

Procedural Politicking: Agency Risk Management in the Federal Rulemaking Process

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Abstract

Administrative procedures are often hailed as the solution to managing an unruly bureaucracy, but they are not self-executing. Rather, they must be implemented by the very agencies whose behavior they are designed to constrain. Further, the expert bureaucrats that oversee these processes have superior insight on how these different procedures tend to play out and can use this information to steer policymaking in their preferred direction. This paper advances the argument that agencies use their administrative discretion in the notice-and-comment rulemaking process to mitigate political interference in the rulemaking process. Using a new dataset of more than 2,000 administrative rules from 29 agencies, I show that agencies strategically shorten—or lengthen—the public comment period on their proposed rules in response to the political environment. This research identifies a dynamic and political role for agency bureaucrats in the federal rulemaking process.

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Under contemporary governance arrangements, unelected bureaucrats routinely make important policy decisions that affect the lives of ordinary citizens. In the United States, bureaucrats use the notice-and-comment rulemaking process to do everything from set the fuel standards for the cars we drive to make decisions about whether insurers should be required to cover contraception in their standard package offerings. In 2014, executive branch agencies issued more than 200 proposed rules (formally known as “Notices of Proposed Rulemaking”) that, if finalized, will carry the same force and effect as laws passed by Congress.¹

Although observers often raise concerns over the democratic accountability of such decisions, a well established literature offers a more sanguine take on the practice. That is, since bureaucrats are required to follow a set of administrative procedures *before* reaching a decision, elected principals in Congress and the White House still retain control over agency decisionmaking (McCubbins, Noll and Weingast, 1987, 1989). With respect to notice-and-comment rule making, this means that the agency must provide notice of a proposed policy change and solicit comments from the affected public before reaching a binding final decision. Consequently, disaffected groups are given an opportunity to “sound a fire alarm” (McCubbins and Schwartz, 1984) and alert a political principal if an agency’s proposal is amiss. Principals then are afforded sufficient time to intervene, rather than being presented with a noxious policy as a *fait accompli*. All is well.

While the logic underlying this political control argument is compelling, it overlooks several important aspects of the notice-and-comment rulemaking process. First, the key procedural components governing notice-and-comment were originally laid out in the Administrative Procedure Act of 1946 (APA). While much else has changed since that law was passed, the basic structure of notice-and-comment has not.² Because the relationship be-

¹Proposed rule counts from www.reginfo.gov.

²At a minimum, “notice-and-comment” rulemaking involves three steps: first the agency must publish a “proposed rule” in the *Federal Register*; then solicit feedback from the public (i.e., public comments) on the proposal; and finally publish a binding “final rule” in the *Federal Register*. Many agencies or types of rules face additional requirements, such as cost-benefit analysis, small business analysis “flexibility” analysis, or requirements to hold public hearings. For a more detailed and careful explanation, see Kerwin and Furlong (2011).

tween agencies and their overseers is necessarily a dynamic one (Krause, 1996), this means that agencies have had considerable time to learn about and adapt to that process. Second, administrative procedures are not self-implementing; they must be executed by the very agencies they are designed to constrain. In other words, agencies have considerable discretion in how they manage the administrative process surrounding each notice-and-comment rule making.

In this paper, I examine how bureaucrats leverage this insider knowledge, along with their administrative discretion, to steer the notice-and-comment rulemaking process in their preferred direction. Specifically, I argue that agency bureaucrats manipulate the administrative process in ways that make it more difficult for Congress or the president to intervene in their proposed rules. To demonstrate this, I explore one aspect of an agency's discretion: the length of the public comment period. I show that under when Congress or the president presents a pressing threat, agencies limit opportunities for external stakeholders to pull fire alarms by shortening the amount of time they have to review the agency's proposal. However, not all proposed rules are initiated by an agency. Occasionally, in their role as Chief Executive, presidents attempt to use the rulemaking process to advance their agendas. When faced with rules imposed by the administration that don't fit with their ideological imperative, I show that agencies actually *lengthen* the public comment period. This slows the process down and gives outsiders more time to identify problems, potentially giving the agency leverage to bring the final policy more in line with their own view.

This paper makes two contributions to the literature on bureaucratic politics. First, while the notion of political control over the bureaucracy is premised upon a power struggle between agencies and their political overseers, the precise ways that bureaucrats subvert the intentions of principals are underdeveloped. This paper identifies a specific mechanism, and shows how and when it is employed by agencies. Not only does this provide a micro-level mechanism for broader theories of principal-agent relations, it also offers granular insight about the incentives associated with the rulemaking process. The second contribution is

empirical. Although scholars have shown a renewed interest in rulemaking, few studies cover more than a handful of agencies. The original data used here span the rulemaking activity of 29 executive branch agencies over 13 years. Accordingly, the argument speaks to broad effects that exist outside of the narrow context of one agency or a small sample of rules.

The remainder of the paper proceeds in several sections. I begin by briefly discussing existing work on political control and administrative procedures. I then identify the discretion that agencies have with respect to the development of proposed rules and offer a theory of how agencies use their tools to fend off (anticipated) congressional and presidential interventions. The third section assesses the hypotheses with a new dataset of agency rulemaking. After presenting these empirical results, I present a case to illustrate how agencies respond to presidential rulemaking initiatives. The paper concludes with a discussion of the implications of these findings for a broader understanding of administrative rulemaking and directions for future research.

Political Control and Administrative Procedures

The tension between bureaucrats and their political masters serves as the theoretical catalyst for a rich literature on bureaucratic activity. Much of this work builds upon a principal-agent framework, with one, or many, political principals attempting to control the behavior of a bureaucratic actor or agency (see Miller, 2005). While early scholars worried that Congress and the president exerted too little influence over agencies (e.g., Bernstein, 1955; Niskanen, 1971), such concerns were attenuated by observations like those of McCubbins, Noll and Weingast (1987, 1989). This development illustrated that the institution of *ex ante* design features like administrative procedures could encourage bureaucrats to make decisions that aligned more closely with the preferences of their principals.

Studies of administrative procedures tend to take a top-down approach, exploring these tools from the principal's perspective. For instance, Bawn (1995) looks at the initial

design choice to show how Congress structures procedures to balance technical expertise and agency responsiveness. Potoski (1999) looks at how state-level politicians employ administrative procedures to manage different types of uncertainty. Other studies take a different tack, looking at whether these procedures yield the responsiveness that principals desire, particularly with respect to rulemaking. Balla (1998), for example, argues that with respect to rules made in the Medicare program the agency did not make decisions that necessarily aligned with the preferences of the law’s enacting coalition. However, studies investigating rulemaking deadlines imposed by the courts or Congress reach the opposite conclusion, finding that deadlines are effective at pressuring agencies to accelerate the pace of the rulemaking process (Gersen and O’Connell, 2008; Lavertu and Yackee, 2012).

By necessity, this top-down approach sets aside an important component of the principal-agent problem: agents (in this case, bureaucratic agencies) have different preferences from principals and will seek ways to see their preferences realized if they can (Huber and Shipan, 2006; Miller, 2005). Indeed, there is an emerging literature on the strategic and autonomy-seeking behavior of bureaucrats (e.g., Carpenter, 2001, 2010; Krause, 1996). For instance, in a book-length treatment Huber (2007) makes the case that bureaucrats at the Occupational Safety and Health Administration (OSHA) have a relatively free hand to use enforcement to shape the policy and political agenda, so long as they operate within the bounds of the external political environment. His theory of “strategic neutrality” suggests that when making enforcement decisions relating to staffing, inspections, and violations, OSHA’s bureaucratic leaders take care to appear neutral, in order to strategically target enforcement where it is best suited to maintain and foster agency goals.

