

WWS 594b
Economics, Science, and Environmental Regulation
Session II—Spring 2005
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TENTATIVE SYLLABUS

Requirements:

Class Participation	25%
1 Problem Set (exercises in cost-benefit calculations, decisions under uncertainty, etc)	25%
Final Paper (see suggested topics at the end of this document)	50%

Week 1: Science-Policy and the Landscape of Regulation

- Economics and risk assessment as, depending on one's point of view, ways to improve the regulatory state or ways to strip citizens of the power to recognize and address market failures
- Brief primer on how risk assessments and economic analyses are conducted (state-of-the-art), with emphasis on acknowledging and quantifying uncertainty (students will learn the basic techniques of Monte Carlo simulation)
- To what extent should, and can, "facts" and "values" be kept separate in the analysis and decision-making processes?

Readings:

- Excerpts from **The Death of Common Sense** (Philip Howard)
- Excerpts from **Breaking the Vicious Circle** (Steven Breyer)
- Excerpts from Finkel, A.M. (1995). "A Second Opinion on an Environmental Misdiagnosis: The Risky Prescriptions of **Breaking the Vicious Circle**." *New York University Environmental Law Journal*, **3**, 295-381.
- Lisa Heinzerling (2000), "The Rights of Statistical People," *Harvard Environmental Law Review*, **24**, pp.189-207.
- Ellen K. Silbergeld (1993), "Risk Assessment: The Perspective and Experience of U.S. Environmentalists," *Environmental Health Perspectives*, **101**, pp. 100-104.
- Alon Tal (1997), "A Failure to Engage," *The Environmental Forum*, Jan/Feb., pp. 13-21.
- Nicholas A. Ashford (1988). "Science and Values in the Regulatory Process," *Statistical Science*, **3(3)**, pp. 377-383.

Week 2: How Analysis Influences Rulemaking

- Process map of regulation: “access points” where analysis is required (from agenda-setting, through proposed and final rules, through judicial and Congressional challenge to agency action, to retrospective evaluation of program effectiveness)
- Court decisions requiring, forbidding, and allowing discretionary analysis; extent to which courts have deferred to agency’s conduct of those analyses that are mandatory

Readings:

- Franklin E. Mirer (2003), “Distortions of the “Mis-Read’ Book: Adding Procedural Botox to Paralysis by Analysis,” *Human and Ecological Risk Assessment*, **9(5)**, pp. 1129-1143.
- “Of Courts and Law: Cost-Benefit Default Principles.” Chapter 8 (pp. 191-228) in **Risk and Reason**, CassR. Sunstein, Cambridge University Press, 2002.

Week 3: Recent Attempts to “Reform” Agency Analysis

- Executive Orders from OMB: 1976-2004
- Regulatory Reform proposals in House and Senate, 1995-1999
- Legislation passed by Congress in this period and its impacts
- Data Quality Act of 2000 and its early effects
- OMB guidance on peer review process
- “Macro” ideas for reform: the “regulatory budget,” regulatory triage, etc.

Week 4: Alternatives to Traditional (Command-and-Control) Rulemaking

- Tradeable permits
- Information dissemination
- EPA’s “Project XL”

- OSHA's "enforceable partnerships"
- Using settlement negotiations to move "beyond compliance"
- CSR and social investment

Readings:

- Cary Coglianese, Jennifer Nash, and Todd Olmstead (2003). "Performance-Based Regulation: Prospects and Limitations in Health, Safety, and Environmental Protection." *Administrative Law Review* **55**, pp. 706-730.
- William F. Pedersen (2001). "Contracting with the Regulated for Better Regulations." *Administrative Law Review* **53**, pp. 1067-1138.

Week 5: Case Study I: OSHA's Methylene Chloride Rule and its Aftermath

- Revision of risk assessment to adopt industry-sponsored model of carcinogenicity
- Refusal to adopt a second recommended theory that would have obviated the need for the regulation
- Interactions with OMB over purported "offsetting risks"
- Congressional oversight hearing
- Court challenge and out-of-court settlement
- Unexpected change in market after implementation; OSHA's response

Week 6: Case Study II: Snowmobile Use in Yellowstone

Case Study III: NHTSA's Tire Underinflation Standard

SUGGESTED PAPER TOPICS:

1. Choose a regulation that controlled a health or environmental risk that you believe might also have caused an increase in a different risk (for example, some have argued that lighter automobiles, which are selectively produced in response to “CAFE” regulation, are also less safe and increase the probability that a crash will lead to a fatal injury). Estimate the magnitude of the risk reduced and the magnitude of the risk increased, using comparable units (e.g., individual annual risk, population lifetime risk). Discuss whether you believe the policy decision should be changed/reversed, based on the size and characteristics of the “offsetting risk.” To what extent does your conclusion depend on the nature of the affected populations (are they the same or different)? Are there any technologies or strategies that might reduce the targeted risk without increasing the offsetting risk, or that might reduce both risks at the same time? Should the relevant agency have been required to consider this “net risk reduction” at the time of the rulemaking process?
2. How have agencies which operate under statutes that forbid them to consider the costs of a regulation (or court interpretations to the same effect) managed to craft rules whose costs are reasonable? Review selected regulatory actions to try to discern a general theory of “back-door cost-benefit balancing.” In light of what you’ve found, do you think the statutes should be amended to endorse the *status quo*, or do you think Congress or the courts should compel the agencies to comply with the letters of the law?
3. Many have suggested that agencies need to submit their risk and cost analyses to additional external peer review (that is, beyond current OMB review and public notice-and-comment). Review selected regulations that have and have not undergone such independent review, to try and gauge the value added by such processes. In light of the costs of the additional review (direct costs, delay, etc.), do you believe the review itself would generally pass a benefit-cost test? Can you find evidence of processes that have increased scientific or economic rigor without disenfranchising the interested but non-expert public?