

REGULATION

Politics, Bureaucracy, and Economics

Kenneth J. Meier

SEC

IA

NHTSA

NAPCA

INS

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FCC

EPA

EEOC

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AMA

AEC

ABA

REGULATION

Politics, Bureaucracy, and Economics

Kenneth J. Meier

University of Wisconsin—Madison

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Preface

Regulation is essential to modern society. Without rules for acceptable behavior in relationships with other individuals, any complex society would rapidly collapse. Regulation provides a framework that defines acceptable behavior for individuals in a variety of situations. People in business must be concerned with the quality of products they produce, the safety of the workplace, and any pollution that results as a by-product. Other citizens also find their lives regulated: Restrictions are placed on how fast they can drive, what kind of products they can buy, even where they can live.

In the last two decades the amount of regulation in American society has exploded. At the federal level the Equal Employment Opportunity Commission, the Environmental Protection Agency, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Commodity Futures Trading Commission, and the National Highway Traffic Safety Administration are just a few of the new agencies that were created. In addition, older agencies received new authority; bank regulators, for example, were given truth in lending laws, equal credit opportunity laws, and laws restricting insider activities. At state and local levels, regulation has expanded at an equal rate. State governments were given authority to implement federal regulations on environmental protection and workplace safety, while state legislatures sponsored numerous efforts in consumer protection, fair employment, and utility regulation. Local governments created their own regulatory agencies to oversee cable TV systems, local election practices, local cases of discrimination, and countless other areas.

Given the great increase in regulation, one would think that regulation was perceived as a universal good. In fact, the public perception of regulation is exactly the opposite. One of the increasing paradoxes in current American politics is that although regulation is heavily criticized, people still demand that it be extended to other areas of society.

In general, however, regulation continues to have a negative press. By reading such specialized journals as *Regulation*, one would get the impression that regulation accomplishes little good and produces great evils. This book addresses this misperception by examining several cases of regulation. Regulation in America is fairly complex, and simple generalizations such as those found in the popular literature or even the popularized economic literature are always incomplete and often wrong. This book will examine a wide range of regulatory situations to determine why regulatory policy exists as it does.

Regulation: Politics, Bureaucracy, and Economics uses a consistent conceptual framework to examine individual regulatory policies. Presented in chapter 2, the framework essentially combines the viewpoints of those who feel regulatory policies are determined by the social and economic environ-

ment and those who feel that bureaucracies are permitted the freedom to set policies without restriction. The economic and technological environment, along with macropolitical forces, sets the general parameters for regulatory policy. These elements provide both opportunities to make policy and restrictions on such activities. Within these forces, the specific policies are established by bureaucracies in interaction with their policy environments. Internal agency factors can be used to explain which of the specific policies an agency follows among those that the environment permits.

In this study of regulation, I have attempted to do three things. First, I have tried to integrate several approaches to the study of regulation that appeared to be useful. The result is a multidisciplinary view of regulation. At times concepts and approaches are taken from history, economics, law, and organization theory as well as from political science. Guiding this multidisciplinary approach, however, is a belief that regulation is a political process. I have emphasized political rather than economic or legal explanations for regulatory policy.

Second, I have addressed both empirical and normative issues. To encourage the reader to look at empirical questions, I have applied the conceptual framework introduced in chapter 2 to substantive regulatory areas in chapters 3 through 9. When we study regulation, avoiding normative issues is almost impossible. Our colleagues in economics have finessed this problem by accepting a normative viewpoint (that regulation is designed to enhance efficiency) and doing empirical research within that viewpoint. Such an approach strikes me as less satisfactory than simply admitting that certain questions are normative and discussing them as such. Consequently, in several places I have offered normative judgments about specific regulatory policies, and in chapter 10 the proposed reforms of others are subjected to an evaluation.

