

CHAPTER 14

**HEDGING:
ORGANIZATIONAL
RESPONSES TO THE
FORMULATION,
IMPLEMENTATION, AND
ENFORCEMENT OF
GOVERNMENT
MANDATED CHANGES**

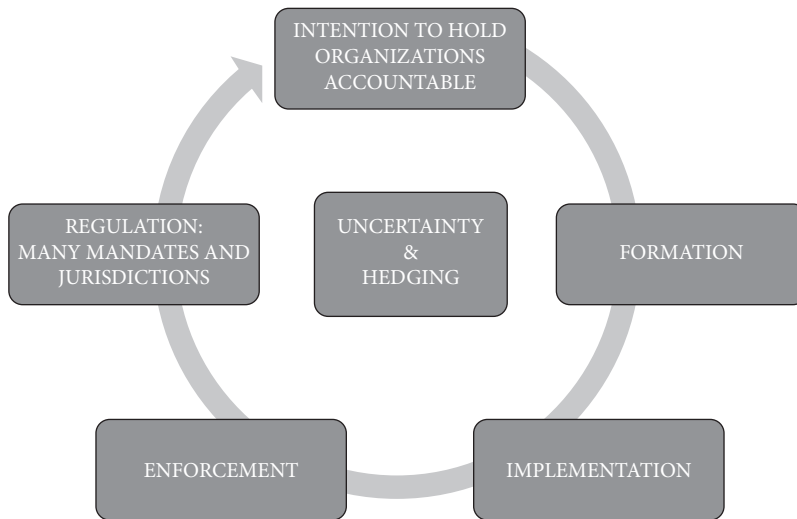
ALFRED MARCUS AND JOEL MALEN

C14.S1

INTRODUCTION

C14.P1 To better align the behavior of organizations with the interests of society, governments make many demands on organizations to change their behavior. However, the changes governments require generally do not correspond to the changes organizations want to make, or those that they actually end up making. Organizations hedge in response to the numerous requirements that governments impose on them. This chapter develops a process model of the hedging behavior of organizations in response to government mandates.

C14.P2 Figure 14.1 illustrates the process model. Governments try to hold organizations accountable for their impacts on organizational stakeholders, including those who have ownership rights in organizations, those who work for organizations, those who consume the goods and services that organizations produce, and the effects that organizations have on the natural environment. Governments hold organization accountable by



C14.F1 **FIGURE 14.1** Organizational Change in Response to Mandatory Government Requirements

regulating their behavior. In order to regulate their behavior, governments at many levels—local, national, and international—must formulate, implement, and enforce laws, not a single law, but many laws that frequently have incompatible and inconsistent standards and means. Organizations are not passive at any stage of the regulatory process. Organizations and other parties mobilize, making the formulation, implementation, and enforcement of numerous regulatory mandates highly contested.

C14.P3 The outcomes of these many contests cannot be known beforehand. Further, the issues that stimulate the process rarely are resolved with a high degree of definiteness. They tend to linger, and any outcomes that do emerge are not stable over time. Regulatory issues leap into and fade from the attention of organizations and many other interest groups in society. They capture and lose media attention. They emerge, re-emerge, become salient, and lose salience again and again. As the arrows in the diagram suggest, the process, therefore, is recursive and takes place over long periods of time.

C14.P4 Thus, the precise changes in behavior across multiple salient domains necessitated by regulation are inherently uncertain. Because of this uncertainty to which organizations enmeshed in the regulatory process are subject, they rarely commit fully to a single strategy. Given the uncertain future conditions organizations subject to regulation face, they hedge their bets (Marcus 2019), that is, being unable to discern how government mandates for change will play out, organizations take steps to simultaneously engage in stonewalling and opportunism. In earlier work (Marcus 1984) labeled the responses that organizations make to regulation as stonewalling and opportunism. Stonewalling involves relying on public relations and employing legal and administrative processes to buffer organizations from regulatory change. Organizations may resort to stonewalling to avoid what they estimate to be costly and unnecessary changes that governments try

to force them to undertake. Opportunism, on the other hand, involves embracing regulation. The reasons for embracing it vary. It can be the desire to improve an organization's image by appearing to be progressive. It can involve attempts to transform constraints into opportunities for gain. For instance, organizations benefit from regulations if they can exclude competitors, guarantee prices and profits, control complements and supplements, and/or obtain subsidies.

- C14.P5 The term hedging is borrowed from finance where it means moving in more than one direction at once to offset the chance of adverse market movements. Technically, to hedge means to make investments that have a negative correlation, that is, it means to take the ambivalence felt about future directions and to make contradictory bets about what is to come next simultaneously. Hedging also draws on studies of organizational diversification (Sengul, et. al. 2019), which hold that when the future is unknown, organizations do not, and should not, place all their eggs in one basket (Ahuja and Novelli 2017). They should bet on more than one future states of world coming into being at the same time, in the hope that their positive choices more than offset the negative ones, or that these choices sustain them at different moments when different conditions prevail.

C14.S2 HIGHLIGHTING A PROCESS MODEL

- C14.P6 This chapter highlights the process model. It puts particular emphasis on three factors that appear in Figure 14.1.

- C14.P7 • *The Formulation, Implementation, and Enforcement of Government Mandated Changes.* After legislatures pass laws, administrators carry them out, and courts clarify how they should be interpreted. The laws may be amended and bear little resemblance to their original formulation. Changes in a ruling party or regime can result in full-scale revision. Further, it needs to be recognized that lawmakers typically have a certain amount of cynicism when they formulate a law. They formulate laws for symbolic reasons to gain public approval, but understand that they cannot specify fully all the compliance and enforcement contingencies beforehand. They understand the limitations administrators have in carrying out the laws and the roles courts play in reinterpreting and changing them. Administrators and the courts change the substance of regulations over time in response to many factors including modifications in scientific and technical information and social movement activity. To the extent that organizations stonewall or are opportunistic, they play a role in how laws are implemented, enforced, and amended. They have some leeway in how they respond. Studies point out that regulations rarely are fully effective because organizations participate in the process (Stigler 1975; Peltzman 1976; Marcus 1980). Lapses in fully carrying out the intent of laws, as

originally intended, therefore, are very common. To pass legislation in the US and in many other countries requires mobilizing support from a broad public, but once formulated, the legislation must be implemented and enforced. After a law is passed, regulated organizations continue to have power, interest, and the expertise to dictate outcomes. Organizations that wait long enough may be able to avoid full compliance with the laws meant to control their behavior. Their ability to avoid full compliance is a result of “cat and mouse” games; according to Funk and Hirschman (2014, 2017) that they play with regulators and other interests in society over time.

