

June 2019

CUTTING RED TAPE:

REGDATA APPLICATIONS IN NORTH AMERICA



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The authors gratefully acknowledge the efforts and assistance over many years of RMIT University's Dr Chris Berg, Dr Darcy Allen, and Aaron Lane, each of whom were formerly on staff at the IPA and remain Adjunct Fellows. Their research and other work taking forward the concept of RegData in Australia has been invaluable.

Cover Image: The Cut Red Tape bus in which the IPA toured Alfredo Ortiz of the US-based Job Creators Network in 2018, at Parliament House Canberra

Contents

The IPA's Cut Red Tape to Unleash Prosperity Program	7
An Introduction to "RegData"	8
Applications of RegData: Case Study from British Columbia	10
States of the USA: Overview	13
Applications of State RegData: Case Studies from the USA	14
References from the Institute of Public Affairs	19

The IPA's *Cut Red Tape to Unleash Prosperity* Program

Cut Red Tape to Unleash Prosperity is the Institute of Public Affairs' (IPA) marquee economics research program. Under this program, the IPA provides research relating to the costs of red tape to Australian businesses, families, individuals, and community groups. This includes analysis of the broad economic costs of red tape, sector and industry specific analysis, and specific red tape items that are particularly burdensome.

A key focus of the research program is to provide methods and recommendations for how policy makers can reduce red tape. This includes both specific examples of red tape that ought to be repealed, as well as broader, institutional approaches that can be implemented to achieve sustainable reductions to red tape over time.

There are many different definitions of red tape. In the context of this research program, the IPA defines red tape as rules or regulations which are considered to go beyond "minimally effective regulation". Minimally effective regulation is a regulatory regime with no red tape – but not no regulation. The key aim of the IPA's red tape reduction research is to highlight ways in which existing government objectives can be achieved at least cost. In other words, this research program does not challenge the underlying veracity of government intervention, but seeks more cost-effective and less economically harmful ways of intervening.

Many jurisdictions around the world, at the national, state or provincial, and local level, have implemented red tape reduction programs with varying degrees of success. The purpose of this information note is to highlight a number of case studies from North America where red tape reduction programs have been successfully implemented. The red tape reduction programs implemented in these jurisdictions all used the variants of what is now referred to as the RegData method to measure and reduce red tape. This methodology is explained in the following section.

An Introduction to “RegData”

There are many ways to measure red tape, from the “paperwork burden” of regulatory compliance, to estimates of the opportunity costs of red tape, to pages of legislation. All of these methods have costs and benefits. The paper work burden approach is simple to calculate, but captures only a narrow range of costs. Opportunity costs get closer to the real cost incurred by business of red tape, but are difficult and time consuming to estimate. And legislation page counts have the benefit of simplicity, but lack nuance.

In addition, all of these approaches are unable to capture the key problem of red tape: it imposes binding constraints on businesses, individuals, families, and non-government organisations. Red tape restricts these groups and individuals from pursuing their goals and objectives, and as result, imposes an array of economic and social costs.

“RegData” is a new red tape measurement approach that captures the restrictive nature of red tape. RegData uses machine learning-based textual analysis of the register of legislation to measure the actual restrictive content of legislation and regulations through words such as “shall”, “must”, “should”, “prohibited”, et cetera. The output of RegData is thus a count of the “regulatory restrictiveness clauses.”

This measure of restrictiveness clauses can then be used for a variety of purposes. For example, it can be used as a proxy for the changes to red tape overtime. It provides the foundation for advanced economic analysis, with the degree of regulatory restrictiveness cross-correlated with measures such as economic growth, wages, exports, and so on. Together these provide a solid foundation for evidence-based public policy advocacy. Importantly, comparisons can be made across industries, sectors, and jurisdictions. It can be used to track the progress of claimed red tape reduction initiatives undertaken by governments.

Importantly, RegData can and has been used as an institutional tool to reduce red tape. For example, some jurisdictions, such as the province of British Columbia in Canada (discussed further below) have used the regulatory restrictiveness approach as apart of “one-in-x-out” red tape reduction initiatives were x number of clauses are repealed for every new one introduced.