For the most part, this sort of strategic bureaucratic behavior has not permeated the rulemaking and administrative procedures literature.³ Instead, scholars consider a related

³Two exceptions are worth mentioning. In a law review article, Nou (2013) outlines several ways in which agencies may be strategic when submitting rules to OIRA for review. And Moffitt (2010) explores how agencies strategically solicit feedback outside the agency in the context of advisory committee policymaking at the Food and Drug Administration (FDA).

problem at the opposite end of the autonomy spectrum—whether discretion has altogether dried up or “ossified” due to the extreme administrative demands placed on rulemaking (e.g., McGarity, 1991). Yet, recent scholarship in this area suggests that procedural demands do not significantly slow the volume or pace of rulemaking (Yackee and Yackee, 2010, 2011), suggesting that agencies know how to work within procedures to keep the process afloat. In the sections that follow, I build on the idea that agencies have procedural expertise, and show how they can combine this knowledge with the discretion they have in the rulemaking process in order to protect some rules and undermine others.

Theory

The rulemaking process is inherently a political process; after all, the policies that agencies create using notice-and-comment are durable and binding. Policy specifics are often left to agencies precisely *because* they are so sensitive (Epstein and O’Halloran, 1999). But this political importance means that even after delegating, political principals often interfere in the rulemaking process to push it toward their own preferences.

Congress has many outlets to intervene in agency rulemaking, including writing a law that overwrites the agency’s proposed rule, essentially rendering the agency’s effort and resources wasted.⁴ However, as MacDonald (2010) shows, the more common route to congressional rule reversals is for Congress to attach a limitation rider to a “must-pass” appropriations bill that bars the agency from completing the rulemaking process. The repercussions for issuing an unpalatable proposed rule do not stop there either. Congress can punish the agency in other ways, including cutting the agency’s budget, reducing the agency’s discretion by writing more specific statutes, strengthening administrative procedures, or increasing the

⁴Congress has a related veto power under the Congressional Review Act of 1996 (P.L. 104-121). This law, which applies to final rules only, states that after issuing a “major” rule (i.e., a rule with important financial or policy consequences) Congress has a period of 60 days to consider and possibly annul—the rule. In order to execute the nullification, both chambers must pass a joint resolution and the president must sign it.

level of monitoring (see e.g., Carpenter, 1996; Epstein and O’Halloran, 1999; Huber and Shipan, 2002; McCubbins, Noll and Weingast, 1987).

The president has perhaps even more powerful means to intervene in the rulemaking process through centralized review of agency rules by the Office of Information and Regulatory Affairs (OIRA). OIRA, the White House clearinghouse for agency rulemaking, reviews draft agency rules not once, but twice during the course of the notice-and-comment process. At the outset, OIRA selects which rules it wants to review. At the conclusion of its review process, OIRA has the authority to “return” the rule to the agency (effectively vetoing the proposed rule) or approve the proposed rule after forcing considerable changes in the agency’s draft.⁵

From the agency’s perspective, the creation of a rule is a considerable time and resource investment; bringing a rule from an idea to a binding final rule typically takes several years (Nou, 2013; O’Connell, 2008; West, 2004, 2009). And because most agencies have a considerable backlog of rules on the to-do list (West, 2004), having a rule stalled or completely gutted by the president or Congress represents a considerable opportunity cost. As a consequence, agencies protect their investment in a proposed rule. That is, they use the discretion afforded to them in the administrative process to increase the likelihood that the proposed rule that they have drafted survives to the final rule stage.

Agencies make numerous decisions with respect to a proposed rule, including when to publish the rule, how long to allow for public comment, whether to extend the initial public comment period, whether to publish a pre-rule (formally known as an Advanced Notice of Proposed Rulemaking), or to host public hearings or information sessions.⁶ And because

⁵These actions can happen at either the proposed or the final rule stage. So, once an agency has survived the propose rule stage, they look prospectively at getting past the clearance hurdle at the final rule stage.

⁶Agencies also make important administrative decisions before even reaching the proposed rule stage, such as whether to sidestep the public comment process and issue an emergency rule (i.e., an interim final rule) or to avoid rule making altogether and issue non-binding guidance. While these are undoubtedly important decisions, I focus on the notice-and-comment and proposed rules since this is how the vast majority of regulatory policy is created.

agencies churn out dozens of rules each year bureaucrats become familiar with the nuances of administrative procedures and how they tend to play out for their agency—much more familiar than their principals.⁷ In the sections that follow, I focus on how agencies can use one such tool—the public comment period—in order to help their rules survive to the final stage.

Manipulating the Public Comment Period

The length of the comment period is important. Longer comment periods are associated with a greater volume of comments from a more diverse set of interests, because “it takes time to assemble the essential information needed to evaluate and then respond to what can be highly technical and complex rules. In the contemporary political environment, time allows people to get organized, to build coalitions, and to orchestrate a response to the agency’s proposals” (Kerwin and Furlong, 2011, p. 67).

External stakeholders can provide the agency with needed policy information, enhance the visibility of an agency project, and lend legitimacy to a position advanced in a proposal (Moffitt, 2014). However, gathering this information also introduces greater risk into the process. The longer a rule is open for comment, the greater the opportunity for groups to submit a comment.

With respect to the courts, this can mean greater legal risk. Not all parties that submit comments will be pleased with the agency’s proposal and, now empowered with stakeholder status, these groups may seek recourse with the courts. While the agency is under no obligation to accommodate group demands in the final rule, submitting a comment or testifying at a hearing can be part of a broader group strategy. A group may not expect that the agency will incorporate the changes they request in the final rule, but instead may be laying the groundwork for future litigation (Schmidt, 2002). This view is consistent with

⁷For instance one Environmental Protection Agency (EPA) official told me that he can predict which groups will participate on a specific rule and what their comments are likely to say with about 90% accuracy.

recent work by Woods (2009) who finds, in a survey of bureaucrats responsible for rulemaking in state agencies, that increasing the opportunities for public involvement (e.g., through a longer comment period) in a rulemaking is associated with greater perceived influence of the courts in the rulemaking process.

Risk may also come in the form of stakeholders taking issue with the agency's proposal and pulling a fire alarm with the agency's political principals (McCubbins and Schwartz, 1984). Moffitt (2014, 3) explains that public participation in agency policymaking can "provide a public forum for agency critics, reveal details of agency decisionmaking that an agency may prefer to keep private, produce information an agency may not want to consider, and compromise agency jurisdiction over the ultimate policy decision." When this information reaches principals, it can lead them to intervene and put a stop to the proposed rule, effectively preventing it from ever becoming a final rule.

Indeed, there is some empirical support for this proposition; Table 1 illustrates that proposed rules that are associated with greater opportunities for public input are less likely to reach the final rule stage. Specifically, a longer initial comment period (i.e., more than the median 60-day comment period) is associated with a reduction in the finalization rate of about 10%, and an extension of the initial comment period is associated with about a 5% reduction in the proposed rule finalization rate.⁸

⁸Even if it doesn't result in the termination of a proposed rule, a longer comment period may slow the rulemaking process. Not only must the agency wait additional time for the comment period to close, but, if more comments are submitted to the agency as a result of the additional time, the additional workload can ossify the process.

