified are, in alphabetical order: Idaho, Kentucky, Missouri, Nebraska, Ohio, and Oklahoma.[27] The remaining states are grouped into the non-reform category, Status Quo States.

Figure 1: Status Quo States vs. Reform States



As a relatively early mover in this space, the state of Idaho offers an instructive example of successful regulatory reform in the United States. Idaho today is the least regulated state in the nation. However, when the State RegData project began in 2016, Idaho did not hold that title. It required deliberate reform of the regulatory process, which has been a hallmark of Idaho Governor Brad Little's time in office. Over the past several years, Idaho has implemented a bold regulatory reform agenda, resulting in a reduction of its regulatory restriction count by more than 50 percent. With one of his first executive orders, Governor Little implemented a one-in, two-out regulatory policy, requiring that for every new regulatory restriction introduced, two must be eliminated.

[26] State RegData is also part of the RegData project, available at Quantgov.org.
[27] Note that, as of this writing, State RegData runs through 2023. If we had more recent data, it is likely that a few more states' recent deregulatory efforts would put them in the reform category, including Iowa, Virginia, and perhaps one or two more.

This approach eventually evolved into a form of regulatory sunsetting called "zero-based regulation," modeled after zero-based budgeting. Under zero-based regulatory budgeting, all state agencies must review all their regulations once every five years. If an agency wants to keep a rule on the books, the burden of proof is on the agency to show that the regulation is necessary and that the least restrictive alternative has been chosen.[28] The results helped Idaho reduce its regulatory complexity and foster a more dynamic business environment, especially for small- and medium-size enterprises.

In our opinion, it is not coincidence that Idaho's economic growth has outpaced national averages following the state's deregulatory efforts, and the state became a magnet for investment and entrepreneurship. Likewise, the other states that have successfully cut red tape have experienced a relatively higher growth rate when compared to the states that have not. Because these are relatively recent changes, more careful study will still be necessary to determine the degree to which deregulation caused this difference in growth rates across the two groups of states.

D. Regulatory Modernization Promotes Compliance with Law

Like most states, the Commonwealth of Virginia has enshrined some form of economic analysis in its statutory law.[29] Long before the creation of ORM, the Virginia General Assembly tasked agencies with conducting a variety of analyses that consider the anticipated economic implications of regulatory actions:

- Agencies must submit all proposed regulations to the Virginia Department of Planning and Budget (DPB), which prepares what is called an economic impact analysis (EIA) that considers issues such as the projected costs that the regulation will create for businesses, localities, and other regulated parties.[30]
- When regulations are anticipated to affect small businesses, agencies must prepare regulatory flexibility analyses that consider whether alternative approaches might achieve the same goals while minimizing the impact on small businesses.[31]
- Agencies and/or DPB also must consider how contemplated regulations affect localities[32] and families.[33]

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[28] Alex Adams & Reeve Bull, *Regulatory Modernization That Works: Lessons from Idaho and Virginia*, REGUL. TRANSPARENCY PROJECT (2024), https://rtp.fedsoc.org/paper/regulatory-modernization-that-works-lessons-from-idaho-and-virginia/

[29] James Broughel et al., *A 50-State Review of Regulatory Procedures,* MERCATUS CTR. AT GEORGE MASON UNIV. (2022), https://www.mercatus.org/research/working-papers/50-state-review-regulatory-procedures; Reeve T. Bull, *Battling Overregulation in State Courts,* MERCATUS CTR. AT GEORGE MASON UNIV. (2023), https://www.mercatus.org/research/research-papers/battling-overregulation-state-courts.

[30] VA. CODE ANN. § 2.2-4007.04 [ADD YEAR].

[31] *Id.* at § 2.2-4007.1.

[32] *Id.* at§ 2.2-4007.04(A)(1).

[33] *Id.* at § 2.2-606.

- Agencies must reconsider all regulations every four years and, in connection with doing so, assess whether economic conditions have changed and whether any given regulation might be modified in a way that minimizes effects on small businesses.[34]

To conduct this statutorily required analysis, agencies need a framework for producing the information that DPB uses to prepare its EIAs and for considering the likely effects on small businesses. Until Governor Youngkin implemented his regulatory modernization reforms, however, agencies had few, if any, resources to help them conduct that analysis. ORM's Regulatory Economic Analysis Manual provides them with just such a framework, and ORM serves as a partner for agencies in helping them achieve these important statutory mandates.

Most other states impose an economic analysis mandate similar to that seen in Virginia. In a recent paper, one of the authors considered statutory benefit-cost analysis requirements across the 50 states. He found that 41 states (including Virginia) impose some form of economic analysis requirement.[35]

As is true in Virginia, many of these state statutes do not spell out the key components of a regulatory impact analysis (i.e., problem identification, assessment of alternatives, calculation of benefits and costs). But they all require agencies to consider certain costs or benefits associated with regulatory actions, such as the costs they create for regulated parties generally or small businesses in particular.

Any states that have statutorily imposed an economic analysis requirement but have not created an office similar to ORM would therefore promote legal compliance by standing up an office designed to provide resources to agencies to ensure that they are conducting robust economic analyses. Doing so would help ensure that state agencies are truly meeting their statutory mandates and are not merely checking a box.[36]

E. Regulatory Modernization Promotes Democracy

A hallmark of the administrative process created by state administrative procedure acts is the opportunity for citizens to participate. The theory behind the federal Administrative Procedure Act and its 50 state counterparts is that knowledge is widely dispersed throughout society and that agencies can draw on this decentralized expertise by undertaking a notice and comment process in connection with proposed regulations.

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[34] *Id.* at § 2.2-4007.1.
[35] Bull, *supra* note 29.
[36] The existence of guidance on how to perform an economic impact analysis is often insufficient to achieve high quality analysis, as has been documented by Ellig and McLaughlin (2011) at the federal level. It often requires both guidance and active oversight. Jerry Ellig & Patrick A. McLaughlin, *The Quality and Use of Regulatory Analysis in 2008*, 32 RISK ANALYSIS 855, 855–80 (2012), https://doi.org/10.1111/j.1539-6924.2011.01715.x.

Academics have spent decades debating whether the notice-and-comment process truly influences agency decision making. Professor E. Donald Elliott famously referred to notice and comment as "kabuki theatre," claiming that agencies solicit public input to satisfy their legal requirements but generally ignore the information they receive.[37] Other scholars have suggested that agencies might be more inclined to rely on public input if the process were restructured, such as by obtaining comments much earlier in the process.[38]

Though the ongoing scholarly debate is unlikely to be resolved anytime soon, it is beyond dispute that citizens cannot provide useful comments on proposed regulations that they don't understand. And there are many regulations for which average citizens, or at least a smaller group of citizens directly affected by a regulation, could provide valuable input. This is especially true at the state level, where regulations are often less complex than federal regulations and have a more immediate impact on people's lives. For example, cosmetologists are likely to have strong opinions on whether the state should require 1,500 or 1,000 hours of training to enter the profession. And everyday citizens, too, may have an opinion on that topic, especially if they understand that a higher training hour requirement is likely to lead to higher prices for cosmetology services (even if it produces better qualified cosmetologists).

Unfortunately, state regulations are often written in a way that is very difficult for laypeople to understand. And even if regulations are written in clear, concise language, people may struggle to understand the real-world impact of proposed changes. Continuing with the cosmetology example, most people probably intuit that a longer training time will result in fewer cosmetologists and, as a result, lead to increased prices. But they likely have no idea what that increase would be. And they may well feel differently about the proposed change if the price of a haircut increases by 50 percent as opposed to 5 percent.

A robust and transparent benefit-cost analysis can help the public understand how regulatory changes affect them and allow them to make more informed comments. As a result, the agency will receive more useful information. The public, in turn, will feel more invested in the regulatory process, especially if citizens see agencies change regulations to account for the input received.

For better or worse, we are living in an era in which public confidence in government is at historically low levels. If people were ever willing to just "trust the experts" and turn over most important policy decisions to unelected bureaucrats, that time has long since passed. By producing high-quality economic analyses and then listening to the public response, agencies can start to rebuild some of the trust that has been eroded over the past few decades.