Third, I have made an effort to include a wide range of substantive regulatory policies that are rarely discussed by political scientists, including such areas as banking regulation, antitrust regulation, occupational regulation, and agricultural regulation. Balance was sought between regulatory policies that work fairly well and those that do not, between policies that are salient to the American people and policies that are not, and between social and economic regulation.

Chapter 3 discusses the regulation of financial institutions such as banks, savings and loan associations, and credit unions. Financial regulation is affected more than most areas by environmental forces outside the control of regulators, especially by the economic and technological forces that define the demand for a financial product.

Chapter 4 assesses several consumer protection policies, including those dealing with prescription drugs, food safety, automobile safety, consumer products, and deceptive advertising. Consumer protection policy puts more emphasis on political and bureaucratic variables, including the creation of consumer organizations and the activities of bureaucratic entrepreneurs.

Chapter 5 covers the economic regulation of agriculture. Agricultural regulation is of interest because it relies heavily on incentives rather than on coercion to get compliance with regulatory policy. I believe the results in agriculture indicate how well such policies would work in environmental protection and workplace safety.

Chapter 6 traces the development of environmental protection policy.

Although environmental policy illustrates several things, such as the role Congress can play in regulation or the impact of public interest groups, it was included primarily to illustrate the relationship between career staff and political leadership. The conflict between the former EPA administrator Anne Burford and the permanent bureaucracy and its allies is a classic case for students of bureaucratic power.

State regulation of occupations such as doctors, lawyers, and plumbers is discussed in chapter 7. It was included for two reasons: (1) to provide one case of state rather than federal regulation and (2) to illustrate an area where regulation is undertaken for the benefit of the regulated interest. State regulation of occupations, however, is probably the worst case; state efforts in other areas are much more effective, and some effort has been made to talk about these state activities in other chapters. In addition, even though regulation is designed to benefit the regulated occupation, the evidence shows that these regulatory agencies are not all that effective.

Chapter 8 deals with that reputed ogre of regulation, the Occupational Safety and Health Administration (OSHA). The chapter shows how OSHA policies can be explained by examining the professional values of the career bureaucrats; it also illustrates how a bureaucracy can learn from its mistakes. Antitrust policy is assessed in chapter 9. It provides an example of regulation that is enforced through the court system. Interesting issues exist in antitrust, and major policy changes have been introduced by recent antitrust administrators.

Several people deserve thanks for the effort they have contributed to this project. Dave Welborn rekindled my interest in regulation by providing me with a convention forum to express my views. He also provided a detailed critique of the entire manuscript, which improved it significantly. Paul Sabatier read several chapters of the manuscript; his comments on the conceptual framework were especially helpful and caused me to rewrite that chapter several times. George Edwards also read several chapters and raised many issues that were subsequently addressed.

Alan Stone read the banking chapter and provided helpful information on the policies and history of these agencies. The consumer protection chapter was improved greatly by the criticism of Paul Quirk. My colleague Steve Ballard provided an exceptionally detailed critique of the environmental protection chapter and, through these comments, encouraged the perspectives presented in the chapter. Paul Culhane, through more general discussions, improved my understanding of this area. William Gormley read and provided excellent comments on a previous version of the occupational regulation chapter and, through his own work, indirectly critiqued the conceptual framework. Anthony Brown on several occasions sharpened my thinking about regulation. I owe all these individuals a debt of gratitude for their assistance. Any errors that remain are mine, not theirs.

I would also like to thank all the people at St. Martin's Press for their encouragement, patience, and effort. Michael Weber deserves a special thank-you for giving me the flexibility to write the book I wanted to write and for tolerating the delays.

