

Designing More Effective Government Regulations

Fall 2018, PPPA 6085.15

Credit Hours: 3 for Trachtenberg School¹

Current as of Aug 21, 2018. Adjustments to readings, schedule and topics are possible by early October.

Course Description

Effective government regulations play a critical role in benefiting public health, safety, and the environment, but these benefits depend on widespread compliance with the regulations. Too often, however, either regulatory compliance is low, or we lack the requisite information on actual compliance to judge the effectiveness of the regulation. At the same time, the world is changing in ways dramatically impacting how best to design and implement regulations to achieve their intended goals. These changes include budget cuts to government inspection and enforcement programs, increases in population, loss of greenspace, climate change, and how we live, manufacture, and consume resources. And with very limited government resources for conducting inspections and enforcement actions to compel compliance with regulations, new ways must be found to build compliance drivers into the design of regulations.

This course provides a modern approach to designing more effective regulations, and will cover:

1. The economic, evolutionary, and behavioral rationales for why government regulations are needed.
2. The reasons why firms and people follow or violate regulations, such as social norms and deterrence.
3. Advances in monitoring, information technology and behavioral science (psychology and behavioral economics) that can improve compliance with government regulations.
4. Five principles for designing effective regulations, and how to apply these principles to “build compliance drivers” into regulations.

In contrast to other courses on government regulations, this course will only briefly address the administrative and legal process for developing regulations and the cost benefit economic analysis performed in developing regulations. While the class will emphasize environmental regulation, the course will use examples from diverse fields such as taxes, prescription drugs, and occupational safety and health. The principles and methods covered in the course are applicable to designing regulation to address a variety of public policy problems, ranging from environmental pollution to the opioid crisis.

The course will use a mix of lectures, discussion, classroom exercises, and student short presentations. Students will be graded based on two tests, their short presentations and their final paper. The short student presentations will be on the same topic as their written paper and will then be easily integrated into the final paper. Students may choose topics for the papers (and the presentations) based on their fields of interest (not just environmental).

¹ For more information on law school credit for this course, contact LeRoy (Lee) C. Paddock, Associate Dean for Environmental Law Studies, at lpaddock@law.gwu.edu or 202-994-0417.

Schedule & Location:

Classes: Thursdays 06:10PM - 08:00PM

FROM/TO: 08/30/18 - 12/6/18 (no class on Thanksgiving); Location: Corcoran Hall 207.

Instructor: David A. Hindin

Mobile Phone: 571-329-2943

Email: davidhindin@GWU.EDU

The instructor is a federal executive with 30 years of experience developing and implementing environmental programs and rules; training state and federal enforcement personnel; litigating enforcement cases; managing national environmental information systems; promoting public access to government information; and leading initiatives to modernize environmental programs. David has a B.S. from the University of Michigan, an M.A. in psychology from Arizona State University, and a J.D. from the University of California at Berkeley.

CAVEAT: While the instructor has extensive knowledge and experience from his work at the US. Environmental Protection Agency, the information, views, and perspectives he will present in this course are his own and should not be considered statements of official Agency policy or direction.

Contacting the Instructor Outside Scheduled Class

If you have a question or concern, the best way to reach the instructor is to send an email. If the question is simple, an email response may be sufficient. For topics that would benefit from a discussion, we can arrange a time to talk via phone or at a GW location. The instructor will respond to email within 1 to 2 days.

Prerequisite(s): Graduate student or law student.

Objectives and Outcomes:

This course teaches students how to design effective government regulations that can successfully achieve their intended benefits through routine high compliance. The content will include approaches and tools for overcoming significant causes of noncompliance, leveraging key compliance drivers, incorporating the most up-to-date advances in pollution control, monitoring, and information technology, and building in behavioral approaches to driving pro-compliance decisions and behaviors. Students completing the class will understand how to apply these strategies in the real world, whether they work for a government agency, non-profit or private entity subject to government rules. The course focuses on principles and techniques useful in analyzing a variety of problems, is structured to present both theory and practical techniques, and may compliment coursework in a variety of disciplines: public policy; economics; law; and behavioral science.