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[37] E. Donald Elliott, *Re-Inventing Rulemaking*, 41 DUKE L.J. 1490, 1492 (1992).
[38] Christopher Carrigan & Stuart Shapiro, *What's Wrong with the Back of the Envelope? A Call for Simple (and Timely) Benefit–Cost Analysis,* 11 REGUL. & GOVERNANCE 203, 203-212 (2017), https://doi.org/10.1111/rego.12120.

III. Nuts and Bolts of Virginia's Reforms

Virginia's approach to regulatory modernization has several unique features. Among other things, Virginia is the only state to have issued a comprehensive set of resources that agencies can use both to conduct benefit-cost analysis and assess regulation for opportunities to reduce burdens. Unlike the federal government, Virginia requires a benefit-cost analysis on every single regulation or guidance document issued.[39] And unlike other states that have undertaken regulatory reduction initiatives, Virginia awards agencies reduction credit either for eliminating individual requirements in regulations or modifying the requirements in a way that reduces burdens.

As a result, Virginia has achieved savings that far surpass those documented in any other state. All told, Virginia's reforms to date save Virginia citizens over $1.2 billion per year. This section analyzes those unique features of the Virginia approach and explores how other states (and the federal government) might implement similar reforms.

A. Simplified Regulatory Economic Analysis

At the heart of ORM's regulatory modernization initiatives lies a foundational premise: economic analysis always improves the quality of regulations and guidance documents by ensuring that agencies are mindful of tradeoffs. Of course, the benefit of a more informed decision comes at a cost: economic analysis takes time and resources to produce.

At the federal level, the Office of Information and Regulatory Affairs (OIRA), a small office housed within the Office of Management and Budget, has addressed this tradeoff by limiting economic analysis to only a small tranche of regulations that have a significant economic or social impact. OIRA reviews only regulations that qualify as "significant" under Executive Order 12,866, and it only requires a complete regulatory economic analysis for rules that qualify as "economically significant."[40] Historically, "economically significant" regulations were those with an annual economic impact of greater than $100 million.[41]

Under that threshold, only around 2 percent of rules per year qualify for a full regulatory impact analysis.[42] And even within that 2 percent of rules, agencies have seldom provided a fully monetized estimate of benefits and costs.[43]

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[39] Va. Exec. Order No. 19 (Jan. 30, 2022), https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf.

[40] Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

[41] The Biden Administration raised that threshold to $200 million. Exec. Order No. 14094, 88 Fed. Reg. 21,879 (Apr. 6, 2023). President Trump has reinstated the $100 million number in his second term. Exec. Order No. 14,148, 90 Fed. Reg. 8237 (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/.

[42] Patrick A. McLaughlin &Casey B. Mulligan, *Three Misconceptions about Federal Regulation,* 13 J. OF BENEFIT-COST ANALYSIS, 287, 287–309 (2022), https://doi.org/10.1017/bca.2022.13.

[43] Ellig & McLaughlin, *The Quality and Use of Regulatory Analysis in 2008*, *supra* note 36.

Though only a tiny tranche of federal regulations undergoes a comprehensive benefit-cost analysis, the few regulatory impact analyses that agencies produce are massive, often consisting of several hundred pages of complex formulae and dense economic jargon.

When crafting its regulatory modernization initiative, ORM intentionally took a different approach. Asking Virginia agencies to produce regulatory impact analyses matching the complexity of their federal counterparts not only would impose a massive burden but also would be impracticable, given that Virginia agencies generally do not employ economists, outside of the Department of Planning and Budget.

But the mere fact that Virginia agencies cannot produce massive tomes rivaling their federal counterparts does not mean that benefit-cost analysis cannot serve a valuable function. Indeed, ORM viewed these limitations as an *opportunity* rather than a setback: federal regulatory impact analyses are expensive to produce and inscrutable to the public precisely because they are incredibly long and extraordinarily complex. A simpler analysis, by contrast, can be applied to a much larger percentage of regulations and facilitate meaningful public input.

The remainder of this section describes the key components of the regulatory economic analysis that Virginia agencies conduct. This much simpler approach has worked well for Virginia and could be adopted by any other state. And perhaps at some future date, the federal government may wish to modify its approach in a way that brings it closer to the ORM model. Prominent regulatory scholars have called for "back of the envelope" economic analyses that are easier for the public to understand and allow for input earlier in the decision-making process.[44] The ORM experience should prove informative to federal regulators if and when they decide to undertake such reforms.

1. Overview of Virginia Regulatory Economic Analysis

Virginia's approach to regulatory economic analysis draws on the approach that has developed at the federal level over the last four or more decades. ORM relied largely on Office of Management and Budget Circular A-4 when designing its process. Like Circular A-4, Virginia's Regulatory Economic Analysis Manual divides the analysis into four key steps:

- Identifying the underlying problem
- Identifying a reasonable range of alternative approaches
- Monetizing the benefits and costs associated with each alternative
- Selecting the most attractive alternative among the options considered

[44] Christopher Carrigan & Stuart Shapiro, *What's Wrong with the Back of the Envelope?, supra* note 38.

In addition, as briefly noted above, Virginia law requires agencies to consider three types of "distributional effects" of their proposed regulations. Virginia agencies must consider how their regulations will affect small businesses,[45] families,[46] and local governments.[47]

Though it is closely modeled on Circular A-4, Virginia's Regulatory Economic Analysis Manual takes an innovative approach with respect to each of these aspects of regulatory economic analysis.

Identifying the Problem

Problem identification is the most important step in conducting a regulatory economic analysis. If there is no problem, or if a problem exists but is better addressed by market forces or by another entity (e.g., the federal government or local governments), then intervention by state government is not appropriate.[48]

Unfortunately, federal regulatory impact analyses often give short shrift to this foundational question. Federal agencies have a tendency to assume that *authorization* to act is equivalent to a directive that they *should* act. And they very seldom identify a market failure[49] or demonstrate the inadequacy of regulation at the state or local level[50] prior to deciding that federal intervention is warranted.

ORM's Regulatory Economic Analysis Manual, by contrast, restores the problem identification step to its rightful place, putting it at the very center of the analysis. It clearly distinguishes between *mandatory* and *discretionary* statutory directives. And it reminds agencies that they should only impose discretionary regulatory requirements when necessary to advance public health or safety or promote the general welfare.

The Manual also instructs agencies on establishing a baseline. If a regulation is already in place, then the agency must justify the *marginal* change in regulatory stringency. It is insufficient merely to show that some regulation is necessary. Instead, the agency must justify the precise level of regulatory intervention it is proposing.

All of this may seem obvious. It is common sense, after all, that regulations are intended to solve problems and that agencies should explain why they are choosing to act as they do. But like all professionals, regulators have a tendency to assume that their services are necessary without

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[45] VA. CODE ANN. § 2.2-4007.1 [ADD YEAR].
[46] *Id.* at § 2.2-606.
[47] *Id.* at § 2.2-4007.04.
[48] REGULATORY ECONOMIC ANALYSIS MANUAL, *supra* note 5, at 5.
[49] Jerry Ellig, *Evaluating the Quality and Use of Regulatory Impact Analysis*, MERCATUS CTR. AT GEORGE MASON UNIV. (2016), https://www.mercatus.org/students/research/working-papers/evaluating-quality-and-use-regulatory-impact-analysis.
[50] Reeve T. Bull, *"What's Your Problem?": Building an Evidence-Based System of Regulatory Analysis from the Bottom-Up*, J. OF BENEFIT-COST ANALYSIS 1, 1-5 (2025).

stopping to consider whether intervention will actually do more harm than good.[51] Requiring a full problem analysis ensures that regulators take the time to carefully consider whether this is the case.

Identifying the Alternatives

After an agency identifies that a problem requiring intervention exists, it must decide how it is going to address that problem. As is true with most things in life, regulatory interventions are subject to tradeoffs. Some interventions may provide large public safety benefits but impose enormous compliance costs. Other interventions may feature smaller benefits but also more modest costs.

