

TRANSACTION COSTS, DISCRETION, AND POLICY CONTROL

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ABSTRACT

ERIK KINJI GODWIN: Transaction Costs, Discretion, and Policy Control
(Under the direction of Virginia Gray)

This research evaluates the utility of applying the transaction cost approach to questions of political control over bureaucratic policy. The transaction cost approach to political decision-making generates two predictions that, if accurate, add considerably to the study of bureaucratic policymaking. First, the theory predicts that a principal's willingness to influence bureaucratic policy will decrease as the transaction costs of doing so increase. This suggests that principals can obtain strategic advantages in battles over bureaucratic policy by selectively increasing the transaction costs of policy control to political rivals. Second, a principal may prefer that the bureaucracy refrain from any new policy action when the transaction costs of policy control become too expensive during periods of divided government. In its extreme form, such a pattern would result in bureaucratic gridlock.

I empirically test both predictions using a new dataset of all federal regulations that underwent White House review between 1981 and 2005. The results strongly support the model. The President is significantly less willing to influence federal regulatory policy when the transaction costs of policy control are increased by the presence of either statutory or judicial deadlines. Perhaps even more significantly, split-party control of Congress reduces the number of the most important regulations on the federal agenda by 33 percent.

DEDICATION

Who else could it be? To my wife...

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ABBREVIATIONS

ACHP	Advisory Council on Historic Preservation
ADF	African Development Foundation
AID	Agency for International Development
FFIEC	Appraisal Subcommittee of the FFIEC
ATBCB	Architectural and Transportation Barriers Compliance Board
BGSEEF	Barry M. Goldwater Scholarship and Excellence in Education Foundation
CAB	Civil Aeronautics Board
CCR	Commission on Civil Rights
CPBSH	Committee for Purchase from the Blind and Other Severely Handicapped
CNCS	Corporation for National and Community Service
CEQ	Council on Environmental Quality
CSOSA	Court Services and Offender Supervision Agency for the District of Columbia
USDA	Department of Agriculture
DOC	Department of Commerce
DOD	Department of Defense
ED	Department of Education
DOE	Department of Energy
HHS	Department of Health and Human Services
DHS	Department of Homeland Security
HUD	Department of Housing and Urban Development
DOJ	Department of Justice
DOL	Department of Labor
STATE	Department of State
DOI	Department of the Interior

TREAS	Department of the Treasury
DOT	Department of Transportation
VA	Department of Veterans Affairs
FAR	DOD/GSA/NASA (FAR)
EOGGLB	Emergency Oil and Gas Guaranteed Loan Board
ESGLB	Emergency Steel Guarantee Loan Board
EPA	Environmental Protection Agency
EEOC	Equal Employment Opportunity Commission
EOP	Executive Office of the President
EXIMBANK	Export-Import Bank of the United States
FCSAB	Farm Credit System Assistance Board
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FMCS	Federal Mediation and Conciliation Service
GSA	General Services Administration
IMLS	Institute of Museum and Library Services
IAF	Inter-American Foundation
ICC	Interstate Commerce Commission
JMMFF	James Madison Memorial Fellowship Foundation
MSPB	Merit Systems Protection Board
NASA	National Aeronautics and Space Administration
NARA	National Archives and Records Administration
NCPC	National Capital Planning Commission
NEA	National Endowment for the Arts
NEH	National Endowment for the Humanities

NIGC	National Indian Gaming Commission
NSF	National Science Foundation
NAVAJO	Navajo Hopi Indian Relocation Commission
OFHEO	Office of Federal Housing Enterprise Oversight
ANGTS	Office of Federal Inspector, Alaska Natural Gas Transportation System
OGE	Office of Government Ethics
OMB	Office of Management and Budget
ONDCP	Office of National Drug Control Policy
OPM	Office of Personnel Management
OSTP	Office of Science and Technology Policy
OSC	Office of Special Counsel
TRADEREP	Office of the United States Trade Representative
OTHINDAG	Other Independent Agencies
OTHTEMP	Other Temporary Commissions
OPIC	Overseas Private Investment Corporation
PANAMA	Panama Canal Commission
PEACE	Peace Corps
PADC	Pennsylvania Avenue Development Corporation
PBGC	Pension Benefit Guaranty Corporation
RRB	Railroad Retirement Board
RTC	Resolution Trust Corporation
SSS	Selective Service System
SBA	Small Business Administration
SSA	Social Security Administration
TVA	Tennessee Valley Authority

OB	Thrift Depositor Protection Oversight Board
USIA	United States Information Agency
MB	United States Metric Board
USPS	United States Postal Service

CHAPTER I

TRANSACTION COSTS, THE BUREAUCRACY, AND THE POLITICS OF POLICY CHANGE

During a stint in Clinton's Office of Management and Budget (OMB) I represented the White House interests in the design of federal regulations. One of the primary functions of OMB was to ensure that agency policymaking remained consistent with presidential preferences. Perhaps the job's biggest surprise was just how difficult that seemingly simple goal was to accomplish. Even at points in the policymaking process designed to maximize presidential power other actors could make it very difficult, and sometimes impossible, for the White House to reliably control agency policymaking. Bureaucratic policy was consistently shaped by forces outside the White House, including the efforts of Congress, the courts, and the agencies themselves. Later, as a lobbyist specializing in executive branch systems, it became clear to me just how many elements affect who wins and who loses when the bureaucracy crafts policy. "Controlling" bureaucratic output sounds like a mundane task, but at times it felt like the downhill side of an avalanche.

In the spring of 1998, seven members of an EPA negotiating team sat in one of the White House conference rooms. They were there for the final round of the White House review of a regulation containing three provisions that the Clinton Administration strongly opposed. Across the table were two White House analysts – an environmental scientist and myself – in charge of the review. As the discussion turned to the disputed provisions, the

EPA program director shifted forward and repeated what he had already said a dozen times: "There isn't anything that we can do. The authorizing statute specifically prohibits us from making those changes even if we wanted to." EPA's preferences were entirely in line with the statutory requirements, in no small part because EPA staff had written a significant portion of the statutory language. Because the agency could use the statute for political cover the White House was forced to concede. Despite strong Administration opposition, EPA obtained precisely the policy it desired.

Two weeks later, the same EPA and White House teams disagreed on another issue. Despite a call from the Senate committee chair and follow-up pressure from his staff, we (the White House) were able to dictate policy to EPA with relatively little effort. Two executive orders already framed the limits of executive branch intentions, and we identified the issue early enough to steer its development. What explained the difference in outcomes? The overall political climate on environmental issues had not changed in the intervening fortnight, but the *regulation-specific* variables had changed sufficiently such that the balance of power was reversed. I spent the next decade as a White House analyst, a federal contractor, and an industry lobbyist being paid to answer the question at the heart of these examples: "When is it possible to move agency policy away from the preferences of the House, Senate, or White House?" A strategy that worked frequently was to follow EPA's approach in the first example above: use one political institution to limit the discretion of future actors.

Why does this work? What makes this strategy so integral to Washington politics that lowly agency contractors, White House staffers, and lobbyists-for-hire are all taught the same tactic as part of their jobs. One of my branch chiefs at OMB had a particularly colorful

way of driving the point home. He would say: “politicians ask the same question before pushing for a policy that you asked before taking this job – are the probable benefits worth the costs?” This illustrates how much of the Washington establishment views policy work. Each effort by the President, House, or Senate (hereafter the “principals”) to influence policy can be thought of as a transaction where a principal “purchases” a policy outcome. This transaction incurs costs and yields benefits. Thus, a principal will only enter into a policy battle when its expected benefits outweigh the anticipated costs. These entry decisions are often complex. The battles with EPA described above highlight the fact that battles over policy implementation may take many forms. The political terrain changes, resources available to the principals fluctuate, and timelines shift. Maximizing the net benefit of policy control over long periods of time requires that the principal realistically value the policy, assess the costs, and strategically approach the business of policy design.

One of the largest cost components for most policies is the degree to which choices have been constrained by earlier policy decisions. Consider the EPA examples. In the first case, Congress used a proscriptive statute to make future White House interference on the issue prohibitively expensive. The President could conceivably have refused EPA’s regulation, petitioned Congress to re-write the statute, and then forced the agency to write a regulation consistent with White House priorities. Even had it been possible, however, it would have necessitated a truly staggering expenditure of staff resources and political capital. In the second example, Congress and the agency conceivably could have overturned the White House decision. Doing so, however, would have taken a considerable toll on both Congress and the agency. It would have required a new statute, no veto, and a new regulation from the agency. Both of these examples demonstrate that one of the best ways to

increase the costs to one principal is to use the authority of another principal earlier in the process. The potential for this strategy exists in virtually every policy system. The separation of powers design means that policymaking generally takes the form of multi-stage processes in which multiple principals have the opportunity to engage in the debate. From a practical standpoint, the goal becomes one of raising the costs of future actions by one's opponents and lowering those costs to one's allies.

Within the universe of policy systems, the implementing decisions made by the bureaucracy are among the most interesting for the following reason – one principal can use the bureaucratic apparatus **to control another principal**. This seems to run against democratic theory. After all, the bureaucracy has no formal authority over the President, House, or Senate, and this would seem to place the bureaucracy in a permanently inferior position. Nevertheless, one elected principal can use bureaucratic systems to constrain another elected institution. For example, the White House frequently inserts its preferences into agency actions that become legal precedent. This creates a problem for the congressional committees that want a different outcome, as the only way to override the policy is for Congress to write a new statute that clearly specifies how the new rule is to be written. Not only is generating such a statute expensive, but the new bill would be a prime candidate for a presidential veto. By forcing the implementation arm of the federal government onto one track the President made it more difficult for Congress to alter that policy. Congress enjoys similar advantages. By allocating budgetary funds to specific agency programs it increases the costs to the administration of pushing a different policy agenda in those agencies.

The idea of competing principals warring on the field of bureaucracy policy continued to fascinate me when I turned to an academic career. Construed broadly, I am interested in the extent to which one principal can use bureaucratic systems to limit the policymaking authority of other principals in later stages of the policy process. Political Science has not yet developed a general theory or model that describes this process or predicts when it will occur. With the exception of a handful of studies, sixty years of research on bureaucratic oversight did a fine job of providing over-simplified principal-agent models that often bear little resemblance to actual policymaking in Washington.

Why Study Bureaucratic Oversight?

Political scientists study the success and failure of bureaucratic oversight for a number of reasons. First, the question of who actually controls the implementation stage of policymaking has significant implications for theories of representation. Who is making decisions about grant allocations, regulations, and enforcement actions, elected officials or unelected bureaucrats? If the answer is the latter, then what guarantee do we have that governing decisions reflect the desires of the electorate? Second, when Congress, the President, and the agencies disagree over bureaucratic outputs, who wins and under what circumstances? This set of questions is of particular interest to those who employ the new institutionalism perspective. Finally, are some policy areas more responsive to certain types of pressure than others? If so, are there structural aspects that can be recreated in other policy areas? Special interests, government bureaucrats, politicians, and political scientists spend considerable resources investigating the answers to these questions.

Research on Bureaucratic Oversight

American politics has a long history of examining the uneasy relationship between elected officials and the unelected bureaucracy (see Cushman 1941; Ogul 1976). The scrutiny is reasonable given that the authority of the federal bureaucracy presents a potential threat to the goals of representative democracy and to the effectiveness of political entities. Federal bureaucrats are not elected, yet their decisions have considerable effects on domestic and international policy. This raises the question of who is in charge of federal policy. If the politicians are in charge and the bureaucracy selects outcomes that are consistent with those of the elected institutions then no problem exists – the preferences of the electorate are taken into account and politicians can be held accountable for policy. Conversely, the electoral connection is severed if the agencies craft policy based upon their own preferences rather than those of their political principals. I am most interested in a third, more subtle possibility – that the bureaucracy generates policy that systematically favors one political institution over another in ways not intended by the system of checks and balances. For example, if the courts control agency policymaking to a disproportionate degree the federal system is certainly not functioning as intended. In sum, research on bureaucratic oversight has consistently sought to answer the question, “who controls bureaucratic policymaking?”

The Need to Delegate and the Definition of Discretion

Why is there any doubt about who controls the bureaucracy? The answer lies in the need to delegate authority to the agencies. Principals rarely dictate policy so completely that agency influence is completely removed. This creates opportunities for the policies that agencies implement to differ from the policies intended by the principals. The degree to

which the two can differ depends in part upon how much authority the principals delegated to the agencies. Measuring delegated authority is most easily done by evaluating the amount of policymaking discretion granted to the bureaucracy by the principals (McCubbins 1985; Calvert, McCubbins and Weingast 1989; Bawn 1995; Epstein and O'Halloran 1999; Shipan 2004). Efforts to operationalize discretion have run the gamut from *ex ante* measures of an "agency's potential to drift from legislative intent" (Bawn 1995), to *ex post* evaluations of "the departure of agency decisions from the positions agreed upon by the executive and legislature at the time of delegation" (Calvert, McCubbins and Weingast 1989). In terms of evaluating how one principal controls another, Bawn's *ex ante* measure (expanded to include all principals) provides a cleaner theoretical look at a principal's decision to engage in the policy process given existing constraints. This is particularly the case when examining a principal's response to the *ex ante* controls put in place by other principals earlier in the policy process.