- C14.P8 • *Many Mandates and Jurisdictions.* In addition, organizations do not confront or engage with solitary government mandates in isolation. They deal with a host of requirements that cover many domains from corporate governance to how organizations treat employees and customers and impact the natural environment. National, local, and international governmental regulatory bodies have separate requirements in each of these domains and the requirements rarely are consistent. This lack of consistency provides organizations with more choices in how they respond—when and under what circumstances will they stonewall or be opportunistic; despite the power of law, organizations have autonomy to make these choices. They have room for maneuver. They can choose on which regulations to focus, which to give less attention to, which to give their endorsement, and which to resist. Though the scholarship on government regulated organizational change is vast, extant research studies overwhelmingly focus on the effects of single regulatory programs in isolation, overlooking the simultaneous impacts of the different regulatory mandates that have emerged in different jurisdictions. Perner and Skjølvsvik (2017), for instance, contend that regulatory change tends not to grapple with the combined effects of regulatory programs. This combined effect is of fundamental importance because of the autonomy it gives organizations and the uncertainty it introduces into the system (Marcus, 1981).
- C14.P9 • *Uncertainty and Hedging.* Temporal instability and multidimensional regulatory context augment uncertainty about whether the many laws governments formulate will be implemented fully, enforced, and achieve intended goals. Consider how Pressman and Wildavsky (1973) describe the process of how regulation unfolds. The instructions given by authorities of the many domains in which organizations are regulated are rarely clear. In each of the domains, there are numerous participants, perspectives, and decisions that have to be made across a series of steps. The conflict among competing interests and values does not go away after laws have been formulated. Ambiguity and resistance persist during implementation and enforcement, and therefore, neither implementation nor enforcement are likely to be simple and straightforward. The mix of mandates that organizations confront, moreover, is not stable over time, making the pathways for the unfolding of regulations even more complex, convoluted, and

uncertain, and the uncertainty provides organizations with considerable leeway in what they actually end up doing (Marcus and Van de Ven 2015; Hoffman and Ventresca 2002). The choices organizations make can be characterized along a continuum. At one end is a “fight all the way” approach whereby organizations do less or at most only what is required. At the other end is an actively progressive approach by which organizations take a leadership position and do more or even much more than is necessary. Typically, organizations will move in *both* of these directions simultaneously, depending on the mandate, the jurisdiction, their leadership at the time, social movement pressure, and other factors. Sometimes, they tilt more in the direction of stonewalling, while in other instances they tilt more in the direction of opportunism. In short, they hedge their bets. Their reactions to a multitude of different mandates is rarely consistent. The many responses to the changes governments try to compel them to make rarely can be classified collectively as entirely consisting of stonewalling or opportunism.

- C14.P10 Taken together, the above three elements in the response of organizations to regulation combine to ensure the process of change that unfolds in response to government efforts to bring about change through regulation is neither smooth nor linear. Rather, it involves back and forth posturing by many governments and government entities that regulate organizational behavior and the organizations responsible for responding to these efforts at many stages across multiple jurisdictions. In this atmosphere of regulatory instability and organizational autonomy, each organization is likely to fashion a unique and distinct hedging strategy in the regulatory domains to which it is subject.
- C14.P11 This chapter further explores this process by highlighting first, the reasons why governments attempt to regulate organizational behavior and what actually happens as regulations arise and governments attempt to control organizational behavior during regulatory formulation, implementation, and enforcement stages. Second, the chapter describes in more detail the types of regulations that organizations face in different arenas and jurisdictions. Specifically, it examines regulations that affect the ownership of organizations, their relations to employees and customers, and the impacts they have on the natural environment. Third, the chapter depicts how uncertainty takes hold and how organizations respond to this uncertainty with hedging strategies. In the face of a complex regulatory climate, mandating diverse and potentially inconsistent behaviors, organizations move back and forth between strategies that resist and that conform to the regulated changes governments attempt to promote.
- C14.P12 In terms of bringing about desired organizational behaviors that are in the interests of the public, the cycles of regulation and organizational responses have been at times positive, at other times negative, and at other times neutral with not much progress achieved. Regardless of the outcome, the process nearly always unfolds in ways governments and regulated organizations rarely anticipated in advance.

C14.S3 **THE FORMATION, IMPLEMENTATION, AND ENFORCEMENT OF REGULATORY CHANGE**

- C14.P13 Extensive scholarship has analyzed how external mandates arise, what happens when they take effect, and to what degree governments implement and enforce them effectively (e.g., see Wilson 1980; Bernstein 1955). Though each instance is different, nearly every regulatory enactment results in unintended consequences that social movements and interest groups become aware of and try to fix by publicizing these problems. Marcus and Geffen (1998), for example, depict how the aim of the 1990 Clean Air Act amendments was to save East coast coal miners' jobs by having coal-fired power plants install scrubbers. Instead, to save money, the power plants lowered their emissions by importing low sulfur coal from strip mines in Wyoming, thus boosting the railroads' economic activity. While the increased demand helped the railroads to modernize, many coal miners in the East lost their jobs. In direct contrast to the intent of the regulation, the intended beneficiary—coal miners—was hurt, while a group that was not considered—the railroads—were restored to profitability at a point when many were close to bankruptcy. This example is just one of many where unintended consequences arise from the uncertainty of government-regulated change.
- C14.P14 Government attempts to regulate organizational behavior are frequently preceded by a notable event, often a series of scandals, accidents or crises, that receives significant media coverage and stimulates governments to act. The process of developing legislation to the perceived problem is strongly contested by various stakeholders and interest groups, including the organizations whose behavior the government is attempting to change. Accordingly, any legislation that is passed often fails to go as far as lawmakers had originally intended when taking up the issue. Once put into legislation, there emerge notable gaps and weaknesses in the regulatory statutes lawmakers formulate. These gaps become apparent in implementation and enforcement stages.
- C14.P15 Even under the best conditions, legislators cannot anticipate all the situations that administrators and enforcement officials will confront. There is an inherent ambiguity in all systems of rules (Mahoney and Thelen 2009). The typical regulation cannot, and does not, cover every case. During implementation, how best to induce organizations to change can become a technical issue lacking clear approaches that governments should follow.
- C14.P16 Ambiguity of regulation can lead to what have been called “cat and mouse” games. Such games are especially pervasive when governments set far-reaching goals without providing sufficient clarity regarding how they expect organizations to achieve these goals (Funk and Hirschman 2017). For example, legislators in California tried to ban the sale of assault weapons in 1989, 1999, and again in 2006. However, gun makers consistently found ways to get around these restrictions by selling slightly altered semi-automatic weapons with the same rapid-fire lethal capabilities (Ellinson and McWhirter 2019). Regulatory games can last for long periods, from the time discussion

first begins that the government should formulate regulations to many years later when regulated changes have been in place for a long time and have been modified as they are implemented and subject to court challenges. While these “cat and mouse” games often distort and undermine regulatory intent (dos Santos 1996), they also can adjust regulatory goals to contexts regulators had not fully anticipated and better customize the rules to real-world conditions (Jarzabkowski et al. 2018; Marcus 1998a; Marcus 1998b; Marcus and Weber 1989).

