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WISCONSIN REGULATION IN FOCUS

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WISCONSIN REGULATION IN FOCUS

Abstract

This study describes the process by which regulations are promulgated in Wisconsin and provides various measures of the regulatory volume in the state. With regards to process, Wisconsin has a detailed set of administrative procedures that includes many checks and balances and oversight mechanisms in both the executive and legislative branches. However, it is unclear how well these processes are working in practice.

The Wisconsin Administrative Code (WAC) contains 12.25 million words as of 2020. At a normal pace of reading, an individual would need about 681 hours, or roughly 17 weeks, to read every word in the WAC. The WAC contains over 161 thousand regulatory restrictions as of 2020, above average for a US state and more than many of the state's neighbors. Importantly, these measures do not include requirements found in agency policy documents or forms, or requirements the legislature puts in place directly via statute. The count also does not include the various restrictions found in local regulations or regulations levied on the state by the federal government.

A recent study estimated that federal regulatory growth from 1997 to 2015 is associated with 85,281 more people living in poverty in Wisconsin, 3.2% higher income inequality in the state, 170 fewer businesses annually, 2,620 lost jobs annually, and 7.35% higher prices.

The paper concludes with suggestions for reforms to the regulatory process in Wisconsin. Wisconsin could benefit from the adoption of trial-like procedures for rulemaking, sunset provisions for regulations, and cost offset requirements for rules. Wisconsin could also improve on existing procedures, such as expanding the use of independently-produced economic analysis for rules and ensuring that pre-proposal "statement of scope" documents are limited to one-per-regulation.

Introduction

Regulations impose restrictions on individuals and businesses, limiting the scope of allowable behavior or mandating that certain behaviors be followed. These rules carry the force of law, but unlike statutes, which are written by elected representatives of the public and signed by an elected official like a governor or the president, regulations are primarily written by unelected, career civil servants, under lawmaking authority delegated to them by elected representatives. “Administrative codes,” compile together the corpus of administrative laws that are commonly referred to as “regulations.”

The effects of regulations can be difficult to ascertain, despite widespread agreement that virtually every aspect of Americans’ daily lives is touched by one form or another of regulation.¹ Regulations affect how much water your showerhead can use, the fuel economy of the car in your driveway, and even the labels on the wine you sip at dinner and the toothpaste you brush your teeth with before bed. Each of these items is regulated by the federal government in the United States.

As of 2019, the *US Code of Federal Regulations* was 185,984 pages long and therefore far too extensive for researchers or individual citizens to read in its entirety.² It would take almost three years to read the entire CFR if all one did was read regulations forty hours per week at a normal pace of reading.³ To add to the complexity, regulations exist at

the state and local levels as well. Thus, there is a vast web of rules at various levels of government that are interacting in ways that are difficult to understand or foresee.

In this brief, we focus on Wisconsin regulations, highlighting regulations generated by Wisconsin state agencies and bureaus as well as federal regulations imposed on the state from Washington, DC. We begin with a discussion of how regulations are produced in Wisconsin, based on the state’s Administrative Procedure Act, before discussing various measures of how regulated activities are in Wisconsin. We conclude with suggestions for how to reform regulatory processes in the state to ease the burden on Wisconsin state residents and businesses.

Wisconsin’s Regulatory Process

Governments have in place procedures for proposing, adopting, and reviewing administrative regulations. Specifically, each state has an “Administrative Procedure Act” (APA),⁴ which establishes procedures for rulemaking. These APAs tend to be similar to the federal Administrative Procedure Act, which was enacted in 1946,⁵ though there are often important differences between the federal APA and state APAs. Wisconsin’s APA, adopted in 1943, actually predates the adoption of the federal APA by three years.⁶

1 Susan Dudley, “A Regulated Day in the Life,” *Regulation* (Summer 2004): 10-11.

2 Federal Register Statistics, Federal Register, accessed September 20, 2021.

3 This assumes a reading speed of 300 words per minute with two weeks of vacation each year.

4 Wisconsin’s APA can be found in Wis. Stat. § 227. For information about state APAs generally, see Rui J. P. de Figueiredo Jr. and Richard G. Vanden Bergh, “The Political Economy of State-Level Administrative Procedure Acts,” *The Journal of Law and Economics* 47, no. 2 (October 2004): 569–88.

5 See 5 U.S. Code Chapter 5.

6 Rui J.P. de Figueiredo Jr. and Richard G. Vanden Bergh, “The Political Economy of State-Level Administrative Procedure Acts,” *The Journal of Law and Economics* 47, no. 2 (October 2004): 569–88.