Table 1: Comment Period Length and Proposed Rule Finalization

	N	% Finalized	Difference
Less than 60 Comment Days	525	83.0%	
60 or more Comment Days	1,479	72.7%	-10.3%*
No comment period extensions	1,662	76.3%	
One or more comment period extensions	342	71.1%	-5.2%*

Note: Data include all proposed rules reviewed by OIRA between 2000–2010. I limit the analysis to proposed rules issued before 2011 in order to accommodate the idea that agencies may still intend to finalize proposed rules that were issued more recently. However, the tests are not sensitive to the selected cutoff year. Asterisks indicate that the differences in means are statistically significant at the .05 level.

While this relationship is not necessarily causal, the basic lesson is not lost on agencies: longer comment periods put proposed rules at greater risk of languishing unfinalized. This may be because a longer amount of time creates more opportunities for fire alarms to be pulled. And, if the complaints made by interest groups fall on sympathetic ears, the agency’s proposed rule is at risk, either of receiving political pressure to fundamentally change the policy or to withdraw the proposed rule altogether.

This leads to several expectations about how agencies structure the public comment period. To begin, I suggest that divided government introduces greater uncertainty into the system. Under divided government, an agency’s detractors will be able to readily find some political ally (Yackee and Yackee, 2009), leading to a greater likelihood of a principal getting involved with an agency’s proposal. As such, agencies will move to limit the opportunities for this to occur.

H1. Ceteris paribus, comment periods on agency proposed rules will be shorter under divided government.

With respect to Congress, agency proposed rules also face a threat. Yet, this threat is not constant. Many of the most devastating tactics that Congress can employ against an agency require that body to overcome its considerable collective action problems. That is, passing a law overturning the agency’s rule, preventing the rule through a limitation rider, cutting the agency’s budget, or instituting new procedures for the agency to follow all require

Congress to come to some level of agreement and act together (usually by passing a law). Congress's ability to do this, of course, waxes and wanes across time. Accordingly, agencies will proceed with greater caution when Congress is well-positioned to respond to a proposed rule that it does not like.⁹

H2. Ceteris paribus, comment periods on agency proposed rules will be shorter when Congress is less fragmented.

Turning to the president, the theory suggests that agencies will be hesitant to grant a longer public comment period for their proposed rules when they are not in ideological lockstep with the president. Numerous studies have suggested that the level of ideological congruence between the president and the agency affects agency decisionmaking (e.g., Hudak, 2014; Lewis, 2008). When an agency does not share preferences with the president, groups can provide specialized information to the White House (and OIRA) about how the proposed rule should be altered or even abandoned. When the president and the agency share the same perspective on policy, however, they are likely to view complaints lodged by groups in the same manner. This means that fire alarms present less of a threat.

H3. Comment periods on agency proposed rules will be shorter when the agency proposing the rule is ideologically distant from the president.

Managing Presidential Priorities

The preceding discussion took a decidedly bottom-up perspective on the rulemaking process, arguing that agencies will work to protect their proposed rules in the face of risk. However, not all proposed rules have the same genesis. As West and Raso (2013) explain, most agencies rules are initiated to fulfill a legislative mandate (i.e., to “fill up” the details

⁹An argument could be made that agencies adjust their comment periods as they become more ideologically distant from some key actor in Congress (e.g., the floor or oversight committee median). Yet, it is not clear ex ante who in Congress will matter for any particular proposed rule, since rules often have broad constituencies and can create odd legislative bedfellows (both in favor of or in opposition to the agency's proposal). Further, given overlapping jurisdictions and the multiple committee oversight structure of Congress, agencies often perceive congressional oversight to be incoherent (Clinton, Lewis and Selin, 2014), suggesting that fragmentation may be a better signal.

of some broad mandate set in statute) or based on the agency’s discretionary authority to address a policy need under their jurisdiction. While the former category of so-called “mandatory” rules lays out a sketch of what an agency must do, agencies usually still have discretion in how to carry out the mandate. And for the latter “discretionary” category, agencies also tend to have considerable breathing room.

There is another class of rule origination, however. The president can try to use rulemaking to advance his (someday her) broader policy agenda. And, when presidents do this, they have a much firmer sense of what the policy should look like (i.e., there is little room for agency policy discretion). For instance, as part of his “We Can’t Wait” initiative President Obama has made numerous policy pronouncements with an agency rule as the policy vehicle.¹⁰ In these cases, the White House, and not the agency, dictates the terms of what will be included in the proposed rule. Yet, the agency still manages the administrative process and can employ comment period in a way that allows groups to bring problems to light. If the agency disagrees with the policy being pushed by the administration, it can set a longer comment period. Again, while this does not guarantee that the proposed rule will meet adverse ends, it increases the likelihood that it could. In other words, ideologically proximate agencies will make an effort to assist the president by moving his priorities through the process quickly and sheltering them from outside pressures, but ideologically distant agencies will not make the same effort.

H4. For proposed rules that are administration priorities, comment periods will be shorter when the agency proposing the rule is ideologically proximate to the president than when the agency is ideologically distant from the president.

¹⁰Examples include a rule from the Department of Education to cap student loan repayment rates and a rule from the Department of Health and Human Services that would strengthen accountability standards in the Head Start programs.

Data

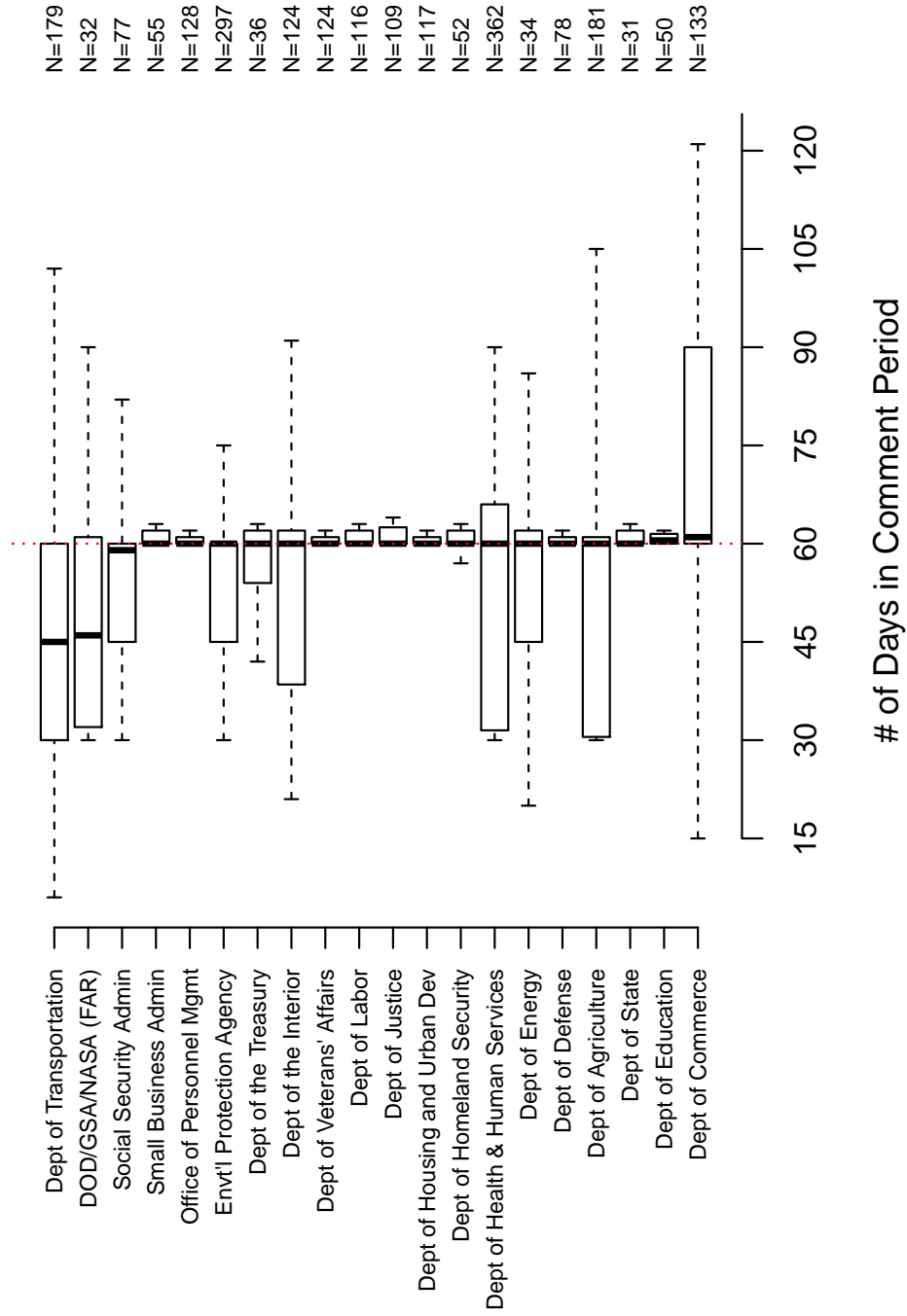
In order to empirically test these hypotheses, I collected data on 2,343 proposed rules issued by 29 Executive branch agencies from 2000–2013.¹¹ I focus on all proposed rules that were reviewed by OIRA for two reasons. First, as previously indicated, OIRA has the authority to review any rule from an Executive branch agency, but given its limited resources it only selects for review those rules that have economic or policy significance.¹² Like laws and executive orders, not all rules are substantively important, so focusing on OIRA-reviewed rules serves as a measure of significance that effectively separates the wheat from the chaff. Second, the presidential priority hypothesis (H_4) suggests that agencies will respond to pressure imposed by the president. Limiting the analysis to OIRA-reviewed rules ensures that the president has the same opportunity to influence each rule.