C14.P17 Scholarship demonstrates that regulators have considerable latitude in how they choose to implement and enforce requirements (e.g., see Wilson 1980; Bernstein 1955). Funk and Hirschman (2014) show how this ambiguity, along with organizational participation in the rule-making process, allows organizations to undermine regulatory intent. Organizations can capture the agencies that are supposed to control their behavior. They attempt to put in place policies that will protect and exploit their capabilities and block policies that threaten these capabilities (e.g., see Lyon et al. 2018; Dal Bó 2006). This process often results in organizations being able to engage in activities analogous to those the government tried to restrict.

C14.P18 Courts frequently become the arbiter of post-enactment conflicts in how regulations are to be enforced. Eventually, regulators and enforcement officers, often under the influence of the organizations they are supposed to control, must offer their own interpretations of a legislative mandate. Interpretations of regulatory bodies can be, and often are, challenged repeatedly over time in the judicial system (Edelman 1992). However, important asymmetries exist with respect to the level of economic resources available to government to enforce regulations and organizations to resist those efforts—with organizations typically holding a major advantage. Organizations have the capacity to hire expensive, focused legal counsel who contend with overstretched government legal staff, and all too often the corporate attorneys overwhelm government attorneys in the courts. They bring about favorable rulings for regulated organizations that eviscerate the efforts to control their behavior.

C14.P19 Thus, regulated organizations typically have the power to stall, deflect, and fight regulation. They can, if they wish, push for fundamental regulatory reform and revision that is beneficial to their interests. They can attempt to stonewall the full force of regulatory mandates governments may try to impose. Of course they are free to choose whether or not to do so. Some organizations, rather than resisting, may be opportunistic and seize upon regulatory mandates to achieve some benefit. Within the same industry among organizations very similar in most respects, one finds both stonewalling and opportunism, thus demonstrating the degree to which organizations have discretion in how they respond to regulation. Such freedom of response compounds how the regulatory process unfolds. The interpretations and reinterpretations of regulatory statutes by judicial authorities brought about by the intervention of social movements as well as regulated organizations can lead to an enactment’s revision, which restarts the regulatory process. Without the backing of the courts, enforcement officials have limited abilities to coerce organizations to comply. To some extent when legislators pass a law they must trust organizations to make good faith efforts to carry out the law.

They cannot impose compliance. The organizations generally are too powerful. There are information asymmetries between organizations and governments with respect to internal operations of organizations, and the number of regulated organizations enforcement officials must monitor is too vast.

C14.S4

MANY MANDATES AND JURISDICTIONS

C14.P20 To understand the diversity of regulations a typical organization in the US faces, a brief review of some of the main regulatory enactments to which they are subject is worth carrying out (Marcus and Hargrave 2021). Here we describe only major regulatory areas covering an organization's primary stakeholders: shareholders, employees, customers, and the natural environment. The diverse laws depicted in this section are essential features of the regulatory programs in the US and, in their intent, of most countries of the world. Though the common aim of these programs is to compel organizations to alter how they would behave, how each of them has been formulated, implemented, and enforced varies greatly across jurisdictions as well as within jurisdictions over time.

C14.P21 Most countries in the world and most jurisdictions within countries have variations on these laws. Within countries, there also are differences by state, province, and/or municipality. Each state in the US, for instance, tends to have its own version of laws. US regulations are not uniform in that states typically modify national laws in addition to having their own existing statutes and histories of relevant judicial decisions. In other countries, a similar situation prevails. International bodies support or add to the laws with codes and standards of their own. The European Union (EU) has general regulatory authority for all countries that belong to it, but each country has the right to adapt these laws to its own circumstances. Within each European country, there are differences by province and metropolitan area. What pertains to Paris may not be relevant in Warsaw. China is the same. Its powerful centralized state might have to cede to provincial and local authorities with regard to the specifics of how a regulation is enforced. Beyond variation in content across jurisdictions, the means by which laws are enforced, and the actual degree of enforcement varies greatly. In sum, the US laws summarized next do not apply across the board or uniformly to each organization.

C14.P22 Organizations that are headquartered and operate in the US exist in a context in which there are many different global, national, and local regulatory enactments. There also are international frameworks, which also influence their behavior. All of the regulations both the mandatory ones and the voluntary international frameworks operate on their own timetable and they change at different rates. These variances provide organizations with choices in how to respond. They can move their operations from jurisdiction to jurisdiction, for instance; and these variances result in differences in how organization change their behavior. The following sections describe laws to protect shareholders, employees, consumers, and the environment that a typical organization would face in the US.

C14.S5

LAWS TO PROTECT SHAREHOLDERS

- C14.P23 Many US laws exist to protect shareholders. Congress enacted the main securities laws in the US in response to the stock market crash of 1929 and the subsequent Depression. These laws designed to protect shareholders require that companies provide full and accurate information about their financial position when they first offer stock and annually thereafter. In recent times, in response to a wave of financial scandals (dos Santos, 1996), Congress has expanded upon these laws, in spite of vigorous business opposition. In 2002, Congress passed the Sarbanes-Oxley Corporate Fraud Accountability Act, the purpose of which was to further increase the protection afforded to investors. This law requires the board of directors of organizations to provide additional oversight of financial reports, and chief executive and financial officers to certify their accuracy. The main reason for these laws is to ensure that directors and managers work on behalf of shareholders as opposed to enriching themselves.
- C14.P24 Regulatory frameworks for protecting shareholders vary within as well as across political jurisdictions. International bodies also have established cross-boundary standards to which they expect organizations to comply such as the OECD global framework.¹ In addition, in the US nearly every state has somewhat different incorporation laws. Delaware and Nevada, where most corporations are incorporated, call for shareholder primacy. Minnesota, where far fewer corporations are incorporated, obligates organizations to take into account the interests of all stakeholders. Globally, so-called Anglo-Saxon nations like the US, the UK, Canada, and Australia tend to follow the path of Delaware and Nevada, while nations in Europe like Germany are governed by co-determination rules which incorporate labor representation on boards of directors. In Asia, the laws of corporate governance often follow an approach similar to that employed in Japan, which has a balanced approach not quite like that of the Anglo-Saxon nations and not quite like that of Europe.
- C14.P25 The point is that no single regulatory scheme exists globally in the realm of shareholder rights and that applies universally. Hence, US organizations have choices with respect to where they wish to incorporate and to what set of regulations they wish to subject themselves. This pattern of regulation that applies to shareholder rights is common to regulations in nearly every domain. The lack of uniformity within and across jurisdictions permits companies to craft their own regulatory strategies by cherry picking among the various jurisdictions that are trying to control their behavior.

¹ See for example Stilpon Nestor, International Efforts to Improve Corporate Governance: Why and How <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/1932028.pdf>, accessed 17 August, 2020.