Delegation of discretion occurs for a number of reasons. One possibility is that principals find it politically expedient to take credit for a publicly popular policy while sticking the agencies with the unpopular task of implementation. In these instances, delegation allows the principals to take credit (e.g., clean air) while avoiding the negative backlash resulting from the inevitable costs of implementation (Lowi 1967; Fiorina 1982; but see Bawn 1995). This implies that Congress does not care overmuch about the policy itself, although it may care a great deal about the credit-claiming opportunities available. It may also work to avoid absorbing too many of the costs of governance. Kiewiet and McCubbins (1991) labeled this possibility the "abdication hypothesis."

Resource scarcity may also compel principals to delegate policymaking authority (Moe 1990; Bawn 1995; Huber, Shipan, Pfahler 2001; Shipan 2004). Policymaking generally requires considerable expertise, research, and time. For example, the debate over the disposal of the nation's high-level nuclear waste in Yucca Mountain, Nevada, has occupied hundreds of scientists from five agencies for 20 years. Congress simply cannot duplicate that effort efficiently with the limited staffs available to House and Senate committees. Principals would like to leverage the considerable issue experience, technical expertise, and implementation infrastructure housed in the agencies. Ideally, this would take the form of setting the broad normative targets and letting the agencies implement those goals. To do so, however, principals must provide the agency with sufficient authority to address the technical issues, deal with time and resource constraints, make mid-course corrections, and handle unanticipated problems. Rigidly-specified constraints imposed on an agency reduce its ability to apply its expertise in a flexible, reasonable fashion. For these reasons, delegation of policymaking authority is an integral part of the policy process.

It is worth noting, however, that delegation is by no means inevitable. Congress, the courts, and the President are perfectly capable of specifying particular policies in great detail if they are interested in doing so (see Fiorina 1982). As Bawn (1995) notes, "delegation is not an all-or-nothing decision" (see also McCubbins 1985). There are certainly reasons not to delegate. Chief among these is the possibility that when a principal delegates authority to the agency, the final policy will not look like what the principal intended. Finally, the political credit for *some* policies accrues at the implementation phase. Certain grant-giving operations and constituent-specific pork barrel allocations are notable examples.

In general, however, delegation is the norm. With delegation comes the risk that the implemented outcomes will differ from the principals' preferred policies. This dissertation investigates what forms that risk takes, how principals address it, and the success that they enjoy by limiting a key aspect of agency discretion.

The Twin Natures of Policy “Drift”

The act of an agency generating policy that shifts the outcomes away from a principal's ideal point is known as “drift” (McCubbins, Noll, and Weingast 1989). From the perspective of any given principal, there are two possible sources of drift.¹ First, an agency may shift outcomes away from the principal's ideal point if the agency's policy preferences are different from those of the principal. I refer to this type as *agency-driven drift*. Theories of *agency-driven drift* assert that the agency has autonomous policy preferences (Lowery 2000; Niskanen 1971; Moe 1990; Golden 2000), and that it uses its discretion to push policy away from the principal's preferred option. For example, EPA is widely believed to have actively worked against the environmental agenda of President Reagan during the mid-1980s. This is by far the most studied aspect of bureaucratic control. A multitude of scholars discuss attempts by Congress to limit *agency-driven drift* (see McCubbins 1985; McCubbins and Schwartz 1984; Calvert, McCubbins and Weingast 1989; Bawn 1995; Epstein and O'Halloran 1999). Research has also asked how much control the President can exert to limit *agency-driven drift* (see Wood and Waterman 1991, 1993; Cooper and West 1988; Moe 1982). Regardless of the principal, the problem revolves around a recalcitrant agency actively working against its political masters.

¹Excluding chance or unintended consequences.

The second type of drift – *principal-driven drift* – occurs when one principal struggles against another to control agency outputs. Unsurprisingly, principals do not always agree about what constitutes the best policy outcome. The separation of powers system precludes the possibility that one principal can exercise complete control over the policy process within the bureaucracy. Put another way, no meaningful system of governance at the federal level is solely the purview of a single political institution. Structurally, this increases the likelihood that *principal-driven drift* will appear in those instances when principals disagree over policy endpoints (Whitford 2005, Shipan 2004, Wood and Bohte 2004). Further, intra-branch principal conflict (e.g., House vs. Senate, committee vs. floor) creates significant opportunities for *principal-driven drift* (Bawn 1997, Shipan 2004). The challenge created by *principal-driven drift*, then, is for one principal to “lock in” bureaucratic policy such that other principals at later stages cannot overturn it.

Returning to the central question of this dissertation, can one principal control the policy influence of another through the medium of agency policymaking? The bureaucratic oversight literature dealing with this question has been, on the whole, unable to reach a conclusion about the viability of the mechanism. This is largely due to an underspecified theoretical approach generated by the path that the literature has taken, which is the subject of the next section.

The Bureaucratic Oversight Literature’s Treatment of Drift

Early on, the bureaucratic oversight literature did not address questions of *principal-driven drift* because the general consensus was that the agencies, not the principals, were in control of bureaucratic policy. This precluded the possibility that one principal is using the

bureaucracy to control another principal's policy impact. In these "strong bureaucracy" models agencies are relatively effective at using resource advantages to implement policy preferences regardless of the preferences of Congress or the President. Thus, scholarship called into question the efficacy of oversight by political principals (e.g., Dodd and Schott 1979; Niskanen 1971; Ogul 1976; Wilson 1989; Lowi 1979) to control the bureaucracy. Principals appeared to lack either the resources or the political will to consistently check *agency-driven drift*, much less engage in activities designed to limit *principal-driven drift*. Strong bureaucracy models have all but disappeared in the last three decades (Lowery and Brasher 2004), gradually giving way to models that reach the opposite conclusion regarding bureaucratic power.

The Rise of Principal-Agent Models of Bureaucratic Control

The change in opinion regarding the strength of the bureaucracy occurred in the 1980s as scholars employed a new framework to formally model and empirically test the question of bureaucratic control. Researchers realized that the problems resulting from delegation under conditions of information asymmetry naturally lent themselves to the principal-agent framework (Niskanen 1971; Bendor 1988). "Weak" bureaucracy theories came to dominate the literature in no small part because of this shift toward formalized principal-agent modeling (e.g., Shipan 2004; Huber, Shipan, and Pfahler 2001; Bawn 1995, 1997; Weingast and Moran 1983).

The new scholarship recognized, successfully modeled, and empirically confirmed two sources of authority with which to constrain *agency-driven drift* that previous studies had overlooked. First, principals have significant *ex ante* control over agency policymaking.

Key among these controls is the authority to design the structure of the agencies themselves (McCubbins, Noll, and Weingast 1989; Wood and Bohte 2005). In so doing, they create the goals, powers, incentives, and interactive effects that govern agency behavior. Essentially, the political principals get to set the rules of the game. It would be naïve in the extreme to assume that they do so without constraining the agency in ways that reduce the likelihood of *agency-driven drift*.

Principals also have tremendous institutional authority that gives them monitoring and control options that are more effective and less resource intensive than those identified in earlier work (McCubbins and Schwartz 1984). In particular, the well-known “fire alarm” system allows politicians to constrain agency behavior without constant oversight. Aggrieved parties and interest groups notify the relevant political principals when the agency deviates from the principals’ preferred policies. Fire alarms substantially reduce oversight costs while retaining efficacy. Agencies, reluctant to risk punishment, follow the normative goals of the principals even in the absence of direct control via structural or statutory constraints. Direct oversight mechanisms (“police patrols”) also limit *agency-driven drift* (Aberbach 1990), but are more expensive to implement. For example, the President requires agencies to submit policy changes to the White House for review. This review requires significant White House resources, primarily in the form of staff time at OMB. It is, nevertheless, quite effective at ensuring that agency outputs reflect White House preferences (Cooper and West 1988).

Where are the Effects of Principal-Driven Drift?

The principal-agent models described above were parsimonious, even elegant, but they were insufficient to deal with the rising concern over *principal-driven drift*. To be fair, early research was not looking in this direction. The early principal-agent models arose in direct response to the strong bureaucracy literature. A dyadic relationship was implicit in the strong bureaucracy models – agencies drove policy right through the political institutions, so the conflict was agency vs. everyone else. When the principal-agent models were developed they incorporated a reversed-form version of the dyad and assumed that one principal was controlling the agency. If only one principal exists then *principal-driven drift* is simply not an option under consideration. Similarly, the idea that policy had multiple stages did not matter in a strong bureaucracy framework since the agency was in control every step of the way. Researchers lost no theoretical traction in looking at each step as an independent game. Later work in the principal-agent tradition has struggled to deal with the questions of *principal-driven drift* as a way to examine the inter-institutional struggle over policy influence. A significant portion of this problem resulted from the restrictive assumptions placed upon models that were initially designed to deal with *agency-driven drift*.

Two endogenous limitations render those models incapable of empirically evaluating *principal-driven drift*. First, the majority of the models assumed that the entire policy process occurs during a single stage. *Principal-driven drift* is not a problem in a single-stage system because there would never be uncertainty about whether another principal would seek to influence the process at some future stage. Of course, the single-stage assumption bears little semblance to the typical bureaucratic policymaking process. No significant bureaucratic activity is formulated, implemented, and reviewed in a single stage. Whitford (2005) argues persuasively that a more realistic model would incorporate multiple principals

influencing the bureaucracy at multiple stages. Such a model would provide greater theoretical traction. The recognition of the need for viewing bureaucratic processes as multi-stage systems appears elsewhere as well (e.g., Ferejohn and Shipan 2000; Shipan 2004).

The second assumption is that the bureaucracy responds only to a single principal. This modeling simplification makes the unrealistic assumption that an agency need only worry about the preferences of one political master. Even models that allow for multiple principals restrict interactions such that the decisions of one principal do not affect the actions of the others (see Waterman, Rouse, and Wright 2004 for an excellent discussion of this problem). Moe (1984) and others (e.g., Whitford 2005; Krauss 1999; Waterman, Rouse, and Wright 2004; Hammond and Knott 1996) argue that the dyadic approach is profoundly flawed. It does not accurately mirror the ways in which the separation of powers design forces the branches of government to share control over major bureaucratic systems, thereby ignoring all of the options created (and precluded) by multiple principals fighting over the same policy outcome.

One promising line of inquiry – the deck-stacking literature – explicitly recognizes the presence of multiple principals, multiple stages, and both sources of drift (McCubbins, Noll, and Weingast 1987, 1989; Bawn 1995, 1997; Balla and Wright 2001). As I explain at length later in this chapter, however, the deck stacking approach still has difficulty in dealing simultaneously with *principal-driven drift* and *agency-driven drift*. In addition, its chief explanatory power applies to broad policy issue areas rather than at the level of individual policies. In sum, the bureaucratic control literature has great difficulty in evaluating *principal-driven drift*. The question is, why has that remained the case?

The Problem – Conflating the Two Types of Drift

The theoretical and empirical wall that the oversight literature has run up against is one of its own making – it typically conflates the two types of drift when evaluating how to prevent agency policy from deviating too sharply from principals’ preferences. For example, a piece of *agency-driven drift* research might ask: “How can the House and Senate prevent the agency from promulgating policymaking too far from the preferences of Congress?” This ignores the possibility that *principal-driven drift* is a problem in the same policy area. Alternatively, research might ask a *principal-driven drift* question like “How can the House and Senate prevent the President from forcing agency policymaking too far from the preferences of Congress?” This question ignores the possibility that *agency-driven drift* is occurring simultaneously.

Conflating the two types of drift creates a number of problems for good scholarship. The same mechanisms that one principal might use to prevent an agency from exercising free will may have no effect on another principal’s attempts to control the policy outcomes. Equally importantly, the nature of the drift matters when designing and interpreting studies of bureaucratic oversight. If we are concerned that unelected bureaucrats are controlling policy despite the best efforts of the principals then studying *agency-driven drift* is critical. If, however, a scholar is principally concerned with understanding how inter-branch conflict shapes policy then *principal-driven drift* might become the focal point of the research. Finally, as I show in the next section, the outcomes that scholars should be evaluating are very different depending upon which type of drift they are attempting to study. For example, studies that evaluate how much political appointees matter have looked at how agency enforcement systems change when a new appointee takes office (see Wood and Waterman

1993). This can only evaluate how successful appointees are at preventing *agency-driven drift*. Assessing their success in fending off other principals would require very different measures.