The dependent variable *Comment Days* is the number of days the agency initially set for the public comment period. Figure 1 shows that while 60 days is the modal number of comment days, there is considerable variation in the length of comment periods across the agencies in this study. For instance, although the Department of the Interior and the Department of Veterans’ Affairs issued the same number of proposed rules during the period under study, the former had considerably more variance in the length of its comment periods than the latter.

¹¹See the Appendix for an explanation of how the dataset was constructed and Table A1 for a list of the covered agencies

¹²For more about OIRA’s review powers, see Executive Order (E.O.) 12866.

Figure 1: Length of Comment Periods for Agency Proposed Rules



Note: Boxes show the upper and lower quartiles of the observed data. The bolded lines represent the agency median. The dotted line indicates the 60-day mark. The proportion of rules that were extended and the total number of proposed rules for each agency is indicated on the right axis. Agencies that promulgated fewer than 15 proposed rules not shown.

The APA mandates that agencies should allow the public a meaningful opportunity to comment on proposed rules. Yet, the law does not state how long the public comment period need be, leaving this decision to the agency’s discretion.¹³ In 1993, the Clinton administration clarified that agencies should provide “a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days” (E.O. 12866). More recently, President Obama reaffirmed this policy in an executive order which indicated that comment periods should be “at least 60 days” (E.O. 13563). In practice, however, the 60-day standard is not closely followed.¹⁴

To test the first hypothesis, I include *Divided*, a dummy variable that takes on a value of “1” during period of divided government and “0” otherwise. The next expectation (*H2*) is that agencies will offer fewer participation opportunities when Congress is more capable of flexing its muscle. To capture the potential for Congress to intervene in a proposed rule, I use Legislative Potential for Policy Change (LPPC), a measure developed by Hurley, Brady and Cooper (1977) that relies on the size and cohesion of the majority relative to the minority party.¹⁵ The resulting measure, *LPPC*, is expected to have a negative relationship with *Comment Days*.

To assess the ideological disposition of both the agency and the president. I employ a measure based on agency ideology estimates created by Clinton and Lewis (2008).¹⁶ Their estimates draw on a survey of bureaucracy experts, who were asked to evaluate the ideology of 82 agencies. Clinton and Lewis aggregate the experts’ responses using a multi-rater item

¹³As Lubbers (2006) notes, “A common misconception is that the APA prescribes a 30-day minimum comment period, a belief that may derive from the APA’s requirement that final rules be published 30 days prior to their effective date” (278). See Balla (2011, 2014) for further explanation of the length of the comment period.

¹⁴T-tests indicate that there is no significant difference in comment period lengths across the last three presidential administrations.

¹⁵This operationalization is calculated by: $LPPC = (majority\ size \times majority\ cohesion - minority\ size - minority\ cohesion)$, where party size is represented as a percentage and cohesion is indicated by party unity scores. Following Howell (2003), I average the scores across the House and the Senate.

¹⁶ In recent years, scholars have developed a number of methods for estimating agency ideology (Bertelli and Grose, 2009, 2011; Chen and Johnson, 2014; Clinton and Lewis, 2008; Clinton et al., 2012; Nixon, 2004). The Clinton and Lewis data is appropriate for use in this study because it covers the greatest span of agencies and years of any of the available scores.

response model to create an estimate of each agency’s ideology. Because experts were asked about the overall ideology of the agency (and not the ideology of the agency at a specific point in time) these estimates are fixed and can be thought of as covering the ideology of the agency’s mission (e.g., whether the Department of Labor is more liberal than the Department of State). The measure *President-Agency Disagree* is a dummy variable coded “1” if the agency is conservative (liberal) and the president is a Democrat (Republican) and “0” otherwise.¹⁷

The fourth hypothesis suggests that proposed rules that are important to the president will incorporate fewer participation opportunities. To create a measure of proposed rules that are presidential priorities, I coded the number of times a proposed rule’s topic area was mentioned by the president in the annual State of the Union (SOTU) address.¹⁸ To do this, I used a portion of the unique four digit Regulatory Identification Number (RIN) for each rule that identifies the bureau or program sponsoring the proposal. For each code I matched the substantive policy area to a corresponding subtopic code in the *Policy Agendas* codebook, a coding scheme that categorizes sub-sentences within each SOTU address. So for example, if the president mentioned highway construction, safety, or maintenance four times in the SOTU, the variable *Presidential Priority* would take on a value of “4” for proposed rules issued by the Federal Highway Administration in that year. To evaluate H_4 I interact *President-Agency Disagree* and *Presidential Priority*.

I include a number of control variables in the analysis. First and foremost, I use two variables to control for the type of rule on the logic that the agency may allow more time for commenters to digest proposed rules that are more difficult or complex.¹⁹ The first, *Log CFR*

¹⁷Following O’Connell (2008), I treat an agency as conservative (liberal) if its score is less than (greater than) zero and its confidence interval excludes zero. However, the results are robust to a specification that relies on the agency’s point estimate (regardless of the confidence interval) and the party of the president (see Hudak, 2014).

¹⁸For a similar approach, see Bolton, Potter and Thrower (2014) and Hollibaugh, Horton and Lewis (2014).

¹⁹Scholars are divided on whether agencies use the comment period for the purpose of gathering policy information. Elliott (1992) likens the process to “kabuki theater” wherein the agency goes through the motions in the public’s view, and all meaningful action occurs offstage. Yackee and Yackee (2006), however, find that the agency does make changes based on comments received during the comment period, suggesting

words, is a (logged) count of the number of words (in hundreds) that the agency proposed to add to the *Code of Federal Regulations* (CFR), the regulatory equivalent of the U.S. code. The CFR text in a proposed rule is the “meat” of the rule; it is the text that binds regulated parties.²⁰ The second variable, *Economic Significance*, is a dichotomous variables indicating that the agency expected the proposed rule to have a large economic impact. I expect both variables to have a positive relationship with the dependent variables.

