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# FOOD SAFETY REGULATION: IS THERE A ROLE FOR ECONOMIC ANALYSIS?

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Regulations may be defined quite broadly to include just about anything government does to alter the conduct and performance of people or institutions. Perhaps the best known are the traditional rates and service regulations, those usually falling under the auspices of the independent regulatory agencies like the ICC. Also included under a broad regulatory definition are Executive Branch agencies charged with establishing rules of conduct or with administering programs and establishing rules for their implementation.

During the late 1960's and 1970's regulation came under fire for introducing inefficiencies and interfering with markets where such interference did not appear justified on the basis of externalities. In many cases regulation was being used as a vehicle for accomplishing objectives that for one reason or another Congress chose not to achieve through the normal budgetary process. The legal nature of regulatory proceedings, and the often politically charged atmosphere surrounding the regulatory process has brought into question the legitimacy of economic analysis in the process. It often is not apparent that economics is a significant force in the decisionmaking process. More cynical observers have viewed the role of the economist as limited to performing the perfunctory impact analysis required by Presidential Executive Orders, in effect collecting the consulting fee but having little impact on the decision.

The regulatory process is indeed political and quite structured and bureaucratic as well. For these and other reasons, I believe economic analysis has an

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important role to play in the process. Before trying to make the case for the importance of economic analysis it is useful to briefly outline the process. The discussion will be limited to Federal food safety regulations.

The Food Safety Regulators

Perhaps the best know of the Federal food safety regulatory agencies is the Food and Drug Administration (FDA) of HHS. The FDA has the major responsibility for the safety of the Nation's food supply. The agency administers the Federal Food, Drug, and Cosmetic Act (FDCA) of 1938, and the Food Additives Amendment of 1958, and Color Additives Amendments of 1960 (The Delaney Clause(s)). The activities of the FDA of greatest interest to agriculture are those carried out in the Bureau of Foods and the Bureau of Veterinary Medicine. The latter, and lesser know bureau, has become much more significant in recent years as residues from growth stimulants and anti-infective drugs have become detectable at lower levels of concentration and thus a greater public health concern.

The Food Safety and Inspection Service (FSIS) of USDA administers the Federal Meat Inspection Act, the Poultry Products Inspection Act and the Egg Inspection Act. The FSIS assures safety of the animal products it regulates through slaughterhouse inspection and on-site inspection in the processing plants. The FSIS approach to food safety regulation is on-site continuous inspection whereby unsafe foods, or practices which would logically be expected to lead to unsafe food, are detected by a policing process. FDA regulation is oriented more toward a safety standard. Food processors are required to meet the level of product safety specified in the rules, and if products failing to meet the standard are found remedial action, ranging from warnings, fines and recalls, is taken.

Another Federal food safety regulator is the United States Congress. In establishing the various regulatory agencies, Congress has in effect delegated

some of the powers given it by the Constitution. But Congress has never toally disassociated itself from food safety regulation--or any other type of regulations for that matter. Generally, the Congress will involve itself in those issues which it views as too important to delegate. An example of such a case is the artificial sweetener saccharin. Nitrite, had it been confirmed as a carcinogen probably would have been handled by the Congress.

The Regulatory Process

Rulemakings are based on the Administrative Procedures Act. Since rule changes or the implementation of new rules invariably alter the distribution of income, or wealth or affect property rights, due process, as constitutionally required, must be adhered to. Generally a rule change will be proposed because the agency--or more likely an affected party--considers the status quo unacceptable. A proposal for change is made through publication in the Federal Register with appropriate notice to the public and adequate time allowed for the public to make known its reactions to the proposal--at least 30 days and usually longer. The public comments are often written and submitted for the record though occasionally formal hearings are held--sometimes around the country--to assure adequate public access to the process.

Ultimately the regulator weighs all of the "evidence" and offers an opinion in the form of a final rule which becomes a part of the Code of Federal Regulations, unless one of the affected parties successfully blocks implementation through judicial review of the decision.

Several Presidents have issued Executive Orders to add a positive economic element to the process. President Ford issued Executive Orders requiring inflation and economic impact statements to appear in the record. President Carter broadened the Ford orders to include wider public participation in the

process, under the assumption that as more parties with a legitimate interest in the outcome became involved in the process better decisions would result. The most recent Executive Order was issued by President Reagan soon after his inauguration. It requires assessment of costs and benefits and maximization of net benefits--an ambitious objective, and nearly impossible to acheive.