In a handful of cases, however, agencies can achieve a high level of public protection while opting for a relatively light compliance burden. For example, rather than prohibiting an activity outright, agencies can sometimes achieve their regulatory goals merely by requiring that businesses disclose critical information that allows the public to decide whether to use a particular product (e.g., requiring that restaurants disclose the calorie counts for popular dishes). In other cases, agencies can issue so-called performance standards rather than design standards. That is, rather than telling regulatory parties exactly what to do, agencies merely set a goal (e.g., reduce fat content in baked goods by 25 percent) and leave it up to the regulated parties to decide how they're going to achieve it.

The ORM Regulatory Economic Analysis Manual lists these sorts of light-touch regulatory interventions (user fees and permits, information disclosure, performance standards, and privately developed standards) and urges agencies to consider each of them. It also describes the various ways in which agencies can vary the stringency of their regulations (e.g., considering different compliance dates, varying requirements by firm size, varying requirements by geographic region) and urges agencies to consider a variety of different approaches.

To satisfy their regulatory economic analysis requirements, Virginia agencies must consider at least three alternatives: the approach they ultimately select, the option of leaving the status quo intact, and an alternative option that involves a stricter or weaker intervention. Agencies are, however, encouraged to consider more than three alternatives. Ultimately, they should consider as many options as possible in deciding which approach best balances the need for intervention with the costs of compliance.

Like problem identification, the analysis of regulatory alternatives is often given inadequate attention at the federal level. To some extent, this is likely because federal regulatory impact analyses do not occur until the agency has a pretty good idea of how it wants to proceed.[52] At

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[51] F.A. HAYEK, THE ROAD TO SERFDOM (Routledge 2014) (1944).
[52] Richard Williams, *The Influence of Regulatory Economists in Federal Health and Safety Agencies,* MERCATUS CTR. AT GEORGE MASON UNIV.(2008), https://www.mercatus.org/research/working-papers/influence-regulatory-economists-federal-health-and-safety-agencies.

that point in the process, regulators are generally more interested in justifying the approach on which they've settled rather than impartially assessing a full array of alternatives and deciding which one is optimal.[53]

By the same token, regulators are also likely to adopt a defensive posture when considering alternatives that may be identified via public comment. They have already settled on a preferred approach, and they therefore may be more inclined to shoot down alternative approaches the public may suggest rather than to consider whether a proposed alternative is preferable.[54]

The ORM process is designed to combat that tendency. It requires agencies to consider alternatives early in the process, while they are still weighing the various options, and it simplifies the associated economic analysis so that members of the public can meaningfully contribute to the discussion.

Monetizing Benefits and Costs

After an agency has identified a range of possible alternatives, it must then assess the benefits and costs associated with each. Ideally, the agency will assign a dollar value to all the benefits and costs connected with each of the alternatives. Providing a monetized estimate may, however, not always prove practicable.

Virginia agencies have not, as an historical matter, conducted comprehensive benefit-cost analyses in connection with their regulations. The ORM Regulatory Economic Analysis Manual is therefore designed to provide them with the resources they need to start conducting sophisticated analyses.

The Manual is mindful of the fact that state regulations can be very different from federal regulations and that the types of analyses state agencies produce will therefore often bear little resemblance to federal regulatory impact analyses. In particular, since state regulatory actions are usually highly targeted with respect to the requirements that they are adding, eliminating, or changing, it is relatively uncommon that an agency will need to apply abstract concepts such as the value of a statistical life or qualify-adjusted life years in order to determine the economic effects of a regulation. Rather, in most cases, agencies can easily quantify the benefits and costs by looking to much more concrete and readily available sources of information, such as the monetary value of time saved or of reduced production expenses.

[53] Behavioral economists have referred to this problem as the "Ikea effect" (after the Swedish manufacturer that has become famous for selling self-assembly furniture). Once someone has poured a significant amount of effort into designing something, he or she is generally reluctant to entertain the possibility of modifying it. Michael I. Norton et al., *The "Ikea Effect": When Labor Leads to Leave*, HARVARD BUS. SCH. AT HARVARD UNIV. (2011), https://www.hbs.edu/ris/Publication%20Files/11-091.pdf.
[54] Carrigan & Shapiro, *supra* note 38.

The Manual therefore chiefly focuses on helping agencies quantify the run-of-the-mill benefits and costs that they will encounter in the vast majority of their regulatory actions. In the instance that an agency must calculate value of statistical life or otherwise call upon more complicated mechanisms for assessing benefits and costs, it is encouraged to consult with ORM in order to ensure that it is using an appropriate value.

After the agency has calculated the benefits and the costs, it must then select among them. ORM directs agencies to calculate the net benefits by subtracting the monetized costs from the benefits. Though ORM encourages agencies to give careful consideration to the regulatory option with the largest net benefits, it does not direct agencies to select any alternative over another. Indeed, ORM notes that there may be perfectly valid reasons to select an alternative with smaller net benefits. For instance, as discussed in more detail below, an option with large net benefits may impose an especially heavy compliance burden on small businesses. Agencies simply should weigh the options and provide a clear explanation for why they selected the alternative that they did.

Targeted Analyses

Traditional benefit-cost analysis considers all the benefits and costs of regulations in the aggregate. A regulation may produce large net benefits overall, but the costs (or in some cases the benefits) might be especially concentrated on a small group of stakeholders. A "distributional analysis" helps regulators identify who bears the costs and benefits.

As noted above, Virginia statutory law requires three types of distributional analysis. Agencies must consider the effects of their actions on small businesses and families, and DPB must consider the effects of proposed regulations on local governments. The ORM Regulatory Economic Analysis Guide elaborates on how to conduct each of these analyses. And it further refines the analysis by pointing to specific subgroups that may be especially affected, including low-income families, and setting out strategies for obtaining input from the relevant communities.

These forms of distributional analysis are especially valuable in that, as noted above, regulations often have a regressive effect, imposing disproportionate costs on the groups that are least capable of absorbing them. For instance, as the Manual notes, a licensing fee that would represent a minor inconvenience for a wealthy or even middle-class family might prove ruinous for a low-income family.[55]

Relatedly, small businesses almost always suffer disproportionate burdens as a result of regulatory interventions. Large corporations can easily call upon teams of lawyers that can help them design a sophisticated compliance regime. Though the cost can be considerable, especially if the company must hire outside counsel, it usually represents a very small percentage of the

[55] REGULATORY ECONOMIC ANALYSIS MANUAL, *supra* note 5, at 28; *see also* Dustin Chambers et al., *Regulation and Poverty, supra* note 20. Dustin Chambers, et al., *Barriers to Prosperity,*, *supra* note 21.

corporation's overall budget. Small businesses, by contrast, would need to spend a much larger share of their annual budgets to achieve compliance. Though some small businesses will simply ignore regulatory requirements and hope they don't get caught, small businesses that play by the rules will be placed at an even larger competitive disadvantage.[56]

As a result of this dynamic, regulations may end up exacerbating market concentration by driving out small players and placing large corporations at a competitive advantage.[57] Though it would be very challenging to calculate the economic cost associated with reduced market competition, and the authors are not aware of any study that has attempted to do so comprehensively, the considerable ills associated with non-competitive markets justify careful consideration of potential regulations' effects on small businesses.

By requiring at least these three types of distributional analysis, Virginia ensures that agencies are aware of the most salient effects of their proposed regulations even in cases in which those regulations otherwise create large social benefits. In some cases, an agency may choose a regulation with somewhat smaller net benefits that has fewer or smaller regressive effects. At the very least, however, agencies conducting these analyses will ensure that the public is aware of these targeted impacts and will give the affected communities an opportunity to weigh in and provide information on how regulatory proposals will affect them.

2. Unique Aspects of the Virginia Approach

Despite the fact that ORM's Regulatory Economic Analysis Manual is closely modeled on Circular A-4, the Virginia approach differs from the federal approach in many important respects. As discussed above, the analysis that Virginia agencies conduct tends to be much more streamlined. The ORM Economic Review Forms that agencies complete tend to run around 8 to 12 pages long, as opposed to the several hundreds of pages that are common at the federal level.

In addition to promoting transparency and public participation, the streamlined process prevailing in Virginia tends to solve one of the most fundamental problems that exists at the federal level: the tendency of federal regulatory impact analyses to place insufficient focus on the problem identification and alternative assessment steps.