I also include two dichotomous control variables that relate to the legal status of the proposed rule. The first, *Statutory Deadline*, takes on a value of “1” if the proposed rule has an associated deadline in a statute, and “0” otherwise. Similarly, the second variable, *Judicial Deadline*, represents whether the court has imposed a deadline for the rule or not. Although judicial deadlines are more infrequent than statutory ones (Gersen and O’Connell, 2008), both instruments are used to compel agencies to quicken the pace of the rulemaking process. As such, I expect that the imposition of either type of deadline will be associated with a shorter comment period, as agencies hasten to accommodate these political demands (Gersen and O’Connell, 2008; Kerwin and Furlong, 2011; Yackee and Yackee, 2010).

Finally, I include *GW Bush* and *Obama*, dummies for presidential administration in order to control for the possibility that agencies behave differently under different regimes.²¹ Descriptive statistics for all of the variables in the analysis are provided in Table A2 of the Appendix.

that the process may be used to gather new information.

²⁰This operationalization is similar to Huber and Shipan’s (2002) use of the number of words in a statute as a proxy measure for legislative constraint on an agency. There, the authors count the number of words in Medicaid statutes across the 50 states and find that “longer statutes are longer because they provide more details about the policy to be implemented” (75). Here I argue that the longer a proposed rule’s text, the greater its complexity. That is, a longer rule tackles more issues and gives more specific instructions on how the regulated community should comply with the agency’s wishes.

²¹Clinton is the omitted category.

Method and Results

Table 2 presents the results of linear models of *Comment Days*. To control for unobserved factors at the agency level, I alternately include agency fixed effects (Model 2) and agency random effects (Model 3), with substantively results.

Overall, the models support the expectation that agencies manipulate the comment period in response to the political environment. To begin, the models show strong support for the effect of divided government; all else equal during periods of divided government agencies reduce the length of the public comment period by a little over three days.²² The effect of a more unified Congress (*LPPC*) is consistently negative (as expected), although the effect is smaller—only about half a day—and only significant at the 90% level.

Somewhat surprisingly, the models do not support the idea that agencies decrease the length of the public comment period when they do not share preferences with the president (*H3*). However, the models show robust support for the idea that the ideological configuration of the president and the agency affects the length of the comment period when it comes to presidential priorities (*H4*). As shown in Figure 2, this effect is more nuanced than the motivating hypothesis suggests. That is, agencies considerably reduce the length of the comment period for administration priorities when they are ideologically congruent with the president—to the tune of approximately 18 fewer days! However, when the agency and the president do not share preferences, there is no difference in the length of the public comment period for priority rules compared to non-priority rules. In other words, when the agency and the president don't see eye-to-eye, the agency will be unwilling to make any exceptions to its standard operating procedures and can use a veil of neutrality (Huber, 2007) to mask underlying political considerations.

²²All interpretations of model effects are based on Model 3 in Table 2, which includes agency random effects.

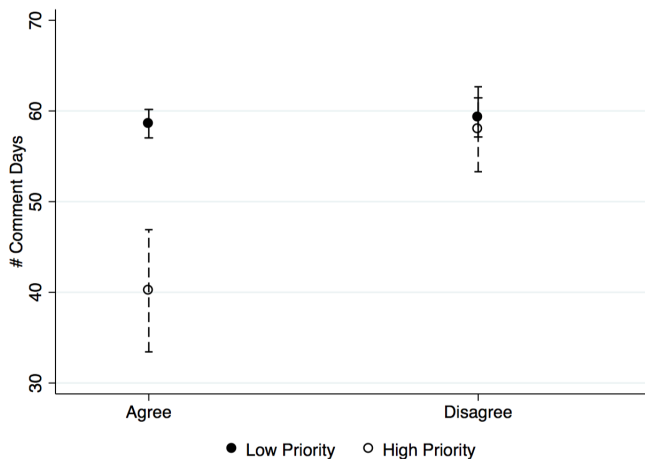
Table 2: OLS Model of Comment Days

	(1)	(2)	(3)
	$\beta/(se)$	$\beta/(se)$	$\beta/(se)$
Divided	-3.690*** (1.318)	-3.227** (1.253)	-3.690*** (1.318)
LPPC	-0.514* (0.279)	-0.488* (0.258)	-0.514* (0.279)
President-Agency Disagree	-0.082 (2.111)	0.698 (1.853)	-0.082 (2.111)
Presidential Priority	-0.996** (0.385)	-1.057*** (-0.243)	-0.996*** (0.385)
President-Agency Disagree \times Priority	0.982** (0.404)	0.993*** (0.267)	0.982** (0.404)
Log CFR Words	1.447** (0.537)	1.529*** (0.548)	1.447*** (0.537)
Economic Significance	4.531* (2.320)	2.350 (2.561)	4.531* (2.320)
Statutory Deadline	-5.712*** (1.214)	-6.787*** (1.465)	-5.712** (1.214)
Judicial Deadline	-1.060 (1.883)	-0.344 (0.965)	-1.060 (1.883)
GW Bush	-3.684 (2.471)	-4.099 (3.467)	-3.684 (2.471)
Obama	-0.865 (2.618)	-1.219 (2.791)	-0.865 (2.618)
Constant	56.472*** (4.304)	56.004*** (4.179)	56.472*** (4.304)
Agency fixed effects		✓	
Agency random effects			✓
N	2,343	2,343	2,343
R^2	0.045	0.041	0.045

Dependent variable is the number of comment days initially selected for each proposed rule. Table entries are OLS coefficients with standard errors clustered on the agency in parentheses. Significance: * $p < .10$, ** $p < 0.05$, *** $p < .01$.

Turning to the control variables, it appears that agencies do take into account the underlying complexity of the proposed rule when determining the length of the comment period although the effects are not substantial. The comment period increases by .01 days when the logged number of words increases by 1%. Substantively, this means that increasing one standard deviation from the mean numbers of logged words results in an increase of only

Figure 2: Marginal Effects for President-Agency Distance x Presidential Priority on Comment Days



Note: Lines indicate 95% confidence intervals. The dark circles indicate a proposed rule that is not a priority for the president (SOTU mentions = 0), while the open circles indicate a proposed rule that is a high priority for the president (SOTU mentions = 17, the 95th percentile of the data).

about 0.25 days of the comment period. For the *Economic Significance* variable, Models 1 and 3 suggest a rather large effect of about 4.5 additional comment days for economically significant rules, although this coefficient does not achieve statistical significance in Model 2. Having a statutory deadline considerably reduces the length of the comment period by about six days, but there do not appear to be meaningful effects from having a judicial deadline. Finally, there is no discernible difference in the length of comment periods across presidential administrations, which is notable since both President Clinton and President Obama issued executive orders on the subject, but President Bush did not.²³

²³Additionally, during both of his presidential campaigns, Obama made public promises to increase the transparency and access of government activities. Yet, these promises do not meaningfully manifest in terms of the number of public comment days during his administration.

Robustness

I assess the robustness of these findings in a number of ways. These robustness checks offer quite strong confirmation for the finding about presidential priorities (H_4), and weaker support for the congressional findings; *Divided* and *LPPC* are not statistically significant in every specification. Nonetheless the signs for these variables and the magnitude of the effects are consistent.