Students who complete the course will better understand and be prepared to apply in their jobs:

1. The economic, social, and behavioral rationales for why government regulations are needed.
2. The many reasons why firms and people follow or violate such regulations.
3. For specific regulatory scenarios, how to diagnose and address or leverage key pro-compliance and noncompliance factors and drivers.

4. What deterrence is, how and why it works, how government regulators use it, when it works, when it falls short, and how to bolster and/or compliment it in regulations.
5. Advances in pollution control, monitoring, and information technology.
6. The latest insights from the behavioral sciences on nudging firms and people to better comply with government regulations.
7. Five principles, and tools, with practical examples and strategies, for designing better rules with compliance “built in” (identified specifically below in **Course Schedule**).
8. An integrated approach to designing effective regulations by employing synergistic combinations of the above principles and tools.
9. Why and how to design regulations up-front to promote effective measurement of their impacts and outcomes.

Student Paper (in 4 pieces):

Each student is required to write a paper, 10 to 12 pages, single spaced (not counting references) at 12-point font Times Roman. The development of the paper will be made easier by splitting it into four pieces:

1. Proposed Paper Topics. By September 30, 2018, students will identify and propose two possible topics for their paper to the instructor. To ensure the class benefits from hearing about multiple topics, the instructor will review the topics in advance to ensure that the approved topic is likely to lead to a good paper and that two students are not covering the same topic. Feedback will be provided to the students around October 7, 2018.
2. Problem Presentation in October 18th class. Each student will have 10 to 15 minutes to present their draft analysis of the problem they are focusing on and the reasons why a new or revised government regulation is necessary. At this class students should provide a 1-page summary handout or may about 5 slides. This will give the presenting student the opportunity to get feedback from the class and instructor.
3. Solution Presentations in the November 8 and 15 classes. Each student will provide an update on the problem being addressed and proposed regulatory solution using the five principles and addressing compliance and noncompliance drivers. Students are encouraged to do a slide presentation.
4. Final Papers Due December 12th. The papers will primarily integrate and refine the content presented on the problem and solution.

More details on paper expectations will be provided in September 13 class.

Course Readings and Schedule of Classes

There is no textbook for this course. The course materials consist of articles or chapters for each session of the class as described below. Students are responsible for accessing and reading all the course materials listed on this syllabus. Some classes will follow the course materials closely, others may not. You are expected to read all assigned articles prior to the listed class date, and you are expected to be prepared to discuss them.

1. **Guest Lecture by Professor Dudley: How Federal regulations fit into the broader context of policymaking at the federal level** (August 30)

Professor Dudley, former director of OMB's Office of Information and Regulatory Affairs, will review the roles of the three branches of government and the process by which regulations are developed and issued. In addition, she will review recent modifications made to the rulemaking process by the Trump Administration. More details on Professor Dudley's background are [here](#). Also, Peter Linquiti, Associate Professor & Director, of the Environmental Resource Policy Program, Trachtenberg School of Public Policy & Public Administration will introduce Professor Dudley and a quick overview of the class.

Recommended assignments and readings:

- Start on the required class readings and assignment for the September 6th class.

2. **Course, Student and Instructor Introductions. Why Are Regulations Necessary? What Are They Intended to Accomplish?** (Sept 6)

Begin with instructor introduction and then student introduction. Review of the syllabus and overall course schedule and expectations. Lecture will review the reasons for government regulations from political, social, economic, and behavioral science perspectives. This goes beyond the traditional economic externality perspective by also considering social and behavioral considerations such as human irrationality, e.g., propensity to focus on short-term, tangible, individual benefits despite more significant long-term individual and public costs.