Though Virginia agencies are not required to perform a regulatory economic analysis until they reach the "Proposed" stage, which is roughly equivalent to a Notice of Proposed Rulemaking at the federal level,[58] the ORM process ensures that they are thinking in benefit-cost terms at all steps of the regulatory process.

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[56] Reeve T. Bull, *How to Account for Small Business Interests in President Biden's Modernizing Regulatory Review Initiative*, BROOKINGS (2021), https://www.brookings.edu/articles/how-to-account-for-small-business-interests-in-president-bidens-modernizing-regulatory-review-initiative/.
[57] *Id.*; *see also* Chambers et al., *Barriers to Prosperity*, *supra* note 21.
[58] In the normal Virginia APA process, which applies unless a regulation qualifies as a "fast-track," "exempt," or "emergency" action, an agency must issue a Notice of Intended Regulatory Action (NOIRA) as the first step in the regulatory process. A NOIRA, which is roughly equivalent to an Advance Notice of Proposed Rulemaking in the

For instance, when agencies conduct the periodic reviews they are statutorily required to undertake every four years, they must complete the targeted analysis components of the ORM Economic Review Form. And as explained more fully below, agencies also must review all their existing regulations to identify requirements that can be eliminated or streamlined in support of the 25 percent reduction goal. As part of that process, they will need to consider the costs and benefits associated with each requirement and whether the costs can be minimized while still preserving the associated benefits.

As they undertake these activities, agencies are either legally required to solicit public input or encouraged to do so under the ORM procedures. As Professors Christopher Carrigan and Stuart Shapiro have argued, obtaining public input as early in the regulatory process as possible allows agencies to consider the widest possible array of options while they are still making up their minds.[59] As agencies undertake periodic reviews and work through their existing regulations to identify possible burden reductions, soliciting external input will help them consider possibilities they may not otherwise have identified on their own.

Relatedly, the simplified approach to regulatory economic analysis will make it much easier for members of the public to provide useful input. The likelihood that a layperson or, for that matter, even a subject matter expert would be able to pore through a several hundred page regulatory impact analysis and identify an approach that a federal agency overlooked is small. The likelihood that the agency will then go back and redo its analysis to consider whether that approach is superior to the one it has decided upon is smaller still. In Virginia, by contrast, a business, NGO, or even everyday citizen can easily thumb through an ORM Economic Review Form and ensure that the agency is considering the most promising options before it has made up its mind.

Ultimately, this approach is optimal for all the key players. Regulated parties have an opportunity to weigh in early and ensure that Virginia agencies are not needlessly imposing excessive burdens. Regulatory advocates also can weigh in early and ensure that agencies are not underestimating regulatory benefits or overlooking opportunities to ensure strong public protections. Virginia agencies will ensure that they're acting on the best possible information by obtaining public input early in the process. And the economic analysis mandates imposed by the General Assembly are more likely to be met when agencies follow a more methodical approach.

3. Effects to Date

Regulators are experts in identifying problems that new regulations might fix. Much as a dentist is trained to identify cavities that need filling or a plumber specializes in pipes that need

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federal system, does not require completion of a regulatory economic analysis. REGULATORY ECONOMIC ANALYSIS MANUAL, *supra* note 5, at 2.

[59] Carrigan & Shapiro, *supra* note 38.

repairing, regulators' professional education and experience makes them very good at crafting new regulations.

But if you've recently been to the dentist or hired a plumber, you likely realize that professional training can often lead practitioners to over-diagnose and, even more often, over-treat problems. A small cavity might go unfilled for decades without causing any real issue. A leaky faucet might be annoying but costs far more to replace than simply ignore. That is why anyone purchasing a professional service must do at least an informal benefit-cost analysis before deciding to make a purchase.

Regulation is no different: it's impossible for agency officials, legislators, or citizens to decide whether they want to "buy" new regulatory protections without some sort of benefit-cost analysis.

As is true with everyday buying decisions, a highly detailed analysis of the economic costs and benefits may not always be feasible. But one should never make a purchase without at least weighing the pros and cons and trying to put dollar values to them wherever possible.

In the nearly three years that Virginia agencies have been operating under Executive Order 19, benefit-cost analysis has sharpened their ability to identify regulatory effects that may have previously gone overlooked. And the results have been jaw-dropping: agencies calculate that regulatory streamlining work to date is saving Virginia citizens *$1.2 billion per year*. Consider some of the major successes.

Removing "Gold-Plating" from the Building Code

The building code is a privately developed set of standards that govern new construction. It is thousands of pages long and dictates the specifications for erecting new buildings in excruciating detail.

Much of this detail is arguably necessary. For instance, a builder would be ill-advised to experiment with 1x4s in load-bearing walls when using 2x4s is the accepted industry practice.

But the building code is revised every three years, and it gets longer and more detailed with each new cycle. Here too, many of the new requirements serve important health and safety goals. For example, electrical outlets now include several features that reduce the risk of inadvertent electrocution.

Yet some of the new requirements fall under the category of "nice to have" features that may not necessarily survive a benefit-cost analysis if prospective homebuyers were to consider all the features they'd like to include in their new homes.

Take ceiling sprinklers in townhomes. High-rise apartment buildings have long used sprinklers, given the high risk of a fire spreading in an ultra-high-density dwelling and the threat of catastrophic property damage if a fire were to tear through the entire complex.

The most recent version of the building code also required sprinklers in townhomes. The owner of a luxury townhome that cost hundreds of thousands of dollars to erect and that contains highly expensive (and water-resistant) furnishings may well decide that the roughly $10,000 price tag for a ceiling sprinkler is a good investment. But the owner of a much less pricey, cheaply furnished townhome in an up-and-coming area may decide that it is not. And unlike the high-rise apartment building, the prospect of catastrophic damage because of high density occupancy does not affect the decision.

The Virginia Board of Housing and Community Development ultimately concluded that this was a decision best left up to the purchaser. It therefore removed that provision from the 2021 version of the building code adopted by the Commonwealth.

All told, the Board's targeted revisions to the Building Code cut $24,000 off the construction cost of a new house. Multiplied by the average number of houses erected per year (30,000), the savings add up to $723 million annually.

Faster Permitting/Licensing

As the adage goes, time is money. Regulations tend to slow down productive activity that could otherwise proceed more quickly. Oftentimes, this pause is perfectly justified. For example, you wouldn't want a doctor to start practicing until he has clearly demonstrated his ability to diagnose and treat patients. The delay is worth it to ensure public safety.

But regulatory delays are only desirable if the benefits exceed the costs. And if an agency is simply moving very slowly or forcing regulated parties to jump through hoops that serve no valuable purpose, delays can impose significant costs without producing any countervailing benefits.

Several Virginia agencies have created significant public savings by expediting the permitting and licensing processes. The Department of Environmental Quality (DEQ) recently adopted changes designed to streamline the Stormwater Management Handbook, which governs DEQ's issuance of stormwater permits. DEQ simplified the Handbook, cutting out unnecessary materials and massively reducing its length (from a 22-inch-thick tome to a much more slim-and-trim 5-inch manual).

It also simplified the permit approval process, making changes that, on net, should shave about one month off the processing time. DEQ estimates that these changes save prospective permittees $123 million per year by allowing them to put capital to work more quickly.[60]

The Virginia Marine Resource Commission (VMRC) also found a way to simplify one of its permits. Traditionally, citizens wishing to undertake construction activities in subaqueous beds would have to apply for what is called an "individual permit." Individual permits require detailed, case-by-case analyses to determine if the proposed activity is suitable. VMRC determined that it could achieve the same level of protection by issuing what is called a "general permit" for the same activity. General permits do not require as detailed of case-by-case findings (the process is more analogous to applying for a driver's license) and dispense with expensive and time-consuming requirements such as announcing the proposed activity for several weeks in a local newspaper. VMRC's changes are estimated to save permittees $47 million per year.[61]

Meanwhile, the Department of Professional and Occupational Regulation (DPOR) implemented a variety of changes to its professional licensing process that, on the whole, have reduced average processing time from 33 days to 5 days (a 77 percent reduction). This allows new plumbers, electricians, and other non-medical professionals to get to work a month faster than they could before, producing overall savings of nearly $180 million per year.