First, I employ an alternate estimate of agency ideology developed by Chen and Johnson (2014). These estimates are a modification of widely used ideology scores developed by Poole and Rosenthal (1997). Those scores, called Common Space DW-NOMINATE (“Common Space”), use roll call votes and presidential statements to uncover legislators’ and presidents’ underlying ideological predispositions on a left-right continuum. Scores closer to -1 indicate a more liberal politician (e.g., Senator Barbara Boxer) and those closer to 1 indicate a more conservative politician (e.g., President George W. Bush). Chen and Johnson (2014) develop an innovative method of extending Common Space scores to agencies by relying on bureaucrats’ (both careerists and appointees) campaign contributions to legislators. The key assumption here is that individuals give money to those legislators that best represent their true preferences (Bonica, 2013). To develop an aggregate estimate of an agency’s Common Space score, Chen and Johnson (2014) use the mean score among those legislators that received contributions from the agency’s employees, weighted by the dollar amount of contributions. This weighting scheme places more emphasis on larger contributions, which tend to come from higher-earning employees (i.e., political appointees). To make a distance measure, I take the absolute value of the distance between the agency and the president’s ideological estimates. The result is a continuous measure, *President-Agency Distance*, that ranges from 0 to 1.1.

While nominally this new measure captures the same concept as *President-Agency Disagree*—ideological disagreement between the agency and the president—the two measures

are quite different in practice. Given the low level of correlation between the Clinton-Lewis and Chen-Johnson measures ($\rho = .14$), finding support for the hypotheses using this alternate measure presents a hard test for the theory. Nonetheless, as shown in Table 3, substituting these scores results in substantially similar findings.

Notably, using this new ideology measure corroborates both $H3$ and $H4$. The third hypothesis suggests that, on average, agencies will reduce the length of the comment period when they are ideologically distant from the president, and indeed using this new measure shows that moving from the minimum to the maximum value of *President-Agency Distance* results in two fewer comment days. The last hypothesis about presidential priorities suggests that agencies that are in ideological lockstep with the president expedite proposed rules, and those that are less so don't give any special treatment to these rules. Again, this is the pattern we see in Figure 3: ideologically concordant agencies cut the comment period for presidential priorities by about 10 days, whereas there is no discernible difference between priority and non-priority rules for distant agencies. While the estimated effect size is smaller here than in the models in Table 2, it is still quite large in absolute terms.

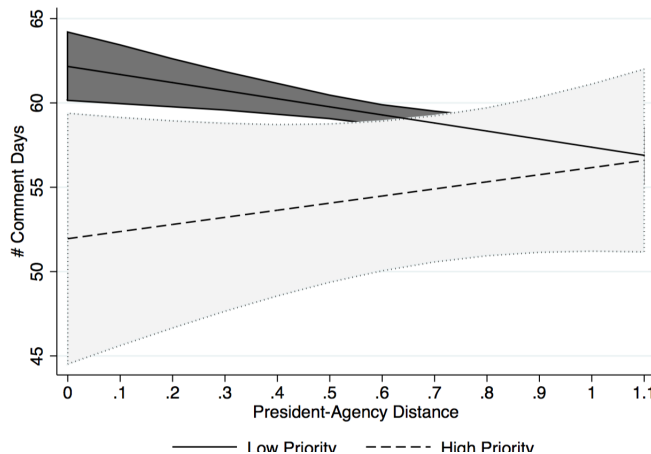
Also, in this specification divided government results in about four fewer comment days, again confirming $H1$. While *LPPC* is negative in most of the specifications and the magnitudes are similar to those from Table 2, the variable is not statistically significant. Taken together with the previous models, this suggests that Congress may be less of an important overseer when it comes to rulemaking, when compared to the president. The control variables follow the same patterns as those in Table 2.

Table 3: OLS Model of Comment Days using Chen-Johnson Scores

	(4)	(5)	(6)
	$\beta/(se)$	$\beta/(se)$	$\beta/(se)$
Divided	-4.181*** (1.348)	-3.734** (1.379)	-4.181*** (1.348)
LPPC	-0.411 (0.442)	0.320 (0.469)	-0.411 (0.442)
President-Agency Distance	-2.458 (2.932)	-2.922 (2.787)	-2.458 (2.932)
Presidential Priority	-0.683*** (0.318)	-0.600** (0.242)	-0.683** (0.318)
President-Agency Distance \times Priority	0.666* (-.351)	0.537* (0.274)	0.666* (0.351)
Log CFR Words	1.735*** (0.520)	1.742*** (0.572)	1.725*** (0.520)
Economic Significance	3.299 (2.718)	1.542 (2.875)	3.299 (2.718)
Statutory Deadline	-5.411*** (1.629)	-7.113*** (1.726)	-5.411*** (1.629)
Judicial Deadline	-1.214 (2.093)	-0.386 (0.713)	-1.214 (2.093)
GW Bush	-2.203 (3.311)	-2.079 (3.309)	-2.203 (3.311)
Obama	-2.312 (2.991)	-3.097 (3.261)	-2.312 (2.991)
Constant	55.368*** (4.653)	55.230*** (4.540)	55.368*** (4.752)
Agency fixed effects		✓	
Agency random effects			✓
N	2,016	2,016	2,016
R^2	0.048	0.044	0.047

This table replicates Table 2 using a continuous measure of president-agency ideological distance in lieu of the Clinton-Lewis measure. The N is reduced since Chen-Johnson scores were not available for three of the agencies in the dataset. The dependent variable is the number of comment days initially selected for each proposed rule. Table entries are OLS coefficients with standard errors clustered on the agency in parentheses. Significance: * $p < .10$, ** $p < 0.05$, *** $p < .01$.

Figure 3: Marginal Effects for President-Agency Distance x Presidential Priority on Comment Days using Chen and Johnson Ideology Scores



Note: Shaded areas indicate 95% confidence intervals. The darker shaded area indicates a proposed rule that is not a priority for the president (SOTU mentions = 0), while the lighter shaded area indicates a proposed rule that is a high priority for the president (SOTU mentions = 17, the 95th percentile of the data).

The next robustness check follows Balla’s (2014) approach²⁴ by using an ordered probit model that compresses the day-to-day variation in comment days (see Table A3). Next, I rerun the models excluding all rules that have a deadline (statutory or judicial) on the logic that deadlines may affect the data generating process in some determinative manner (see Table A4). Finally, I reestimate the models excluding the upper and lower 5% of the comment days data so as to ensure that outliers are not driving the results (see Table A5). In each of these specifications I obtain substantially similar results to those presented here, suggesting that these findings are quite robust.

²⁴In an article that examines the length of the comment period, Balla (2014) codes the length of the public comment period into five discrete categories: 1) less than 30 days, 2) 30 days, 3) between 30 and 60 days, 4) 60 days, and 5) more than 60 days.