K. J. M.

List of Abbreviations Used

AAA	Agricultural Adjustment Act
AAM	American Agriculture Movement
ABA	American Bankers' Association
ABA	American Bar Association
AEC	Atomic Energy Commission
AMA	American Medical Association
AMS	Agricultural Marketing Service
APA	Administrative Procedures Act
ASCS	Agricultural Stabilization and Conservation Service
ATM	automated teller machine
BAT	best available technology
BPT	best practicable technology
CAA	Clean Air Act
CAB	Civil Aeronautics Board
CEQ	Council on Environmental Quality
CFTC	Commodity Futures Trading Commission
COWPS	Council on Wage and Price Stability
CPSC	Consumer Product Safety Commission
CUNA	Credit Union National Association
CWA	Clean Water Act
CWIP	construction work in progress
DIDC	Depository Institutions Deregulation Committee
DIDMCA	Depository Institutions Deregulation and Monetary Control Act
EEOC	Equal Employment Opportunity Commission
EFT	electronic fund transfer
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FHLBB	Federal Home Loan Bank Board
FERC	Federal Energy Regulatory Commission
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FSIS	Food Safety and Inspection Service
FSLIC	Federal Savings and Loan Insurance Corporation
FTC	Federal Trade Commission
FWPCA	Federal Water Pollution Control Act
FY	fiscal year
GAO	General Accounting Office
GM	General Motors
GRAS	generally recognized as safe
HEW	Health, Education, and Welfare (Department of)

xviii List of Abbreviations Used

IBAA Independent Bankers Association of America
ICC Interstate Commerce Commission
INS Immigration and Naturalization Service
MADD Mothers Against Drunk Drivers
MMDA money market demand account
MMF money market fund
NAAQS National Ambient Air Quality Standards
NAFCU National Association of Federal Credit Unions
NAPCA National Air Pollution Control Administration
NAS National Academy of Sciences
NCUA National Credit Union Administration
NEPA National Environmental Policy Act
NFO National Farmers Organization
NFU National Farmers Union
NHTSA National Highway Traffic Safety Administration
NIOSH National Institute of Occupational Safety and Health
NMPF National Milk Producers Federation
NOW negotiable order of withdrawal
NPDES National Pollution Discharge Elimination System
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
OSHRC Occupational Safety and Health Review Commission
PAC political action committee
PCB polychlorinated biphenyl
PIK payment in kind
PMA Pharmaceutical Manufacturers Association
PHS Public Health Service
PSD prevention of significant deterioration
R and D research and development
RARG Regulatory Analysis Review Group
S&Ls Savings and Loans (Savings Associations)
SEC Securities and Exchange Commission
UAW United Auto Workers
UHF ultrahigh frequency
USDA U.S. Department of Agriculture
USLSA U.S. League of Savings Associations.
VHF very high frequency

Contents

Preface *xiii*

1. The Myths of Regulation	1
What is Regulation?	1
The Regulatory Explosion	2
The Myths of Regulation	4
Regulation is Ineffective	4
Regulation Is Out of Control	4
Regulatory Agencies Are Captured	5
The Purpose of Regulation Is Efficiency	6
The Study of Regulation	7
Regulation Is Complex	7
Multidisciplinary Focus	7
Normative Judgments	8
 2. The Regulatory Process	 9
Regulatory Policy Outputs	9
Subsystem Politics	10
Regulatory Agencies: Inside the Black Box	14
Agency Goals	14
Resources	15
Agency Discretion: A Recapitulation	18
The Organization of Interests	18
The Political Environment	22
Congress	22
The Presidency	25
Courts	28
The General Environment	30
Economics	30
Technology	32
Summary	34
 3. Depository Institutions: Banks, Savings Associations, and Credit Unions	 37
The Financial Industry	37
Commercial Banks	38