Wisconsin's procedures for promulgating new regulations have features that make it fairly unique compared to other states. Regulatory agencies in Wisconsin begin the process of proposing new regulations by preparing a "statement of scope."⁷ The production of a statement of scope is a step that occurs prior to a regulation being formally proposed and is intended to encourage initial investigation into the potential need for a rule in a particular area. The statement of scope is reviewed by the Department of Administration and must receive the approval of the governor before it can be sent to the Legislative Reference Bureau for publication. Cochairpersons of a committee in the legislature known as the Joint Committee for the Review of Administrative Rules (JCRAR) can also direct the agency to hold a public hearing and comment period. Agencies will often receive feedback from interested members of the public during this time, including from those likely to be regulated should a rule be forthcoming.

Next in the rule promulgation process is for a rule to be formally proposed. At that point, the agency prepares an economic analysis that describes the problem the agency is trying to solve and includes attempts to quantify the costs and benefits of the proposed regulation.⁸ In completing the analysis, the agency consults with businesses, associations, local government units, and individuals that may be affected by the rule. The analysis should capture compliance costs as well as the impact on specific sectors of the economy, productivity, jobs, and overall competitiveness in the state. In addition,

the analysis should investigate alternatives to the proposed rule, including not issuing the proposed rule. A fiscal analysis that explores the effects on state revenues must also be prepared.⁹

If an agency's analysis reveals that the regulation could have an adverse effect on small businesses in the state, a more rigorous review process is triggered. The analysis is then submitted to the Small Business Regulatory Review Board (SBRRB),¹⁰ which is an independent agency that consists of seven small business owners, along with one state representative and one senator who are involved in small business issues in the legislature.¹¹ The SBRRB may use cost-benefit analysis to determine the fiscal effects on small businesses, whether the rule could have a significant impact on a substantial number of small businesses in the state, and whether the agency has complied with various analysis requirements.

A proposed rule and the associated economic analysis are also submitted to the Legislative Council where they are reviewed in order to create a report.¹² The agency is required to hold a public hearing (with a few exceptions) to afford interested parties the opportunity to present evidence and opinions either orally or in writing.¹³ Once all required evidence has been collected and the rule has been drafted in its final form, the proposed rule goes back to the governor, who may once again approve or disapprove the regulation at his or her discretion.¹⁴

7 Wis. Stat. § 227.135.

8 Wis. Stat. § 227.137.

9 Wis. Stat. § 227.14(4)(a).

10 Wis. Stat. § 227.14 (2g).

11 "Small Business Regulatory Review Board." State of Wisconsin Department of Administration. Accessed October 29, 2021. <https://doa.wi.gov/Pages/DoingBusiness/SBRRB.aspx>.

12 Wis. Stat. § 227.15.

13 Wis. Stat. § 227.16.

14 Wis. Stat. § 227.185.

Following the governor's second-round approval, the final form regulation is reviewed by a standing committee in the legislature that has oversight in the relevant topic, followed by a review from the JCRAR.¹⁵ JCRAR has the power to delay or suspend a regulation under review by the legislature.¹⁶ It may also object to proposed rules, in theory indefinitely, whereby a bill is needed to authorize promulgation by the agency.¹⁷ A bill can also be introduced to prevent promulgation.¹⁸ If the bill is passed in both legislative chambers and signed into law by the governor, the agency cannot promulgate the entire regulation or, alternatively, the part of the regulation that was objected to. As a part of its review process, JCRAR can also request that a second economic analysis be prepared by an independent contractor.¹⁹

Wisconsin's administrative process also includes a requirement that is similar to the proposed federal *Regulations from the Executive in Need of Scrutiny Act* (REINS Act). If the economic analysis, or the independent economic analysis requested by JCRAR, reveals that the passage of a regulation could lead to implementation or compliance costs of over \$10 million over any 2-year period, the agency must seek approval from the legislature and a bill must be passed before the rulemaking can move forward.²⁰ In other words, regulations with costs in excess of this amount are banned as a default practice, unless the legislature provides affirmative approval for the rule in question. The REINS Act has been proposed at the federal level,

but not adopted. Wisconsin is one of just a few states in the nation with a REINS-like law in place (another is Florida).²¹

The procedures just described relate to a review of new regulations that state agencies wish to promulgate. Wisconsin also has a review process concerning existing regulations. Each agency is required to prepare a report every other year, detailing rules that are unauthorized, for which the agency's authority has since been restricted, that have become obsolete or are economically burdensome, or that are duplicative or in conflict with other rules. The agency must also outline its intended actions to address these issues.²² The report is submitted to JCRAR for review on March 31 of each odd-numbered year. JCRAR can also direct an agency to create a retrospective economic impact analysis at any time for any rules that are published in the administrative code.²³

On paper, Wisconsin's process for reviewing new and existing rules appears to be quite thorough, especially relative to some other states. Regulatory review takes place in both the executive and legislative branches, as well as by the independent SBRRB. However, some of these oversight mechanisms have yet to be used to their full potential. For example, it is unclear the extent to which the state's equivalent to the REINS Act is discouraging state agencies from promulgating high-cost regulations, and the JCRAR's indefinite