The Congress also gets into the regulatory process, particularly on issues which it views as too important for an agency to decide. When the Congress feels that all the evidence is not in, or the sense of the public will is not yet clear it has used a non-appropriating approach to regulations. The procedure is to simply dissallow any of the appropriations to be used to implement the rule. Once the verdict is clear Congress tends to take a more positive approach. While often criticized by parties closely associated with particular regulations, the non-appropriations approach has a certain pragmatic appeal. Congress can also enact legislation to override an agency decision, or use the resolution process to restrict rules implementation. In some instances Congress may appropriate additional funds to study the issue, delaying action until they have more facts. This is usually viewed as a delaying tatic by those parties calling for changes in the status quo.

A more recent vehicle coming into vogue with the Congress is the veto of agency rules. Though not used for food safety rules as yet--thus far being concentrated in review of FTC decisions--the Congressional veto must be viewed as a usable Congressional regulatory tool which may have implications for the food system and agriculture.

The Process is Conducive to Economic Analysis

Regulation changes the status quo. As such there rarely is a Pareto Optimal regulation hence there will be opposition to the change. Since the regulations are implemented by a govermental body it is not unusual for politics to enter

the process. After all, prior to delegating the regulatory authority to a commission or agency it was the domain of the U.S. Congress, a highly political body which reflects the position of various public and private interests. Since politics enters the regulatory process it is customarily a very visible process. Economic analysis of the impacts of various regulatory options, either by the regulator or one or several of the affected parties, is useful to point out to all interested parties and to the public at large, the effects of proposals. To believe that economics can have no impact on a decision is to ignore the power of public opinion and the importance of a sense of fair play.

Regulators are often career bureaucrats. While the agency heads may be political appointees, top aids in most regulatory agencies are civil servants. They generally are cautious, not wishing to appear biased. They usually are responsive to a variety of pressures--their bosses, the public, and the regulated interests who they must face continuously. But most of all, they don't like being sued, particularly when they lose, thus they must be responsive to the law and the potential of having a decision reviewed by the courts. This leads to careful decisionmaking and considerable time and resources devoted to information gathering.

Anyone studying a proceeding will soon find that a considerable amount of time is consumed in the process. In many respects it is reminiscent of a television soap opera--if you check back in 3 or 4 months (or years) on your favorite one, little has happened, no time has passed, or if it has the same thing is happening again. For regulation at least, there is good reason for the sluggishness. The issues are often complex, expecially food safety issues. Information is never exact, is usually incomeplete, and is usually filled with contradictions. These shortcomings often can lead to quite different interpretations. This is especially true of scientific evidence. And, since the scientific information lies at the heart of any economic analysis, that too is likely to be contradictory.

Decisionmakers need, and want, as much relevant information as is reasonably available. This goes for economic intelligence as well as scientific. We, as economists, or as parties at interest in the proceedings, may feel that economics is rarely given adequate weight in the final decision. However, we should recall the proceedings always alter the status quo, and economists have never been very adept at adding up utils. Simply because the decisionmaker does not select the most preferred option from an economic perspective, is no basis for concluding that economic analysis had no bearing on the decision.

A Broader Concept of Food Safety

With the recent report on Diet, Nutrition and Cancer by the National Academy of Sciences the question of how broadly we should be defining food safety resurfaces. The various laws governing food safety currently on the books--Meat, Poultry and Egg Inspection Acts, and the Food, Drug and Cosmetic Act, and Food and Color Additive amendments--relate to safety in terms of healthy animals, products free of contaminants or adulterants, additives which pose no hazard to consumers, and safe and suitable manufacturing practices. The food safety issue raised by the National Academy report, the various diet recommendations proffered earlier by various medical authorities, the Dietary Goals and Dietary Guidelines, centers around a wholesome and safe diet, rather than wholesome and safe foods.

If deficiencies exist in our ability to assess risks and costs of safety in the food system under the existing food safety paradigm and if scientific evidence is conflicting and incomplete, those deficiencies pale by comparison when we consider the broader concept of food safety raised by a safe and wholesome diet. The methods and problems are the same, only more difficult to get a handle on, and the stakes may be substantially higher for food system participants, particularly farmers. What we learn through our efforts to assess risk and benefits under the existing food safety paradigm should serve us well if and when we are called upon to apply those tools to the broader concept of food safety.