Savings Associations	38
Mutual Savings Banks	39
Credit Unions	39
Other Financial Intermediaries	40
The Regulatory Agencies	41
Office of the Comptroller of the Currency	41
The Board of Governors of the Federal Reserve System	42
Federal Deposit Insurance Corporation	42
State Banking Commissions	43
The Federal Home Loan Bank Board	43
The National Credit Union Administration	44
The Other Regulators	44
Agency Resources	44
The Regulatory Environment	45
The Economic Environment	45
Technology	46
The Early History of Depository Regulation	48
Banking Regulation	48
Mutual Savings Banks: Early Development and Regulation	52
Credit Unions	53
Savings Associations	53
Early Regulation: A Summary	54
Separate and Specialized	55
The Destruction of Barriers Between the Industries	57
Technological Changes	57
Economic Changes	57
Entrepreneurial Innovation	59
Court Intervention	62
The Depository Institutions Deregulation and Monetary Control Act of 1980	63
The Interest Groups Line Up	63
The Legislative Battle	64
The Administrative Battle	67
DIDMCA and Its Impact	68
The Garn—St Germain Act	68
Environmental Changes	68
Legislative Action	69
Administrative Action	70
Garn—St Germain: An Assessment	70
The Barriers Continue to Crumble	71
Interindustry Barriers	71
Geographic Barriers	73
Conclusion	75
 4. Consumer Protection	 77
The First Era of Consumer Protection:	
The Progressives	78
The New Deal Era	80

The Contemporary Era	81
Regulating Drugs	82
The Subsystem	82
The Environment	82
Agenda Setting: The Kefauver Hearings	83
The Law and Agency Procedures	84
The Impact of FDA Procedures	84
Withdrawing Ineffective Drugs	85
Current Issues	86
Policy Direction	86
Food Safety Regulation	87
The Subsystem	87
The Environment	88
The Food and Drug Administration	89
The Food Safety and Inspection Service	93
Food Safety: Who Benefits?	95
Automobile Safety Regulation	95
The Subsystem	95
The Environment	96
Setting the Agenda: Legislative Action	96
NHTSA Administration	97
The Impact of NHTSA Policy	99
Who Benefits?	100
Consumer Product Safety Regulation	100
The Subsystem	100
The Environment	101
Consumer Product Safety Legislation	101
CPSC Administration	103
Evaluation of Agency Policy	104
Who Benefits?	106
The Revitalization of the FTC	106
The Subsystem	107
The Environment	107
The Early Performance of the FTC	108
The Revitalization of the FTC	108
The Anticonsumer Backlash	109
The Reagan FTC	110
The Congressional Fight Continues	111
State Consumer Regulation	113
Public Utilities	113
Sales and Loan Regulation	114
Food Purchases	114
Drug Sales Regulation	115
Legal Remedies	115
Other Areas	115
The Forces Behind State Regulation	116
Summary	116

5. Regulating Agriculture	119
The Industry	119
The Agricultural Sector	120
Individual Industries	120
Advocacy Coalitions	122
The Regulatory Agencies	123
ASCS	125
AMS	125
Resources	125
Subsystems	126
The Environment of Agriculture	126
Economic Environment	126
Technological Environment	127
The Policies of Regulating Agriculture	128
Preregulatory Policies	128
Modern Agricultural Regulation	129
The New Deal	129
Party Conflict Within the Subsystem, 1948–1973	131
Opening the Subsystems	131
The Failure of Farm Policy	134
Who Benefits?	135
Summary	137
 6. Environmental Protection	 139
The Environment	139
The Subsystem	140
The Agency	140
The Advocacy Coalitions	141
Early Environmental Policy	141
Early Water Pollution Efforts	142
Early Air Pollution Efforts	143
Changes in the Political Environment	143
Legislative Action of the 1970s	144
The National Environmental Policy Act	144
The Environmental Protection Agency	145
The 1970 Clean Air Act Amendments	146
The 1972 Federal Water Pollution Control Act Amendments	147
Implementing Pollution Policies	148
Auto Emissions Controls	148
Stationary Sources of Air Pollution	151
Water Pollution	156
Pesticides	159
Hazardous Waste	161
The EPA and Anne Burford	163
Environmental Politics in the 1980s	166
Renewal of CAA and CWA	166
Cost-Benefit Analysis	166