To date the Mercatus Center at the US-based George Mason University has compiled a dataset of 28 states in the US called “State RegData”. A number of these states have used state-level RegData analysis and case studies provided by the Mercatus Center to justify and explain the need for red tape reduction and broader regulatory reform. The experience of RegData is that it can be used as a catalyst to drive changes to policy the state and federal level.

In conjunction with Australian researchers the Mercatus Center is preparing a working paper recording the establishment of a baseline RegData panel of Commonwealth Government legislation, which will be published by July 2019. The IPA is working with Mercatus to establish and support RegData Australia and enable associated economic analysis and development of public policy recommendations.

Applications of RegData: Case Studies from North America

There are a number of jurisdictions in North America – twelve in the United States alone - which have applied the RegData method as a part of their red tape reduction initiatives. A summary of some of these examples are provided below.

British Columbia, Canada

The Canadian province of British Columbia provides the best illustration to date of how the use of regulatory restrictiveness clauses can be used to achieve sustainable reductions to red tape and provide a substantial economic dividend.

In 2015, the Canadian government became the first government in the world to pass a law requiring that one regulation be removed for every new regulation introduced. The change has deep roots in a much longer running set of reforms at the provincial (state) level in Canada. In 2001 the British Columbia government announced it would cut regulation by one-third in three years. Not only did it accomplish its goal but it continues to track its regulatory requirements and build on its early success. Earlier this year, British Columbia became the first jurisdiction in North America to legislate an annual Red Tape Reduction Day.

The following section is an extract¹ which explains British Columbia's approach to reducing red tape through the use of regulatory restrictiveness clauses.²

Context

British Columbia is Canada's western-most province, with a population of 4.6 million people and a GDP of approximately C\$220 billion. Economic growth and employment in British Columbia lagged the rest of the country in the 1990s. Excessive regulation and high taxes were widely cited as major concerns by those in the business community.

In 2001, a new government was elected after campaigning on promised to improve the economy by reducing taxes and regulation. A minister of deregulation was appointed to lead the file and ensure that the government's specific campaign promised of reducing regulation by one-third in three years was met.

1. Extract is from http://redtapereduction.com/BC_Reg_Reform_Model.aspx

2. A more detailed account can be found at Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, November 2015.

Measuring Progress

The minister of deregulation chose “regulatory requirements” as his measure. A regulatory requirement is defined as “an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges.” Notably the measure includes “requirements” found not just in regulation but also those found in legislation and forms or other government policies. It is more comprehensive in this dimension than many other measure. A few additional notes of interest:

- The first baseline count revealed 382,139 regulatory requirements contained in 2,200 regulatory instruments). The count was accomplished in several months with the help of interns.
- Government departments and agencies were required to track progress against their own baselines. The counts by department were made public quarterly and discussed regularly at cabinet meetings.
- A regulatory reform checklist was put into place. The minister was required to sign off on the checklist. It includes an indication of how many regulatory requirements will be added and how many will be subtracted.
- When measuring began, it was a requirement that two regulatory requirements be removed for every one added. Currently one must be removed for every one added to maintain the reduction.
- Currently the government has achieved a 41 percent reduction relative to the 2001 baseline.

Lessons from British Columbia

Reducing the regulatory burden has proved extremely challenging. British Columbia’s model stands out for its simplicity, longevity and results. Following are some reflections on its success as well as some of its shortcoming:

- For regulatory reform to succeed it must have top level political support. B.C.’s premier (equivalent of a state governor) was a champion and appointed a minister whose only job it was to oversee the reforms.
- It is hard to lose weight without stepping on a scale. A differentiating factor for B.C.’s model was a clear measure, with a reduction (and subsequent maintenance) target.
- Requiring the elimination of existing regulatory requirements before new ones can be adopted engaged the bureaucracy in becoming part of the solution. In B.C. each agency is responsible for tracking, reporting, and monitoring its own progress. This decentralized approach helped create buy-in. The minister of deregulation offered guidance, support and feedback about which regulations were problematic based on extensive consultation with the private sector.