This becomes a problem very quickly for examinations of *principal-driven drift*. In order to determine whether a reduction in agency discretion was intended to forestall *principal-driven drift*, one must rule out the other potential reasons for the action. There are at least two other reasons why a principal might reduce agency discretion: credit claiming and controlling *agency-driven drift*. Saying with confidence that a principal is reducing discretion due to *principal-driven drift* requires us to rule out the other possibilities – an exceptionally difficult task. Credit claiming is particularly problematic. For example, Executive Order 13148, “Greening of the Government through Leadership in Environmental Management” was significantly more detailed than it needed to be. Its specificity reduced agency discretion in policymaking, procurement, and systems management, and reduced Congress’s leeway in specifying agency procurement pathways. The last effect was, however, completely coincidental to the purpose of the executive order. Its intended purpose was almost exclusively to increase then-Vice President Gore’s visibility with the environmental community prior to the 2000 presidential election. I took part in crafting the document, and Gore’s staff were very clear about the impetus behind the executive order, its primary goal, and the intended audience. Because of the E.O.’s specificity and high-profile nature Gore was able to bolster his claim as an environmental leader. As a data point, however, it might look like an example of the President exerting policy control over agency procurement in such a way as to limit Congress’s ability engage in *principal-driven drift*.

Similarly, controlling for *agency-driven drift* presents a host of problems, chiefly due to the fact that no reliable measure of agency preference exists. Three articles have tried various workarounds, but none are compelling. Wood and Bohte (2004) attempt to overcome the lack of an agency preference measure by examining how the expectation of *principal-driven drift* affects the original designs of the agencies. This clever design increases confidence in the finding that a link between discretion and *principal-driven drift* exists. It cannot, however, account for the possibility that the same political forces that make *principal-driven drift* more likely also increase the possibility of *agency-driven drift*. In particular, research has suggested that conflict among the principals increases the likelihood of *agency-driven drift* (McCubbins, Noll, and Weingast 1987; Calvert, McCubbins, and Weingast 1989). Shipan (2004) chooses to assume that agencies do not have preferences independent of the President's. This assumption is not uncommon, but simply assuming away the presence of *agency-driven drift* does not inhibit the probability that it imposes spuriousness on the empirical tests. Epstein and O'Halloran's (1999) seminal work on delegated discretion is similarly unable to differentiate between *agency-driven and principal-driven drift*. These three pieces represent the best efforts of the literature to isolate and evaluate *principal-driven drift*. Even so, their shortcomings demonstrate why the absence of a measure of agency preference hampers this line of enquiry by forcing the conflation of *agency-driven and principal-driven drift*. How, then, can the study of *principal-driven drift* move forward?

A Transaction Cost Model of Behavior

The principal-agent literature has begun to employ the transaction cost approach within multi-principal, multi-stage models to address questions of *principal-driven drift* (Macher and Richman 2008). The transaction cost approach provides a micro-theory of behavior that applies to principals and agents alike, thereby allowing decisions by multiple actors on the same policy question to be evaluated consistently and systematically. This in turn allows a rigorous examination of *principal-driven drift* that adequately controls for the effects of *agency-driven drift* on principal decision making.

All changes to federal policy involve two broad categories of costs that apply to both the winners and the losers. The first category includes the actual expenditures required by the programmatic change and the political costs created by the competition over the issue. The second category is made up of the costs required to bring the decision about. These include the procedural costs imbedded in the processes that govern the decision making process, and many of the enforcement costs of implementing the policy change. Costs in this latter category make up the bulk of the political transaction costs. Transaction costs vary issue by issue depending upon the processes that apply to the issue, the policy and legal precedents already in place, and the difficulty of implementation.

The term “political transaction costs” was first coined by North (1990). Based upon a bounded-rationality model of micro-level decision making, transaction costs capture the idea that sometimes controlling an agency output is simply more costly to a principal than the outcome is worth. Thus, the decision to constrain an agency’s policy discretion is dependent upon the cost to the principal of constraining the agency. Principals prefer, therefore, those control mechanisms that are least costly to implement. Epstein and O’Halloran’s (1999) provide an excellent definition of transaction costs: “When we refer to political transaction

costs, then, we mean transaction costs that arise in transactions among political actors” (44). A similar definition is used by Wood and Bohte (2004). One of the benefits of the transaction cost approach is that it provides a micro-theory of behavior capable of capturing the incentives imbedded in a principal’s decision to delegate discretion. In particular, coupled with the right model, the approach can differentiate between *agency-driven* and *principal-driven drift* sufficiently to examine them independently.

Transaction costs are commonly known in the literature as part of decision-making “friction” (Jones, Sulkin and Larsen 2003; Godwin, Lopez and Seldon 2008). Political principals incorporate these costs into the decision to pursue a particular policy change or invest the resources elsewhere. This is a critical point. It suggests that if one principal can raise the transaction costs to another principal high enough relative to the benefits then the second principal will not engage on the issue. Raising the transaction costs can be accomplished by strategies such as structuring the political environment surrounding the decision, altering the informational costs of decision making, and instituting new precedents or requirements governing the issue. Other theories, such as principal-agent models and deck-stacking, incorporate some of these costs. For reasons that I describe at length in the next section, however, neither general model provides the specificity necessary to deal with the majority of bureaucratic processes.

A principal enjoys two primary advantages from raising the transaction costs to future principals seeking to influence an issue. First, the principal does not have to continually protect her initial policy. Once the transaction costs are imposed they apply to everyone, making all future changes to the policy expensive. Thus, constant oversight is not required and the principal can turn her attention to other issues. Second, the wide range of transaction

costs within political systems – and particularly those systems that require implementation by the bureaucracy – allows a targeted, issue-specific method of locking in a policy change. For example, a principal can raise the costs of overturning a specific water quality issue rather than having to make all environmental policies more difficult to adjust. Taken together, these advantages suggest that manipulating transaction costs should be one of the key tools used by principals seeking to control bureaucratic policymaking.

The logic is uncomplicated. Imagine a simple two principal, two stage scenario where Principal I and Principal II disagree over a policy outcome. In the first stage, Principal I has an opportunity to either increase or decrease agency discretion over policy design. Assuming that the agency's preferences are consistent with its own, Principal I would like to delegate policymaking discretion to the agency. Increasing discretion, however, allows Principal II to use its influence over the agency in the second stage to move policy away from Principal I's ideal point. In response to the expected *principal-driven drift*, Principal I provides less discretion to the agency than it would in the absence of the threat of *principal-driven drift*. Since decreasing discretion will increase the costs of the policy transaction, Principal I will only do so when the increase in the expected benefits justifies the costs.

One testable prediction generated by the above scenario is that as the probability of interference by principals in the future rises, so to does the current principal's willingness to incur the transaction costs arising from limiting agency discretion (assuming that the principals disagree). Recent large-n empirical tests support this hypothesis. Wood and Bohte (2005) find that the initial design of agency processes depends upon the perceived probability that principals in the future will create policy that runs contrary to the preferences of the principals in the enacting coalition. If the probability of *principal-driven drift* is high

then the enacting coalition reduces agency discretion. Epstein and O'Halloran (1999) find that Congress decreases agency discretion through statute when another principal is more likely to influence the agency outputs in future stages. Similarly, Whitford (2005) finds that Congress will willingly incur the transaction costs of reducing agency discretion in order to protect its position from other principals in the future.

The Theoretical Model

The theory behind using transaction costs to evaluate *principal-driven drift* for a given policy decision relies upon two causal links. In the first, a principal at some initial stage anticipates *principal-driven drift* and reduces an agency's discretion accordingly. The second link assumes that this reduction in discretion causes a decrease in the ability of principals at future stages to move agency policy outcomes. Thus, extant theory takes the following form:

Scholarship has not established the veracity of either link. First, as stated above, research cannot convincingly demonstrate that principals reduce discretion with the intention of constraining other principals at future stages. Thus, the explanation for why principals elect to employ the “*reduces discretion*” arrow may have nothing to do with *principal-driven drift*. Second, no scholarship to date has demonstrated that principals at future points alter their behavior in any way in response to changes in agency discretion. This makes the “*reduces principal-driven drift*” arrow nothing but conjecture. In sum, neither arrow of the model has unequivocal – or even marginally strong – support.

If, however, we are able to establish that the second link exists – i.e., that principals in later stages alter their behavior in response to changes in agency discretion – then the

expectation of *principal-driven drift* becomes a credible reason for a principal to reduce discretion. In order for the transaction cost logic to hold, reducing discretion must successfully alter the behavior of principals later in the process. Consider an empirical finding demonstrating that principals interfere less in agency policymaking as a result of another principal's decision to reduce agency discretion at an earlier stage in the process. If this is the case then it becomes reasonable to assert that part of a principal's decision to withhold agency discretion comes from expectations of *principal-driven drift*. In fact, such a finding would, alone, strongly suggest that the first link is valid for the following reason. If a principal has access to an action (reducing agency discretion) that successfully constrains future principals, then it would be naïve to assume that the principal would not use such a powerful tool. Even if the primary goal of reducing agency discretion is credit-claiming or reducing *agency-driven drift*, the transaction cost theory of behavior predicts that the added benefit of reducing *principal-driven drift* would increase its use.

Until now we have had to take the second link on faith – the data to test it simply did not exist. Testing whether one principal's attempts to reduce agency discretion at one stage actually reduces the influence of other principals in future stages requires a dataset that accurately tracks two things. First, it must identify the first principal's efforts to reduce discretion. Second, it must link that reduction in discretion to the actions of other principals in future stages *on the same policy issue*. This is the first contribution of my dissertation.

Transaction Costs vs. Deck Stacking

Many of the key benefits of the transaction cost approach are also generated by a relatively mature line of literature based upon the deck-stacking model. One of the key

theoretical advances of this dissertation is explaining how the deck-stacking micro-theory of behavior and standard political variables can be used in a ways that are as yet unexplored. To this end, the next section explains the critical differences in the theory that make the transaction cost approach a useful and distinct method of researching one principal's use of the bureaucracy to control another principal's policy reach.

The broad definition of the deck-stacking theory provided by McCubbins, Noll, and Weingast in their seminal 1987 article remains the most cogent explanation of the theory (the authors are here describing deck-stacking when creating an agency):

the coalition that forms to create an agency – the committee that drafted the legislation, the chamber majorities that approved it, and the president who signed it into law – will seek to ensure that the bargain struck among the members of the coalition does not unravel once the coalition disbands. Specifically, the coalition will seek to... create pressures on agencies that replicate the political pressures applied when the relevant legislation was enacted (255).

The enacting coalition accomplishes this goal primarily by setting the procedures that the agency must follow when implementing the policy (Balla and Wright 2001; Bawn 1995; McCubbins, Noll, and Weingast 1987, 1989). The logic is that a policy's enacting coalition can favor its constituents during agency implementation by specifying procedural requirements such as where an agency obtains information, what types of analyses the agency must undertake prior to making a decision, who the agency must consult, or how agency decisions can be challenged. In this way the coalition protects its constituents against the possibility that the agency – or some future coalition – will successfully impose policy drift. Administrative procedures are durable, difficult to overturn, and generally affect more than a single policy decision. These characteristics make them particularly attractive to the political interests that won during the enactment stage of the policy.

Deck-stacking shares some important characteristics with the transaction cost approach. They both provide a framework within which to evaluate how principals reduce the likelihood of policy drift. Similarly, they explicitly recognize that the multi-stage nature of federal policymaking creates opportunity for drift over time – and that the duration process can be measured in decades. Perhaps most importantly, the concept of political cost is present in both theories. Cost is explicit in the transaction cost approach. Within the deck-stacking theory the additional transaction costs of overcoming entrenched procedural requirements are the driving incentive behind agency and principal behavior. For example, McCubbins, Noll, and Weingast (1987) consider the case of an agency seeking a better deal: “The agency may seek to develop a new clientele for its services, but such activity must be undertaken not only in full view of the members of the initial coalition, but in an administrative process that is designed to favor them (262).” The implication is that this is a difficult task, but the authors stop short of making explicit the notion of cost. Later examinations of the deck-stacking theory connect the link between procedural requirements and transaction costs (Wood and Bohte 2004; Spence 1997).

Despite these similarities, however, the theories have two critical differences that argue in favor of using the transaction cost approach when evaluating federal policymaking at the level of individual policies. First, the deck-stacking theory is best used to address general policymaking trends, not individual policy decisions. The primary mechanism of deck stacking – administrative procedures – clearly demonstrates this broad focus. For example, the Small Business Regulatory Fairness Act of 1996 (SBREFA) imposes procedural requirements on administrative actions designed to increase the influence of small businesses. The statute requires the agency to conduct impact analyses on small businesses,

grants specific judicial recourses for small businesses, and increases small business access to agencies in a number of ways. What SBREFA does not do, however, is guarantee that the outcome of any given agency policy decision is consistent with the desires of small businesses. Not a single provision of the statute identifies a specific agency decision that will favor small businesses. Instead, SBREFA imposes administrative procedures that increase the impact/influence of small business concerns on a broad swathe of agency decisions – and does so in a way that will be difficult for any future big-business coalition to overturn.