Effluent Charges	167
The New Source Bias	168
The Frostbelt Bias	168
Which Pollutants Should Be Controlled?	169
Acid Rain	170
Integrated Enforcement	170
The Impact of Regulation on the Economy	171
Enforcement	171
Conclusion	172
 7. Regulating Occupations	 175
Why Regulate Occupations?	175
The Environment of Occupational Regulation	177
The Process of Regulation	177
The Regulatory Subsystem	178
Regulatory Options	179
Registration	179
Certification	179
Licensing	180
Potential Harms of Regulation	180
Regulating Medicine	181
The Impact of Occupational Regulation	184
Barriers to Entry	184
The Existence of Rents	186
Impact on Price	187
Impact on Quality	190
Miscellaneous Impacts	191
The Politics of Occupational Regulation	192
Reforming Occupational Regulation	194
Complete Deregulation	195
Certification	195
All-Comers Examinations	195
Legal Remedies	196
Institutional Licensure	196
Sunset Legislation	197
Public Representation	197
A Department of Consumer Affairs	198
Conclusion	199
 8. Workplace Safety and Health	 202
The Subsystem	202
The Agencies	202
Advocacy Coalitions	203
The Environment	204
Occupational Safety Before OSHA	204
Establishing Federal Regulation	206

x Contents

The Politics of Creation	206
The Occupational Safety and Health Act	207
Rule-making Procedures	209
Implementing the Law	210
The Inspection Process	210
Implementing Safety Regulation	211
The Shift to Health Regulation	212
The Politics of OSHA	216
Congress	216
Presidents	216
The Courts	217
Political Leadership	218
The Reagan Initiatives	218
Rule Making	219
Enforcement	220
Evaluating OSHA Policy	221
Enforcement	221
Impact	223
Current Political Issues	224
State-Run Programs	224
Impact on Small Business	225
Risk-Based Wages	225
The Injury Tax	227
Costs and Benefits	227
A Combination Reform	228
Conclusion	230

9. Antitrust Policy 232

The Subsystem	232
The Agencies	232
Advocacy Coalitions	234
Economic Premises of Antitrust	234
A Legal History of Antitrust	235
Monopoly	237
The Initial Failures	237
Busting the Trusts	238
The End of Trustbusting	240
The New Attack and the Surrender	242
An Evaluation of Monopoly Antitrust	243
Collusion	244
Price-Fixing	245
Information Agreements	246
Innovations in the 1970s	246
Summary and Evaluation	247
Mergers	248
Mergers in History	249
Horizontal Mergers	249
Vertical Mergers	251

Conglomerate Mergers	251
Summary and Evaluation	252
Price Discrimination	253
Retail Price Maintenance	254
Price Discrimination	254
Evaluation	255
Exclusionary Practices	255
Tying Agreements	256
Exclusive Dealing Agreements	257
Exclusive Distributorships	257
Evaluation	258
Antitrust Law as Public Policy	258
The Goals of Antitrust	258
Are the Goals Consistent?	260
Has Antitrust Attained its Goals?	261
Market Concentration Aside, Should We Worry	
About Bigness?	262
Reforming Antitrust Policy	266
Summary	267
 10. Reforming Regulation	 269
Regulatory Goals	269
Efficiency	269
Equity	273
Efficiency, Equity, and Regulation	275
Regulation's Shortcomings	276
Political Shortcomings	276
Second-Order Failings	280
Regulatory Reforms	284
Market-Oriented Reforms	284
Responsiveness Reforms	291
Conclusion	298
 Appendix: Hypotheses Concerning Regulatory Policy	 300
References	303
Court Cases Cited	319
Index	321

The Myths of Regulation

WHAT IS REGULATION?

Regulation is any attempt by the government to control the behavior of citizens, corporations, or subgovernments. In a sense, regulation is nothing more than the government's effort to limit the choices available to individuals within society (Mitnik, 1980). Despite the simple definition, regulation can take numerous forms (see Daly and Brady, 1976).