Making Life Better for Small Businesses and Families

As explored above, Virginia's regulatory reforms have produced some staggering savings for Virginia businesses and citizens. Benefit-cost analysis has allowed agencies to find these savings that might otherwise have gone overlooked and implement targeted regulatory amendments to capture them.

But regulatory modernization is not just about saving money. It's about making people's lives better, whether or not the associated savings are easily captured in dollars and cents. That is why regulatory economic analysis requires that agencies look not only at aggregate benefits and costs but also at how those benefits and costs will fall on specific groups that often get overlooked, including small businesses, local governments, and families.

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[60] *Office of Regulatory Management Economic Review Form for GM 24-2001 Virginia Stormwater Management Handbook, Version 1.1*, VA. DEP'T OF ENV'T QUALITY (2024) https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs_Proposed\440\GDoc_DEQ_2494ORMForm_v3.pdf

[61] *Office of Regulatory Management Economic Review Form for Proposed Regulation for a General Permit*, VA. MARINE RES. COMM'N (2023), https://townhall.virginia.gov/L/GetFile.cfm?File=85\6325\10135\ORM_EconomicImpact_MRC_10135_v5.pdf.

A recent regulatory change from the Virginia Department of Health (VDH) has created new opportunities for a handful of Virginia businesses.[62] A Newport News automobile shop owner named Tyrone Jarvis became interested in harvesting rainwater for certain non-potable uses, but existing regulations prevented his doing so. Over the course of a decade, he worked with both the General Assembly and VDH to create a new set of regulations that allow the use of harvested rainwater for specific applications.[63]

As the regulatory economic analysis for the regulation acknowledges, rainwater harvesting will not always be the most economical approach. Using either municipal water or well water will often prove to be the better option. But for small business owners like Mr. Jarvis, rainwater harvesting creates an attractive new option that can sometimes represent the optimal approach. The savings likely represent a few thousand dollars at best, but the change signals that Virginia agencies are willing to work with entrepreneurs to provide the flexibility they need to adopt new business models.

Like small businesses, families can often struggle under the weight of regulatory burdens. Anything that makes it easier to put food on the table, provide a first-rate education, or obtain medical care at a reasonable cost will be welcomed by hard-working parents, especially those who qualify as low-income.

The Virginia Department of Social Services recently identified an out-of-date requirement that certain childcare forms be notarized.[64] As anyone who has ever tried to get a document notarized in the last decade or so well knows, finding a notary public can be a challenge. This requirement proved especially problematic for foster families, who are subject to a much heavier paperwork burden than traditional families.

Here too, the economic benefits of the regulatory change are relatively small. Virginia caps notary fees at $5, so the out-of-pocket cost is minimal. The more significant burden consists of the time spent trying to locate a provider of a service that has been almost completely phased out, especially in rural areas.

As these examples show, regulatory economic analysis ensures that agency officials think about the effect of regulations from the perspective of regulated parties. Calculating aggregate costs is a critical part of that exercise, but it is also important to consider how specific groups will be affected. If a regulation will impose a significant disadvantage for small businesses or place a burden on an especially vulnerable population such as foster families, the agency should consider

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[62] *Rainwater Harvesting Regulations*, VA. DEP'T OF HEALTH (2024), https://townhall.virginia.gov/L/ViewStage.cfm?stageid=10309.

[63] Katherine Hafner, *Auto-shop Owner Helped Change Virginia Rainwater Harvesting* Law, VPM NEWS, June 28, 2024, https://www.vpm.org/news/2024-06-28/go-green-auto-care-newport-news-virginia-law-rainwater-harvesting.

[64] Virginia Department of Social Services, *Office of Regulatory Management Economic Review Form for Proposed Regulation to Remove Notary Requirement for Consent to Central Registry System Check*, VA. DEP'T OF SOC. SERV. (2023), https://townhall.virginia.gov/L/GetFile.cfm?File=73\5959\9933\ORM_EconomicImpact_DSS_9933_v1.pdf.

whether the regulatory intervention is truly necessary or if it can be modified in a way that minimizes these impacts.

Faster Regulatory Review

Of course, any time a president, governor, or legislature imposes a new analysis requirement, there is the risk that it will slow down the regulatory process. In Virginia's case, however, the process has *sped up* considerably since ORM opened its doors. This is largely a function of substantially reducing what had been an inordinately long executive branch review process in prior administrations. Specifically, that process averaged over 80 days in the 20-year period prior to Governor Youngkin's term, whereas it has averaged slightly under 10 days during the period since ORM opened its doors.

Much of the reduction in the processing time is a result of simply bringing greater discipline and oversight to a process that had been considerably less organized in the past. Having a dedicated office to focus on regulations ensures that they receive the attention that they merit. But at least some of the improved processing time is almost certainly a direct result of introducing regulatory economic analysis.

In the past, the Governor's office was largely left to guess as to the likely economic implications of proposed regulatory actions. Though one can only speculate on the internal workings of past administrations, it seems reasonable to assume that certain regulations were set aside for months or even years on end because there was some concern regarding the burden they might impose. If the Governor's office wanted additional information, it presumably would need to initiate an exchange with the relevant agency, a process that, understandably, often took a considerable amount of time.

Under the new process, the agency already produces the key information for ORM and the Secretaries' and Governor's Offices to review. This may increase the overall time to produce a regulatory package on the front end. But it almost certainly saves time on the back end as the ORM Economic Review Form addresses the key questions the executive branch offices need answered as they are reviewing the regulation.

B. Regulatory Reduction

Performing a robust regulatory economic analysis ensures that *future* actions do more good than harm. But agencies typically have far more regulations sitting on the books than they have ongoing regulatory changes at any given point in time. A truly successful regulatory modernization effort therefore must be mindful of *existing* regulations and strive to ensure that they, too, maximize social benefits while minimizing compliance costs.

To achieve this goal, many nations as well as states and provinces have adopted regulatory budgeting or reduction initiatives. At the national level, these initiatives usually involve some form of regulatory budget. Agencies typically must eliminate one or more existing regulations for each new regulation they propose. Agencies also often must find a dollar (or pound, euro, etc.) or more in cost savings for each dollar of new compliance costs they impose.[65] The most famous example is likely the budget the Trump Administration adopted during the first term and then re-adopted (and enhanced) in the second term.[66] The UK, Canada, Australia, the European Union, and several other governments have adopted (and in some cases abandoned) some version of a regulatory budget.

The U.S. states that have acted in this space, by contrast, have typically adopted a regulatory reduction target. This usually involves reducing regulations or requirements in regulations by a set percentage, such as 25 percent.[67]

Virginia's approach is unique in that it draws on the strengths of both the state and federal models. Like several other states, Virginia has sought to reduce the overall number of regulatory requirements by 25 percent. But the Virginia model differs from that of all other states in several important respects. First, like the federal government, Virginia has tasked a centralized office (ORM in Virginia's case, OIRA in the federal government) with supervising the regulatory reduction effort. Second, also like the federal government, Virginia accounts for the fact that there are many ways to alleviate burdens other than striking "musts" and "shalls." The remainder of this section explores how Virginia's model incorporates the most successful aspects of past budgeting efforts and considers its successes to date.

1. Overview of Virginia Regulatory Reduction Initiative

In 2018, the Virginia General Assembly passed House Bill 883 and the identical Senate Bill 20, which created a pilot program by which two agencies, the Department of Professional and Occupational Regulation (DPOR) and the Department of Criminal Justice Services (DCJS), were tasked with reducing their regulatory requirements by 25 percent.[68] The legislation also tasked all other Virginia agencies with calculating the total number of regulatory requirements they had on the books. Virginia agencies completed this exercise in 2021.

Building on this program, Governor Youngkin directed *all* Virginia agencies to achieve a 25 percent reduction in regulatory requirements by the end of his Administration in early 2026.