This focus on the broad policy trends rather than specific policy outcomes is an explicit tradeoff made by the designers of the deck-stacking approach:

Specifically, the coalition will seek to combine sanctions with an institutional structure to create pressures on agencies that replicate the political pressures applied when the relevant legislation was enacted. Here, the point of administrative procedures is *not* to preselect specific policy outcomes, but to create a decisionmaking environment that mirrors the political circumstances that gave rise to the establishment of the policy (McCubbins, Noll, and Weingast 1987; 255).

Similarly, Spence (1997) says of deck-stacking through administrative procedures: “While it is true that the APA [Administrative Procedures Act] and NEPA [National Environmental Policy Act] increase the transaction costs of agency decision making, neither increases the cost of making a *particular* decision.”

This dissertation, however, requires a theoretical paradigm capable of evaluating how one principal constrains the behavior of another principal during the development of specific policy outcomes. The transaction cost theory takes the same incentive structure and understanding of political transaction costs and applies them to all levels of the policymaking process, including individual decisions. By expanding the scope of possible controls beyond administrative procedures the transaction cost approach captures the full range of constraints on a given issue. These include many that are generally excluded from the deck-stacking

approach, such as proscriptive statutory language that constrains a single decision, impeachment of political appointees, and budget cuts. Put simply, sometimes political principals lower the hammer and say to the agency “do exactly this, by the following date, and to this standard.” This is not stacking the deck to favor particular players in the future – this is taking all of the other players’ cards away and stealing the pot.

The second benefit of the transaction cost approach for my research stems from the theoretical ambiguities associated with deck-stacking theory’s concept of the “enacting coalition.” The deck-stacking theory gives the enacting coalition the prime mover advantage with which it will restrict policy drift. The difficulties begin when the theory attempts to split the general concept of drift into its *agency-driven* and *principal-driven drift* components. Deck-stacking evaluations of *agency-driven drift* have made substantial contributions to our understanding of the importance of the decision-making environment in policymaking (Balla and Wright 2001; Bawn 1995). When evaluating *principal-driven drift*, however, the deck-stacking theory encounters a problem with its use of the coalition as the unit of analysis. The theory postulates that the enacting coalition seeks to protect its policy from new coalitions that have different preferences. Specifically, the enacting coalition seeks to minimize “coalitional drift,” or drift resulting from a later coalition’s influence over the policymaking process (Wood and Bohte 2004; Bawn 1995, 1997). The concept of coalitional drift works well within the context of agency design (Wood and Bohte 2004) and the structuring of procedural authority granted to an agency (Bawn 1995). It lacks sufficient specificity, however, to evaluate how one principal attempts to constrain *principal-driven drift* within the same “coalition.” This is problematic because, as Moe (1990) points out, there is considerable ambiguity regarding who makes up the “enacting coalition.” Does the

term encompass all participants, even those who disagree with the policy chosen, or does it refer only to those members whose policy position was implemented? The problem is that the concept of coalitional drift often assumes that members of the enacting coalition can be treated as a unitary actor that supports the chosen policy. Drift, then, can only occur after the composition of the dominant coalition changes at some future date. Moe (1990) and Balla and Wright (2001) point out that it is by no means certain that the members of the enacting coalition are united in support of the selected policy. If this is the case, then a member who supported the losing side may seek to pull the policy back toward his/her preferred option – this constitutes *principal-driven drift*, but it is not accounted for because it occurs without a change in the coalition.

For example, consider a policy decision where a statute will result in a bureaucratic policy with two possible implementation outcomes, A and B. Congress prefers outcome A, the President prefers outcome B, and both Congress and the President prefer either outcome to the *status quo*. Further assume that the President has sufficient control over agency policymaking such that the President can shift policy once the bureaucracy begins implementation. In this case, coalitional drift suggests that drift caused by principals will only be a problem when the members of the coalition change. It makes no explicit provision for the possibility that a principal within the current coalition will cause policy drift at some later stage (e.g., the implementation phase) of the process. My research, however, requires a way to handle the potential for drift from within the enacting coalition. The transaction cost approach allows a clean look at the incentives and actions of individual principals within the coalition. By changing the level of analysis from the coalition to the individual principals within the coalition I am able to evaluate how one principal (e.g., Congress) attempts to

minimize *principal-driven drift* from a second principal (e.g., the President) **within the same coalition**.

In sum, both the transaction cost and deck-stacking approaches solve some of the earlier problems inherent in studies of bureaucratic oversight by employing multi-principal, multi-stage processes and a coherent micro theory of behavior. For the purposes of this evaluating *principal-driven drift* at the level of individual decisions, however, the deck-stacking approach has two critical shortcomings. First, it has considerable difficulty in predicting how broad administrative procedures will impact a specific policy decision. Second, the theory's indecision over what constitutes the "enacting coalition" – and the resulting difficulties in defining coalitional drift – render the approach theoretically incapable of cleanly addressing efforts to control principal drift within the same coalition.

Thus, the transaction cost framework enjoys some unique advantages for research into *principal-driven drift* – advantages that have so far gone untapped. First, it utilizes a more realistic view of the world than the early dyadic, single-stage models. Second, it has a micro-theory of behavior that applies across all categories of policymaking authority. Finally, it provides the critical specificity necessary to evaluate the whether the imposition of transaction costs by one principal systematically changes the behavior of the second principal at the level of individual policies.

Contributions of this Dissertation

Contribution #1: An Empirical Test of the Transaction Cost Theory and Multi-Stage Principal Drift

I test the hypothesis that a principal's decision to limit agency discretion decreases the likelihood that other principals will attempt to control the policy's outcomes in future stages. I have chosen to test the transactions cost theory using the federal regulatory system as the target bureaucratic process. The regulatory process carries undeniable importance to the President, the House, the Senate, both parties, and the agencies themselves. Regulatory influence spans much of society, such as safety, health, transportation, corporate behavior, and the environment. By their nature, regulations (or "rules") favor some groups over others, making them one of the principal battlegrounds in the policy arena. Research on regulations has been uneven, with few empirical works investigating the implications of winning and losing within the regulatory arena. The process itself is not well-understood, and regulatory outcomes are notoriously difficult to measure cleanly (Wood & Waterman 1991).

Empirical Test #1: Statutory Deadlines and Presidential Decision Making

There are two separate empirical tests of the theory. First, I evaluate how presidential influence over regulatory outcomes is affected when Congress reduces agency rulemaking discretion. I have constructed a dataset that tracks all regulations reviewed by the White House from 1994-2005. The data allow me to identify whether the agency's rulemaking discretion is reduced by Congress through a statutory deadline. It also tracks whether the President chose to reject the regulation as submitted by the agency. This makes it possible to test whether a previous reduction in agency discretion by Congress affects the likelihood that the President will use his authority to reject a rule. The results demonstrate that, consistent with the transaction cost theory, the President is far less likely to reject large categories of regulations when Congress has already reduced the agency's discretion.

Empirical Test #2: Court Deadlines and Presidential Decision Making

The second empirical test evaluates whether court actions that reduce agency discretion have the same effect. This is necessary because the observed relationship between a pre-existing contract with Congress and presidential power may have more to do with the nature of the relationship between those two institutions than with the impact of transactions costs. The ubiquitous budgetary and lawmaking authority of the Hill could make the President responsive to Congress in a way that other institutional relationships simply do not resemble. This would damage the generalizability of my theory, and strongly indicate that I may be capturing a spurious relationship.

Fortunately, the dataset allows me to examine how judicially-imposed restrictions on the promulgating agency affect the President's imposition of policy preferences. Similar to statutory deadlines, a judicial deadline indicates that a court order reduces agency discretion by requiring that the agency promulgate the regulation by a specified date. This unambiguously means that the court imposed a meaningful constraint on the agency's policymaking authority prior to the promulgation of the rule. I use the same dependent variable as above – the likelihood that the President rejects the rule. The results once again support the hypothesis that presidential action depends in part on the amount of discretion a principal has previously granted to the agency.

Contribution #2: The Second Face of Power

The burgeoning literature on *principal-driven drift* provides the theoretical tools necessary to examine a bureaucratic oversight question that has so far gone unanswered:

“does the presence of competing principals reduce the bureaucracy’s ability to govern effectively?” By mining the divided government literature for measures of principal conflict and using an expanded version of the regulatory dataset described above I examine the effects of probable *principal-driven drift* on the volume of regulatory output. The findings strongly support the theory that principals prevent bureaucratic action when they anticipate strong resistance from other principals in the future. This has significant implications for arguments that divided government causes policy gridlock, and thereby reduces the federal government’s ability to govern effectively.

What this Dissertation Does Not Address

Before moving to the hypotheses and their empirical tests, I will discuss briefly what this dissertation does not do. First, I make no claims about where the policy preferences of the principals and the agencies originate. In the case of the principals this follows a long tradition of simply placing a principal’s preference on a single liberal-conservative dimension relative to the other principals. The evaluation of agency preferences, however, does not have quite so clean a history. Scholarship has yet to agree upon the source of bureaucratic preferences, their expression, or the appropriate modeling method. Do bureaucrats seek, as Moe (1990) states, specific policy outcomes? Is Niskanen (1971) correct that agencies seek to maximize their budgets? Or do the preferences depend, as Golden (2000) claims, on the situation? The sheer range of possibilities – and the lack of agreement – provides a compelling incentive to design tests of the model that do not require me to adjudicate among the options. It has been my experience that agencies definitely **do** have preferences that at times diverge from those of their political masters. Measuring those

preferences on a case-by-case basis for 35,000 different regulatory actions is impossible. My approach, therefore, is to recognize that agencies **could** have unique preferences. With this in mind, I design the tests evaluating one principal's reaction to another's actions in such a way that assessing the agency's preference is not required. I return to the issue of agency policy preferences in Chapter V, but I remain agnostic as to their source.

A second line of enquiry that this dissertation avoids is an evaluation of how interest groups affect policy preferences, oversight options, and the probability of *agency-driven* and *principal-driven drift*. The bureaucratic oversight literature is replete with references to ways in which interest groups intervene in the policy process – stacking the deck, fire alarms, iron triangles, and even back-room dealings – all figure prominently. In the same way that the study design sidesteps the need to locate the fountainhead of bureaucratic preferences, it also can safely ignore the effects of interest groups. As I will demonstrate in chapter four, the question of how a principal reacts to the earlier actions of another principal does not depend on interactions with interest groups. Using the initial EPA example, the agency was quick to inform the White House that a statute defined the universe of possible regulatory activity. It would not have mattered in the slightest, however, if that information had come from an interest group. Similarly, while I know for a fact that the agency drafted the proscriptive part of the statute, it would not have had any effect on the White House decision if the statutory language had been drafted by the Sierra Club instead. Because of the study design I can confidently set aside the complexities of interest group effects and preference origination.

I turn now to an explanation of the regulatory process and a description of the dataset.

CHAPTER II

THE FEDERAL REGULATORY PROCESS

If the transaction cost model works as theorized, then a pre-existing contract between the agency and Principal I that reduces agency discretion should have a negative effect on Principal II's willingness to constrain the agency at a later stage. The additional cost to Principal II of overriding Principal I's decision will, on average, reduce Principal II's willingness to pursue its policy preferences. What is needed, then, are data from a multi-principal, multi-stage bureaucratic system that allow us to track the effects of a pre-existing contract on Principal II's willingness to exercise authority. Fortunately, data are available in the regulatory arena. This chapter describes the regulatory process and the measures of principal influence.

The regulatory process has numerous stages, each of which has multiple requirements (see Kerwin 2003). For the purposes of this dissertation, however, I focus on two specific levels of the federal regulatory system: 1) the general inter-branch process that sets the parameters for agency regulatory activity, and 2) the nuances of the executive branch processes that generate the actual regulatory language. This dissertation's theoretical foundation and the specificity of its hypotheses allow me to set aside, for example, the complex rules within the House and Senate that lead to authorizing statutes. Similarly, I do not focus on what gives an entity legal standing when challenging a regulatory issue, or how the Supreme Court chooses to grant *certiorari* when a federal agency is the defendant. While

fascinating questions in their own right, the analyses that follow do not depend upon the answers to evaluate the transaction cost theory of principal behavior.

General Model of Regulation

The constitutionally-proscribed order for federal policymaking is well known. Congress writes a statute, the President signs it into law, and the courts (where necessary) opine on the results. If these were all of the steps, however, the question of who controls federal lawmaking would be far less interesting. Instead, the process has grown increasingly byzantine, in part as a response to the growing need for regulations capable of addressing issues that continue to increase in complexity and technical specialization. The growth of the process of administrative lawmaking is unsurprising. The stakes are enormous – the most expensive 31 of the 4,153 federal regulations promulgated in Fiscal Year 2001 had aggregate costs to society of \$1.6 to \$2.0 billion and aggregate benefits of \$2.4 to \$6.5 billion (OMB 2003). With these kinds of rents available the regulatory arena receives an enormous amount of attention from within and without the government. The federal bureaucracy now promulgates thousands of regulations per year on issues that span the nation’s social and economic activities (OMB 2003). Figure 1.1 provides, therefore, a more accurate depiction of the policy process.