15 Wis. Stat. § 227.19.

16 Wis. Stat. § 227.19 (1)(b)(4).

17 Wis. Stat. § 227.19 (5)(em).

18 Wis. Stat. § 227.19 (5)(e).

19 Wis. Stat. § 227.137 (4m).

20 Wis. Stat. § 227.139.

21 Florida Statutes § 120.541(3).

22 Wis. Stat. § 227.29.

23 Wis. Stat. § 227.138.

objection powers have only been used one time.²⁴ Both of these processes are new as of 2017,²⁵ so perhaps legislators have yet to fully explore the extent of their new authorities.

In short, Wisconsin's system of regulatory procedures includes many checks and balances that may help ensure democratic input, accountability, and an evidentiary basis for rules. Whether these oversight mechanisms result in a lower overall burden of regulation for state residents is another question, so we turn next to measures of Wisconsin's regulatory volume.

Quantifying Wisconsin's Regulatory Volume

BACKGROUND ON REGDATA

In 2012, the Mercatus Center, a university-based research center affiliated with George Mason University in Virginia, launched a project called RegData as a way to address a dearth of available data on U.S. federal regulation.²⁶ The RegData project utilizes text analysis technology and machine

learning methods to process large quantities of regulatory text and to convert it into usable data.²⁷ By detecting regulatory restrictions, which are defined as instances of the terms “shall,” “must,” “may not,” “prohibited,” and “required” in laws, the project reports a measure of the restrictiveness of a body of legal text. The technology also identifies those industries these restrictions are most likely to pertain to. The RegData project initially focused on federal regulations in the United States, but in 2019, the Mercatus Center launched a related project, State RegData, which applies the same technology to state administrative codes. The technology has now been extended to other countries as well, most notably Canada and Australia.²⁸

WORD AND RESTRICTION COUNTS

The simplest way RegData quantifies the volume of regulations in a state is to count the words in the state's administrative code. The Wisconsin Administrative Code contained 12.25 million words as of 2020.²⁹ If we assume that the average person can read about 300 words per minute and spends 40 hours per week reading, it would take an individual about 681 hours, or roughly 17 weeks, to read every word in the

24 “Record of Committee Proceedings. Clearinghouse Rule 20-089.” Joint Committee for Review of Administrative Rules. Accessed October 29, 2021. https://docs.legis.wisconsin.gov/code/register/2021/786a1/register/actions_by_jcrar/actions_taken_by_jcrar_on_may_27_2021/actions_taken_by_jcrar_on_may_27_2021.pdf. A personal communication with an official from the Wisconsin Legislative Reference Bureau confirmed this was the only time the indefinite objection powers had been used to date (September 21, 2021).

25 2017 Wisconsin Senate Bill 15.

26 For more information about RegData, see Omar Al-Ubaydli and Patrick A. McLaughlin, “RegData: A Numerical Database on Industry-Specific Regulations for All United States Industries and Federal Regulations, 1997–2012,” *Regulation & Governance* 11 (2015): 109–123.

27 For more information about the machine learning algorithm used to construct RegData, see Patrick A. McLaughlin and Oliver Sherouse, “RegData 2.2: A Panel Dataset on US Federal Regulations,” *Public Choice* 180, no. 1 (2019): 43–55.

28 Patrick McLaughlin, Scott Atherley, and Stephen Strosko, *RegData Canada: An Overview*, Mercatus Center at George Mason University (2019), <https://www.mercatus.org/publications/regulatory-analysis/regdata-canada-overview>. Patrick McLaughlin, Oliver Sherouse, and Jason Potts, *RegData: Australia – Taking Inventory of Australian Regulations*, Mercatus Center at George Mason University (2019), <https://www.mercatus.org/publications/regulation/regdata-australia>.

29 Kofi Ampaabeng and James Broughel, *A Snapshot of Regulation in Great Lakes States*, Mercatus Center at George Mason University (2021), <https://www.mercatus.org/publications/state-and-local-regulations/snapshot-regulation-great-lakes-states>.