Assignments and Readings

- Individual student introductions of no more than 5 minutes each covering name, favorite book you have read, why you are taking this class and what is your favorite or least favorite government regulation. In describing your selected government regulation, spend up to 15 minutes jotting down your own notes to explain this (it will not be handed in nor graded).
- Elise Amel, Cristie Manning, Britain Scott & Susan Koger, Beyond the roots of human inaction: Fostering collective effort toward ecosystem conservation. *Science*, 21 Apr 2017: Vol. 356, Issue 6335, pp. 275-279. PDF file posted on Blackboard.
- David A. Hindin & Jon D. Silberman, *Designing More Effective Rules and Permits*, 7 GEO. WASH. J. OF ENERGY & ENVTL. L. 103, 113 (2016). Skim read by focusing on the text, you may skip the footnotes for now.
https://gwujeel.files.wordpress.com/2016/05/completed_jeel_vol7_issue2_designingmoreeffectiverulesandpermits.pdf

- Optional: Cynthia Giles, Next Generation Compliance, Env'tl. Forum (Sept.–Oct. 2013), at 22, 23, and Appendix. <https://www.epa.gov/compliance/article-next-generation-compliance>

3. Diagnosing and Addressing Why Firms and People Comply with Government Regulations and Overview of Key Legal and Process Requirements for Regulations

(Sept. 13)

- A. Present a unique, multidisciplinary review of the key economic, social, cultural, and behavioral factors influencing firms and people to follow or violate government regulations. In addition to considering evidence from classic economic and deterrence theory, the instructor will consider about 12 factors that impact compliance with government regulations. We will then explore a diagnosis and treatment methodology for identifying and leveraging key factors and drivers influencing a given industrial sector's or facility's propensity for regulatory compliance.
- B. Overview of key regulation development and implementation requirements, including: the legal basis for government agencies to issue regulations; actors and stakeholders; administrative and judicial processes for issuing and challenging rules; compliance monitoring; enforcement; outcome measurement and retrospective evaluation.

At the end of the class, the instructor will review the instructions for developing the paper (in four pieces), with the 1-page summary of two possible topics due no later than September 30.

Required pre-class reading:

- Christie Manning, The Psychology of Sustainable Behavior, Minnesota Pollution Control Agency, September 2009, available at <https://www.pca.state.mn.us/sites/default/files/p-ee1-01.pdf>.
- Garrett Hardin, The Tragedy of the Commons, Science 13, Vol. 162, Issue 3859, pp. 1243-1248 (Dec. 1968). <http://science.sciencemag.org/content/162/3859/1243.full>
- Robert Olson and David Rejeski, Sow Threats and Environmental Policy, Environmental Law Reporter, 48 ELR 10116, February 2018. PDF provided on Blackboard.
- Richard Williams and Jerry Ellig, Regulatory Oversight: The Basics of Regulatory Impact Analysis, Mercatus Center at George Mason University –Regulatory Studies Program (2011). No need to read beyond page 12. <https://www.mercatus.org/system/files/Mercatus-Regulatory-Impact-Analysis-Toolkit.pdf>

4. Deterrence Theory and Empirical Research; Class Exercise (Sept. 20)

What deterrence is; how and why it works; how governmental regulators use it; when it works; when it falls short; why, despite being critical to compliance assurance, deterrence-based approaches, alone, cannot ensure routine high levels of regulatory compliance.

This class will include an exercise in which the students will break into small groups, apply the methodology for identifying and leveraging key factors and drivers influencing regulatory compliance to a hypothetical regulatory scenario, and report out on findings and recommendations.

Required pre-class reading:

- Class exercise 1, about 5 pages. Will be posted to Blackboard around Sept 10.
- James Alm and Jay Shimshack, *Environmental Enforcement and Compliance: Lessons from Pollution, Safety and Tax Settings*, Foundation and Trends in Microeconomics, Vol 10, 2014, 209-274. Posted as PDF on Blackboard.
- Dorothy Thornton et al., *General Deterrence and Corporate Environmental Behavior*, 25 L. & Policy 262 (2005). PDF posted on Blackboard.

- The next 5 classes cover, in each session with numerous practical examples and evidence, 5 key principles and 16 tools and approaches for designing effective government regulations.