Note that all three principals have specific points of control over agency policymaking. In later chapters I relax the assumption that the stages proceed in the order given above. In reality the President, House, Senate, and courts can influence the bureaucracy even when it is not their “turn.” I address this possibility in the empirical

chapters. For now, however, the general model above provides a useful starting point when discussing the federal process used to generate administrative law.

The Executive Branch Process

Within the “Executive Branch Generates Regulations” box in Figure 2.1 the agencies and the White House are responsible for crafting the implementing regulations. Figure 2.2 highlights the key procedural steps of the White House review process. The initial step occurs when an agency receives the statutory mandate, queries the interested public and private entities, and drafts a proposed regulation. At this point the regulation is designated as “economically significant,” “other significant,” or “not significant.” These definitions come from President Clinton’s Executive Order 12866 “Regulatory Review.” E.O. 12866 directs the regulatory agencies (excluding certain agencies such as the CIA and the independent commissions) to submit all “economically significant” and “other significant” regulations to the White House for review prior to publication. E.O. 12866 provides the thresholds for significance in the following criteria:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. (Federal Register, Vol. 58, No. 190, Oct. 4, 1993, p. 51738)

Those regulations meeting threshold number one **and** that have a novel legal or policy implication are classified as “economically significant.” Regulations meeting any of the

other thresholds – but not the first – are designated as “other significant.” In practice, the last three criteria are sufficiently inclusive to ensure that the White House can review any regulation that it wishes.

E.O. 12866 requires that the agencies send “other significant” and “economically significant” proposed regulations to the White House for review. Only administration personnel are present during these reviews. The design of these review periods specifically minimizes contact with parties outside the executive branch, including Congress and the public. For example, no one, including the public and Congress, has the exact text under consideration at the OMB. Given that these reviews constitute the final administration checks on the regulations prior to public unveiling, it is unsurprising that the White House wishes to retain the ability to alter them in an environment free from public scrutiny.

The reviews take place in the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). Substantial evidence exists indicating that the reviews further the President’s policy agenda. When President Reagan issued Executive Order 12291 (the precursor to, and model for, E.O. 12866), he intended it as a method of expanding presidential power over the bureaucracy: “In essence, OMB review institutionalizes the primacy of politics” (Cooper and West 1988). Similarly, congressional investigations found that the review process substantially increased administration control over regulatory outcomes:

While the informal, often secretive nature of the review process has made it impossible to measure the effects of E.O. 12291 with any high degree of precision, numerous documented cases of OMB influence in areas of public safety, health, and the environment strongly indicate that it has provided a very effective means of controlling policy in those instances where the administration has taken a strong interest (Energy Subcommittee Report, 1985).

Given this, I assume that any changes that occur during the review process move the regulatory outcomes closer to the administration's preferred policy. The White House has three options during review. First, it can approve the text of the regulation without change. Second, it can allow the proposed regulation to move forward, but with changes. Third, the White House can reject the rule (or force the agency to withdraw it from review). Predictably, the White House is reluctant to publicly embarrass an agency in this fashion, and the authority to reject is used sparingly.

If the proposed regulation survives White House review and the agency wishes to move forward, then it publishes the agreed-upon text in the Federal Register for public comment. The agency then drafts the final regulation, taking public comments into account. The final rule is returned for a second round of White House review. Again, the President can reject the rulemaking by returning it to the agency or forcing the agency to withdraw it. In addition, the White House can change the language here, but with one important caveat. The Administrative Procedures Act requires that the final rule remain substantively similar to the proposed rule. This makes sense from a good governance standpoint. The regulatory process is designed to allow the public to engage meaningfully in the discussion. If the requirements change dramatically between the proposed and final rule stages then the public does not have the ability to voice concerns before the agency has essentially closed debate on the subject. Thus, any changes to rule between the proposed and final stages must either come directly from the public comments or be a reasonable extension of the original proposal. If the regulation changes too dramatically then the agency must re-propose it – effectively starting the process again. From the perspective of those interested in influencing regulations, then, much of the action occurs at the proposed rule stage. If a principal or

interest group loses at the proposed rule stage the chance of succeeding at the final rule stage is slim.

If the final rule language that emerges from the review process is acceptable then the agency publishes the final rule in the Federal Register. The public once again has an opportunity to comment, although these comments are more for the formal record. Once the final rule is published in the Federal Register it has the force of law.

In this dissertation I am fundamentally concerned with **important** government actions – those regulations with sufficient impact on society to meet one or more of the thresholds of significance. E.O. 12866’s ability to call in all the rules that meet the significance thresholds account for a majority of the impact of regulations on society. Unimportant regulations comprise more than 50 percent of federal regulatory activity, yet their cumulative impact on society is negligible. Tellingly, principals rarely, if ever, engage on “non-significant” regulations. For this reason, I have chosen to focus the analyses on only those regulations that meet the significance thresholds and are reviewed by the White House. The question of how issue salience affects policy conflict is an interesting one, however, so I take care to examine it within the context of important regulations. If different levels of regulatory importance may potentially affect my outcomes of interest I retain empirical leverage by contrasting “other significant” and “economically significant” regulations.

The White House review process is particularly suited to test the transaction cost theory because of its clean measures of principal influence and easily-identified stages across issue areas. For example, on any given issue, Congress has delegated a certain amount of rulemaking discretion to the agency prior to White House review. If the transaction cost approach is correct then presidential influence over the regulation should decrease as agency

discretion decreases. Similarly, if the court has decreased agency discretion on a regulation then the President should have less opportunity to steer that regulation's outcome. Even better, the statutes and executive orders governing the regulatory process require the federal dockets to preserve remarkably precise measures of principal influence.

Two Key Independent Variables – Statutory Deadlines and Judicial Deadlines

The federal regulatory process provides multiple opportunities for principals to reduce agency discretion prior to White House review. The transaction cost theory predicts that as these principals limit agency discretion the President will be less likely to influence policy. Thus, testing the transaction cost model requires a consistent measure that identifies those regulatory actions where agency discretion was reduced by another principal prior to White House review. The data provide two such measures – statutory deadlines and judicial deadlines.

One of the unique properties of these variables is that they provide consistent indicators of congressional or judicial constraint on regulatory implementation across agencies, issue areas, and time. Prior to this dataset, correctly assessing whether a statute or judicial decision achieved a meaningful level of control over agency behavior required an encyclopedic knowledge of the agency's structure, in-depth substantive knowledge, and often a subjective judgment call. Deadlines, however, do not require subjective evaluations to determine whether the expected costs to the President of policy influence have actually increased. I explore the costs and benefits of deadlines and policy delay to each entity in this section.

The Benefits to Congress of Statutory Deadlines

The presence of a statutory deadline means that Congress wrote a proscriptive statute constraining agency discretion. A deadline mandates the date by which an agency must promulgate the implementing regulation(s). This clearly reduces the amount of delegated discretion, thereby constraining the agency's and/or the President's ability to select the time frame for promulgation. Statutory deadlines are certainly not perfect indicators of the degree to which Congress has limited the potential for drift. They do, however, reliably indicate two things – congressional interest in the regulation (and the probable existence of additional statutory controls) and a meaningful reduction in agency discretion.

Congress enjoys three potential benefits from mandating the implementation schedule. First, by specifying the promulgation date Congress prevents either the agency or other principals from engaging in what Kerwin (2003) calls “tactical delays” of the regulation. The passage of time plays a vital role in the design and implementation of policy. The importance of issues can wax and wane, the public's opinion can change, or new data may alter the fundamental nature of the policy question. Any of these time-dependent circumstances have the potential to make the original preferences of Congress more difficult to achieve if the agency is permitted to delay the promulgation of the implementing regulations. Eliminating the possibility of delay reduces Congress's uncertainty about what form the regulation will take, and precludes the possibility that the agency will delay promulgation of the policy indefinitely.

Second, limiting the timeframe within which the agency must craft the regulation can give an advantage to one interest over another. Bawn (1995) suggests that imposing statutory deadlines on agency rulemaking can have the effect of limiting the agency's ability

to employ its full complement of resources, such as information gathered from external sources. Knowing how a deadline will limit agency options allows Congress to predict which option the agency will select, thus allowing Congress to force policy that favors one constituency over another. In Bawn's example, shortening deadlines renders the agency less able to question the entrenched group's information, thereby giving the interests on the other side of the issue "less of an opportunity to respond" (Bawn 1995). Thus, under certain circumstances, Congress can impose deadlines to strategically advantage a particular interest without having to explicitly favor that group. Finally, Congress can reap credit-claiming rewards by imposing the deadline. Kerwin and Furlong (1992) note that "Congress often enacts these deadlines to placate impatient and powerful interests."

The question, then, is does imposing a deadline result in meaningful reductions in agency discretion such that Congress obtains the benefits listed above? The answer appears to be affirmative. Whitford's work on the effects of competing principals on bureaucratic policy finds that controlling the timing of policy outputs is a particularly effective method of limiting agency discretion: "For agencies, this shifting of gears – accelerating or decelerating as political overseers demand – has substantial importance for administration" (Whitford 2004). Similarly, Bawn (1995) suggests that statutory deadlines have a force-multiplier effect on other requirements put into place by Congress – the imposition of a deadline makes other controls over the agency's regulation more effective. Finally, Moe (1990) lists deadlines as the formal requirement that "simultaneously protects against the problems of political uncertainty: by locking in controls ex ante, not only are bureaucrats highly constrained in how they can use their official positions but opposing groups are effectively shut out." Thus, whichever entity controls the timing of the regulation gains a considerable

advantage in achieving its preferred policy outcomes. By specifying a deadline Congress can limit the timing dimension of both *agency-driven* and *principal-driven drift* while still allowing the agency to make use of its expertise in the technical details of the policy area.

Why then, are deadlines used so infrequently? Despite their effectiveness, Congress imposed statutory deadlines on only 12.8 percent of all regulations that underwent White House review between 1994 and 2005. This seems like a vanishingly small number for a constraint that yields such a wide range of benefits to Congress. The answer, I believe, lies in the expense that Congress incurs each time it writes a deadline into a statute.

The Costs of Deadlines to Congress and an Empirical Examination of their Use

Perhaps the largest category of costs to Congress of imposing statutory deadlines is that many of the advantages that Congress receives by delegating authority to the agencies no longer apply. These advantages of delegation (and the costs of not delegating) are discussed at length in Chapter I. The costs directly associated with deadlines, however, bear further explanation. First, one of the key reasons for Congress to delegate is to make use of agency expertise. Complex issues have many moving parts, and understanding how all those parts fit together requires a considerable expenditure of time and resources. Congress would generally like to set the broad policy objective and allow the agency to use its specialized expertise to bring that objective to fruition. Removing agency discretion by writing proscriptive statutory requirements reduces a key agency resource – time – in such a way that the agency has fewer policy options available. In order for the net benefit of such a move to be positive Congress must invest the time and resources necessary to understand the issue and set a deadline that allows the agency to achieve Congress's preferred outcomes.

Congress, therefore, is now duplicating agency expertise and reducing the value of delegation.

Second, imagine a circumstance where Congress imposes a deadline without conducting the due diligence necessary to select the deadline that will yield the appropriate policy. The consequences of the wrong statutory deadline can be significant in terms of undesirable policy outcomes. In the preceding section I discuss how the presence of a deadline can enfranchise specific interests or effectively determine the policy the agency must select. If the deadline is not selected with care then Congress runs the risk of forcing the agency to generate a policy outcome that is inconsistent with congressional preferences. Thus, Congress faces one of two outcomes when imposing deadlines, both of which generate additional costs to Congress. In the first, Congress expends the resources to become sufficiently expert in the issue area, and the policy outcomes are consistent with congressional preferences. In the second, Congress avoids the cost of issue expertise, but the expected value of the policy decreases because the likelihood that the policy change will yield Congress's preferred option is lower. In either case, the decision to impose a deadline increases the costs (or decreases the benefits) of policy control to Congress.

While Congress likely incurs substantial costs when imposing deadlines, it is worth considering a possible state of the world in which accurate, policy-influencing deadlines are cheap for Congress to impose. Congress writes statutory deadlines into fewer than 13 percent of regulations that make it to White House review – why employ so useful a tool so infrequently if the costs of doing so are low? If low-cost deadlines are the norm but their use is so infrequent then something else is likely preventing Congress from employing them. This would suggest that I am missing a significant part of the story and, therefore,

misspecifying my model. Thus, I need to examine whether the “cheap deadline” scenario is viable.