C14.S6

LAWS TO PROTECT EMPLOYEES

- C14.P26 Another prominent domain covered by US regulation relates to the well-being of employees. During the Great Depression, the US Congress first enacted serious national laws in this domain. Under these laws, it set up the National Labor Relations Act (NLRA), which provides employees with the right to establish and operate unions and bargain collectively. The NLRA also prohibits employers from interfering with employees' ability to organize and bargain collectively. Labor laws also prevent unions from coercing employees to join a union. Hence, the actual rights of employees depend on how agencies like the National Labor Relations Board and the courts interpret them and how they are implemented in the different US states. Some states, for instance, have vigorously protected employees' rights to unionize. Other have not. Many corporations, including both Whole Foods and Walmart, have successfully fought unionization. In addition to laws permitting unionization, the federal Fair Labor Standards Act (FLSA) imposes a minimum hourly wage rate and mandates overtime pay. Yet each state and municipality is free to go its own way and many have adopted their own minimum wage laws which go beyond the federal mandate.
- C14.P27 Another law applicable to labor is the Occupational Safety and Health Act which Congress passed in the 1960s. Under this law, Congress established the Occupational Safety and Health Administration (OSHA). Its goal is to protect workers' health and safety. These laws grant to employees rights and impose obligations on employers. Again, each state has its own occupational health and safety law and level of enforcement, which may differ in important ways.
- C14.P28 Globally, the laws protecting labor are much stronger in Germany and much of the rest of Europe, where it is far harder to lay off an employee than in the US, where most employees can be fired for little or no cause. This difference played a role in Walmart's decision to withdraw from doing business in Germany and the European continent, despite the economic gains it could have achieved there. US automakers as well have seen their European operations consistently lose money, which they tend to blame on excessively stringent European labor requirements that do not allow them to fire workers easily and close down production facilities that are no longer profitable without bureaucratic delay.

C14.S7

LAWS TO PROTECT CONSUMERS

- C14.P29 In addition to protecting the rights of shareholders and employees, the US Congress also has enacted consumer protection laws. These laws are both broad in scope and hard to enforce since the US government typically can take up only one case at a time and the burden of proof on plaintiffs of winning such cases is very high. Nonetheless, the US

does have extensive laws on the books designed to protect consumers. Among the most prominent are antitrust laws meant to prevent collusion, cartels, mergers, and acquisitions that would reduce competition and hurt consumers by increasing prices. Whether such changes in organizational scope actually hurt consumers is decided on a case-by-case basis. The counter argument to such change hurting consumers is that the economies of scale and scope and the efficiencies brought about by organizational restructuring and consolidation are in consumers' interest. In the merger between T-Mobile and Sprint, the Federal Communications Commission (FCC), tasked with deciding on the legality of that merger, split in its decision. While the two Democrats on the committee had concerns that prices would rise, their three Republican colleagues did not, and therefore the merger was allowed.

C14.P30 The interpretation of anti-trust laws change is important and it changes over time. The change is a result not just of the political affiliations of appointed officials. The change comes from legal reinterpretation about what constitutes fairness in a capitalist economy. Until the Kennedy administration, an ultra-high market share indicated a company may have been violating anti-trust laws might. However, subsequent doctrine changed during the Nixon and Reagan administrations and the focus of violations shifted toward corporate misconduct; high market share had to be a result of wrongful corporate action. So long as the entry of new organizations was not blocked, a market share of 100 percent was not sufficient reason to start a case against a company.

C14.P31 Despite this alteration in the interpretation of anti-trust laws, significant rulings took place. These shook up whole industries and changed the global economy. The modern era of telecommunications was ushered in by dissolving AT&T's monopoly. The 1982 breakup of this company made possible a new era of telecommunications. On the other hand, the failure of anti-trust laws to bring about Microsoft's breakup in the late 1990s, arguably, slowed the pace of organizational and economic change. The government lost this case despite demonstrating some degree of wrongful conduct on Microsoft's part.

C14.P32 Anti-trust is not the only focus of US consumer protection laws. The Consumer Product Safety Commission (CPSC) has a broad mandate to assure the safety of a wide array of products people use. The National Highway Traffic Safety Administration (NHTSA) holds authority over motor vehicles. The Food and Drug Administration (FDA) focuses on food, pharmaceuticals, and medical devices. This agency often finds itself in the cross-hairs between the interests of large drug and medical device companies and individual safety. It has had several major failures in regulating these companies, for example with respect to Merck's Vioxx pain killer and Johnson and Johnson's DePuy hip replacement. In these instances, regulators had ample warning that consumers were seriously threatened, but they chose not to act until it was far too late (Marcus 2016); by that time, many people had died and suffered severe injuries. A reason for these lapses is the revolving door between positions of authority at the FDA and high level and lucrative positions in the companies that the FDA regulates.

C14.P33 The 1968 Truth in Lending Act is supposed to provide another form of consumer protection. This law requires financial institutions and credit card companies to offer

easy-to-understand information about costs and terms, yet its inability to function effectively was a primary causes of the 2007-08 financial crisis, as consumers were duped into taking out automatic re-adjustable mortgages for which they were ill equipped to deal as interest rates rose and the economy tanked. After the financial crisis, Congress therefore, established the Consumer Financial Protection Bureau (CFPB) to better oversee banking, mortgage lending, and debt collection. As head of this agency under President Obama, Elizabeth Warren attempted to carry out the law, but the banking industry considered her efforts too energetic. With the change of administration under President Trump, this agency, like other regulatory agencies, was eviscerated, and there were calls for its elimination.

C14.P34 This pattern is not uncommon in the regulation of shareholder, employee, and consumer rights in the US. Legislation passed in the hope that it will correct a marketplace problem often weakens over time. Originally tough regulations meant to change organizational behavior may be pulled back or eliminated.

C14.P35 Globally, each nation has its own regulations to protect consumers. European Union (EU) anti-trust authorities have become stricter than US authorities and more willing to challenge major organizations, both on the grounds of wrongful practice and high market share. They have gone after tech giants like Microsoft, Facebook, and Intel in ways that US authorities have not. The EU also has demanded that product labels indicate whether a food contains GMOs (genetically modified organisms), a requirement that does not exist in the US and has not been seriously considered (Marcus 2016). Another example of where the EU has gone farther than regulatory authorities in US is in its regulation of Internet privacy where the EU has adopted laws to protect privacy, while no such laws exist in the US.