The 2018-21 exercise brought much-needed clarity to Virginia's regulatory process. For the first time ever, the public could now see which agencies imposed the largest numbers of requirements

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[65] Reeve T. Bull, *A New Approach to Regulatory Budgeting in Virginia*, THE REGUL. REV. (2023), https://www.theregreview.org/2023/05/29/bull-a-new-approach-to-regulatory-budgeting-in-virginia/.
[66] Exec. Order 13,771, 82 Fed. Reg. 9,339 (Jan. 30, 2017); Exec. Order 14,192, 90 Fed. Reg 9,065 (Jan. 31, 2025).
[67] Laura Jones et al, *Measurement Options for Regulatory Budgeting*, HARV. J. OF LAW & PUB. POL'Y PER CURIAM, Summer 2022, at 43.
[68] This targeted reduction approach was inspired by the Canadian province of British Columbia, which cut its regulatory requirements by nearly 40 percent between 2001 and 2004. *See* Coffey & McLaughlin, *Regulation and Economic Growth*, *supra* note 24.

and whether those requirements were dictated by federal or state statutory law or by Virginia agencies themselves. Since ORM did not exist at the time, however, there was widespread variation in the approaches taken by the various agencies. This made it difficult to compare one agency to another, since each agency appears to have decided on its own methodology.

To ensure a consistent approach, ORM released the Regulatory Reduction Guide in April 2023. So far as the authors are aware, it represents the first attempt by any government, whether at the state or national level, to adopt a comprehensive system for counting existing regulatory requirements and then tracking reductions to the initial baseline.

Calculating a Baseline

With respect to calculating the baseline, some of the innovations involved in the Virginia approach include the following:

Regulatory "requirement" is defined expansively. In most cases, regulatory language imposing a requirement uses language such as "must," "shall," or "will."[69] Occasionally, however, less prescriptive words, such as "should" or "may," may nevertheless impose a requirement. The Regulatory Reduction Guide directs agencies to look beyond the exact word used and ask whether the language has the legal effect of requiring or prohibiting some action.

Single sections can impose multiple requirements. If a provision requires a regulated party to engage in multiple different activities, each activity counts as a requirement (e.g., a section providing that "a licensee must pass an examination, submit an application fee, and provide character references" would yield 3 requirements). If, however, the regulated party need only comply with one requirement on a list, then the requirement is only counted once (e.g., a section providing that "a licensee must either pass an examination or submit proof of having practiced for five years in another jurisdiction" would yield only one requirement).

Only requirements governing outside parties count towards the 25 percent reduction. The Guide urges agencies to look for opportunities to decrease burdens both on themselves and on outside parties (individual citizens, businesses, NGOs, local governments, other state agencies). But agencies only receive credit towards the 25 percent target for reducing burdens on outside parties. This sets the proper incentive structure, since agencies are already motivated to eliminate burdens on themselves.

[69] The identification and tallying of modal verbs, such as "shall" and "must," and permission-restricting phrases, such as "may not" and "prohibited," were originally innovations of the RegData project, which established inventories of regulatory restrictions across all federal regulations beginning in 2012 and all states beginning in 2020. *See Omar Al-Ubaydli & Patrick A. McLaughlin, RegData: A Numerical Database on Industry-Specific Regulations for All United States Industries and Federal Regulations, 1997–2012,* 11 REGUL. & GOVERNANCE 109, 109–23 (2017), https://doi.org/10.1111/rego.12107.

Requirements associated with optional programs still count. In many cases, whether to enter a regulatory regime is optional, but compliance with certain requirements is mandatory once the decision to participate has occurred. This arises frequently with so-called "certification" requirements[70]: one need not be certified to practice, but a practitioner cannot say that she is "certified" unless she complies with all the relevant requirements. Since the requirements are mandatory for anyone who chooses to participate, they must be counted towards the baseline.[71]

Requirements appearing in documents incorporated by reference count. Agencies often refer to documents outside of the regulatory code and mandate that regulated parties comply with all the provisions in those outside documents. In some cases, agencies are merely referring to another body of law with which the regulated party already must comply (e.g., a federal statute or regulation or a regulation issued by another state agency). In other cases, however, agencies refer to documents created by private parties outside of the government. These documents are usually referred to as "standards."

The number of requirements contained in private standards can be enormous. For instance, in Virginia, the Department of Housing and Community Development alone estimates that it has 161,000 requirements in the various building codes it incorporates by reference, a number that rivals the total requirement count for all other provisions of the Virginia Administrative Code. Given the often large number of associated requirements, and the fact that a user often must pay to obtain a copy of private standards, it is important that agencies carefully review their documents incorporated by reference to ensure that they intend every requirement contained therein to be binding.

ORM has encouraged agencies to carefully assess each of their incorporated documents and decide whether they are truly necessary. It has also urged agencies to clearly state which documents are intended to impose binding requirements and which are merely provided as helpful background.

Requirements appearing in guidance documents count. By definition, guidance documents cannot impose binding requirements.[72] Nevertheless, many guidance documents contain language that is virtually indistinguishable from regulatory language. ORM is working with Virginia agencies to ensure that any language that imposes a binding requirement on a party other than the agency itself gets moved to regulations. In the interim, ORM is asking agencies to count any requirement that is contained in a guidance document towards its baseline. This promotes proper incentives by ensuring that agencies cannot get regulatory reduction credit by

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[70] Terminology tends to vary significantly in this space. In Virginia, some certification regimes are mandatory, whereas others are opt-in. Licensing regimes, by contrast, are always mandatory.

[71] The opposite conclusion, that any "voluntary" activity does not count towards the baseline, would be difficult to administer. With a handful of exceptions (e.g., enrolling children in school), the vast majority of regulated activities (e.g., driving a car, obtaining a professional license) are optional in the sense that one could technically avoid coming into compliance by refusing to engage in the underlying activity.

[72] VA. CODE ANN.§ 2.2-4101 [ADD YEAR]; PROCEDURES ON GUIDANCE, *supra* note 7, at 3.

moving regulatory text into guidance, which would decrease the clarity of the regulatory code by increasing ambiguity as to whether certain provisions are binding.

A separate baseline applies to guidance document length. Assuming that agencies have properly avoided placing binding language in guidance documents, the 25 percent reduction goal would not apply to that class of materials. Yet there is still a regulatory burden associated with thumbing through a lengthy corpus of guidance documents, especially if those documents are out-of-date or needlessly wordy. ORM has therefore created a separate baseline that applies exclusively to guidance documents and focuses on length: agencies should reduce the overall number of words in their guidance documents by 25 percent.

Counting Regulatory Reductions

Once an agency has determined its baseline number of requirements, it must assess each requirement to decide which should be retained and which should be eliminated or modified. Some of the innovations of the Virginia approach include the following:

Agencies focus on eliminating "discretionary" requirements. Though it is a basic principle of constitutional law, it bears repeating: regulatory agencies derive all of their powers from legislative delegations of power and must act within statutory mandates. For that reason, agencies can only be expected to eliminate so-called "discretionary" requirements. If a statute mandates that they do (or not do) something, they have no choice but to comply until the legislature tells them otherwise. Therefore, the regulatory reduction initiative applies only to requirements that agencies can permissibly eliminate under existing law.

The Regulatory Reduction Guide is careful, however, to define "discretionary" as widely as possible. In many cases, a statute may mandate that an agency act, but it leaves the agency with a wide degree of discretion in deciding *how* to act. For instance, a statute may mandate that an agency impose a continuing education requirement for doctors, but it leaves it up to the agency to decide how many hours to require. Agencies cannot, therefore, get around the 25 percent reduction requirement merely by pointing out that a statute requires them to act: a requirement is truly "mandatory" only if the statute dictates precisely what the agency must do with no room for maneuvering.

ORM also encourages agencies to be proactive in working with the General Assembly to promote regulatory modernization at the legislative level. For instance, the ORM Economic Review Form directs agencies to calculate regulatory benefits and costs even if they are imposed entirely by statute.[73] Though the agency has no discretion in the option it selects, the General Assembly can make use of the information produced in deciding whether to amend the statute to maximize benefits and minimize costs.

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[73] REGULATORY ECONOMIC ANALYSIS MANUAL, *supra* note 5, at 6 n.2.

Agencies can meet the 25 percent goal by reducing burdens as well as by striking requirements. The most obvious way to decrease regulatory burdens is by striking discrete requirements. For example, if an agency does away with an annual report that a licensee must file, it has eliminated a regulatory requirement and will receive full credit for doing so.
There are, however, plenty of ways to reduce regulatory burdens other than striking "musts" or "shalls" from the regulatory code. For example, reducing the training hours required to become a cosmetologist from 1,500 to 1,000 does not technically eliminate any requirement, but the burden has been substantially reduced. ORM therefore provides partial credit any time an agency reduces a burden.