First, the most commonly perceived form of regulation is price regulation. Price regulation means that a government regulator determines the minimum, maximum, or range of prices that an individual can charge for a good or service. State public utility commissions, for example, set the price that utility companies charge for a kilowatt hour of electricity. Numerous other state boards often set the price of haircuts, dry cleaning services, and even funerals. In the last few years, federal regulatory agencies have become less involved in price regulation; state and local governments, however, continue to regulate prices in many industries.

Second, franchising or licensing is a process by which regulatory agencies permit or deny an individual the right to do business in a specified occupation or industry. To operate a television station, for example, an individual must receive a license from the Federal Communications Commission. To open a bank, a person must obtain the necessary charter from either the Office of the Comptroller of the Currency or from a state banking commission. Along with licenses come regulations. Acceptance of a license to conduct a certain business normally implies that the government has an interest in how that business is operated.

Third, standard setting is a form of government regulation in which the government establishes standards for a product or a production process. Standards may be either performance standards or engineering standards. When the U.S. Department of Agriculture (USDA) requires that exported grain contain no more than a certain percentage of foreign matter, it is setting a performance standard. USDA's concern is the level of foreign matter, not how any excess foreign matter is removed. On the other hand, when the Occupational Safety and Health Administration (OSHA) requires that factory workers be exposed to no more than two parts per million of cotton dust particles, it often tells the business how to meet this standard. OSHA with an engineering standard specifies both the goal and the means.

Fourth, government can regulate by the direct allocation of resources. Under energy policies that grew out of the energy crisis of 1974, the federal

government directly allocated crude oil to various refiners and to various end products. Although direct allocation of resources by government is fairly uncommon in the United States, it may become more frequent if tradable pollution permits become a part of national environmental policy (see chapter 6).

Fifth, government can regulate by providing operating subsidies. Such subsidies can be direct as they were when the Civil Aeronautics Board granted subsidies to airlines to encourage them to serve small cities or when the Agricultural Stabilization and Conservation Service offers loans and subsidies to farmers not to plant crops. Subsidies can also be indirect; the national gasoline tax may be thought of as an indirect subsidy of the trucking industry because proceeds from the tax are used to improve the roads used by the trucking industry. Even though subsidies look like a direct benefit rather than regulation, they become regulation when they are used for the purpose of changing the behavior of the individuals who receive the benefit.

Sixth, government can regulate to promote fair competition. Free markets are so essential to the American economic system that certain regulatory agencies are created simply to monitor the marketplace for fairness. Regulations against deceptive advertising by the Federal Trade Commission and antitrust regulation are two prominent examples.

As the various types of regulation illustrate, not all regulation is coercive. Much regulation is done through inducements offered by the government or its agencies. The objective of regulation, however, is the same—to change the behavior of individual citizens, corporations, or governments.

THE REGULATORY EXPLOSION

Twenty years ago regulation was a fairly minor part of the federal government. The major political issues were redistributive issues such as medicare and tax reform or were foreign policy issues. Regulation was rarely on the national agenda, and little was being done to study the impact of regulation on society.

The last two decades have changed that situation. According to the Center for the Study of American Business, regulation became a major growth industry in the 1960s and 1970s. The number of federal regulatory agencies increased from 28 in 1960 to 56 in 1980 (Penoyer, 1981: 3). A series of major regulatory agencies were created in these two decades. The National Highway Traffic Safety Administration was established in 1966 to regulate both automobile and highway safety. The Environmental Protection Agency was created in 1970 to coordinate the federal efforts to protect the environment. To eliminate harmful and hazardous products from the marketplace, Congress formed the Consumer Product Safety Commission in 1972. Equal employment opportunity was placed under the jurisdiction of the Equal Employment Opportunity Commission in 1964. Workplace health and safety were delegated to the new Occupational Safety and Health Administration in 1971. Nor was the federal government alone in creating regulatory agencies. State governments created a variety of consumer protection agencies and were required by federal law to establish agencies to regulate air and water pollution.