5. **Principle 1: Enable government, regulated entities and public to easily identify who is regulated and the applicable requirements (Sept 27)**

Simpler rules which clearly identify who is regulated, what an entity must do to comply, and how an entity should detect noncompliance are not only easier for regulated entities to comply with, but also easier for governments to implement than more complex rules. For example, consider whether simple rules promoting high compliance can deliver more actual regulatory benefits than complicated rules with low compliance

Required pre-class reading:

- Memorandum from Cass R. Sunstein, Adm'r, Office of Mgmt. & Budget, to Heads of Exec. Dep'ts & Agencies, *Disclosure and Simplification as Regulatory Tools* (June 18, 2010) (especially pp. 9-12, *Simplification As A Regulatory Tool*).
<https://www.transportation.gov/sites/dot.gov/files/docs/Disclosure%20and%20Simplification%20as%20Regulatory%20Tools.pdf>.
- Review table of contents at pp. iii-v, only (full document is not assigned for reading; students may skim subsections of interest): *Federal Plain Language Guidelines* (March 2011; Revision 1, May 2011).
<http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/FederalPLGuidelines.pdf>
- Richard H. Thaler, *Do You Need a Nudge?*, Yale Insights (Nov. 4, 2009).
<http://insights.som.yale.edu/insights/do-you-need-nudge> [alternative student option: Cass R. Sunstein, *Nudges.gov: Behavioral Economics and Regulation* (Feb. 16, 2013 draft), published in final as *Nudges.gov: Behaviorally Informed Regulation* in the *Oxford Handbook of Behavioral Economics and the Law* (Nov. 2014).
https://www.researchgate.net/publication/256048068_Nudgesgov_Behavioral_Economics_and_Regulation].

- Sarah L. Stafford, Rational or Confused Polluters? Evidence From Hazardous Waste Compliance Contributions, 5 Econ. Analysis & Policy 1 (2006) (pp. 1-6, n.22 on pg. 8, and CONCLUSIONS section, only (students may skim rest of article)). PDF file is on Blackboard.

6. Principle 2: Structure regulations to make compliance easier than noncompliance and mid-term exam (Oct 4)

Rules and permits can be structured to make compliance the behavioral default. There are two basic structural approaches for doing so. The rules can require physical designs that make it intrinsically difficult, expensive, or impossible for regulated entities to violate. Or, the rules can include features to improve the ability of regulators, sources, and stakeholders to detect and respond to noncompliance.

Required pre-class reading:

- Edward K. Cheng, Structural Laws and the Puzzle of Regulating Behavior, 100 Nw. U. L. Rev. 655, 678 (2006). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=709701
- John Schakenbach et al., Fundamentals of Successful Monitoring, Reporting, and Verification Under a Cap-and-Trade Program, 56 J. Air & Waste Mgmt. Ass'n 1576, 1577 (2006). https://www.epa.gov/sites/production/files/2015-05/documents/fundamentals_of_successful_monitoring_reporting_and_verification_under_a_cap-and-trade_program.pdf

In the second hour of this class, there will be a test on the course material to date.

7. Principle 3: Require regulated entities or third parties to assess compliance and take steps to prevent and remedy noncompliance (Oct. 11)

The state of the science of compliance monitoring – collecting and analyzing information on the compliance status of the regulated community – is evolving rapidly. Understanding and applying these changes are critical to effective regulatory design. Historically, rule writers designed monitoring and reporting requirements to allow regulators and facilities to detect and correct violations, and provide regulators with compliance status information and evidence to bring enforcement actions and evaluate program outcomes. Today, however, monitoring and reporting requirements are being designed increasingly to drive compliance proactively by identifying problems and deficiencies before they become violations. In this session, we will review current and anticipated advances in pollution control, monitoring, and information technology germane to regulation development and explore their relevance to 21st century regulation. Concepts will include “making the invisible visible,” “changing the regulator-regulated entity dialog,” the “democratization of monitoring,” and the evolving roles of individuals, communities, the financial services sector, and other stakeholders in regulatory design, implementation, and oversight (including potential political, liberty, and financial implications).