Calculating how much a burden has been reduced can pose a bit of a challenge. The best way is to calculate the cost of compliance both before and after the change and then provide credit for the reduction (e.g., 50 percent reduction for reducing compliance costs from $10 million to $5 million). In most cases, ORM has found that such a calculation is possible. In some cases, however, the burden reduction may be harder to calculate. For example, a regulatory change that allows new competitors into the market may eventually reduce prices, but it may take a while for the effects to be fully felt. ORM is therefore working with agencies in these cases to ensure that they receive proper credit.

In addition, though agencies only get regulatory reduction credit towards the 25 percent target for quantifiable changes in numbers of requirements, both ORM and the Governor are highlighting major successes, especially those that involve large cost reductions.[74] This provides another incentive for agencies to find opportunities to reduce burdens even in cases in which the number of requirements they may deduct from their overall total is relatively small.

ORM supervises the regulatory reduction process. To the authors' knowledge, past state-based regulatory reduction efforts, including the 2018-21 Virginia pilot program, have not featured a dedicated office that supervises the overall initiative. As a result, agencies sometimes take wildly different approaches, which makes the process of determining whether the government-wide target has been met very difficult. In ORM's experience, agency officials want to ensure they're complying with both the letter and the spirit of the exercise, but they need clear guidance on what it is that they are expected to accomplish.

Though the Regulatory Reduction Guide is likely the most comprehensive resource available in terms of how to streamline regulatory burdens, it doesn't come anywhere close to discussing every single scenario an agency might encounter. Indeed, it would be a multi-volume set rather than a 16-page how-to guide if it were to attempt to do so, and a document that long would be of little use to agencies or the public.

Instead, ORM has worked directly with agencies to address some of the unique situations they encounter. A few examples will help illustrate the types of questions agencies have raised:

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[74] VA. OFFICE OF REGUL. MGMT., *Fact Sheet on Regulatory Modernization Savings*, https://www.orm.virginia.gov/media/governorvirginiagov/orm/images/ORM-Virginians-Savings-1-pager.pdf.

- Agencies frequently issue regulations that technically add "musts" and "shalls" to the regulatory code but that actually reduce regulatory burdens by opening up new options. For instance, a recent proposed regulation from Virginia's Board of Nursing opened up a new option for health practitioners to be licensed as "licensed certified midwives."[75] The action added a handful of new requirements to the Virginia Administrative Code because a licensed certified midwife must complete certain activities in order to be authorized to practice, but the action reduced regulatory burdens by creating a new type of license that has less onerous requirements than the alternative licenses that would qualify someone to engage in the same activity.[76]
- Regulations sometimes have multiple separate sections that effectively say the same thing. For example, Virginia's Department of Wildlife Resources recently consolidated several provisions of its regulations dealing with hunting of bear, deer, elk, and turkey.[77] Though the regulatory requirements mostly stayed the same, the agency was able to eliminate dozens of requirements simply by combining multiple separate provisions applying similar or identical requirements to four different species into a single set of provisions applying those requirements to all four species. This will eliminate confusion and save time for hunters who will no longer have to thumb through multiple separate chapters to find the relevant requirements.
- In some instances, agencies will temporarily increase or decrease a regulatory burden. Though the Regulatory Reduction Guide instructs agencies not to count things like year-to-year adjustments in hunting quotas as increases or reductions,[78] at some point a change becomes sufficiently permanent that it should be counted. ORM works with agencies to decide what should and should not be included.

These complexities underscore the importance of having a dedicated office such as ORM to supervise the regulatory reduction process. Though the Regulatory Reduction Guide addresses the vast majority of situations agencies might encounter, unique questions will inevitably arise and require a centralized office to provide answers. ORM also serves a quality control function by ensuring that agencies are properly applying the methodology of the Regulatory Reduction Guide.

2. Effects to Date

Virginia is on track to exceed the targets established in Executive Order 19. It has already blown through the 25 percent length reduction target for guidance documents, having eliminated 47.8

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[75] *Regulations Governing the Practice of Licensed Certified Midwives*, VA. BD. OF NURSING (2023) https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9552.

[76] Other examples of actions that technically add requirements but that actually reduce regulatory burdens include creating the option of a general permit in lieu of an individual permit, entering an interstate compact that allows out-of-state licensees to waive into practicing a profession, and adding a performance standard as an alternative to a design standard.

[77] *Game: In General*, VA. DEP'T OF WILDLIFE RES. (2023), https://townhall.virginia.gov/L/ViewStage.cfm?stageid=10034.

[78] REGULATORY REDUCTION GUIDE, *supra* note 6, at 12.

percent of the words in guidance documents already, and it is anticipating a 50 percent reduction in length by the end of the Youngkin Administration in early 2026.

Virginia agencies have also collectively surpassed the 25 percent regulatory requirement reduction target and are currently sitting at a 26.5 percent reduction. And Virginia should have streamlined around 33 percent of regulatory requirements by the end of the Youngkin Administration.

In addition, the Administration has achieved success across a wide array of agencies. The Department of Housing and Community Development (DHCD) and Department of Transportation (VDOT) impose by far the largest number of regulatory requirements (161,000 and 73,000, respectively). DHCD is on track to reduce regulatory requirements by almost 30 percent, and VDOT is projected to achieve a 46 percent reduction in requirements.

The success of the two most requirement-heavy agencies helps explain the fact that Virginia will substantially exceed the 25 percent requirement reduction goal. But around 75 percent of agencies are projected to hit or exceed the 25 percent requirement reduction target (and over 80 percent are projected to hit or exceed the 25 percent guidance document reduction target).

The agencies that will hit the reduction target handle a diverse array of regulatory issues (healthcare, education, public safety, environmental protection, workforce development, finance, and information technology), as do the agencies that will fall a bit short. It therefore appears that any type of regulatory program is a good candidate for regulatory streamlining.

The key characteristic of agencies that will not hit the reduction target is a preexisting commitment to maintaining a streamlined regulatory code. A handful of agencies already made significant progress in pruning their regulatory requirements prior to the issuance of Executive Order 19, and these agencies had a harder time meeting the reduction target. Even so, no agency is on track to increase regulatory requirements (the lowest reduction percentage is 0 percent), and many of the agencies that are unlikely to hit a 25 percent reduction will still fall in the 10-20 percent range.

As noted above, these changes are saving Virginia citizens $1.2 billion per year.[79] In many cases, the regulatory actions that streamlined the largest numbers of requirements corresponded to the actions that produced the largest savings. For example, DHCD's changes to the Building Code save $723 million per year and count for 48,000 requirements streamlined.[80]

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[79] We note that these cost savings are primarily in easily measured, direct costs. We are not including second- and third-order effects of deregulation—namely, its positive effects on business investment and the innovation that derives therefrom. But as Coffey et al. (2020) demonstrate, these effects can create a massive windfall for GDP growth. *See Bentley Coffey et al., The Cumulative Cost of Regulations*, *supra* note 12.

[80] The use of the term "streamlined" rather than "cut" is intentional. As noted above, agencies can get credit for either eliminating requirements entirely or modifying requirements in a way that reduces regulatory burdens. In DHCD's case, it would be impossible to cut tens-of-thousands of over 161,000 requirements in the building code, especially because most of those requirements are necessary to protect public safety. But removing expensive gold-

Other changes produced major reductions in requirements but did not necessarily yield large cost savings. For instance, VDOT achieved the vast majority of its requirements by eliminating so-called "documents incorporated by reference" (DIBRs) from its regulations.

In many cases, it is more efficient for an agency simply to refer to a privately developed standard in a regulation rather than reprinting it. But these DIBRs can become confusing if the agency does not specify which portions of the document regulated parties are expected to comply with.

In VDOT's case, it was incorporating thousands of pages of text in its DIBRs while providing minimal direction to regulated parties as to which parts were relevant. It therefore rescinded the DIBRs and instead tailored individual permits to include the handful of requirements with which regulated parties were expected to comply. These changes, along with other reductions, are expected to result in roughly 33,000 requirements cut.

