

Regulatory reform in Idaho: A recent retrospective

Mark Kubinski

Associate General Counsel

Office of the Governor

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Governor's Regulatory Reform Initiative

In 2019 Governor Little issued the first in a series of Executive Orders targeted at regulatory reform.

- Red Tape Reduction Act (Executive Order 2019-02)
- Zero-Based Regulation (Executive Order 2020-01)
- Enhancing Licensing Freedom: Organization of the Department of Self-Governing Agencies (Executive Order 2020-10)

<https://gov.idaho.gov/cutting-red-tape/>

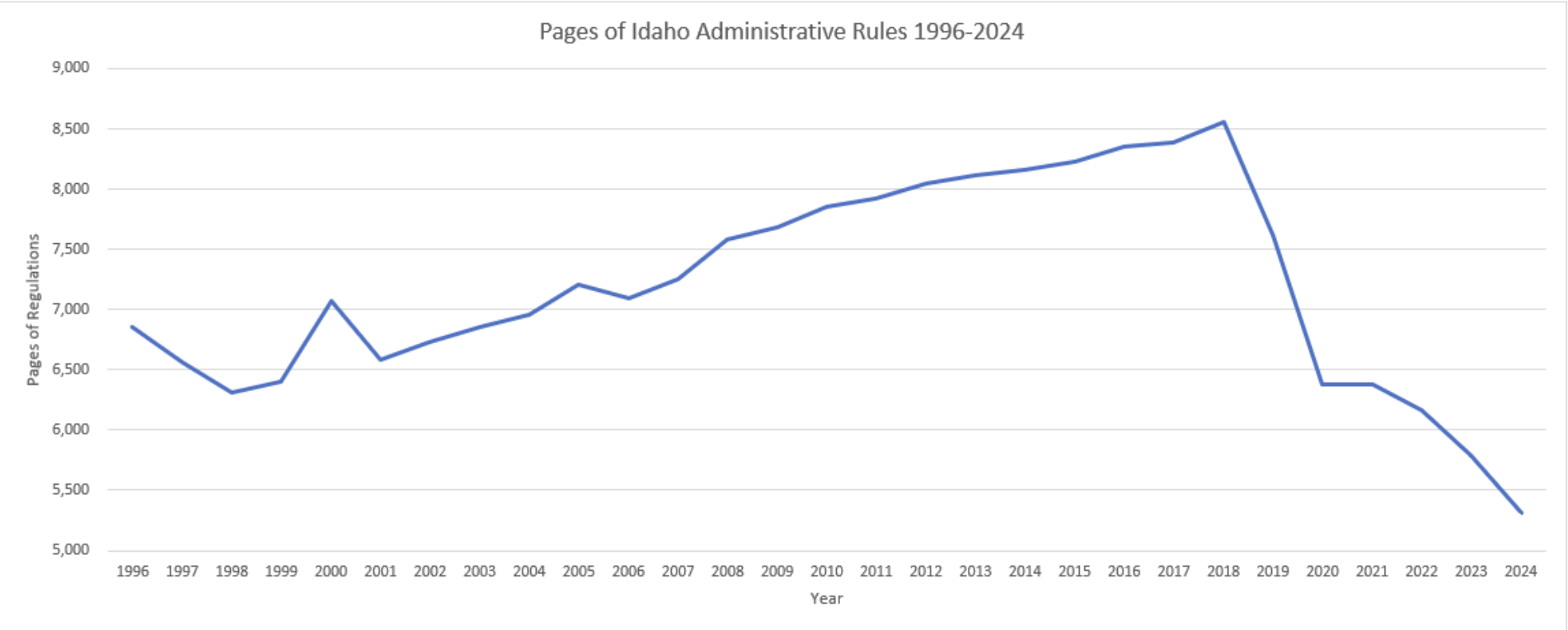
Red Tape Reduction Act

- Required all executive agencies, prior to proposing a new rule, do the following:
- Submit a business/competitiveness impact statement identifying the impact the proposed rule has on individuals and small businesses
- Repeal or significantly simplify 2 existing rules for every new additional rule.
- Resulted in elimination of 250 rule chapters/1,804 pages of regulations