Required pre-class reading:

- Jon Silberman and David Hindin, **Effective Environmental Monitoring and Reporting**, Compliance and Enforcement of Environmental Law in the Elgar Encyclopedia of Environmental Law series (forthcoming May 2017). PDF file on Blackboard.
- Short, Jodi L. and Toffel, Michael W., **The Integrity of Private Third-Party Compliance Monitoring**, Fall 2016 edition of the Administrative & Regulatory Law News, available at http://www.hbs.edu/faculty/Publication%20Files/ShortToffel_2016_ARLN_13fe8ba5-cb72-482b-b341-5c7632f7c164.pdf.
- Esther Duflo et al., **Truth-Telling by Third-Party Auditors and the Response of Polluting Firms: Experimental Evidence From India**, 128 Q.J. Econ. 1499, 1499 (2013) (pp. 1-30 and 35, only). <https://economics.mit.edu/files/10713>.
- Additional reading on feedback for goal achievement.

8. **Student presentations on their regulatory problems as part of the development of the final paper.** (Oct 18)

No required pre-class reading.

9. **Principle 4: Leverage transparency and accountability by providing the government and public with real-time access to quality information on compliance and Class Exercise.** (Oct. 25)

Rules can be made more effective by designing them to help provide governments, the public, stakeholders such as customers, the financial services sector, academia, non-governmental organizations (“NGOs”), and the regulated entities themselves with useful and reliable performance and compliance information. Public knowledge of facilities’ performance can add incentives for regulated entities to improve their compliance whether they are frequently or rarely inspected. Transparency improves compliance by helping facilities understand and address their environmental impacts. It enables communities to have data-rich conversations with their industrial neighbors, thereby empowering them to hold facilities accountable and advance environmental justice.

Required pre-class reading:

- Class Exercise on Sitting as the New Smoking.
- Memorandum from Cass R. Sunstein, Adm’r, Office of Mgmt. & Budget, to Heads of Exec. Dep’ts & Agencies, **Disclosure and Simplification as Regulatory Tools** (June 18, 2010) (especially pp. 3-8, **Disclosure as a Regulatory Tool**). <https://www.transportation.gov/sites/dot.gov/files/docs/Disclosure%20and%20Simplification%20as%20Regulatory%20Tools.pdf>
- Archon Fung et al., **Transparency Policies: Two Possible Futures**, Harv. U. Taubman Ctr. Policy Briefs (May 2007) <http://www.transparencypolicy.net/assets/two%20possible%20futures.pdf>
- Lori S. Benneer & Sheila M. Olmstead, **Impacts of the “Right to Know”: Information Disclosure and the Violation of Drinking Water Standards**, 56 J. Env’tl. Econ. & Mgmt. 117 (2008). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=939590

10. **Principle 5: Leverage market forces and other incentives and Class Exercise.** (Nov 1)

Designing rules to leverage market forces can promote better regulatory compliance. For many firms, the deterrent impacts which penalties generate may pale in comparison with the potential impacts of market forces such as consumer demand, shareholder loyalty, declining stock prices in response to pollution liability fears, poor eco-efficiency that shareholders relate to reduced profitability, liabilities (such as tort judgments, citizen suits, or cleanups), adverse publicity, or community pressure. This is because market forces are often capable of generating financial pressures orders of magnitude greater than those posed by most penalties. Rules can also be designed to provide market benefits to compliant firms.