Regulating Smog at the EPA

The preceding analyses identified rather large effects for the hypothesis about agency handling of the comment period for presidential priorities (H_4). Comparing a pair of smog proposed rules issued by the Environmental Protection Agency (EPA) under the Bush and Obama administrations illustrates what this mechanism looks like in practice. Under the Clean Air Act, the EPA is required to examine its ozone standards every five years, although it typically takes the agency about 10 years to enact new rules (Eilperin, January 8, 2010). Historically, the process has been controversial, with environmental groups advocating for stricter standards and industry calling for more permissive ones. When the smog rule was up for renewal under President George W. Bush, the left-leaning EPA created considerably more opportunities for public involvement (including a longer public comment period) than when the agency revisited the same policy three short years later under President Obama.²⁵

In 2007, under the Bush administration the EPA issued a proposed rule to tighten the nation's smog standards from the Clinton-era standard set in 1997. The proposal covered two types of ozone: a primary standard, designed to protect human health, and a secondary standard that addressed crops and vegetation. EPA offered several possible scenarios in the proposed rule: a primary standard between 0.070–0.075 parts per million (ppm) and a secondary standard stricter than or identical to the primary standard. The agency's own staff (EPA Staff, 2007) and its scientific advisory committee (CASAC, 2006, 2007) argued for stricter standards, particularly that the secondary standard should be more stringent than the primary. As one letter from the advisory committee to the EPA administrator emphasized, *“the protection of managed agricultural crops and natural terrestrial ecosystems requires a secondary [ozone standard] that is substantially different from the primary ozone*

²⁵The EPA is widely perceived to be a liberal agency; it receives a score of -1.21 (out of a [-2.1,2.4] left-right continuum) on Clinton and Lewis's (2008) measure, and an average score of -0.20 (out of a [-0.51, 0.67] left-right continuum) on the Chen and Johnson (2014) measure. Similarly, in a survey of 72 EPA bureaucrats, Waterman, Rouse and Wright (2004) report that EPA bureaucrats are more likely to identify with the Democratic party and to approve of a Democratic president than the general public.

standard...” (CASAC, 2007, p. 3, emphasis in original). When the agency published the proposed rule in March of 2007, the proposal was accompanied by a 90 day comment period—well above the agency mean of 57 days—with one extension to the comment period and five public hearings.

When the final rule was issued one year later in March of 2008, it adopted the laxest of the scenarios from the proposed rule: a primary standard of 0.075 ppm and an identical secondary standard. The loosening of the standards came following the direct intervention of President Bush, despite the objections of EPA staff (Dudley, March 12, 2008; Eilperin, March 14, 2008).

Nearly one year into the Obama administration, in January 2010, the EPA published a new proposed rule revisiting the smog standards. Although the timing was well ahead of the typical smog rulemaking schedule, strengthening regulation was key to Obama’s environmental agenda (McGarity, 2013). The agency proposed considerably reducing primary and secondary smog standards, below levels envisioned in the 2007 scenarios and in line with the advisory committee’s earlier recommendations (Eilperin, January 8, 2010).²⁶ In contrast with the Bush era proposal, this time around the EPA included a comment period of only 62 days (with no extensions) and three public hearings.

Ostensibly, the 2007 and 2010 proposed rules addressed the exact same policy—setting an acceptable level of ground-level ozone (i.e., smog)—although the politics of the two proposals was certainly different.²⁷ The public comment strategy on the two smog proposed rules reflected the EPA’s more favorable disposition toward the Obama proposal compared to the Bush proposal. The Obama proposal included 28 fewer comment days, no extension to the initial comment period, and two fewer hearings than the Bush proposal. In other words,

²⁶In the fall of 2011, the EPA withdrew the 2010 proposed rule at President Obama’s request. The withdrawal has been perceived as a strategic move ahead of the 2012 presidential election, rather than a statement on the smog policy itself. In November 2014, the EPA reintroduced a smog proposed rule that was “essentially as strong” as the 2010 proposal (Martinson, November 25, 2014).

²⁷Bush’s hostility to environmental protection measures is well-documented, while Obama’s green credentials are considered bona fide (McGarity, 2013).

when the agency was favorably inclined to Obama’s proposal they gave fewer opportunities for public input, but when the agency did not support the administration’s policy, they afforded greater opportunities for members of the regulated community to participate.

Discussion and Conclusion

This paper identifies a dynamic and political role for agencies in the rulemaking process. Starting with the work of Weingast and Moran (1983), agencies have been deemed to be “responsive” to political control efforts, including administrative procedures (like those instituted by the APA with respect to rulemaking). The evidence that I have presented here, however, indicates that the institution of administrative procedures is not the end of the story. That is, agencies can work within these procedures to steer policy in their preferred direction. This suggests that administrative procedures may be less effective tools of political control than previously thought.

I have argued that proposed rules are costly for agencies and that the comment period introduces risk into the process. Each additional day a proposed rule is open for comment presents a new opportunity for some party to find something wrong with the agency’s proposal and organize opposition. Accordingly, when agencies fear that any concerns that are identified may reach sympathetic political ears, they reduce the opportunity for an adverse event by selecting a shorter comment period. Using a new dataset of more than 2,000 proposed rules, I show that comment periods on agency proposed rules are indeed shorter under divided government and, to a lesser degree, when Congress is strong. However, only proposed rules that are presidential priorities reflect strategic action vis-à-vis the president. When the administration foists a rulemaking upon an unwilling agency, that agency is more likely to select a *longer* comment period, in an attempt to undermine the president’s effort.

The finding about agency treatment of presidential priorities has broad implications for presidential use of unilateral powers. While presidents often make sweeping policy pro-

nouncements that involve agency rulemaking, they still must rely on an agency to carry out those policy directives. And agencies can choose to drag their feet if they don't agree with the president's proposal, or expedite it if they do. As a consequence, priority rules carried out by ideologically distant agencies are exposed to greater risk and may potentially meet with opposition. This presents a wrinkle to the idea of unchecked presidential unilateralism and suggests that critics' concerns over Obama's "We Can't Wait" initiative may be overblown. Further, this finding may have applications to other forms of presidential unilateralism—such as executive orders, trade agreements, and presidential memoranda—where the president must depend on an agency to do his bidding.

This research opens a number of interesting avenues for future research. For instance, by necessity this paper has pooled the two primary types of rules that West and Raso (2013) identify: discretionary rules and statutorily-mandated rules. Yet, the public comment strategies identified here may speak distinctly to the issuance of these types of rules, as agencies may be more inclined to protect discretionary rules compared to mandatory rules (in a manner similar to agency treatment of presidential priorities). Additionally, this paper's empirical analysis found little effect of judicial deadlines on agency behavior when it comes to the public comment period. This does not imply, however, that courts do not matter when it comes to procedural decisions. Rather, court influence may be felt in more subtle ways and a more thorough theoretical account of the impact of courts on the procedural decisions of agencies would certainly be welcome.

This analysis of comment days begins a conversation about how agencies respond to the constraints they face and work to insulate proposals from congressional and presidential interventions. I have explored one component of the rulemaking process, the public comment period. Future work would do well to investigate other strategies—such as the publication of a pre-rule (an "Advanced Notice of Proposed Rulemaking"), hosting a hearing, engaging in the "negotiated rulemaking" process, or timing the publication of a proposed or final rule. Taken in aggregate, these procedures have the potential to pack a powerful punch.

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Appendix

Description of the Dataset

The dataset used in this study was constructed according to the following process. First, I identified all proposed rules that were reviewed by OIRA between 2000–2013 (inclusive) according to www.reginfo.gov (Reginfo), the public website that tracks rules under E.O. 12866 review. From there I matched each proposed rule with the accompanying document that was published in the *Federal Register*. The purpose of this matching exercise was twofold: first, to confirm the length of the comment period (much of this data is missing or incorrect in the Reginfo data); and, second, to obtain the data for the variable *log CFR words*. I used the proposed rule’s Regulatory Identification Number (RIN) to match the text to its Reginfo listing. I excluded from the analysis any rule for which there was no *Federal Register* text available or which did not meet my definition of a proposed rule.²⁸ This resulted in the exclusion of 290 documents from the list of proposed rules from Reginfo. I exclude another 51 proposed rules from 6 agencies for which there was no associated score in Clinton and Lewis’s (2008) dataset.²⁹ The resulting dataset includes 2,343 proposed rules from the 29 agencies listed in Table A1.

