

APPENDIX N

REGULATORY RULEMAKING  
BASED ON LESS THAN TOTAL INFORMATION

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Estimation of the costs and benefits expected from regulatory programs is complicated by a lack of precise information. Several areas where a lack of knowledge exist are: the methods to be used by those regulated to meet the requirements; the efficacy of the methods chosen; the details which enter into the pricing effort of changes brought about by the regulation; alterations in the initial conditions which may occur over time, causing unpredictable variations in costs or benefits; the effectiveness of the regulation in achieving the desired benefits; and the impacts the regulation might have in other areas.

One subject not frequently addressed is the variation of the process to be regulated. If a population characteristic is time-varying, the potential benefits may be similarly varying. In such a situation, the possible conflicting conclusions that might be arrived at must be considered. There are well known tools, such as decision theory, which may provide a better conclusion than some undefined subjective process. Thus, the cost, the need or the value of additional data collection can be evaluated in light of its potential for clarifying the issues.

Nevertheless, governmental expectations are sufficiently high and the public demand sufficiently intense that programs may proceed even though complete information is unavailable or unattainable. After programs have been in place for some period, improvements

may be realized more slowly than initial expectations. Ensuing discussions are polarized around industry and the regulatory agency: Is industry using unnecessarily expensive methods, and not choosing methods most likely to meet the intent of the regulation? Or on the other hand, are bureaucrats acting to enlarge their domain or justify their existence as a regulator? Or is there a lack of communication between industry, the regulators and the public so that there is little understanding of the issues and therefore little progress in resolving them?

Advocates may reference controlled laboratory experiments to estimate the efficacy of a regulation. They argue that the learning process will improve the methods used to meet the intent of the regulation and lower costs. Cynics question the extent to which laboratory experiments represent the real world. When cynics argue that the introduction of a new technology has a price tag which will ultimately be paid by the public, the advocates counter that the withholding of such technology has its own price tag. Clearly, there are societal costs to be borne without the protection of the regulation, with inadequate regulation or with excessive regulation. These issues have no general answers but require analysis case by case at each stage of the development of the regulation.

Analyses of the complex **issues can best be** carried out by a number of independent professional sources working independently. These efforts should then be compared, and the analyses and reasons for proceeding or not proceeding with a suggested program should be subject to public scrutiny. The consumer is potentially victimized when information is in the hands of any one monolithic organization, be it a regulatory agency or an industry. The consumer may also tend to be victimized by oversimplified sensationalized commentary by either side to the debate.

The consumer has to rely on the different perspectives within society to accomplish the various analyses that expose the issues. We believe this pluralism can then lead to modifications of various points of view and perhaps lead to an eventual crystallization of the issues in a form that can be more readily understood by the public. At this point, it is essentially a public or political decision as to whether to proceed or not to proceed with any given regulatory program. The public interest is served best by having the issues fully explored from many points of view by many independent sources in estimating the potential costs and benefits of proposed regulatory programs.