

## **Politics And Regulation**

Professor Stuart Shapiro

EJB 546

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Course: 833:565

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### **Course Description**

Regulation is an important and pervasive force in American life. Government regulation affects nearly every aspect of modern society. Regulation in insurance, transportation, and communication affect the prices we pay for goods and services and the quality of these goods and services. Regulation of consumer products, workplace safety, food and drugs affect the risks we face from different products and activities. Environmental regulations affect the quality of the water we drink, the air we breathe, and the existence of wetlands. In short, in almost every aspect of your life, regulations have an impact.

This course will look at two fundamental questions. 1) What should determine what regulations say? 2) What does determine what regulations say? In an area of policy that has such profound impacts on the public, it is crucial for policymakers to understand the answers to both of these questions and why differences in these answers may have important consequences on the general welfare. We will conclude the course with a discussion of reforms to the regulatory process and evaluate whether they promise real improvements on the current process.

### **Required Text**

Cornelius Kerwin, Rulemaking: How Government Agencies Write Law and Make Policy, 3rd edition (2003), Congressional Quarterly Press.

### **Recommended Text**

Cindy Skzrycki, The Regulators: Anonymous Power Brokers in American Politics (2003) Rowman and Littlefield Publishers Inc.

Many of the more important readings are on sakai.

### **Requirements and Grading**

Class Participation: 20%

Policy Memo on Methods of Regulation Due October 18: 25%

Policy Memo on Regulatory Reforms Due December 13: 25%

Presentation on Regulatory Reforms December 13 10%

Take home Final: 20%

## **Class Schedule and Readings**

### **Part I – What should regulations look like?**

#### **Class 1, Wednesday September 8: Why study regulation? Why does regulation exist?**

Skrzycki excerpts in class.

#### **Class 2, September 13: The Regulatory Process**

Kerwin Chapters 1-3

Skrzycki Chapter 1

#### **Class 3, September 20: The Role of Cost Benefit Analysis in Regulatory Decisionmaking.**

Tammy Tengs et. al. “Five Hundred Life Saving Interventions and Their Cost Effectiveness” Risk Analysis 15:369 (1995)

Lisa Heinzerling “The Humbugs of the Anti-Regulatory Movement” Cornell Law Review 87:648 (2002) available at:  
[http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Heinzerling\\_Humbugs.pdf](http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Heinzerling_Humbugs.pdf)

John Morrall “Saving Lives: A Review of the Record” *Journal of Risk and Uncertainty*, 2003, vol. 27, issue 3, pages 221-37 available at:  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=424523](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=424523)

Stuart Shapiro “The Evolution of Cost Benefit Analysis in U.S. Regulatory Decisionmaking” available at: <http://regulation.huji.ac.il/dp.php>

#### **Class 4, September 27: The Role of Science in Regulatory Decisionmaking**

David Michaels and Celeste Monforton “Scientific Evidence in the Regulatory System: Manufacturing Uncertainty and the Demise of the Formal Regulatory System” Journal of Law and Policy (2005)

Cary Coglianese and Gary Marchant “Shifting Sands: The Limits of Science in Setting Risk Standards” University of Pennsylvania Law Review 152:1255 (2004)

## **Class 5, October 4: Case Study, Ergonomics.**

Ergonomics final rule and cost-benefit analysis. Federal Register November 14, 2000. 68262-68263, 68762-68809 (minus charts), 68846-68870 (can be accessed under Occupational Safety and Health Administration at [http://www.access.gpo.gov/su\\_docs/fedreg/a001114c.html](http://www.access.gpo.gov/su_docs/fedreg/a001114c.html))  
Feel free to read more of the preamble if you would like.

SBA Comments on Proposed Ergonomics Rule

President Bush Statement of Administration Policy on Congressional Resolution overturning the ergonomics rule. Skryzcki p. 47-48.

## **Class 6, October 11: Methods of Regulation**

Robert Stavins “Experience with Market-Based Environmental Policy Instruments” pp 1-6 plus as much as interests you. <http://www.hks.harvard.edu/m-rcbg/research/rpp/RPP-2001-11.pdf>

Cary Coglianese and David Lazer “Management-Based Regulatory Strategies” pp 1-15 plus as much as interests you. <http://www.hks.harvard.edu/m-rcbg/research/rpp/RPP-2001-09.pdf>

Mary Graham. “Information as Risk Regulation: Lessons from Experience” pp 1-13 plus as much as interests you. <http://www.hks.harvard.edu/m-rcbg/research/rpp/RPP-2001-04.pdf>

## **Part II Why do regulations look the way they do?**

**October 18 (no class) *Policy Memo 1 Due***

## **Class 7, October 25: Congressional Influence on the Regulatory Process**

Kerwin 213-224

Matthew McCubbins et. al. “Administrative Procedures as Instruments of Political Control” Journal of Law Economics and Organization 3:243 (1987)

Murray Horn and Kenneth Shepsle, “Commentary on McNollgast” Virginia Law Review 75:499 (1989)

Matthew McCubbins and Thomas Schwartz “Congressional Oversight Overlooked: Police Patrols and Fire Alarms” American Journal of Political Science 28:165 (1984)

## **Class 8, November 1: Presidential Influence on the Regulatory Process**

Executive Order 12866 available at (about midway down the page):  
<http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>

Lisa Schultz Bressman and Michael Vandenberg "Inside the Administrative State: A Critical Look at the Practice of Presidential Control," 105 *Michigan Law Review* 1 (2006)

Elena Kagan, "Presidential Administration" *Harvard Law Review* 114:2245 (2001)

Stuart Shapiro, "Politics and Regulatory Policy Analysis" *Regulation* Summer 2006

### **Class 9, November 8: Judicial Influence on the Regulatory Process**

Kerwin pages 238-255

*Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984) available at  
<http://laws.findlaw.com/us/467/837>

Sunstein, Cass R. & Thomas Miles. "Do Federal Judges Make Regulatory Policy? An Empirical Study," 73 *University of Chicago Law Review* 823 (2006).

### **Class 10, November 15: Interest Group and Citizen Influence on the Regulatory Process**

Kerwin Chapter 5

Skrzycki Pages 115-132 (optional)

Susan Webb Yackee, "Sweet-Talking the Fourth Branch: Assessing the Influence of Interest Group Comments on Federal Agency Rulemaking"; *Journal of Public Administration Research and Theory*

Cary Coglianese "Citizen Participation in Rulemaking: Past Present, and Future" *Duke Law Journal* 55:943 (2006)

### **Class 11, November 29: Case Study: Roadless Areas in National Forests**

Readings to be determined.

## **Part III Regulatory Reform**

### **Class 12, Some evening the week of November 29 e-class: Understanding Regulatory Reform**

Steven Croley “Theories of Regulation: Incorporating the Administrative Process”  
*Columbia Law Review* 98:1 (1998). Pages 1-106.

**Class 13 December 13: Reforms in the Regulatory Process: Student Presentations:  
Wrapup.**