- Language matters. In B.C. “deregulation” worked initially in the context of a struggling economy with excessive regulation. It has since changed its language to “red tape reduction.” Red tape reduction helps create clarity in necessary government rules are not going to be eliminated. In hindsight, this term could have been used right from the beginning to more clearly capture what the government was trying to do.
- Small business advocacy was important in championing B.C.’s reforms and particularly critical in ensuring they survived past 2004, when the initial one-third reduction target was met.
- One of the short comings of the B.C. model is that it does not address a critical component of what is often felt by citizens as red tape: poor government service (confusing language on forms, long wait times, etc.) However, the B.C. government recently legislated a Red Tape Reduction Day. The consideration around what to announce during this day focused heavily around improving government customer service. How this will be measured over time has yet to be determined.

State of the USA: Overview

There is excellent data demonstrating that regulatory accumulation has occurred for decades in the United States at the federal level, but knowledge has been limited regarding how much regulation exists among US states. The Mercatus Center's State RegData product—built on the QuantGov platform—offers a starting point for tracking and comparing regulation and its trends at the state level.

State RegData quantifies regulatory restrictions, which are words and phrases that indicate legal obligations or prohibitions in state administrative codes. Specifically, the dataset counts instances of the words shall, must, may not, required, and prohibited. To assess how relevant a restriction is to an industry, State RegData uses machine learning algorithms to connect regulatory restrictions to industries and sectors of the economy, as defined by the North American Industry Classification System (NAICS).

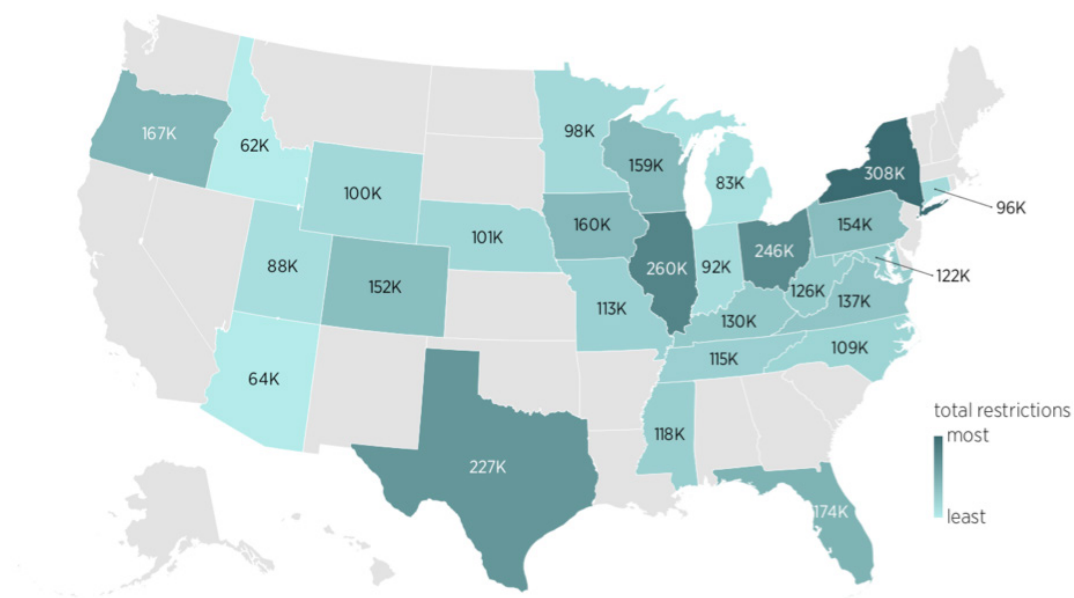
At the time of this writing, State RegData includes data on 28 states with more in development. Unsurprisingly, State RegData reports significant variety in the amount of regulation among states. New York, the most regulated state in the dataset, has 307,636 restrictions in its administrative code. Illinois, Ohio, and Texas all have more than 200,000 regulatory restrictions. At the other end of the spectrum, Arizona's regulatory burden is merely 63,919 restrictions. Connecticut, Michigan, Minnesota, and Utah also have fewer than 100,000 restrictions in their administrative codes.

On the next page is a graphical presentation of the current number of regulatory restrictions (in thousands) across the United States.³

3. Fabrizio and McLaughlin (2019), *Mapping Regulatory Restrictions in US States*, <https://quant.gov.au/stateregdata/> Bing Maps (data), © GeoNames, HERE, MSFT. Produced by the Mercatus Center at George Mason University, February 2019.

