



The Daily Dish

Neither the Press nor Progressives nor a Pandemic...

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Eakinomics: Neither the Press nor Progressives nor a Pandemic...

Can deter the Trump Administration's deregulatory drive. Eakinomics has frequently noted the sea change between the ever-rising regulatory burden during the Obama Administration and the reversal to (modest) declines during the Trump years. Still, one might suspect that the advent of the coronavirus pandemic would cause the administration to focus on something else.

Wrong. As [detailed](#) by AAF's Dan Bosch, "President Trump issued an executive order (EO) on May 19 that directed agencies to further consider waiving, repealing, or modifying regulations in an effort to stimulate the economy in the wake of COVID-19. The EO, [Regulatory Relief to Support Economic Recovery](#), asks agencies to identify possible deregulatory actions and to utilize enforcement discretion in order to help the economy recover."

There are two important aspects to this executive order, above and beyond identifying ways to stimulate the economy through regulatory relief. The first is asking agencies to use their enforcement discretion. Agencies have wide latitude in setting enforcement priorities. Putting a particular regulation at the bottom of the enforcement priorities is a much easier way to be rid of it than is the rulemaking process. The second is that whatever the agencies come up with will likely be policy for as long as the president remains in office, including his entire second term, if reelected. It is safe to say that plenty of politicians, regulation advocates, and proponents of federal pre-emption won't be thrilled with this EO.

The initial pandemic response itself is bound to generate new discussion on the topic of regulatory review, too. In a second new paper, "[Evaluating Regulatory Review Commissions to Analyze COVID-19 Regulation](#)," Bosch notes, "The federal response has left many

wondering whether the regulations that are not needed in an emergency are really necessary once the pandemic is declared over. Some have recommended that the federal government establish a commission – or several commissions – to review amended rules to see if they are necessary.”

The idea of legislative oversight, review, and (potential) rejection of regulations has been a popular congressional agenda item in recent years. Per Bosch, “In 2016 and 2017, the House of Representatives passed the [Searching for and Cutting Regulations that are Unnecessarily Burdensome \(SCRUB\) Act](#). The crux of the SCRUB Act was to establish a Retrospective Regulatory Review Commission, made up of outside experts, that would develop a list of regulations to repeal, and that list would then go to Congress for an up-or-down vote.”

Of note, the only legislative proposal thus far – the [Coronavirus Regulatory Repeal Act](#) in the House – comes at this issue from the other direction. It sets up a commission in each area of jurisdiction – composed of committee members and the agency heads – that draws up a list of regulations to *keep* in their area. The remainder would be eliminated.

Where does this leave the regulatory state? The Trump Administration appears dead set on continuing to eliminate regulations and reduce the regulatory burden using all the tools at its disposal. Congress continues to make noise about intervening in the regulatory process, but it has yet to enact any such legislation. Expect more of the same from both parties.