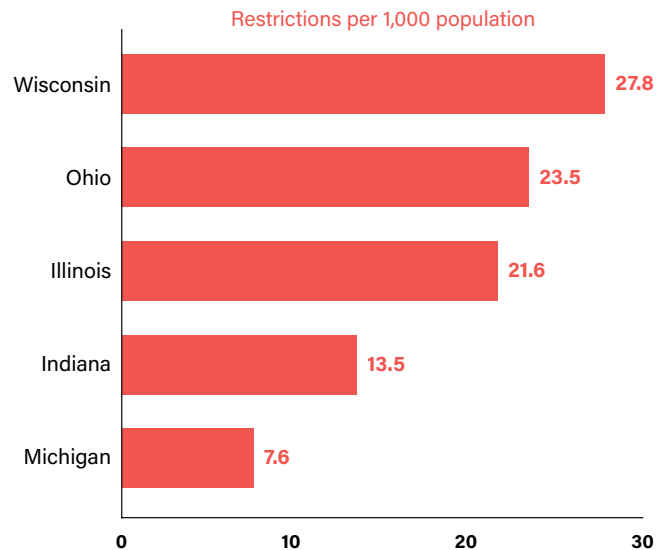
Wisconsin Administrative Code. The Wisconsin Administrative Code contained 161,549 regulatory restrictions as of 2020. By this measure, Wisconsin is more regulated than the average state, which has about 134,000 restrictions. This measure does not include all the requirements found in agency policy documents or forms, or requirements the legislature puts directly in statute. It also does not include the various restrictions found in local regulations or regulations the federal government imposes on Wisconsin residents.

There is evidence that more populous states tend to have more regulation than less populated states.³⁰ This could potentially be explained by regulatory costs falling on a per capita basis as the population grows. Alternatively, as the number of residents increases, it may be easier or more lucrative for special interest groups to lobby for regulations that benefit themselves at public expense. Whatever the reason for this empirical relationship, it is sometimes useful to adjust regulatory restrictions for the size of a state's population. Figure 1 demonstrates that on a per-capita basis, Wisconsin is the most regulated state in the Great Lakes region.

COMPLEXITY

The extent of regulation at the state and federal levels can make it difficult to comply with rules due

Figure 1. Population-adjusted Regulatory Restrictions for Great Lakes States



Source: A Snapshot of Regulations in Great Lakes States. Kofi Ampaabeng and James Broughel, Mercatus Center at George Mason University, 2021.

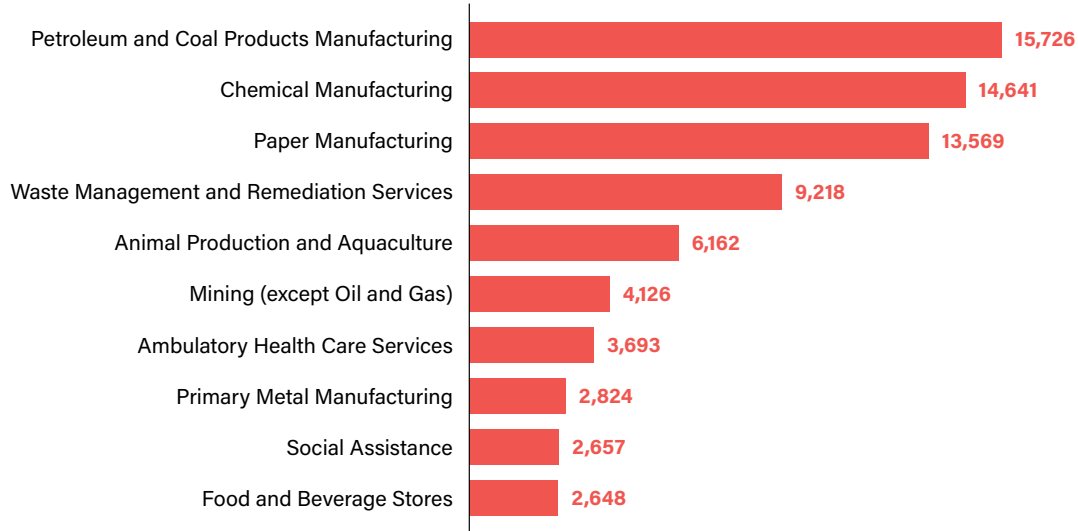
to their complexity. Correspondingly, the RegData project includes measures of complexity. Table 1 presents complexity metrics for the administrative code in Wisconsin. The Wisconsin administrative code's average sentence length of about 14 words per sentence is considerably lower than most other states in the United States. Its Shannon Entropy score, a measure of the amount of information contained in text, is 8.0. For comparison, a typical

Table 1. Wisconsin Complexity Metrics

State	Average Conditionals (Per part of code)	Average Sentence Length	Shannon Entropy
Wisconsin	41	14	8.0

Source: Patrick A. McLaughlin et al., "State RegData 2.1" (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2020, <https://quantgov.org/state-regdata/>.

30 James Bailey, James Broughel, and Patrick McLaughlin. (forthcoming). "Larger Polities are More Regulated," *Journal of Public Finance and Public Choice*. Casey Mulligan and Andrei Schleifer, "The Extent of the Market and the Supply of Regulation," *Quarterly Journal of Economics* 120, no. 4 (2005): 1445–73.