Such a state of the world requires that Congress has an easy and consistent method – such as interest group input – to determine what deadline is appropriate for a given issue. This would allow Congress to inexpensively and accurately set the optimal deadline without incurring the resource costs of duplicating agency expertise. Fortunately, the “low cost” theory and the “high cost” theory generate vastly different predictions that are testable using the regulatory database. If deadlines are cheap then Congress should impose deadlines whenever doing so would increase the likelihood of policy control. Conversely, if deadlines are expensive to craft, then the decision calculus is not simply one of whether a statutory deadline will successfully steer policy outcomes. It becomes a cost-benefit calculation where the expected benefit of controlling the policy is balanced against the costs of imposing the deadline. In this case, Congress’s willingness to shoulder those costs will rise as the expected benefit of policy control increases.

In order to test which case best fits the data I examine whether Congress is more likely to impose deadlines on “economically significant” rules rather than “other significant” regulations. As mentioned previously, “economically significant” regulatory actions have greater impacts on society than do “other significant” regulatory actions. If Congress is equally likely to impose deadlines on regulations meeting both thresholds of significance then the costs of deadlines are likely low since Congress is willing to impose deadlines regardless of the expected benefit. In contrast, if Congress is disproportionately likely to impose deadlines on “economically significant” regulations, this suggests that the costs associated with deadlines are substantial enough to matter.

To evaluate whether the probability that Congress imposes a statutory deadline varies by the economic significance of a regulation, I estimate an unconditional agency fixed effects model with standard errors clustered by agency. This model estimates the probability of a statutory deadline as a function of the economic significance of the regulations and agency dummy variables.² The inclusion of the agency dummies controls for any unobserved time invariant agency characteristics that influence the probability that a statutory deadline is imposed. The excluded agency is the Department of Agriculture. As seen in Table 2.1, policies that are deemed “economically significant” are 9.6 percentage points more likely to have a statutory deadline relative to “other significant” regulations. Given that 10.5 percent of “other significant” regulations have statutory deadlines, this represents a 91.4% increase in the probability that Congress imposes a statutory deadline. Thus, as the probable benefits of policy control increase so too does Congress’s willingness to write statutory deadlines. This provides considerable support for idea that deadlines are costly to Congress. The coefficients on the other agency dummy variables indicate how the average probability that a regulation in that agency has a statutory deadline differs from that of agriculture rules. The variation among the agencies demonstrated no discernable pattern.

This analysis does have an important caveat. I do not include any additional information about the political environment at the time that the statute was passed – my current data does not allow that level of specificity by statute. This may result in an underspecified model if, for example, a political variable such as divided government influences both the likelihood that a given statute has a deadline and the likelihood that the statute addresses a policy capable of producing “economically significant” regulations. In

²While my original dataset includes 6,202 regulations, this analysis only includes 6,061 regulations because 6 agencies did not have any regulations with statutory deadlines.

the future I will collect data on the authorizing statutes for a random stratified sample of my regulations to allow the inclusion of additional control variables. Despite this limitation, however, I feel that the logic of the delegation literature and this rudimentary empirical test provide confidence that deadlines impose costs on Congress.

Statutory Deadlines and Presidential Control

How do statutory deadlines affect the President's willingness to influence policy? The transaction cost theory predicts that a meaningful constraint on presidential influence will result in fewer policy interventions by the President. To test this assertion I need to determine a) what types of policy influence the President would exert in the absence of deadlines, and b) whether those options were curtailed by the presence of statutory deadlines. The second is an empirical question that I answer in Chapter III. The first, however, I address here. I first discuss the benefits of policy delay (the type of influence directly curtailed by statutory deadlines), and then discuss how those benefits are affected by the imposition of deadlines.

The President can reap substantial rewards from Kerwin's (2003) "tactical delay" of regulations. A delay can generate three broad categories of benefits to the White House – policy benefits, constituent benefits, and political benefits. First, the rule may look very different if the President can wait out the current policy environment. Delaying the rule even a relatively short time can allow the issue to fade in importance, give interested groups time to generate new data that changes the nature of the policy question, or allow Congress (or a new Congress) to prioritize other issue areas. Thus, delaying the rule potentially increases the President's influence – or allows him to obtain a different outcome with the same amount

of influence – than would have occurred had he been forced to promulgate the rule a year earlier. Second, delaying a regulation may provide immediate and direct benefits to a constituent group that yield political capital to the President. For example, consider an industry facing new and more stringent regulations on a production process. A delay in the codification of the rule gives the industry precious time to move assets out of the regulated area, create alternative streams of production, and delay expected penalties. A delay in the imposition of stringent regulations can make a significant difference in the stock price on Wall Street. Finally, a President may simply want to avoid promulgating a regulation at a politically sensitive time. Delaying the policy until the next administration or waiting out an unfavorable period in public opinion can generate substantial political benefits.

All of these benefits become more expensive to obtain if a statutory deadline determines the date at which a regulation must be codified into law. In the presence of a deadline, the President must select one of two options if he is to successfully control policy. First, the President can negotiate with Congress to write a new law that eliminates the presence of a deadline. The political costs of this are obvious. Second, the President can simply force the agency to miss the deadline. The transaction costs of this approach are high for several reasons. First, missing a statutory deadline makes the Department Secretary or Agency Administrator a candidate for jail time. While such a stint in the slammer is vanishingly unlikely, I certainly heard this complaint from agency staff during my time at OMB. Putting a chief subordinate in this position certainly incurs political costs to the President. Second, forcing the agency to miss the deadline leaves the President open to negative press charging that the President is openly thwarting the will of Congress. Finally, Congress itself can impose political costs on the President in terms of reduced cooperation,

budgetary friction, etc. Thus, statutory deadlines increase the transaction costs to the President of obtaining the benefits of controlling policy through regulatory delay.

It is worth noting that a statutory deadline frequently indicates that the authorizing statute contains other discretion-reducing requirements. For example, the Food Quality Protection Act of 1996 contained statutory deadlines, scheduling requirements of pesticide licensing, agency review requirements, public notice requirements, and a host of other reductions of agency discretion. For the President to overturn these additional provisions would require absorbing even greater political transaction costs. Thus, even though the deadline is a potent control mechanism in its own right, the other statutory provisions that likely accompany a deadline further reduce agency discretion and increase the costs of control to the President.³

Why Measuring Congressional Influence is Insufficient

Testing the transaction cost theory of inter-principal interaction requires evaluation beyond just Congress and the President as the principals of interest. The constant interaction between the two institutions creates an intricate web of interdependency and political back-and-forth. This makes it exceedingly difficult to claim that a single factor – like a statutory deadline – is the sole catalyst for presidential action. It is equally plausible that one of the multitude of informal political structures between the two institutions (e.g., logrolling) is systematically guiding the results. Further, the analysis is limited to the most important subset of regulations, thereby increasing the likelihood that Congress and the White House have informal (or unobservable) agreements influencing the President's actions. In other

³I will formally test this assertion using the statute data I plan to collect for a stratified random sample of the regulations – discussed earlier. Specifically, I will examine the correlation between the presence of a statutory deadline and the statute length under the hypothesis that more proscriptive statutes are longer.

words, unobservable political influences might create non-random patterns within the data leading to a spurious result. This would run counter to my experience – I never observed a systematic channel of influence that this analysis ignores – but I cannot rule out the possibility that one existed above my pay grade. Thus, I test the transaction cost model between two institutions that rarely engage in political logrolling – the President and the courts.

Court Control – Judicial Deadlines

The dataset also allows me to examine how judicially-imposed restrictions on the regulatory process affect the President’s control over regulatory policy. Similar to statutory deadlines, a judicial deadline reduces agency discretion when promulgating the regulation. Moe (1989) finds that judicially-imposed deadlines are a particularly effective method of constraining EPA’s regulatory efforts. In addition, it constitutes an unambiguous constraint on an agency’s policymaking authority prior to White House review. OMB records all instances of regulations with judicial deadlines that underwent review and the actions taken during review. The reasons to expect that judicial control over the timing of policy restricts presidential authority are the same as those discussed above in the statutory deadline section.

Despite their similarities in effect, however, it is important to deal with one obvious difference between the two types of deadlines. Whereas we might reasonably expect Congress to craft proscriptive statutes to deliberately restrict *principal-driven drift* by the President, we do not view court action through the same lens. The courts must wait for an entity with standing to bring suit, and even then a court deadline may result from the preferences of the litigants rather than the courts. Thus, we should not assume that the

application of judicial deadlines occurred because the courts wished to reduce *principal-driven drift* during the regulatory process. This difference is one of the primary benefits to testing the transaction cost theory using judicial deadlines. It removes a great deal of the assumed intent behind proscriptive statutes and allows me to focus solely on the effect of **any** limitation on agency discretion. It is not necessary for the theory that the courts intentionally restrain *principal-driven drift* from the White House. The fundamental question of this empirical test is to see whether the second principal is less willing to engage in the costs of policy control when another principal previously constrained the agency.

Transaction Costs and Gridlock

The final empirical chapter assesses the potential effects of divided government on regulatory gridlock. The independent variables of interest capture two types of divided government and the dependent variable measures the volume of regulation completed. I discuss each variable in greater detail in the empirical chapters. The next section provides an overview of the dataset, the coding rules, and descriptive statistics for the regulations across agency, year, and category of regulation.

CHAPTER III

THE DATA

Data Source

The data for this dissertation is a census of all regulatory actions reviewed by OMB from 1981 through 2005. It was constructed from the XML files available at: (<http://www.reginfo.gov/public/do/XMLReportList>). This website is maintained by OMB and the General Services Administration. The website provides a file for each calendar year from 1981 through the current calendar year. Each file contains information (described in detail below) about all OMB actions related to regulation completed during that calendar year. Each file from 1981 through 2005 was imported into Access then exported into SAS for cleaning.

Data Cleaning

The original dataset contains 37,619 actions completed by OMB; however, I delete the 898 actions outside the formal regulatory process. Non-regulatory actions include: announcements, white papers, technical appendices, record management documents, notices, and pre-rules. These are either administrative documents or agency updates that lack the force of law. I delete 801 regulatory actions that lack information regarding the outcome of the review process. 241 of these were designated by OMB as “emergency cases,” with the remaining 560 titled “deadline cases.” 63 regulatory actions were deleted because a review

was never completed. Seven of these were deleted because the regulatory action was not submitted properly and therefore was returned to the agency and 56 were deemed to be exempt from the Executive Order after the agency submitted the paperwork. Finally, a handful of regulatory actions (5) were deleted because integral information about the regulatory action was missing. One regulation was missing the decision variable assessing whether the rule was approved without changes, approved with changes, rejected, or withdrawn. Four regulatory actions were deleted because their agency code did not correspond to an agency name and the agency could not be determined based on a search of the on-line database. These modifications leave 35,852 regulatory actions completed between 1981 and 2005.

Data Description

The data includes the following 9 variables, each described in detail below:

- RIN
- Title
- Agency Code
- Date Received
- Date Completed
- Legal Deadline
- Stage
- Economically Significant
- Decision

Identification and Date Variables

The *RIN* is an identification number used by the federal government. It is not, however, a unique identifier for an individual regulation. A proposed and final regulation may have the same RIN number or they may not. In addition, a controversial regulatory action may have undergone several proposed versions before reaching approval. All of the

versions may be under the same RIN or the RIN may have changed for each version. Consequently, proposed and final regulatory actions cannot be linked automatically. This dissertation does not require linking proposed and final regulations in the analyses. In the future, however, finding a way to link them would provide enormous possibilities when evaluating interest group strategies at different policy stages, how different Presidents interact with the bureaucracy, or the effects of different presidential appointees on the same issue area.

The *Title* variable contains the agencies' title for each submission. 186 regulatory actions are missing this variable, but these regulatory actions have all other information including agency code and RIN. This information can be generated by using the searchable on-line database to look up each regulatory action by *RIN*, *Date Received*, and *Date Completed*. I chose not to do so because the title is not necessary for the analyses in this dissertation. In the future this variable may be instrumental in looking at subsets of regulation by issue area. The current data format allows the database to be read into Access to facilitate searches.

The *Agency Code* is a numeric code that corresponds to the agency or sub-agency submitting the regulatory actions. A separate XML file contains the agency name and acronym. These two variables were merged into the regulatory action dataset. In addition, I created two new variables: main agency code and main agency name. For regulatory actions originating in a sub-agency, these new variables were coded to reflect the larger agency in which the sub-agency is located. For regulatory actions submitted from the main agency, these new variables match the original agency variables. 197 regulatory actions were

missing agency codes. This information was found by using the searchable on-line database to look up each regulatory action by *Title*, *Date Received*, and *Date Completed*.