C14.S8

LAWS TO PROTECT THE ENVIRONMENT

C14.P36 Starting in the 1970s, the US Congress made a concerted and comprehensive effort to address environmental issues (Marcus 1980). In that year it established the Environmental Protection Agency (EPA) in addition to enacting a suite of new national laws for the EPA to enforce. Prior to the EPA's establishment most US environmental protection laws were enforced on a state-by-state basis. Though the changes that took place in 1970 were vast, Congress explicitly chose not to pass a single comprehensive environmental bill. It did not pass such a bill despite the fact that it was well understood at the time that environmental problems intimately relate to each other; pollution that goes into earth or water, for instance, can be diverted to the air and so on. Laws applying to different environmental media may not be relevant to all of a factory's connected systems. The failure to pass comprehensive environmental regulation has sown confusion in the US and throughout the world as many nations have copied the US approach and also adopted separate regulation for different types of environmental impact. Organizations, as result, can often evade the need to eliminate pollution at its

source; instead, moving the pollution from media to media, depending on what relevant laws are in place.

C14.P37 Each environmental law in the US has a different emphasis and is governed by different rules of administration and implementation. Table 14.1 is a list of some of the most significant environmental statutes the US Congress passed from 1970 to 1990. Water pollution laws are technology-based and designed to accomplish best available and achievable technology standards within specified time periods to assure that waterways are fishable and swimmable. Air pollution laws are goal-based and designed to achieve health standards. Further, air pollution laws are “grandfathered-in.” They only apply technology standards to new facilities. This provision in the air pollution laws has created a perverse incentive for organizations *not* to build new facilities; instead, they rely on the technicality in the law to make a series of minor improvements rather than update their facilities out of a concern they will be designated new and therefore be subject to technology controls. The mishmash of environmental requirements in place provides firms with discretion in how they respond, which laws to prioritize, which changes to make, and how to make the changes.

C14.P38 The variance in corporate response, in turn, adds to the burden of enforcement officials, who must treat each facility on a case-by-case basis. Technical challenges also plague the process by which the laws are enforced. Understanding what constitutes “clean” as opposed to “unclean” air or what “best” available or achievable technology means is not simple. It has resulted in countless court cases. Idiosyncratic characteristics of individual facilities make it difficult to determine what enforcement officials should consider fair in comparison to other facilities. The appropriate solution to an environmental problem for a given facility never has been straightforward.

C14.P39 Controversy about feasibility and economic impacts also have affected the implementation of environmental protection laws in the US. From the beginning, such controversy has been intense.² Monitoring progress and compliance only adds to the challenge. The net result has been near continuous battles between regulated organizations, enforcement officials, communities, and national and local environmental organizations. Many of these battles have been conducted in the court of public opinion as well as the judicial system. Refinements of these laws through amendments have taken place, often stimulated by new ideas that economists or engineers introduce. At every turn, some organizations have resisted the implementation of environmental laws, fought against them in the courts, and lobbied to eliminate or change them.

² Stewart’s analysis (1981) remains one of the best of this situation. He analyzes the tools used in environmental regulation and the standards, and the types of specifications on which authorities try to rely. His analysis takes up rulemaking, adjudication, and judicial review. It examines affordability criteria, moving targets, and overlapping requirements, and considers reliance on economic trade-offs, variances, and waivers. Stewart concludes that unpredictability and unintended consequences are the norm (also see Wilson 1967). He develops alternative decision processes that would make the system more predictable, but governments have implemented few of the modifications he recommended. The problems that Stewart has dissected persist.

C14.T1 **Table 14.1 Major US Environmental Protection Laws: 1976–1990**

Clean Air Act	<ul style="list-style-type: none"> • Sets national ambient air quality standards for various pollutants by determining their maximum concentrations. • Establishes emission standards for hazardous pollutants and individual source emissions limitations. • States make their own implementation plans though the EPA (environmental protection agency) administers the act.
Clean Water Act	<ul style="list-style-type: none"> • Aims to restore and maintain the chemical, physical, and biological integrity of US waterways. • Restricts effluent discharges into navigable waters through a permitting system known as the National Pollutant Discharge Elimination System (NPDES). • A separate statute, the Safe Drinking Water Act (SDWA), regulates drinking water.
Resource Conservation and Recovery Act	<ul style="list-style-type: none"> • Imposes cradle-to-grave liability on generators making them responsible for storage, transportation, and final treatment, or disposal of their waste.
Comprehensive Environmental Response, Compensation, and Liability Act	<ul style="list-style-type: none"> • Comprehensive national program for systematic control of hazardous waste. • Generators have <i>cradle-to-grave</i> liability for waste storage, transportation, and final treatment or disposal.
Toxic Substances Control Act	<ul style="list-style-type: none"> • Requires that chemicals be registered and screened for toxicity before use. • Covers toxic substances in everyday products and their by-products. • Puts the burden of proof of a chemical's safety on those proposing to use it.
Endangered Species Act	<ul style="list-style-type: none"> • Designed to protect endangered flora and fauna from extinction. • Species designated as either endangered, or threatened (likely to become endangered). • Requires protection of "critical habitat" of endangered species. • Administered by the US Fish and Wildlife Service and the National Marine Fisheries Service.
Clean Air Act Amendments	<ul style="list-style-type: none"> • Substantially strengthens penalties for noncompliant regions. • Addresses the problems of acid rain, urban smog, airborne toxins, and ozone-depleting chemicals. • EPA auctions a limited number of SO₂ emissions allowances for each year. • Firms holding the allowances use them to emit SO₂; firms also may bank them for later use or sell them.

C14.P40 At the same time, environmental organizations have sued the government and regulated organizations for not effectively carrying out the laws as required by statute. Rather than resist, some organizations voluntarily have gone beyond, even far beyond, what environmental laws require. They have done so either to gain commercial or reputational

advantage, or both. However, such efforts often are selective. While 3M's manufacturing facilities have been notorious polluters of the waterways and land in and around the Saint Paul and Minneapolis area, the company also has been a pioneer in going beyond compliance with an innovative pollution prevention program that many other chemical companies copied for public benefit (Marcus et al. 2002).

- C14.P41 Leakage in the enforcement of environmental laws comes about because organizations seek pollution havens outside the US. This exit from the US, in turn, has negatively affected the industrial base of the country in ways unanticipated when major environmental laws were passed. The natural environment in the US has improved, no doubt, partially as a result of the passage of and enforcement of environmental laws but also because of the exit of polluting facilities from the US. Too much of US pollution has been exported abroad, especially to China. Chinese officials, meanwhile, have had to stiffen their own environmental standards because of the rapid degradation of the health and welfare of the countries' citizens.