Figure 2. Top 10 Industries Targeted by Wisconsin State Regulation in 2020

Source: State RegData 2.1

Shakespeare play receives a score of about 9.0 to 9.8.³¹ The Wisconsin Administrative Code averages 41 conditional terms per part of code, where conditionals refer to the terms “if,” “but,” “except,” “provided,” “when,” “where,” “whenever,” “unless,” “notwithstanding,” “in the event,” and “in no event.” Sentences that include these conditionals may contain more information or caveats and therefore be harder to comprehend.

SPECIFIC INDUSTRIES AND AGENCIES

State regulations target different industries to varying extents. For example, an October 2020 report found that Wisconsin regulates petroleum and coal products manufacturing, as well as paper manufacturing, more than any other state.³²

Figure 2 provides regulatory restriction information for the 10 industries in Wisconsin most targeted by

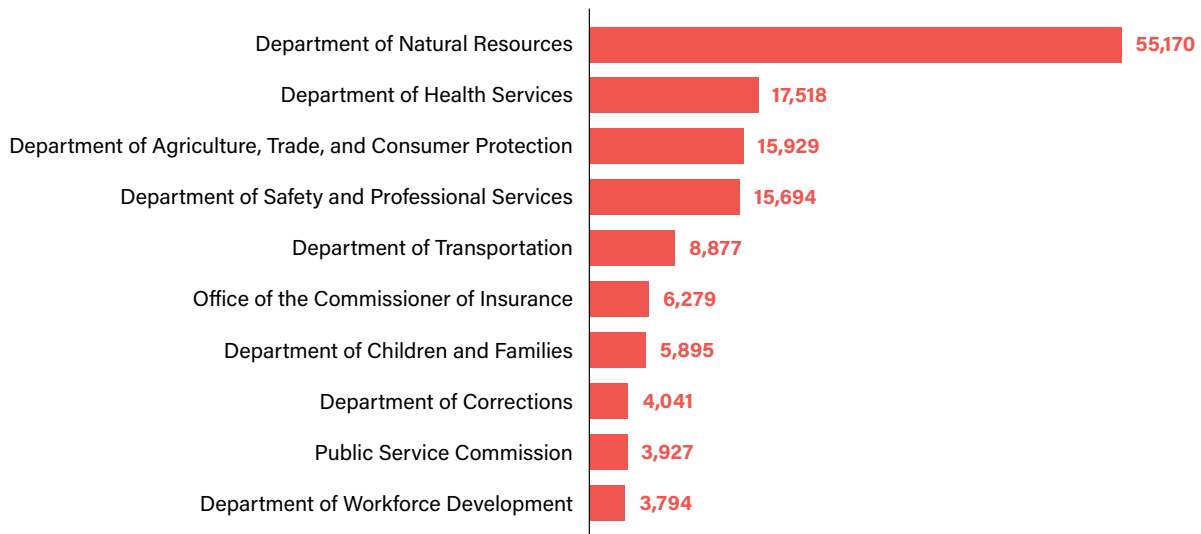
state regulations in 2020. These estimates suggest the state targets more than 15,700 industry-relevant restrictions at the petroleum and coal products manufacturing industry and 13,500 restrictions at the paper manufacturing industry.

Figure 3 provides regulatory restriction counts broken down by regulatory department in Wisconsin. The Department of Natural Resources has produced far more regulatory restrictions than any other department in the state. This likely explains the high volume of manufacturing industry regulation in Wisconsin. However, the Department of Health Services, the Department of Agriculture, Trade and Consumer Protection, and the Department of Safety and Professional Services all have more than 15,000 regulatory restrictions in their respective sections of the state administrative code.

31 Marcin Lawnik, “Shannon’s Entropy in Literary Works and Their Translations,” *Journal of Computer Science* 1, no. 3 (2012): 1–3.

32 Kofi Ampaabeng, James Broughel, Ethan Greist, Patrick A. McLaughlin, Jonathan Nelson, Walter Stover, Stephen Strosko, and Hayden Warlick, *A Policymaker’s Guide to State RegData 2.0*, The Mercatus Center at George Mason University (2020), <https://www.mercatus.org/publications/regulation/policymaker’s-guide-state-regdata-20>.

Figure 3. Top 10 Regulators in Wisconsin in 2020



Source: State RegData 2.1.