Date Variables

The *Date Received* provides the day, month, and year that a regulatory action was received by OMB, while the *Date Completed* provides the day, month, and year that a regulatory action was completed by OMB. These variables could be used calculate how long the action was under review at OMB. However, different administrations have chosen to selectively enforce the 90-day review time at different points in their term. Thus, the measure would not be reliable across time.

Volume of Regulatory Actions

The 35,852 regulatory actions fall into 189 agency or sub-agencies which translates into 81 main agencies. The table below lists the main agency names and the number of regulatory actions completed between 1981 and 2005. As seen in the Table 3.1, 10 agencies account for approximately 79 percent of all regulatory actions completed between 1981 and 2005 and 15 account for a full 90% of the actions. Department of Agriculture completed the largest number of regulatory actions – 6,639 (19 percent) over this time period. Department of Health and Human Services completed 12 percent (4,185) while the Environmental Protection Agency completed approximately 11 percent of the regulatory actions (3,895). Department of Transportation completed 10 percent of the regulatory actions (3,459). Combined these 4 agencies account for 50% of all regulatory activity completed between 1981 and 2005.

A simple number or percentage by agency does not capture the substantial intra-agency variation that occurs over time as the regulatory activity of a given agency waxes and wanes. Note that not all agencies were active across the full time period. In some cases, this simply indicates a lack of regulatory output. In others, however, it may reflect the sometimes-transitory nature of agencies as they come into (and fade out of) existence. Table 3.2 provides the number of regulatory actions completed by each agency over time.

Threshold of Significance

As discussed in Chapter 2, E.O. 12866 sets guidelines for defining the significance of regulations. OMB only reviews regulations meeting the “economically significant” and “other significant” status. The *Economically Significant* variable captures whether the regulatory action was “economically significant”. “Economically significant” regulatory actions are those with an annual effect of \$100 million or more on the national economy (Executive Order 12291, 1981; Executive Order 12866, 1993). Since 1981, all regulations meeting the \$100 million threshold **and** having novel legal or policy implications have been required to undergo White House review. These two criteria ensure that the rule has substantial quantifiable economic impacts and also engages an important segment of national policy.⁴ This designation allows for consistent tracking of the most important regulations in terms of economic effect and public salience. In addition, Congress uses the same \$100 million threshold when it reviews regulations under the Congressional Review Act, thus ensuring that the executive and legislative branches are using similar measures of importance

⁴Rules that reach the \$100 million threshold but are not reviewed by the White House include actions such as the re-licensing of a given chemical. Such rules do not generally have novel legal or policy implications. Note that the White House reserves the right to review any regulation should it surface as an issue requiring oversight.

for the purposes of this analysis. Between 1981 and 2005, OMB reviewed 1,992 “economically significant” regulatory actions from 31 agencies.

Figure 3.1 describes the number of “other significant” and “economically significant” regulatory actions completed in each year. The marked difference in the number of “other significant” regulatory actions completed before and after 1993 reflects the change in how E.O. 12291 and E.O. 12866 approached regulatory review. At the beginning of regulatory review, no one was quite sure how it would work. Reagan chose to err on the side of caution and kept the threshold for “other significant” regulatory actions very low. This ensured that the White House saw virtually everything, but it also meant that OMB reviewed thousands of regulations per year. Predictably, this caused substantial delays – OIRA has never had more than 50-60 analysts at any one time. Clinton changed the review process by reducing the number of regulations termed “other significant” to diminish review times. His Executive Order cleverly allowed the White House to call in every regulation that it wanted to review while still avoiding the procedural burden of reviewing unimportant regulations. Note that the number of “economically significant” regulations called in for review did not diminish when the executive orders changed. The \$100 million threshold is used by both congressional and executive order review processes, and has remained unchanged since 1981. On average 77 “economically significant” regulatory actions are completed each year (SD=19). The graph highlights the consistency of that number over time with the exception of 1991 through 1994 where the number was somewhat higher.

Table 3.3 describes the number and percentage of “economically significant” regulatory actions over time. The number ranges from 52 in 1981 to 126 in 1991. Prior to the change in the Executive Order, approximately three percent of regulatory actions in the

average year were classified as “economically significant.” After the change, approximately 15 percent were considered “economically significant.” This change is almost exclusively due to the reduction in “other significant” regulations undergoing review.

Regulatory Stage

The *Stage* variable describes the type of OMB action evaluated. As discussed earlier, given the topic of this dissertation, non-regulatory actions were deleted from the database. The remaining regulatory actions can be classified as proposed or final regulations. Table 3.4 and Figure 3.2 describe the number of proposed and final regulations completed over time. The numbers of proposed and final regulatory actions follow the same pattern over time. On average, 43 percent of completed regulatory actions in a given year are proposed rules.

Legal Deadlines

The *Legal Deadline* variable captures whether the regulatory action was subject to a statutory or judicial deadline. This is the key independent variable for my first empirical chapter. Figure 3.3 describes the proportion of regulatory actions with any deadline over time. Prior to 1994 the proportion of regulations with a deadline varies dramatically over time (3% in 1981 to 50% in 1985). This pattern calls into question the validity of this variable from 1981 - 1993. In addition, prior to 1994, the database does not distinguish between judicial and statutory deadlines, making it virtually impossible to identify which type of deadline is causing the variation. Consequently, none of the analyses examining the impact of deadlines use data prior to 1994. Finally, the chapter evaluating the impact of

divided government on regulatory outcomes excludes regulations with deadlines to avoid confounding the results.

Figure 3.4 describes the proportion of regulatory actions with each type of deadline from 1994 through 2005. The proportions of regulatory actions with no deadlines, statutory deadlines, and judicial deadlines remain relatively constant between 1994 and 2005.

White House Action

The *Decision* variable describes the action taken by OMB. These include: Approved Consistent with Changes, Approved Consistent without Changes, Returned to Agency, Withdrawn by Agency, and Suspended. The outcomes for the 35,852 regulatory actions completed between 1981 and 2005 are described in Table 3.5. The majority of regulatory actions are approved without change (69 percent). Twenty-six percent are approved with changes. Finally, OMB rejects 6 percent of regulations by returning them to the agency in one of three forms – returned, suspended, or withdrawn by agency. While the dataset allows the distinction between changed and not changed, the extent of the changes made is unclear. I change in the placement of a comma could lead to a changed designation. In addition, whatever changes occurred yielded a compromise that the President was willing to approve. Consequently, I only distinguish between regulations that were approved relative to those that were rejected in this dissertation.

As seen in Figure 3.5, the percentage of regulatory actions rejected remained relatively constant over time with one exception -2001. On average, 6 percent of regulations are rejected each year ($SD=0.04$) ranging from 3 to 8 percent each year (except in 2001). In 2001, 26 percent of regulatory actions were rejected and returned to the agencies. President

George W. Bush actively pursued turning back those midnight regulations that Clinton did not quite finish before leaving office.

The final section of this chapter examines the rejection rates among various types of regulatory actions over time. Figure 3.6 compares rejection rates for proposed and final regulations. The graphs reveal that the rejection rates for proposed and final regulatory actions follow the same pattern over time with the rejection rate for proposed regulations approximately 3 percentage points higher each year. On average, 8 percent of proposed regulations are rejected in a year ($SD=0.06$), while only 5 percent of final regulations are rejected ($SD=0.03$). The rejection rates are fairly constant over time for both types of regulations with the exception of 2001. The proportion of proposed regulations rejected ranges from 4 to 11 percent while the proportion of final regulations rejected ranges from 2 to 8 percent. In 2001, 34 percent of proposed and 20 percent of final regulations were rejected by GW Bush.

Figures 3.7 compares White House rejection rates for “economically significant” and “other significant” regulatory actions. The rejection rates for “other significant” regulations is fairly consistent over time with the exception of the spike in 2001. On average, 6 percent of “other significant” regulations are rejected each year ($SD=0.04$) ranging from 3 to 8 percent (excluding 2001 in which 26 percent were rejected). The rejection rates for “economically significant” rules is somewhat more erratic, however, the total number of such regulations is smaller – 1933 total (77 per year on average). On average, 8 percent of “economically significant” regulations are rejected each year ($SD=0.06$). The times series is marked by 2 peaks in the percentage of rejections: 1989-1990 during the middle of George Bush’s term and 2001-2002 at the beginning of GW Bush’s first term.

An Outline of the Empirical Tests

These data have numerous applications for evaluating bureaucratic systems. In the next two chapters I use the data described here to evaluate two specific predictions of the transaction cost theory. Chapter IV looks at how decreasing agency discretion affects the decision calculus of the President. Chapter V takes the transaction cost theory to its logical conclusion and examines the potential effects of increasing principal cost on the likelihood that bureaucratic gridlock results.

CHAPTER IV

TESTING THE THEORY: THE FEDERAL REGULATORY PROCESS

Introduction

This chapter empirically tests the responsiveness of the President to two different types of reduction in agency discretion that increase the transaction costs of policy control – statutory and judicial deadlines. The goal of these tests is to determine whether principals (in this case the President) are in fact less likely to influence policy as the transaction costs of doing so increase. Extant research has never empirically established this link, and the absence of such support casts doubt upon the validity of applying the transaction cost theory to questions of *principal-driven drift*. In essence, scholarship has assumed that Principal I uses reductions in agency discretion to control Principal II, but has not empirically tested whether or not Principal II responds as anticipated. Given the myriad of other reasons that Principal I might reduce agency discretion (e.g., credit claiming or controlling *agency-driven drift*), claiming *principal-driven drift* as a motive requires validation.

I have chosen to evaluate this link using the White House review of regulations as the target bureaucratic system. This segment of the federal regulatory process offers an excellent venue within which to evaluate the transaction cost theory. I begin with a look at the segment of the regulatory process under examination – White House review – and then turn to the dependent variable, independent variables, and statistical design. The findings provide

substantial support for the transaction cost theory. They also indicate the presence of a surprising degree of pre-decisional court influence over the bureaucracy.

Why White House Review?

The White House review stage offers several advantages when evaluating the effects of changes in transaction costs on *principal-driven drift*. One of the stage's great virtues is its terminal position in the overall regulatory process. Evaluating *principal-driven drift* requires identifying whether the principal in the second stage is reacting to previous reductions in agency discretion or is seeking to influence principals even later in the process. A principal's decision at some middle stage could be a response to a previous principal's action, an effort to reduce *principal-driven drift* by a future principal, or some combination of the two. Reliably distinguishing between these two motives at a middle stage in the process is extraordinarily difficult. I avoid this problem by evaluating a principal's behavior at the final stage in the process when their actions could only be in response to, rather than in anticipation of, another principal's actions.

Scholars of the courts or Congress might argue that both entities have windows of regulatory influence that occur after White House review is complete. Neither, however, affects the outcomes of presidential review. Although legal challenge occurs after White House review, the courts are tasked with evaluating whether or not an agency's regulation is consistent with its statutory mandate – not whether the agency adhered to presidential preferences. Thus, White House review has no effect on either the likelihood that a court action will occur or on its eventual result. Similarly, the White House does not factor in possible rejection by the Congressional Review Act (CRA) when making decisions. In

theory the CRA provides Congress with a final check over certain classifications of regulations. In its entire history, however, the CRA has only been employed once (the Ergonomics Rule) and it has functionally ceased to be relevant to White House decision making. For these reasons, I can reasonably assert that White House decisions are not made in anticipation of future principal-driven drift.

The second advantage stems from the first – multiple principals have had the opportunity to influence the regulations at earlier stages. Both Congress and the courts can – and frequently do – reduce agency discretion prior to White House review. The third advantage is one of scope. The White House reviews critical regulations from all but a handful of the regulatory agencies. Thus, the evaluation of the transaction cost approach – a rather broad theoretical lens – includes an equally broad set of the federal policymaking activities. This stands in marked contrast to more typical approaches to bureaucratic research that focus on a single policy area, or at best a handful of issues.

Finally, as part of White House review, OMB keeps excellent records of all three principals' influence over regulations. The data provide consistent measures of key types of principal intervention across policy areas and across time. Recalling Chapter II's discussion of the regulatory process, Congress has a clear opportunity to reduce agency discretion through the use of proscriptive language in the authorizing statute. One such proscriptive control – and the first independent variable of interest – occurs when Congress imposes a statutory deadline on agency rulemaking. In other words, Congress dictates the date by which the agency must successfully promulgate the regulations implementing the policy intent of the statute. The second independent variable, judicial deadlines, occurs when the courts impose a similar restriction on the agencies prior to White House review. I explain

how the courts directly influence regulatory outcomes prior to the agency writing the regulation, in greater detail below.

The final measure of principal activity captures whether the President is less willing to influence a regulation's outcomes when either a statutory or judicial deadline increases the transaction costs of doing so. The dependent variable – White House rejection of a regulation – provides a consistent measure of presidential influence over regulations. The mechanisms of rejection are uncomplicated. If the White House deems a regulatory action so unacceptable that it cannot be salvaged by policy compromise then it has two options – return the rule⁵ or force the agency to withdraw it. Either decision constitutes a rejection of the rule for the purposes of the analysis. For example, OMB “suggested” that EPA withdraw its first regulatory proposal on Yucca Mountain because there was no way the White House was going to approve the text as submitted.