C14.S9 LAWS TO PREVENT CLIMATE CHANGE

- C14.P42 Regulations to mitigate climate further illustrate variations in regulatory enactments. Policies that regulate carbon exist at various supranational, national, and subnational levels, as well as across administrative bodies within jurisdictions. This variation simultaneously increases the degree to which organizations can craft their own strategies while making organizational change difficult. This phenomenon applicable to all climate mandates is especially pertinent to automobile companies (Marcus 2019; De Stefano et al. 2016; Aghion et al. 2016) that face different climate change policies at supranational, national, subnational, and global levels.³
- C14.P43 *Supranational Climate Change Regulation.* Over the past decade, the EU, which signed the Kyoto Protocol — unlike the US — agreed to reduce its carbon dioxide emissions further than it originally promised. In 2014, it lowered its average carbon dioxide emissions target for light commercial vehicles to 147 grams per kilometer starting in 2020 and 95 grams per kilometer for passenger cars beginning in 2021. It also strengthened standards to limit emissions of diesel-powered vehicles and bring them down to a level equivalent to gasoline-powered vehicles.
- C14.P44 *National Climate Change Regulation.* The US, not a signatory to the Kyoto agreement, only acted after a 2007 US Supreme Court ruling gave the EPA the authority to

³ Temporal complexity further complicates this picture. Penna and Geels (2015) mapped the reorientation of US auto firms to environmental regulations from 1979 to 2012 as a series of stages consisting of: problem emergence and company neglect, rising public concerns and continued company defensiveness, political debates and controversies and company hedging, substantive policy formation and company diversification, and spillovers and strategic reorientation. The development of policies, however, was far more uneven in the subsequent 2012–2018 period (Marcus 2019). An amalgam of diverse laws and policies and their unpredictable unfolding stood in the way of rapid change.

regulate automotive greenhouse gases. Before that, it had been unclear if it had this authority under various versions of the Clean Air Act. The EPA then strengthened standards for a number of different pollutants in phases starting in 2017 through 2025 to bring them in line with California, which as a separate jurisdiction with special pollution problems, has the right to go further than the federal government to regulate pollution within its borders. Along with the National Highway Traffic Administration (NHTSA), the EPA set 2025 Corporate Average Fuel Economy (CAFE) standards at 163 grams of carbon dioxide per mile, equivalent to 54.5 miles per gallon, subject to re-evaluation in 2018.

C14.P45 The US standards were very different from those of the EU, which created a dilemma for automotive companies about what type of R&D to conduct, and to what extent they could harmonize global vehicle production. The Trump administration has tried to rescind the EPA and NHTSA standards, despite the objections of some of the auto companies, so that the standing of these controls in the US was in doubt.

C14.P46 *Subnational Climate Change Regulation.* The Trump administration also tried to eliminate California's special status. Lacking a national standard, the California Air Resources Board (CARB), which had the right to set its standards separate from the federal government, adopted a zero-emission requirement. At the same time, the states of New York, Massachusetts, Connecticut, Maine, Maryland, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Delaware, and Colorado either adopted, or planned to adopt, regulations substantially similar to California's. Thus, global auto companies operating in the US faced a bevy of different requirements – some at the national and some at the state level, substantially complicating the challenge of how to respond. Without consistency among these laws, their concern was they might have to develop different models for different regions.

C14.P47 *Climate Change Regulation outside the US.* Outside the US, the EU and other countries, such as Korea, Mexico, Brazil, Taiwan, and India, introduced their own fuel-consumption regulations to reduce carbon emissions. These standards were customized to domestic requirements and adopted elements of approaches used in other countries based on local circumstances and needs. The result has been a patchwork of climate-related regulations throughout the world. On top of these diverse regulations, each country has additional policies relating to carbon emissions, including subsidies and other types of initiatives.

C14.P48 Among countries outside the EU and the US that regulated carbon emissions, Chinese regulations have been especially significant. They were influential because the Chinese auto market has been virtually the only market in the world experiencing meaningful growth in the sales of automobiles and other motor vehicles. In the rest of the world sales growth tended to be flat or under 2 percent per annum. China's climate change regulations called for the development of new technologies, such as high-performance batteries, and dictated limits on vehicle sales for manufacturers unable to develop such technologies within the timetable mandated by the government.

C14.S10

UNCERTAINTY AND HEDGING

C14.P49 As shown, the burden the regulatory enactments place on organizations to comply differs from jurisdiction to jurisdiction. In every country in which an organization operates there also are likely to be laws, similar perhaps in intent but different in substance and content to those in place in their home country. Therefore, organizations have flexibility regarding which regulations they choose to comply with and how to comply. If an organization is not comfortable with a state's securities or tax laws, for instance, it can change jurisdictions. If it can save money by locating its production abroad where home country labor regulations do not apply or apply in a different way, it can make this change. If environmental regulations where it is located are onerous and stringently enforced, it can move its manufacturing facilities to another location where these regulation may not even exist, and if they do exist, their enforcement is at best nominal.

C14.P50 The aggregate result is that regulated organizations do not face a single, consistent set of regulations originating from a single government entity. Rather they face a host of different regulations emanating from different government bodies, some local, some national, and some international. Organizations face uncertainty not only because of different standards in different parts of the world but because they are uncertain if these standards will remain in place as governments change, the performance of the global economy fluctuates, and different types of technological advancement take place.

C14.S11

UNCERTAINTY AND RESPONDING TO REGULATION

C14.P51 Uneven development of regulations creates substantial uncertainty for organizations (Marcus 1984; Rothenberg and Ettlé 2011; Marcus et al. 2011), which can deter or interfere with change. Because regulatory uncertainty shapes such factors as future prices, costs, demand and competitiveness, it makes forecasting and planning difficult. Without certainty, organizations cannot commit fully to a course of action. Neo-classical economic theory assumes that accurate predictions about price, demand, technology, and supply are possible. However, Rumelt and Lamb (1984) suggest that the type of regulatory uncertainty described can provoke results that depart significantly from rationality. After legislatures pass laws, agencies create regulations to implement and enforce these laws. At this point, no matter how detailed the laws and regulations, the laws are subject to modification. Complex negotiations among affected parties, regulators, social movements, and others shape regulations and the changes that take place in uncertain ways. Under these conditions, decision makers within organizations cannot readily assess the opportunities and risks and make the necessary trade-offs for

the long-term investments they must make to yield the sizeable organizational changes that sometimes are needed. As decision-makers examine what is likely to happen next, they realize that contingencies are likely to increase and unexpected interactions likely to grow, and thus the orthodox approaches to decision-making that they might use are not likely to be reliable (Ghemawat, 1991). With so much uncertainty, accurate predictions about the future are not possible. Decision makers must engage in simplified analysis; therefore, it is hard for them to make firm and lasting commitments (Ghemawat 1991). They must hedge their bets.

C14.P52 Regulatory uncertainty exacerbates the other types of uncertainty—state, effect, and response—that also exist (Milliken 1987). To make weighty changes, organizational decision-makers would have to commit scarce resources to future outcomes, but if they have little assurance these outcomes will come into being, their capacity to make these extensive changes decreases. The more organizational decision-makers must engage with uncertain conditions, in which they do not know the chances of payoffs/losses and their magnitude in advance, the less they can rely on rational/analytical decision-making and the more cognitive and collective errors they are likely to make. The less they rely on rational/analytical decision-making, the more other factors such as organizational politics and imitation of rivals are likely to influence what they do. The less they rely on rational/analytical decision-making, the more errors they can make and, because they are aware of this tendency, the more cautious they are likely to become.