Required pre-class reading:

- Class Exercise on Electronics Recycling.
- Stefan Ambec, Mark A. Cohen, Stewart Elgie & Paul Lanoie, *The Porter Hypothesis at 20 Can Environmental Regulation Enhance Innovation and Competitiveness?*, Discussion Paper 11-01, Resources for the Future (Jan. 2011).
<http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-11-01.pdf>
- Refresher/re-read: U.S. EPA, *Guidelines for Preparing Economic Analyses* (2010), Chapter 4 – Regulatory and Non-Regulatory Approaches to Pollution Control,
[https://yosemite.epa.gov/ee/epa/erm.nsf/vwan/ee-0568-04.pdf/\\$file/ee-0568-04.pdf](https://yosemite.epa.gov/ee/epa/erm.nsf/vwan/ee-0568-04.pdf/$file/ee-0568-04.pdf)
- Frank Ackerman & Kevin P. Gallagher, *GETTING THE PRICES WRONG: The Limits of Market-based Environmental Policy*, Global Development and Environment Institute Working Paper 00-05 (2000).
<http://www.ase.tufts.edu/gdae/publications/priceswrong.PDF>

11. **Designing Rules and Permits to Promote Outcome Measurement and Integrating the Regulatory Design Principles and Tools; plus 2 to 3 student presentations** (Nov. 8)

Because achieving and documenting compliance is a prerequisite to achieving and documenting any rule's intended benefits to people, communities, and the environment, we will first consider how designing rules to promote and measure compliance supports these practical rule effectiveness objectives followed by a summary of logic modeling, measures development, and program evaluation techniques.

Required pre-class reading:

- Joseph E. Aldy, *Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy*, prepared for the consideration of the Administrative Conference of the United States (Nov. 17, 2014), pp. 4-16 and 64-67.
<https://www.acus.gov/sites/default/files/documents/Aldy%2520Retro%2520Review%2520Draft%252011-17-2014.pdf>
- Marcus C. Peacock, et al., *Public Interest Comment to the Commission on Evidence-Based Policymaking*, Docket ID No. 160907825–6825–01, GWU Regulatory Studies Center (Nov. 8, 2016).

<https://regulatorystudies.columbian.gwu.edu/sites/regulatorystudies.columbian.gwu.edu/files/downloads/Peacock%20et%20al.-Evidence-Based-Rulemaking.pdf>

12. **Remaining Student Presentations.** (Nov. 15)

Required pre-class reading: None.

NO CLASS NOVEMBER 22

13. **Challenges to the application of rule effectiveness principles in government agencies and placeholder for second hour of class.** (Nov. 29)

Required pre-class reading: TBD

14. **Summary of Key Points in the Course and One Hour Final Exam.** (Dec 6)

Required pre-class reading:

- Review student's notes, slides and readings as necessary.

ATTENDANCE, PARTICIPATION, ELECTRONIC DEVICES AND GRADING

Attendance and Participation:

Complete attendance is necessary for success in this course. Late arrivals are distracting – please arrive on time. More than one unexcused absence will lower your final grade by one increment (e.g., from a B+ to a B.) Please inform the instructor in advance if you have an unplanned urgent matter during the semester that will require you to be late or miss a class.

Class participation is strongly encouraged and influences your grade as described below. Participation means active engagement in the class, not simply being present. The success of class discussions depends on all of us. Come to class on time and prepared, which includes having read and considered the assigned readings in advance. As you participate in the class discussions, please:

- Do not be afraid to speak out about the readings – after all, that is why we are here.
- Allow other people to also speak and participate in the class – avoid dominating the discussion.
- Be courteous and respectful of one another. Do not laugh at or belittle anyone's remarks.
- While you may disagree with something said by your instructors or classmates or presented in your readings (which is fine), try to build a constructive dialogue around your differing interpretation(s).
- Listen to what is being said rather than who is saying it. Responses should not be personalized, and disagreements in opinion are not to be taken personally. Our goal is learn from one another.

ELECTRONIC DEVICES

Using your smart phone or laptop during class is likely to interfere with your ability to actively participate in the class and can distract your fellow students. The instructor strongly recommends that all electronic devices (e.g., computers, tablets, cellphones) be turned off, or at least in airplane mode. Of course, if you have a possible emergency to deal with that night or a university approved learning or medical accommodation, you may use these devices discretely. For an initial explanation, read