THE IMPACT OF FEDERAL REGULATIONS ON WISCONSIN

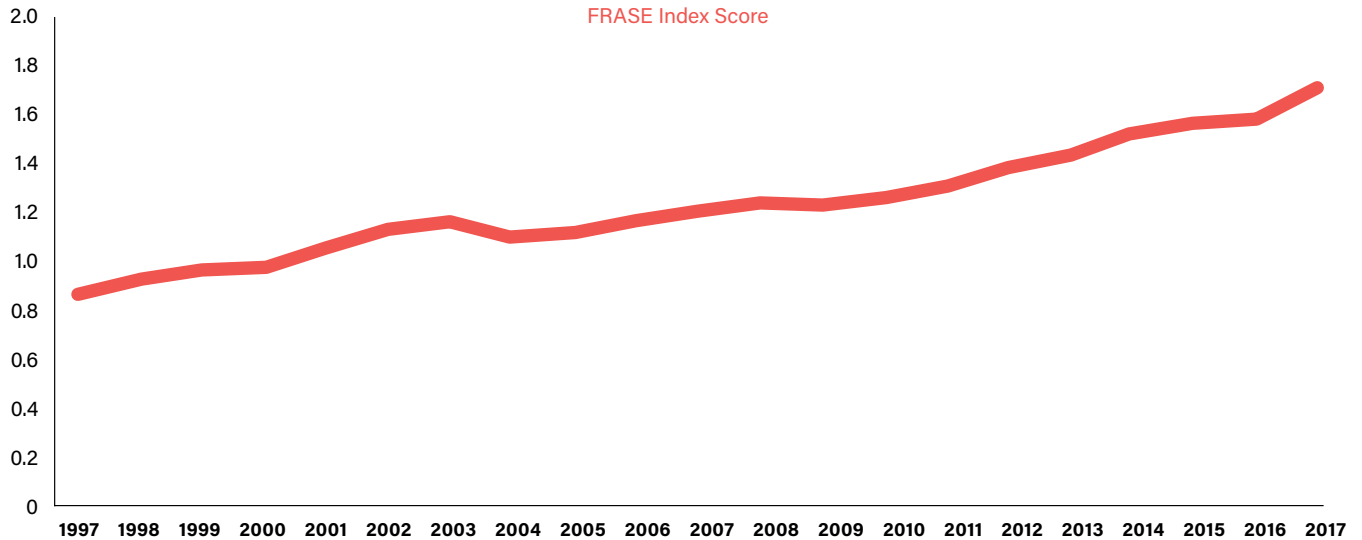
The Mercatus Center has also produced data to better understand the degree to which federal regulations target states' economies. By combining estimates of how regulated industries are by the federal government, with data on the contributions of various industries to states' gross state product, the Federal Regulation and State Enterprise (FRASE) index ranks the states in terms of how regulated they are by the federal government. Figure 4 shows how Wisconsin's FRASE index score has changed between 1997 and 2017. The ranking is scaled relative to the nation as a whole in 1997, which receives a score of 1.0. In 1997, Wisconsin's FRASE score of 0.92 meant that federal regulations restricted the activities of industries in Wisconsin slightly less than industries across the nation as a whole. By 2017, Wisconsin received a score of 1.81, which means Wisconsin industries are about 81 percent more regulated than industries across the nation were in 1997. Meanwhile, Wisconsin

industries in 2017 were about as regulated by the federal government as industries across the nation were as a whole in 2017.³³

The Unintended Consequences of Regulatory Accumulation for Wisconsin

Regulation is necessary in many cases to protect health and safety. However, excessive regulation has unintended consequences that have traditionally been difficult to uncover. In recent years, as better data have become available, research has begun to shed light on these unintended consequences. For instance, a study published in the *Review of Economic Dynamics* estimates that national economic growth has been slowed by 0.8 percentage points per year

33 Kofi Ampaabeng and James Broughel, *A Snapshot of Regulation in Great Lakes States*, Mercatus Center at George Mason University (2021), <https://www.mercatus.org/publications/state-and-local-regulations/snapshot-regulation-great-lakes-states>.

Figure 4. Federal Regulatory Burden in Wisconsin over Time, Relative to the Nation in 1997

Source: McLaughlin and Warlick, "2021 FRASE Index" (dataset).

on average by federal regulations implemented since 1980.³⁴ At first glance, this figure may not sound hugely significant, but due to compounding, it suggests the US economy would have been \$4 trillion larger by 2012 had the regulatory volume been capped at 1980 levels. \$4 trillion in annual lost income equates to \$13,000 per person in the US, which would represent a significant improvement in living standards, particularly for those at the lower end of the income spectrum.

Aggregate estimates of the cumulative costs of regulations are an important development in the recent literature, however, they mask that some states and individuals are disproportionately affected. The development of the FRASE index has allowed scholars to assess the consequences of federal regulations on individual states' economies and their residents. One recent study estimated

that federal regulatory growth from 1997 to 2015 is associated with 85,281 more people living in poverty in Wisconsin, 3.2% higher income inequality in the state, 170 fewer businesses annually, 2,620 lost jobs annually, and 7.35% higher prices.³⁵

Moreover, the unintended consequences of regulations are not purely financial. When real incomes fall as regulatory costs are passed on to customers in the form of higher prices and workers in the form of lower wages, households and families have fewer resources available to spend on other priorities, such as on doctor's visits, safer vehicles, or moving to a safer neighborhood. Economists have estimated that when regulatory costs are sufficiently high, these costs lead to increases in mortality by displacing private risk-reducing expenditures.³⁶ One recent study found that a 1% increase in the FRASE index is associated with an increase in an index of

34 Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, "The Cumulative Cost of Regulations," *Review of Economic Dynamics* 38 (2020): 1-20.