In one sense, the VDOT actions do not produce a significant change in regulatory burdens: regulated parties will still be expected to comply with most of the same requirements.

But providing permittees with a tailored document that lays out precisely what they are expected to do is far more useful than directing them to thousands upon thousands of pages of dense text and expecting them to figure out which parts are relevant. Small businesses, in particular, will undoubtedly find the new process far easier to navigate and hopefully should need to invest much less time and effort in trying to figure out precisely what the law is.

Virginia's two-track approach to regulatory streamlining gives agencies strong incentives to find innovative ways to modernize their regulations. Some agencies like DHCD have found it more profitable to focus on cost-cutting rather than eliminating words from the regulations. Others, such as VDOT, have been able to cut enormous amounts of text from the regulations. Though these latter changes may not always produce major cost savings, they make the regulatory code much easier to navigate.

These efforts have not gone unnoticed. In 2024, CNBC named Virginia its top state for business.[81] Though the regulatory climate was one of many factors that CNBC considered, Virginia's concerted effort to make it easier to do business has started to produce significant results.

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plating, such as the requirement to install a sprinkler in townhomes, resulted in a 29.9 percent reduction of the cumulative costs associated with the building code. ORM therefore multiplied the total number of requirements by the cost reduction and awarded DHCD 48,000 reduction "credits" for its changes.

[81] Scott Cohn, *Virginia Is America's Top State for Business in 2024, with the Nation's Best Schools and Solid Infrastructure*, CNBC, July 11, 2024, https://www.cnbc.com/2024/07/11/virginia-americas-top-state-for-business-nations-best-schools-solid-infrastructure.html.

Other states are also sitting up and taking notice. Governor Mike Braun of Indiana recently issued an executive order that is modeled closely on the work Virginia has done.[82] The Texas legislature has created a Regulatory Efficiency Office that is largely modeled on Virginia ORM.[83] The American Legislative Exchange Council (ALEC) approved a model bill that creates an Office of Regulatory Management.[84] And Virginia ORM has spoken with representatives in over a dozen states, many of whom are interested in replicating the Virginia reforms.

IV. Spreading Virginia's Reforms to Other States

Though the point has been made in preceding sections, it bears reemphasizing. Achieving meaningful and lasting success in the regulatory modernization space requires a dedicated team focused on ensuring that each aspect of any reform effort is carried out.

Of course, the key Virginia documents, including especially the Regulatory Economic Analysis Manual and Regulatory Reduction Guide, were intentionally designed as "plug-and-play" resources. Though they were tailored to Virginia regulations, other states' regulatory regimes are sufficiently similar that a state could easily retool those resources with relatively minimal modification. And, absent any dedicated funding for creating an entity like ORM, a Governor's decision to adopt a regulatory reform executive order directing his or her state's agencies to use the key Virginia ORM documents would undoubtedly be better than nothing.

But ORM's experience has shown that regulatory economic analysis and burden reduction are simply too complicated to leave up to the dozens of agencies that make up state government to figure out and implement on their own.

Fortunately, ORM's experience has also shown that a lean staffing model is entirely feasible. ORM consists of four dedicated employees: a Director, a Deputy Director, and two Policy Analysts. And another state could potentially make do with an even smaller office. ORM has taken on a number of tasks beyond the programs described above, which constitute the bulk but by no means the entirety of its portfolio.

Moreover, since ORM is acting largely as a first mover in the state regulatory modernization space, its burden has been especially large. In the first few months of its existence, a considerable amount of ORM's staff's time was spent researching the regulatory economic analysis literature and deciding how to apply it in a Virginia context, writing the manuals and guides described above, training agency staff on the changes, and redesigning the process to accommodate the new review structure.

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[82] Ind. Exec. Order 25-17 (Jan. 14, 2025), https://www.in.gov/gov/files/EO-25-17.pdf.
[83] Texas Senate Bill 14, https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=89R&Bill=SB14.
[84] AN ACT TO ESTABLISH THE OFFICE OF REGULATORY MANAGEMENT (2024), https://alec.org/model-policy/an-act-to-establish-the-office-of-regulatory-management/.

Some of these upfront costs, such as training agency staff on a new process, would also apply in other states. But many, including designing the relevant resources, would not. Other states can reap considerable economies of scale simply by copying and adapting the Virginia model.

In addition, developments in artificial intelligence (AI) promise to reduce the costs associated with cataloguing and processing regulatory requirements by a considerable margin. AI technology is a perfect fit for reviewing regulatory text. It can process thousands of pages of material in a small fraction of the time it would take a human being to do the same.

In the handful of months remaining in the Youngkin Administration, Virginia ORM will be undertaking a pilot program that uses AI to process the text of regulations and guidance documents and identify additional opportunities for streamlining.

The AI tool developed as part of the pilot program will take at least two separate approaches to identifying opportunities for streamlining. First, it will scan both the statutory code and the regulatory code side-by-side and identify the regulatory requirements that go beyond the minimum required in the statute. Many such discretionary regulatory requirements may prove necessary to protect public health and safety, but some may not. A human being would then look at the AI-produced analysis and decide which regulations may be candidates for streamlining or elimination.

Second, it will scan each participating agency's regulatory code and then scan the codes of other states (ideally all 50, but perhaps a smaller subset of neighboring states) to identify provisions that impose similar requirements. A human being would then review the results and identify instances in which Virginia regulation is stricter than that of sister states.

For example, the algorithm could identify every provision of state codes dealing with training hour requirements for cosmetologists. If Virginia requires 1,500 hours, and the least restrictive state requires only 800 hours, Virginia should consider whether its requirements are too strict. Absent evidence that the state with the least restrictive training requirements produces subpar practitioners, Virginia should consider whether its requirements are too burdensome.

Of course, a state may have a perfectly legitimate reason to impose regulatory restrictions that are stricter than those in surrounding states. But the algorithm would create a "heat map" that would allow Virginia (or any other state) to identify areas in which it may be imposing burdens that are more onerous than what is necessary. Performing such a comparison likely would take a human being hundreds or even thousands of hours. AI will produce the necessary analysis in a matter of seconds.

States that are interested in undertaking reforms modeled on those implemented in Virginia but that are reluctant to create a new program should therefore consider whether they might use AI to achieve similar results. Though an ORM serves certain functions that an AI program cannot easily replicate, such as fielding questions regarding reduction strategies or determining whether or not a change will result in a meaningful burden reduction, a cash-strapped state could likely achieve impressive results merely by using AI to scan its regulations and tasking a high-ranking member of the Governor’s staff to work with agency officials to try to achieve appropriate reductions.

V. Conclusion

In three short years, Virginia has designed and carried out a comprehensive program for modernizing its regulatory system. It has achieved over $1.2 billion per year in savings for Virginia citizens, and it has produced a much shorter, more coherent regulatory code. And it has achieved these impressive results without eliminating any regulatory requirements necessary to protect public health and safety.

As Justice Brandeis observed nearly a century ago, innovative states can serve as “laboratories” of democracy, pioneering new approaches that other states, as well as the federal government, can emulate. Since Virginia began its work in 2022, the interest in regulatory reform has grown exponentially. Federal DOGE, and the Trump Administration more generally, have indicated that the next four years will witness regulatory reduction efforts unlike any seen in decades. And numerous states have implemented reform efforts of their own.

As these efforts proceed, Virginia’s model will hopefully prove influential and inspire similar reforms in states across the nation. As Virginia’s experience shows, regulatory modernization doesn’t have to be a partisan affair. Getting citizens to work faster, freeing businesses to spend their time offering goods and services rather than navigating red tape, and combating inflation by reducing compliance costs and expanding the number of market participants are goals that voters and legislators across the political spectrum should agree on.

From the first landing at Jamestown into the 21st century, Virginia has been at the forefront of states in reinventing government so that it better serves the people it represents. Though it would be naïve to assume that technical reforms such as benefit-cost analysis and regulatory reduction will somehow cool partisan tempers or forge a new consensus on the best way to run government, they can and will make people’s lives incrementally better. It is therefore our hope that Virginia’s successes spread nationwide and that citizens across the nation (and the world) reap the significant benefits that a simpler, smarter approach to regulation can provide.