

Politics And Regulation

Professor Stuart Shapiro

EJB 546

Office Hours: 12-1:30 Tuesday and Thursday

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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%

Paper on Methods of Regulation Due October 2: 20%

Presentation on Methods of Regulation October 2: 7.5%

Paper on Regulatory Reforms Due November 25: 25%

Presentation on Regulatory Reforms November 25 7.5%
Take home Final: 20%

Class Schedule and Readings

Part I – What should regulations look like?

Class 1, September 4: Why study regulation? Why does regulation exist?

Skrzycki excerpts in class.

Class 2, September 11: The Regulatory Process

Kerwin Chapters 1-3

Skrzycki Chapter 1

Class 3, September 18: 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

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

Congressional Hearings on Confirmation of John Graham.

Class 4, September 25: 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 2: Methods of Regulation: Student Presentations

Class 6, October 9: 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)
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.

Part II Why do regulations look the way they do?

Class 7, October 16: 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, October 23: Presidential Influence on the Regulatory Process

Executive Order 12866 available at (about midway down the page):
<http://www.whitehouse.gov/omb/inforeg/regpol.html>

Steven Croley, "White House Review of Agency Rulemaking: An Empirical Investigation" University of Chicago Law Review 70:821 (2003) introduction.

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

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

Class 9, October 30: 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>

Cass Sunstein "Do Judges Make Regulatory Policy: An Empirical Examination of Chevron" *University of Chicago Law Review* downloadable at: <http://www.reg-markets.org/publications/abstract.php?pid=1080>

Class 10, November 6: 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 13: Case Study: New Source Review

An article by the Center for Progressive Reform opposing the changes (found at: http://www.progressiveregulation.org/articles/NSR_504.pdf).

An op-ed from National Review online favoring the changes (found at: <http://www.nationalreview.com/adler/adler200310010939.asp>)

An excerpt from the proposed rule's preamble (the entire rule can be found at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2002/pdf/02-31900.pdf> -- you can read the entire rule but I do not recommend it).

An excerpt from the final rule's preamble (the entire rule can be found at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-26320.pdf> -- ditto on reading the whole thing).

The court decision invalidating the rule (found at: <http://www.nrdc.org/media/docs/060317b.pdf>)

Part III Regulatory Reform

Class 12, November 20: Introduction to Regulatory Reform

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

Classes 13 and 14, November 25 and December 4: Reforms in the Regulatory Process: Student Presentations: Wrapup.