²⁸I defined a proposed rule as any document that the agency identified as a proposed rule (i.e., a proposed rule or a Notice of Proposed Rulemaking) and which proposed to alter the text of the *Code of Federal Regulations* in some way (i.e., add, amend, or remove text). Some items that agencies deemed as proposed rules, were actually notices (e.g., Notices of Enforcement Priorities, Notice of Proposed Grant Priorities) and were accordingly excluded.

²⁹The six agencies are: Architectural and Transportation Barriers Compliance Board (i.e., the Access Board, 5 proposed rules), the Corporation for National and Community Service (5 proposed rules), the Court Services and Offender Supervisory Agency for the District of Columbia (4 proposed rules), the Federal Acquisition Regulations (i.e., joint rule makings issued by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, 32 proposed rules), the Financial Stability Oversight Council (2 proposed rules), and the Office of Government Ethics (3 proposed rules).

Table A1: Agencies Included in the Dataset

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Veterans Affairs
Department of the Interior
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
Federal Emergency Management Agency
Federal Mediation and Conciliation Service
General Services Administration
National Aeronautics and Space Administration
National Archives and Records Administration
National Science Foundation
Office of Personnel Management
Pension Benefit Guaranty Corporation
Railroad Retirement Board
Small Business Administration
Social Security Administration
United States Agency for International Development

Note: The Department of Homeland Security was created in 2002 and thus appears in the data from that year onward.

Table A2: Descriptive Statistics for Variables in the Models

Variable	Mean	Std. Dev.	Min	Max
<i>Comment Days</i>	58.061	18.390	0	182
<i>Divided</i>	0.536	0.499	0	1
<i>LPPC</i>	7.990	4.324	1.173	17,591
<i>President-Agency Disagree</i>	0.379	0.485	0	1
<i>President-Agency Distance</i>	0.632	0.316	0.006	1.128
<i>Presidential Priority</i>	1.817	6.053	0	64
<i>Log CFR words</i>	7.71	1.497	4.025	12.170
<i>Economic Significance</i>	0.158	0.365	0	1
<i>Statutory Deadline</i>	0.148	0.356	0	1
<i>Judicial Deadline</i>	0.069	0.253	0	1
<i>GW Bush</i>	0.631	0.483	0	1
<i>Obama</i>	0.297	0.457	0	1

Table A3: Ordered Probit Model of Comment Days

	(A1)	(A2)
	$\beta/(se)$	$\beta/(se)$
Divided	- 0.107 (0.076)	-0.085 (0.082)
LPPC	-0.017 (0.017)	-0.015 (0.016)
President-Agency Disagree	-0.017 (0.095)	0.048 (0.083)
Presidential Priority	-0.051** (0.021)	-0.054*** (0.012)
President-Agency Disagree \times Priority	0.054** (0.022)	0.054*** (0.013)
Log CFR Words	0.037 (0.033)	0.050 (0.034)
Economic Significance	0.100 (0.179)	0.029 (0.200)
Statutory Deadline	-0.366*** (0.090)	-0.365*** (0.100)
Judicial Deadline	-0.031 (0.090)	0.017 (0.045)
GW Bush	-0.047 (0.147)	-0.083 (0.161)
Obama	0.010 (-0.138)	0.008 (0.154)
Cutpoint 1	-2.229 (0.288)	-2.231 (0.359)
Cutpoint 2	-1.287 (0.299)	-1.264 (0.351)
Cutpoint 3	-0.651 (0.260)	-0.592 (0.311)
Cutpoint 4	0.284 (0.248)	0.389 (0.296)
Agency fixed effects		✓
N	2,343	2,343
Log pseudolikelihood	-3032.761	-2950.476

This table replicates Table 2 in the paper using an ordered probit model of comment days with five categories: 1) less than 30 days, 2) 30 days, 3) between 30 and 60 days, 4) 60 days, and 5) more than 60 days. Standard errors clustered on the agency are in parentheses. Significance: * $p < .10$, ** $p < 0.05$, *** $p < .01$.

Table A4: OLS Model of Comment Days Excluding Rules with a Deadline

	(A3)	(A4)	(A5)
	$\beta/(se)$	$\beta/(se)$	$\beta/(se)$
Divided	-2.958** (1.451)	-2.137* (1.251)	-2.400** (1.312)
LPPC	-0.346 (0.214)	-0.226 (0.159)	-0.253 (0.178)
President-Agency Disagree	-0.501 (2.014)	-0.208 (1.657)	-0.534 (1.462)
Presidential Priority	-1.169*** (0.412)	-1.211*** (0.302)	-1.231 (0.342)
President-Agency Disagree \times Priority	1.180*** (0.427)	1.176*** (0.299)	1.219*** (0.353)
Log CFR Words	1.582** (0.638)	1.719*** (0.621)	1.666*** (0.622)
Economic Significance	4.541* (2.419)	1.700 (2.240)	2.730 (2.293)
GW Bush	-4.343 (3.138)	-3.925 (2.712)	-3.717 (2.881)
Obama	-1.944 (2.739)	-2.258 (2.953)	-2.019 (2.826)
Constant	54.627*** (5.733)	52.296*** (5.021)	52.157*** (5.140)
Agency fixed effects		✓	
Agency random effects			✓
N	1,847	1,847	1,847
R^2	0.040	0.037	0.039

This table replicates Table 2 excluding rules that have a statutory or judicial deadline. The dependent variable is the number of comment days initially selected for each proposed rule. Table entries are OLS coefficients with standard errors clustered on the agency in parentheses. Significance: * $p < .10$, ** $p < 0.05$, *** $p < .01$.

Table A5: OLS Model of Comment Days Excluding Outliers

	(A6)	(A7)	(A8)
	$\beta/(se)$	$\beta/(se)$	$\beta/(se)$
Divided	-1.031 (1.128)	-0.675 (1.108)	-0.763 (1.117)
LPPC	-0.190 (0.160)	-0.143 (0.155)	-0.141 (0.157)
President-Agency Disagree	-0.470 (1.417)	0.248 (1.450)	-0.078 (1.221)
Presidential Priority	-0.625** (0.301)	-0.676*** (0.221)	-0.672*** (0.252)
President-Agency Disagree \times Priority	0.619* (0.327)	0.619** (0.253)	0.639** (0.282)
Log CFR Words	0.805*** (0.259)	0.799** (0.299)	0.805*** (0.284)
Economic Significance	0.876 (1.334)	-0.406 (1.556)	0.055 (1.456)
Statutory Deadline	-2.639** (1.041)	-3.376*** (1.184)	-3.280*** (1.042)
Judicial Deadline	-0.140 (1.241)	0.421 (0.415)	0.419 (0.608)
GW Bush	-1.641 (1.343)	-1.893 (1.575)	-1.697 (1.467)
Obama	-1.207 (2.017)	-1.430 (2.275)	-1.382 (2.139)
Constant	57.662*** (2.973)	57.465*** (3.643)	56.905*** (3.261)
Agency fixed effects		✓	
Agency random effects			✓
N	2,010	2,010	2,010
R^2	0.025	0.022	0.024

This table replicates Table 2 excluding the upper and lower 5% of comment days (i.e., extreme values of comment days). The dependent variable is the number of comment days initially selected for each proposed rule. Table entries are OLS coefficients with standard errors clustered on the agency in parentheses. Significance: * $p < .10$, ** $p < 0.05$, *** $p < .01$.