35 Dustin Chambers and Colin O'Reilly, *The Regressive Effects of Regulation in Wisconsin*, The Mercatus Center at George Mason University (2021), <https://www.mercatus.org/publications/regulation/regressive-effects-regulations-wisconsin>.

36 James Broughel and W. Kip Viscusi, "The Mortality Cost of Expenditures," *Contemporary Economic Policy* 39, no. 1 (2021): 156-67.

12 state-level measures of mortality of between 0.53% and 1.35%.³⁷ Estimates vary across studies, but recent estimates suggest that for every \$40 to \$110 million in regulatory expenditures (2019 dollars), one expected death occurs.³⁸ These impacts can be regressive as well, in the sense that a dollar of regulatory cost will tend to increase risk more when it comes out of a person at the bottom of the income spectrum's wallet, compared to when the costs accrue to someone at the top.³⁹

Recommendations for Reform

The system for producing and reviewing regulations in Wisconsin has several notable features. First, the state has somewhat stronger legislative oversight mechanisms in place than is typically observed in other states. At the same time, it has a relatively high regulatory volume, especially compared to some of its neighbors and on a per capita basis. Additionally, the Wisconsin rulemaking process allows for independent production of economic analysis. This is notable because a problem often highlighted with analysis at the federal level is that it is perceived as politicized.⁴⁰

Wisconsin could take better advantage of its existing processes that stand out as best practices, whilst simultaneously adopting some of the best practices from its neighbors. For example,

Wisconsin's allowance for regulatory analysis to be commissioned from independent contractors stands out as a best practice among the states. However, this could be the primary way in which analysis is produced, as opposed to a mechanism only relied upon in special circumstances. If this is too expensive, a commissioned analysis could only pertain to regulations over a certain threshold in terms of regulatory costs, such as \$5 million.

Moreover, the Wisconsin REINS Act and the ability of the JCRAR to indefinitely object to regulations are potentially strong tools for legislative oversight of executive agencies, but these tools are not being utilized to the extent they could be. Similarly, while statutes require that each rule be justified based on a statement of scope, the law is unclear as to whether or not each rule requires its own scope statement. Given this latitude, agencies sometimes use the same scope statement for multiple regulations. The legislature should consider amending the requirement to provide that an agency may only promulgate one rule per statement of scope.

Another reform worth considering is to set up regulatory procedures like Wisconsin's next-door neighbor, Minnesota. Most states set a low bar for new regulations. So long as regulators can provide minimal justifications, regulations go into effect. For example, although regulatory agencies typically have to accept comments from the public before rulemakings may be enacted, it is easy for agencies to dismiss those comments with minimal explanation.⁴¹ Minnesota, by contrast, enforces

37 James Broughel and Dustin Chambers, "Federal Regulation and Mortality in the 50 States," *Risk Analysis* (in press).

38 James Broughel and W. Kip Viscusi, "The Mortality Cost of Expenditures," *Contemporary Economic Policy* 39, no. 1 (2021): 156–67. James Broughel and Dustin Chambers, "Federal Regulation and Mortality in the 50 States," *Risk Analysis* (in press).

39 Diana Thomas, "Regressive Effects of Regulation," *Public Choice* 180 (2019): 1–10.

40 For this reason, federal regulatory analyses are sometimes referred to as "advocacy documents." See E. Donald Elliott, "Rationing Analysis of Job Losses and Gains: An Exercise in Domestic Comparative Law," in *Does Regulation Kill Jobs?*, eds. Cary Coglianese et al. (2014) 256, 265; Christopher Carrigan & Stuart Shapiro, "What's Wrong with the Back of the Envelope? A Call for Simple (and Timely) Benefit–Cost Analysis," *Regulation & Governance* 11 (2017): 203–12.