C14.P53 One choice in how organizations respond is drift; that is to let the process of regulation take its course without an active response. Many organizations are not able to create a coherent response in a timely way. Although seemingly not a choice, the inability to forge a coherent response is in its own way a kind of choice. A related option is that organizations, while delaying a response, can observe what other organizations are doing and perhaps choose to join them or reject their approaches.

C14.P54 In the face of the multitude of regulatory programs that exist, organizations must make trade-offs, prioritizing some of the regulations that exist, while giving less attention to others. Decisions must be made based on many factors, including which markets they regard as most important and where social movement pressure, lobbying, and public attitudes operate in ways beneficial or not beneficial. Thus, each organization, if its responses to regulation are taken together, is likely to develop a unique set of strategies and to change differently in response to the regulatory challenges it faces.

C14.P55 Anticipating how the unique state of affairs in an organization influences its response depends on many factors internal and external to the organization. How organizations that face vast number of regulations prioritize each one is hard to foretell given differences in organizations' leadership, financial status, and operational capabilities, Even if organizations have reputations for a type of response—whether it be opposition and stonewalling or cooperation with the government and opportunism, their response may not be uniform across the different types of regulation they encounter. In some instances, they may willingly go along with government mandates, while in other instances they may try to circumvent regulations government imposes. Some regulations, they evade,

others they support and embrace. They may or may not be able manage regulation for their benefit (Marcus 1984). Regulatory restrictions challenge managers' skills. They must identify the competitive impacts of regulations. Large and efficient organizations may gain because of economies of scale, while small and recent entrants may gain because they are technologically advanced and are ahead on the learning curve.⁴ Who the winners and losers are is not obvious.

C14.P56 Organizations also appraise their political acumen and the extent to which they possess the capabilities to influence politicians, administrators, and the courts. The ability of organizations to influence regulatory direction arises not just from lobbying and contact with government officials and other organizational leaders. This ability also depends on the capacity to conduct sophisticated economic and technical analysis, to forge coalitions, and to make arguments that appear to be in the public interest and not just self-serving. Strictly classifying organizational responses as opportunism or stonewalling ignores the dynamic characteristics of actual responses which often involve simultaneous stonewalling and opportunism or movement from one type of response to another.

C14.P57 For instance, standard economic reasoning maintains that environmental regulation imposes costs on organizations (Jaffee et al. 1995; Majumdar and Marcus 2001). Since these costs tend to be rigid, inefficient, ineffective, and do harm to organizations, the response of organizations should be resistance. However, the strategic management literature emphasizes that organizations do not just resist. Rather, they respond in distinct and idiosyncratic ways. Environmental regulation can induce some to innovate, become more efficient, and perform better (Hart 1995; Aragón-Correa and Sharma 2003; Marcus and Fremeth 2009. Vogel (2007) contests the degree to which this outcome is common, but a growing body of work came to support the idea that under some circumstances it does “pay” to be “green” (Esty and Winston 2009). If it pays, then organizations respond in opportunistic ways. Some try to get ahead of the curve and embrace environmental regulation, while others continue to stonewall.

C14.S12

HEDGING

C14.P58 In the face of uncertainty, organizations hedge their bets. That is, they may engage in both stonewalling and opportunism simultaneously or move in sequence from one type of response to another. Pursuing multiple responses is, however, difficult. If organiza-

⁴ When challenged by stringent pollution control requirements, 3M, for instance, relied on its superior technical and organizational capabilities in order to innovate and create more efficient processes and products (Marcus et al. 2002). When it conducted clean-ups at its own facilities and when it helped other companies do clean-ups at their facilities, yields grew and costs fell. Of course, this type of win-win scenario in which an organization benefitted at the same time the public benefitted is not always possible. The opportunity costs may be such that even if pollution prevention is profitable it does not allow organizations to pursue alternatives that are even more profitable.

tions invest too broadly in many options they experience the disadvantages of being a generalist, while if they invest too narrowly it becomes difficult for them to learn (Eggers 2012). Nonetheless, the purpose of hedging is to reduce downside risk and access upside opportunity. Thus, hedging draws on options theory (Kogut and Kulatilaka 1994, 2001; Tong and Reuer 2007), which examines how organizations defer, stage, and try to sequence investments in multiple interacting ways. They alter the scale of their investments, switch them around, abandon some, escalate commitment to others, deescalate commitments, and lump them together. They may grow and scrap their commitments. In uncertain regulatory environments, slack can facilitate their adaptability, as greater slack makes it easier for them to pursue multiple responses to the uncertainty (Kim and Bettis 2014).

C14.P59 The hedging behavior of organizations in this respect diverges from predictions of theories that maintain organizations' aim to optimize. Rather, their goal is to protect themselves from losses and preserve themselves in a way that is largely driven by the risk aversion behavior that Tversky and Kahneman (1991) describe at the individual level and accumulates throughout the organization. Such aversion to loss is driven by the recognition of an inability to predict whether any individual decision aimed at optimizing returns will actually pay off or turn out to be a miscalculation. Uncertainty about the future leads to ambivalence about the moves organizations should make (Ashforth et al. 2014). In the face of this regulatory uncertainty, organizations are apt to make contradictory moves simultaneously (Marcus, 1981). Assuming that different sets of events may happen leads to the well-known and investigated phenomenon of organizations, on the one hand, defending their current positions and exploiting current strengths, and, on the other hand, trying to be agile and innovative by exploring for new avenues of growth, while shielding themselves from losses (Benner and Tushman 2003; Lavie et al. 2010). In response to the uncertainties of regulation, they are prone to launching exploratory endeavors alongside their exploitative cores.

C14.P60 The literature has framed this problem as one of ambidexterity (Raisch and Birkinshaw 2008; Tushman and O'Reilly 1996). The issue ambidexterity presents to managers is how to accommodate the tensions. Poole and Van de Ven (1989) depict a number of coping methods for dealing with these contradictory tendencies: accepting and simply living with them; dividing them in space and time by allocating them to different organizational units, and emphasizing alternative tendencies at different moments (also see Carlson et al. 2017). Depending on their time perspectives, organizations are likely to manage the ambiguity of regulations differently (Kim et al. 2019; Marcus 2019; Zaheer and Zaheer 1999). Consider for instance that organizations in the oil and natural gas sector have time spans as long as thirty and forty years, since this is how long they need to exploit the resources they acquire. Organizations in the motor vehicle sector, on the other hand, tend to confine themselves to no more than a decade in the future, since this time is what they need to introduce new models and brands. These different time horizons influence how organizations in these sectors have

responded to a diverse set of climate-change regulations.⁵ Organizations in these sectors have hedged their bets by staking out paradoxical positions (Poole and Van de Ven 1989; Farjoun 2010; Schad and Bansal 2018). On the one hand, they have prepared for an uncertain regulatory future in which fossil fuels might be demoted from their role as the world's dominant energy source. On the other hand, they have focused on capturing as much gain as they could from dependence on fossil fuels, despite changing government mandates.