Zero-Based Regulation (ZBR)

- Repealed and replaced Red Tape Reduction Act
- Established a top to bottom review schedule for all executive agency rules to be reviewed by the agency
- Analysis to determine whether the benefits the rule intended were being realized, whether benefits justified the costs, and whether there are less restrictive alternatives to accomplish benefits
- Agencies must start with from a zero-base mindset, assume that no rule is necessary, and not simply reauthorize existing rules

Results of Regulatory Reform



Enhancing Licensing Freedom

- At the time, 442 different types of occupational licenses issued to more than 204,000 licensees, and administered by 13 executive agencies and 47 boards and commissions
- Created the Division of Occupational and Professional Licenses within the Department of Self-Governing Agencies
- Consolidated agencies, boards, and commissions to promote efficiency, provide consistency, and streamline operations
- DOPL was statutorily created by Legislature in 2021

Legislative and Court Reform

- Occupational Licensing Reform Act
- State Athletic Commission v. Office of the Administrative Rules Coordinator
- Changes to standard of review for agency action

Occupational Licensing Reform Act

- Title 67, Chapter 94-“policy of the state to adopt a comprehensive and proactive approach to reducing occupational licensing constraints and barriers.”
- Recognition of military training and expedited applications for military members
- Universal licensure
- Limited impact of criminal convictions

Occupational Licensing Reform Act

- Idaho Code § 67-9415 (SB1429a)-Allows for application for waiver of a licensing requirement or a practice that would otherwise be restricted to only the licensee if:
 - Licensing requirement or restricted practice imposes undue hardship or burden on applicant with no offsetting public health, safety, or welfare benefit to the public
 - Applicant proposes alternative that will afford substantially equal protection of health, safety, and welfare
 - Waiver would test an innovative practice that will generate meaningful evidence to support change to licensing requirement or restricted practice.

Occupational Licensing Reform Act

- Occupational and Professional Licensure Review Committee
 - Joint legislative committee to conduct sunrise and sunset reviews
 - Conduct sunrise review for any request that a profession or occupation become licensed
 - Conduct review of licensing authority on 10 year cycle to determine whether it is necessary to protect health, safety, or welfare of public

State Athletic Commission v. Office of the Administrative Rules Coordinator

- Prior to 2023 pending non-fee rules automatically became final upon adjournment of Legislature, unless specifically rejected
- In 2023 Legislature amended APA so that all pending rules expired if not specially accepted or rejected

State Athletic Commission v. Office of the Administrative Rules Coordinator

- In 2022 Athletic Commission adopted temporary rules which were submitted to Legislature as pending rules for approval during the 2023 session
- Legislature failed to take up Athletic Commission rules during the session and adjourned without approving rules
- Result was Athletic Commission left without rules

State Athletic Commission v. Office of the Administrative Rules Coordinator

- Athletic Commission filed original action with Idaho Supreme Court challenging the legislative preapproval provisions of the APA as unconstitutional
- Court held that agency rulemaking is not a constitutional delegation of authority to the executive branch but is instead a legislative delegation of authority
- Because Athletic Commission did not have constitutional authority to promulgate administrative rules, APA requirement for legislative approval of pending fee rules does not violate the separation of powers provision of the Idaho Constitution

Changes to Standard of Review for Agency Action

- Idaho Code § 67-5279 (HB626)
- Altered scope of judicial review of agency action
 - When interpreting agency action, court shall not defer to agency's interpretation of law or rule and shall interpret its meaning and effect de novo
 - After applying all customary tools of interpretation, court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty

Changes to Standard of Review for Agency Action

- Loper Bright Enterprises v. Raimondo
- U.S. Supreme Court overruled Chevron v. Natural Resources Defense Council (1984)
- Chevron doctrine required federal courts to defer to agency interpretation of statute or rule it administers as long as interpretation was reasonable
- Under Loper Bright, “Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires... But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

THANK YOU

Mark Kubinski

mark.kubinski@gov.idaho.gov