



POLICY SPOTLIGHT

COVID-19 Shows Why America Needs Regulatory Reform:
A “Fresh Start” Is How to Get It

MATTHEW D. MITCHELL, ADAM THIERER, AND PATRICK A. MCLAUGHLIN | JUNE 2020

In response to the COVID-19 pandemic, policymakers across the country began to suspend or modify regulations that were hindering sensible, speedy action. Some of these rules may have been well intentioned or may have once served a compelling interest. But at the outset of the pandemic many of them were shown to undermine public health or defy common sense. The question thus arose about whether the paused rules had been undermining health and welfare even before the crisis. If this was the case, then why had such regulations still been in effect? Even more pressing for policymakers is the following question: How should policymakers deal with the suspended rules once the crisis is over? The months ahead may well present a rare opportunity for real reform.

RESTRICTIONS SUSPENDED DURING THE CRISIS

Special interest groups have long fought to preserve a regulatory status quo that benefits them. Large hospitals, for example, tend to benefit from little-known certificate-of-need (CON) laws that limit competition from new hospitals and nonhospital providers. Similarly, physicians are reliably opposed to efforts that might give nurse practitioners more independent authority.

The COVID-19 pandemic has allowed citizens and policymakers to see the often-observed costs associated with these restrictions. After the crisis subsides, there is likely to be considerable momentum to review rules, such as the following, that have slowed the response. Some should probably be permanently repealed and others amended to allow for more flexible policy responses in the future.

- FDA restrictions contributed to delays of **COVID-19 testing** by six critical weeks. The agency eventually took steps to relax rules on testing and treatment options as well as to allow more flexible responses to shortages of ventilators and drugs.
- The Transportation Security Administration waived its 14-year-old 3.4-ounce limit on liquid gels for **hand sanitizers** on airplanes.
- The US Trade Representative issued tariff exemptions for medical gloves, gowns, goggles, and other **medical supplies**.
- The US Department of Health and Human Services announced it would allow doctors in federal health programs to be paid for offering **telemedicine services** in states where they do not hold a license.
- Many states followed the guidelines of the National Academy of Medicine to permit **nurse**

practitioners “full practice authority,” allowing them to evaluate patients and initiate treatment without physician approval.

- More than a dozen states suspended or modified **CON laws** requiring healthcare providers to first obtain permission before opening or expanding their facilities.

WHEN IT COMES TO REGULATIONS, AMERICA NEEDS A FRESH START

We recommend that federal policymakers consider a “Fresh Start Initiative” that would review federal regulations temporarily suspended or modified during the COVID response.¹ As a model we cite the bipartisan Base Realignment and Closure (BRAC) commission, which successfully closed many underused military bases.

A BRAC-style regulatory review commission would objectively identify and remove large amounts of unnecessary or ineffective regulations. Moreover, it would do so without interference by the special interests who benefit from these regulations at the expense of the broader population. (The states could adopt a similar reform model to address their own paused regulations.²)

The Fresh Start Initiative would entail three steps:

1. Identify and study all rules revised or suspended during the crisis.
2. Formulate a set of recommended regulatory reforms for each of those rules.

3. Craft a plan and timetable for automatically sunseting or comprehensively reforming those policies or programs as part of a single reform package.

The Fresh Start Initiative would not evaluate every federal program or rule—just those paused or partially repealed as part of the effort to address the coronavirus. A longer list of reform objectives would become politically unworkable. The more focused effort envisioned in the Fresh Start Initiative has a greater likelihood of achieving concrete, lasting reforms of the most counterproductive laws and regulations.

NOTE

1. Patrick A. McLaughlin, Matthew D. Mitchell, and Adam Thierer, “A Fresh Start: How to Address Regulations Suspended during the Coronavirus Crisis” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, April 2020).
2. Patrick A. McLaughlin, Matthew D. Mitchell, and Adam Thierer, “How to Create a Fresh Start Initiative in Your State: A Step-by-Step Guide” (Mercatus Policy Spotlight, Mercatus Center at George Mason University, Arlington, VA, May 2020).

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