41 Administrative law experts sometimes refer to the public commenting process as akin to "Kabuki Theater." In other words, it

a form of “formal rulemaking,” which includes trial-like procedures, overseen by an administrative law judge, and involves presentation of evidence, and allows for cross-examination of witnesses. Minnesota has a surprisingly light regulatory load relative to some of its neighbors, including Wisconsin. While the reasons for this are not fully understood, Minnesota’s unique process for creating regulations could be one reason why. Wisconsin should consider adopting similar formal rulemaking procedures.⁴²

At some point Wisconsin must also address its outsized regulatory load. In this regard, Wisconsin may want to follow the example of states that have implemented red tape cutting reforms or established regulatory review commissions in recent years.⁴³ Idaho, for example, cut its regulatory restrictions by about 37 percent in a single year, 2019.⁴⁴ New Jersey is a state that in the early 2010s set up a bipartisan regulatory review commission that reviewed regulations and produced reports with recommendations for improvements, many of which were subsequently implemented.⁴⁵ The benefits of red tape cutting can be substantial. For example, in the early 2000s, the Canadian province of British Columbia cut its regulatory requirements

by about 36 percent. Recent estimates suggest these reforms boosted provincial GDP growth by about 1 percentage point annually.⁴⁶

A simple reform Wisconsin could adopt to address its large regulatory volume is to require that whenever state agencies adopt a regulation that imposes a positive cost, that they simultaneously find cost savings to offset the new burden. Texas passed a similar law in 2017.⁴⁷ A rule that does not offset costs might require affirmative approval by both houses of the legislature before taking effect (thereby expanding the scope of the state REINS Act).

Finally, while Wisconsin does have a biennial requirement that agencies produce a report compiling any existing rules that are unauthorized or otherwise problematic, this requirement has not prevented Wisconsin from being more regulated than the average state. A sunset provision could add teeth to the retrospective review requirement. For example, regulations or chapters could expire seven years after adopted, unless readopted through ordinary rulemaking procedures. Similar provisions exist in states like Indiana, New Hampshire, and Kentucky.⁴⁸ In 2017, legislation along these lines

is a song and dance agencies go through that provides more symbolism than substance. See E. Donald Elliott, “Re-Inventing Rulemaking,” *Duke Law Journal* 41 (1992): 1490-1496.

- 42 For more information on formal rulemaking, see Arron Nielson, *Rethinking Formal Rulemaking*, The Mercatus Center at George Mason University (2014), <https://www.mercatus.org/publications/regulation/rethinking-formal-rulemaking>.
- 43 For examples of best practices among states engaged in red tape reviews, see James Broughel, *Constructing a Red Tape Reduction Executive Order*, The Mercatus Center at George Mason University (2021), <https://www.mercatus.org/publications/regulation/constructing-red-tape-reduction-executive-order>.
- 44 Kofi Ampaabeng, James Broughel, Ethan Greist, Patrick A. McLaughlin, Jonathan Nelson, Walter Stover, Stephen Strosko, and Hayden Warlick, *A Policymaker’s Guide to State RegData 2.0*, The Mercatus Center at George Mason University (2020), <https://www.mercatus.org/publications/regulation/policymaker’s-guide-state-regdata-20>.
- 45 James Broughel, *Cutting Red Tape in the Garden State*, The Mercatus Center at George Mason University (2018), <https://www.mercatus.org/publications/urban-economics/cutting-red-tape-garden-state>.
- 46 Bentley Coffey and Patrick McLaughlin, *Regulation and Economic Growth: Evidence from British Columbia’s Experiment in Regulatory Budgeting*, The Mercatus Center at George Mason University (2021), <https://www.mercatus.org/publications/regulation/british-columbia-reform-analysis>.
- 47 Texas Stat. § 2001.045.
- 48 Indiana Code § 4-22-2.5-2; New Hampshire Administrative Procedure Act § 541-A:17(I); Kentucky Revised Statutes §13A.3102.

was introduced in the Wisconsin state legislature,⁴⁹ which passed the Assembly but failed in the Senate.

Conclusion

All told, Wisconsin has a considerable amount of regulation impacting its residents. Much of the impact on state residents comes from the federal government, and there is little state policymakers can do about that, at least directly. That said, the states are the laboratories of democracy, and states that innovate in regulatory practices can and do get noticed by policymakers in Washington, DC. For example, Arizona and Idaho have achieved notable successes in terms of regulatory reform in recent years. These states (and others) were singled out by policymakers in Washington as examples for other states to follow,⁵⁰ which is helping build momentum for regulatory reform efforts nationwide.

Meanwhile, Wisconsin also has a significant number of state regulations, especially relative to some of its neighbors. Wisconsin has adopted some notable reforms in recent years, particularly with respect to legislative oversight of rulemaking. But these have yet to be used to an extent that is having measurable results. There is ample room for Wisconsin to become a leader in regulatory reform, much in the way the state led in terms of civil service and labor reforms in the early 2010s. Wisconsin residents are likely to be feeling the pinch in terms of the regulatory burden. Now it is up to their leaders to re-envision a regulatory framework worthy of the Badger State.

49 2017 Wisconsin Assembly Bill 384; 2017 Wisconsin Senate Bill 295.

50 The Trump administration launched a Governor's Initiative on Regulatory innovation, which shared best practices and lessons learned amongst the White House and the States.



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