C14.S13

RECURSIVE CYCLES

C14.P61 Raisch et al. (2018) propose a spiral model of paradoxical learning in response to regulatory uncertainty. The learning is progressive over time and positive. This hopeful vision imagines a positive convergence, but perhaps there can be downward spirals of folly, as well as upward spirals, and rounds of imperfect sensemaking that lead to futile and endless cycles that achieve little progress (also see Hargrave and Van de Ven 2017). Hopefully, the positive cycles win out, but the outcomes of externally regulated change are hard to know because of the uncertainty, especially in advance, when it counts the most.

C14.P62 Perner and Skjølvik (2017) maintain that unexpected outcomes, conflicts, resistance, and significant gaps in achievement are common. The lasting and stable resolution of regulatory outcomes, which they illustrate in their study of procurement of the management consulting services in Sweden, is an exception. Jarzabkowski et al. (2018) also argue that unintended consequences can initiate action cycles that escalate and result in regulatory breakdowns. Heroic managers, who prevented breakdown in their study of a mandated change in a telecommunications company, are not that common.

⁵ To summarize a complicated story that Marcus (2019) tells in his book *Strategies for Managing Uncertainty* in the oil and natural gas sector, companies responded in the following ways to the types of uncertainty that existed because of existing and possible future climate change regulation. ExxonMobil slightly changed its stance and widely publicized an effort to develop petro-algae. BP disgorged large amounts of fossil fuel assets to save itself from bankruptcy after the Deepwater Horizon oil spill. Shell restructured, letting go of oil assets and acquiring natural gas assets instead. As an owner of advanced battery and solar panel companies TOTAL started to secure European electric utilities. All of these companies at the same time remained committed to oil and natural gas. In the motor vehicle sector, where the time perspective differed, the decisions taken also diverged. GM introduced the all-electric Bolt and exited from the unprofitable European market. Ford wavered in the face of weak financial results, unsure how much it should commit to its global bestselling F-150 series light truck versus moving to hybrids and to the opportunities of new transportation models. It made the F-150 series lighter by replacing some of the metal body with an aluminium one. VW, with its back against the wall because of its cheating on diesel emission standards, reversed its commitment to diesel as the world's "green" solution, and promised that it would make almost all its models available in some type of electric option no later than 2030. Toyota, while bringing on board more SUVs and small SUVs to the US market, pledged to make the most far-reaching transformation of any automaker with regard to offering hybrid and fully electric vehicles. These motor vehicle firms went farther than the oil and natural companies in making changes in the face of a future in which regulations might make dependence on fossil fuels far more difficult.

This case is inspiring, but it is not likely that it can be replicated in issues where the stakes are far higher. In highly contested regulatory contexts, such as that surrounding government efforts to mitigate climate change, respite from uncertain and unexpected outcomes (Giddens 1984) is less likely.

- C14.P63 Two cycles may be possible (Marcus 1988a; Marcus 1988b; Marcus and Weber 1989). On the one hand, a vicious cycle can develop in which organizations that perform poorly are subject to increased government supervision and oversight. The increased supervision and oversight give them no choice but to respond with rule-bound changes. Since their flexibility is limited, it blunts their capacity for creative change and adaptation, which increases the chances that the poor performance persists. On the other hand, a beneficent cycle may materialize when an organization performs well. As a result, government grants autonomy from excessive supervision and oversight, and the release from close supervision provides these organizations with the freedom to make creative changes to government requirements, which reinforces their strong performance. Another result might be neutral, neither vicious nor beneficent.

C14.S14

CONCLUSION

- C14.P64 Though numerous studies focus on regulatory formulation, implementation, and enforcement and reveal the unintended consequences that flow from the process, a limitation, as emphasized in this chapter, is that most consider a single regulatory program, rather than the combined effects of the diverse programs to which organizations are subject. Past research mostly examines the effects of regulatory programs separately. It does not consider their simultaneous impacts. This chapter has focused on the myriad impacts of multiple mandatory regulatory programs, the uncertainty created, the diverse responses of a host of different organizations to this mix of myriad uncertain regulatory mandates, the hedging in which these organizations engage to deal with the instability and uncertainty, and the contradictory results that follow. In the face of a full set of many different types of regulatory programs that change regularly over time, this chapter has argued that organizations hedge their bets. They make a series of trade-offs between resistance to change and acceptance of its inevitability.

- C14.P65 This chapter has provided a model of an ongoing process that describes organizational responses to externally regulated change. Governments try to hold organizations accountable, they formulate, implement, and try to enforce many different regulations, and these regulatory programs proliferate at many levels and domains and are not stable. Uncertainty takes hold. Organizations respond by hedging their bets with stonewalling and opportunism depending on the circumstances and their characteristics. Their responses to regulation are distinct and varied. No two organizations are likely to respond in the exact same way. Their responses also are far from static. Responding to a fluid external and internal context leads decision-makers to branch out in many

directions. As ultimate resolution of the attempts governments make to hold organizations accountable is indeterminate, the process begins afresh and repeats itself again and again as a series of “cat and mouse” games.

C14.P66 This chapter has shown that multiple government regulated mandates for organizational change exist. They cover organizations’ major stakeholders and their relations to the natural environment, and they differ in their intensity and intent across many jurisdictions. Their source is in the many different government jurisdictions that regulate them—national, local, and international—and that regulate them in different ways. These laws are formulated, implemented, and enforced differently. They are inconsistent, contradict each other, and do not give organizations consistent and sufficient guidance about what to do. Administrators try to take over, the courts play an important role, and organizations have great leeway in what they choose to do. States, localities, and international bodies all impose requirements at national, international, and local levels and for organizations it is not at all clear what the organizations’ responses should be. A jumble of mandates and jurisdictions regularly changing yields uncertainty about how organizations should respond. Given the uncertainty of how the mix of controls is likely to evolve into the future, organizations are reluctant to commit themselves too strongly to any particular course of action. They resist and try to preserve the current state of affairs through lobbying and court battles, sometimes going so far as to fund full-scale disinformation campaigns. They hedge their bets defensively by opposing regulations and act proactively by innovating in order to benefit from regulations. They try to maintain a balance between the status quo and the future, and they are not likely to go too far for too long in either direction. They also innovate, bringing into the world new processes and products in response to government regulations. The aggregate impact of diverse external regulatory pressures leads to a dynamic process. The process of government regulated change described in this chapter may be compared to a treadmill, or even to Sisyphus and his brave attempts to push the rock up the mountain even as it falls back again after each effort that is made.

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