Figure 1: State level regulatory restrictions in 2018

New York had the most regulatory restrictions in its administrative code, while Idaho had the fewest.



Source: Patrick A McLaughlin, Oliver Sherouse, Daniel Francis and Jonathan Nelson, State RegData (dataset), Quant Gov, Mercatus Center at George Mason University, Arlington, VA, 2018.

Individual State RegData applications:

The following pages contain case studies of applications State RegData prepared by the Mercatus Center at the request of the IPA. The IPA gratefully acknowledges the assistance of the Mercatus team, particularly Patrick McLaughlin and Tyler Richards, in providing this information and generally for supporting efforts to extend the RegData approach to Australia:

- Idaho, Pharmacy Regulations
- Virginia, Criminal Justice and Occupational Licensing
- Missouri, Holistic Reform
- Kentucky, Red Tape Reduction Initiative
- Iowa, Red Tape Reduction

Idaho, Pharmacy Regulations

Over the past two years, Mercatus scholars have briefed the Idaho State Board of Pharmacy on ways to reform rules under its purview and trained staff to use RegData to assess progress. As a result the Idaho State Board of Pharmacy reduced the number of regulatory restrictions by 50 per cent.

Importantly, this method is spreading to other Idaho agencies. After the 2018 election, the executive director from the pharmacy board became administrator of the state budget office, and is implementing a state-wide regulatory reform using recommendations from Mercatus research, such as the one-in, two-out deregulation standard.

Virginia, Criminal Justice and Occupational Licensing

The state government of Virginia has completed the first step required by HB 883, a bipartisan law informed by Mercatus findings on targeted regulatory reduction. Officials completed a baseline count of rules that apply to two agencies relating to criminal justice and occupational licensing. Virginia House Speaker Kirk Cox announced that the agencies must eliminate 1,200 regulatory requirements by 2021. This task now falls to the state's regulators, with oversight from the Department of Planning and Budget, which acts as the sole accountable entity as suggested by Mercatus research.

Missouri, Holistic Reform

In 2017, Missouri policymakers launched a deregulation initiative after consulting with Mercatus scholars about how to operate a holistic regulatory reform process. This initiative heavily cited Mercatus research and RegData technology, which found that the state placed over 113,000 restrictions on citizens and businesses. The Governor's Office froze most rulemaking for a short time and implemented a review process for every rule in the Code of State Regulations. This process required each agency to evaluate their rules according to six criteria and to solicit public feedback. Two years later, the initiative is showing clear results: Missouri has already eliminated more than 19,000 regulatory restrictions, according to an official involved with the project.

Kentucky, Red Tape Reduction Initiative

In 2016 the state government of Kentucky announced a plan to address the outdated, overly complex and unnecessary red tape that has accumulated in Kentucky's regulatory code. As part of the government's plan, government employees - with input from the business community and the general public - were tasked with reviewing over 4,500 regulations on Kentucky's books in order to identify the problematic rules in need of revision or elimination. As of August 2018, the state had reviewed over 2,300 regulations, repealed 453 of them, amended an additional 424, and identified hundreds more for future action

Kentucky governor Matt Bevin launched the Red Tape Reduction Initiative after meeting with scholars from the Mercatus Center. Inspired by the Mercatus Center's research detailing how the Canadian province of British Columbia increased economic growth by cutting unnecessary regulations, Bevin chose to adopt a similar approach in the state of Kentucky. Now Kentucky officials are consulting with Mercatus Center scholars on other reform proposals.

Figure 2: Matt Bevin, Governor of Kentucky, with Scott Hargreaves of the IPA, 2017.



Further references:

<http://redtapereduction.com/>

(Includes video of Governor Matt Bevin and Laura Jones of the Mercatus Center)

Iowa, Red Tape Reduction

In 2018 the Iowa state government renewed its efforts to reduce red tape on the back of research undertaken by the Mercatus Center. A RegData analysis of Iowa revealed some 160,306 state regulatory restrictiveness clauses that would take one person around 563 hours – or more than 14 weeks – to read.

The renewed effort to reduce red tape in Iowa follows a 2011 requirement which required all new regulations to be justified through job impact statements. And in 2012, a law was passed requiring all agencies to review their administrative regulations every five years.

Further reference:

<https://governor.iowa.gov/2018/01/gov-reynolds-lt-gov-gregg-announce-new-research-on-state%E2%80%99s-regulatory-framework> ;<https://www.radioiowa.com/2018/01/16/gmu-research-on-state-of-iowa-regulations-audio/>

New Mexico, Regulatory Impacts Statements

In December 2018, the state government of New Mexico issued an executive order which directed all state boards, commissions, and agencies to complete a Regulatory Impact Form for every new proposed rule or rule change.

The executive order was made following research published by the Mercatus Center using the RegData methodology to illustrate the red tape problem in New Mexico. That research found that regulations and legislation in New Mexico contained 125,395 regulatory restrictiveness clauses which would take an individual about 514 hours, or 13 weeks, to read.

The reason also found that the top five industries affected by red tape were healthcare services, chemical manufacturing, transport, aged care facilities, and mining.

Further references:

<https://abc7amarillo.com/news/local/nm-governor-issues-executive-order-requiring-impact-analysis-for-proposed-regulations>

<http://www.ydr.com/story/opinion/columnists/2018/01/04/lets-cut-excessive-pa-regulation-column/1004432001/>

http://www.dailyitem.com/the_danville_news/news/lawmakers-propose-plan-to-begin-re-examining-state-regulations/article_521b07b4-27fe-5647-be32-11f280aea091.html

<http://fox43.com/2018/01/25/wagner-disanto-and-brooks-propose-to-count-cap-cut-state-regulations/>

Pennsylvania, Health and Safety regulatory reform

In April 2018, the Pennsylvania state government passed a multi-bill package to cut government red tape and reduce burdensome regulations while still maintaining the integrity of health and safety regulations.

Among the bills are those that would review statutes and regulations for possible revision or repeal; enhance the review process for regulations that impose a major cost burden on the state; grant the General Assembly the authority to repeal any regulation in effect without the governor's consent; reform the permit process; and require each state agency to designate a regulatory compliance officer.

The reforms were implemented following research by the Mercatus Center which estimated that there were more than 153,000 regulatory restrictiveness clauses contained with legislation and regulation in Pennsylvania.

Further references:

Pennsylvania radio:

<https://app.criticalmention.com/app/#clip/view/db9b15f6-7cdc-4b63-b528-4b67b52ac7b3?token=aa457ea8-f74d-49ea-baba-c58ac226edee>

<https://app.criticalmention.com/app/#report/eee0d7ae-fdf2-41b3-b26f-23a79cbcc7b9>

References from the Institute of Public Affairs

How British Columbia Defeated Red Tape - And How We Can Too (video)

<https://youtu.be/mvylwra1qWA>

Five Principles of Red Tape Reduction

<https://ipa.org.au/wp-content/uploads/2018/06/IPA-Report-Principles-of-Red-Tape-Reduction.pdf>

Barriers To Prosperity: Red Tape And The Regulatory State In Australia

<https://ipa.org.au/wp-content/uploads/2017/11/IPA-Report-Barriers-to-Prosperity-Red-tape-and-the-regulatory-state-in-Australia.pdf>

Submission To The Senate Red Tape Inquiry Into Environmental Assessments And Approvals

<https://ipa.org.au/wp-content/uploads/2017/06/Letter-Senate-Red-Tape-Wild-and-Allen.pdf>

The Growth Of Federal Environmental Law 1971 To 2016

<https://ipa.org.au/wp-content/uploads/2017/06/Letter-Senate-Red-Tape-Wild-and-Allen.pdf>

Clause for Concern: Counting restrictive clauses in legislation is a powerful tool to reduce red tape

<https://ipa.org.au/ipa-review-articles/clause-for-concern>

Also, contributions by IPA, RMIT University and other authors in:

Australia's Red Tape Crisis: The Causes and Costs of Over-regulation

Edited by Darcy Allen and Chris Berg

https://www.connorcourtpublishing.com.au/AUSTRALIA%E2%80%99S-RED-TAPE-CRISIS-The-Causes-and-Costs-of-Over-regulation--Edited-by-Darcy-Allen-and-Chris-Berg_p_178.html