Given these three measures of political influence, Figure 4.1 provides a view of the transaction cost theory's predictions as they apply to White House review of regulations. Next I discuss in detail the three measures, beginning with the selection of rule rejection as the dependent variable.

The Dependent Variable: Rule Rejection by the White House

Evaluating the transaction cost theory within the context of White House regulatory review requires a dependent variable that provides a consistent measure of presidential influence on regulatory policymaking across agencies and over time. Rule rejection meets

⁵Returning a rule requires that OMB craft a “return letter” that provides a detailed account of all that is wrong with the regulation. If the agency ever decided to try again then it would have to respond to each point in the return letter. These return letters are made available to the public.

this criterion. There is no more severe expression of presidential influence over regulatory policy than rejection (Kerwin 2003), and its effects are consistent across all agencies. Similarly, the process of rejection and its impact on regulations have remained constant over the entire time period. Most importantly, rejection of the rule by the White House can only be construed as an attempt to control the policy outcome. Every rule rejection carries substantial political costs to the President, embarrasses the agency, and generally airs executive branch dirty laundry to the public. If something other than policy control is the goal of the White House, there are cheaper, more effective ways to achieve political ends. Rejection is the option of last resort, used only when every other method of policy compromise has failed. Given this, the White House is understandably reluctant to use the authority – only 6 percent of the regulatory actions were rejected between 1994 and 2005.

From the perspective of the theory, I expect a decrease in the likelihood that a rule is rejected when the agencies have less discretion over the rule's policy outcomes. As discussed in Chapter I, the cost to the President of controlling a policy increases when agency discretion has been previously reduced by another principal. Rule rejection is the most expensive manifestation of White House regulatory oversight, and is therefore used only on those rules that are absolutely unacceptable. The severity of rejection imposes costs on the President. The political transaction costs to the White House have four primary components. First, as discussed in Chapter II, the White House designed the review process to remain opaque to entities outside the administrative branch. No one – including Congress – has the text of the regulation under review. This allows the White House to alter the regulation without having to publicly claim which revisions it demanded. The political benefits of such deniability can be enormous, particularly when dealing with a controversial policy and active

constituent groups. Rejecting the rule strips the White House of this option by making the rule, and the decision, public. Second, rejecting a rule consumes considerable White House and agency resources that could be profitably spent elsewhere. White House personnel will generally exhaust every option for compromise before choosing to reject a rule. On average, rejected rules require that more White House staff get involved and commit greater political resources than do rules that undergo a successful review. The agency faces a virtually identical situation. Successful reviews are generally handled by agency program staff familiar with the issue area. Conversely, I have never heard of a review ending in rejection that did not involve one or more of an agency's political appointees. Finally, public disagreement between an agency head and the White House on an important policy issue carries substantial image costs to the President. When the President rejects the considered opinion of his "expert" in the issue area he virtually guarantees himself a certain amount of political fallout that he would prefer to avoid. For all of these reasons, rule rejection constitutes the most severe measure of the presidential control over regulatory outcomes.

Its effect is as impressive as it is expensive – rejecting the rule publicly forces the agency to accept the *status quo*. Thus, rejection is at once the most expensive form of policy control and the most effective. If constraining agency discretion successfully reduces the use of this tool then the practical effect is to protect a regulation opposed by the President in a process designed to prevent just such a regulatory proposal from becoming law. Such a finding would provide considerable support for the transaction cost theory, but the analysis requires reliable measures of reductions in agency discretion imposed by other principals earlier in the process. I now turn to a description of these key independent variables.

The Independent Variables of Interest: Statutory Deadlines and Court Deadlines

As described at length in Chapter II, statutory deadlines and judicial deadlines provide excellent measures of reductions in agency discretion. The transaction cost theory predicts that as agency discretion goes down the President's likelihood of policy intervention also decreases. Thus, the transaction cost theory generates the following hypothesis:

H₁: Regulations with statutory deadlines are less likely to be rejected during White House review than are regulations without deadlines.

H₂: Regulations with judicial deadlines are less likely to be rejected during White House review than are regulations without deadlines.

A Second Implication of Pre-Decisional Court Control

The presence of judicial deadlines provides an opportunity to test a secondary question that, while unrelated to the transaction cost theory, is of interest to scholars of the bureaucracy and the courts: "Do the courts have a formal, pre-decisional check on bureaucratic policy?" In theory, the courts' formal authority is limited to reviewing an agency's interpretation of congressional intent. This can only occur **after** the agency promulgates the rule and **if** an entity with standing brings suit. The traditional view, therefore, of court/agency interaction contends that agencies are not forced to take court preferences into account when formulating policy because the courts lack formal pre-decisional authority (Moe 1985; Baum 1976, 1981; Rosenberg 1991). In theory, legal precedent supports this attitude. The lower courts were removed from the business of

interfering in pre-decisional rulemaking by *Vermont Yankee Nuclear Power Corporation v. United States* (1978). Similarly, *Chevron v. Natural Resources Defense Council* (1984) ruled that the courts must show deference to the agency's interpretation of statutory intent. These cases should prevent the courts from exercising formal pre-decisional control on regulations prior to White House review. Since judicial deadlines constitute a formal check on agency action, any finding that deadlines have significant pre-decisional influence on policy would require a reevaluation of the current conceptualization of court influence.

Such a finding would not, however, come as a complete surprise. Recent work has demonstrated that the courts have significant **informal** pre-decisional influence over bureaucratic outputs. Research studying the Corps of Engineers has found that agencies take the attitudes of the courts into account when generating decisions (Canes-Wrone 2003). Similarly, Howard and Nixon (2002) find that the IRS audit rates are responsive to the ideological composition of circuit courts, and Wood and Waterman (1993) demonstrate that EPA referrals are unusually sensitive to court decisions. Again, however, these are examples of informal, and in some cases, indirect influence. A finding of formal pre-decisional influence would add new information to the discussion of court authority over the bureaucracy.

Data

Beginning with the clean dataset described in Chapter I, I omit all regulations completed before 1994 because the data do not distinguish between statutory and judicial deadlines. I delete six regulations completed in 1994 because the type of deadline was not

available.⁶ There were 6,329 regulations completed between 1994 and 2005 with sufficient deadline information from 54 agencies. As described in detail below, these models are estimated within a fixed agency effects framework which results in the exclusion of agencies without a rejected regulation over the time period. This exclusion omits 24 agencies but only 127 regulations. The analysis, therefore, examines 6,202 completed regulatory reviews from 30 agencies.

Thirteen percent of the regulations have statutory deadlines (796 regulations), while 5 percent have judicial deadlines (294 regulations). Table 4.1 provides agency-specific statutory deadline information. Twenty-four of the 30 agencies in this analysis have one or more regulations with a statutory deadline. The Department of Health and Human Services (HHS) has the most rules with statutory deadlines - 165 regulations accounting for 21 percent of all regulations with statutory deadlines. EPA, the Department of Transportation (DOT), and the Department of Agriculture (USDA) each account for approximately 12 percent of all rules with statutory deadlines with 95, 94, and 88 rules with statutory deadlines, respectively.

On average, 12 percent of an agency's regulations were subject to statutory deadlines ($SD=.11$ with a range of 43% to 0%). Department of Energy (DOE), FAR (DOD/GSA/NASA), and Architectural and Transportation Barriers Compliance Board (ATBCB) had the highest proportion of rules subject to statutory deadlines (43, 35, and 29 percent, respectively). HHS's 165 rules with statutory deadlines accounts for 19 percent of their total rules completed. Among the agencies with nearly 100 rules with statutory deadlines, 12 percent of EPA's, 19 percent of DOT's, and 15 percent of USDA's rules had statutory deadlines.

⁶I omit the 14 regulations in the sample that have both a judicial and a statutory deadline because of the risk of spuriously assigning causality to one deadline over another.

Table 4.2 shows that only 12 of the 30 agencies have one or more regulations with a judicial deadline. The EPA has the most rules with judicial deadlines – 169 regulations accounting for 57 percent of all regulations with judicial deadlines. Department of Interior (DOI) completed 77 regulations with judicial deadlines accounting for 26 percent of all regulations with judicial deadlines. Department of Commerce (DOC) completed 18 regulations with judicial deadlines accounting for 6 percent of all regulations with judicial deadlines. Together these three agencies account for 90 percent of all regulations with judicial deadlines. On average, 2 percent of an agency's regulations were subject to judicial deadlines ($SD=.06$ with a range of 28% to 0%). EPA, DOI, and DOC had the highest proportion of rules subject to judicial deadlines (28, 22, and 7%, respectively).

Figure 4.2 compares the proportion of regulations rejected for rules without deadlines, those with statutory deadlines, and those with judicial deadlines. Among regulatory actions without deadlines, the proportion rejected averages 8 percent with the exception of 2001 when 29 percent were rejected (approximately a 350 percent increase). Among regulatory actions with statutory deadlines, on average, 4 percent of regulatory actions with statutory deadlines are rejected in a year. The rate does increase to 11 percent in 2001 (slightly less than a 250% increase). The pattern for regulatory actions with judicial deadlines is much more erratic, however there are only 294 regulations with judicial deadlines over the 12 year period compared to 796 regulations with statutory deadlines.

Methods

To determine whether reduced agency discretion impacts the behavior of the President at a later stage in the process, I examine the relationship between the probability

that a regulation is rejected and the presence of a statutory or judicial deadline. Given that agencies complete multiple regulations over the time period – on average an agency completes 17.2 regulations per year (SD=21.4, median=7) – I need to control for the agency-specific impact on the probability that a regulation is rejected. I can model this impact within a fixed effects model (estimating a different intercept for each agency) or a random effects (estimating the agency-specific intercept as part of the error term) model. Table 4A.1 in the Appendix shows the results from both models. The results are similar, but I perform a Hausman test to determine whether the differences in the results are statistically significant. I reject the null of no systematic differences in the coefficient estimates between the models ($\chi^2 = 18.8$, p-value = 0.03). This result indicates that the assumption of the random effects model – that the agency-specific part of the error term is uncorrelated with the other covariates – is violated. Consequently, this analysis employs a fixed effects model.

Because the dependent variable is dichotomous I must also choose between the available binary choice outcome models: logit, probit, or gompit.⁷ In addition, a fixed effects model may be estimated by including dummy variables for agency in a standard binary choice model (an unconditional fixed effects model) or as a conditional fixed effects model in which the likelihood function is conditional on the number of regulations rejected in each agency. The conditional and unconditional fixed effects logit models yield nearly identical results as seen in Table 4A.2 of the Appendix. Conditional fixed effects probit and complementary log log are not possible to estimate because there are not sufficient statistics

⁷A gompit model estimated using a reverse coding of the outcome and a complementary log log model. The gompit model is a reasonable alternative to the standard probit and logit models when the outcome variable includes a disproportionate number of zeros. This situation violates the symmetrically distributed error term assumption of the probit and logit models. When the mean of the dependent variable is low, in this case only 8.3 percent of regulations are rejected, the gompit model is more appropriate. The gompit model assumes that the error term is distributed with a Gompertz distribution. The cumulative Gompertz distribution is described by the following equation: $G(z) = 1 - \exp(-\exp(z))$.

available to remove the fixed effects from the likelihood function (StataCorp 2005). In addition, the unconditional versions of these fixed effects models produce biased coefficient estimates (StataCorp 2005). I have estimated the unconditional fixed effects probit and gompit (a complementary log log model with the outcome reverse coded) models as a robustness check. While the magnitudes of the estimates vary from those of the logit model, Table 4A.2 of the appendix shows that the pattern of results and the significance levels are reasonably consistent. To allow readers to compare the differences in rejection rates between agencies, I present on the results from the unconditional fixed effects logit model in this analysis.

Equation 4.1 describes the model. The covariates of interest are the indicators for statutory and judicial deadlines. The model also includes a number of control variables. First, I include an indicator for whether the regulation is “economically significant” or “other significant.” As discussed previously, economically significant regulations carry additional analytical procedural requirements that could independently alter the probability of rejection. Second, I control for the stage of the regulation. Final regulations have a substantial “hold-over” component from their proposed texts, making rejection less likely. Third, I include an indicator for whether the President was Republican to account for partisan differences in how presidents use OMB review. Fourth, I control for the different specifications of divided government: divided government in which the majority party of the two houses of Congress differ (*Split Congress*); and an indicator for divided government in which the majority party of Congress differs from the party of the President (*United Congress*).⁸ I also include two

⁸The transaction cost theory offers a weak expectation for a link between inter-branch partisan conflict and rejection rates. Overturning a statutory requirement requires the passage of a different statute – an expensive proposition for the President under any circumstances, but particularly under divided government. If costs are lower under unified government, then, the President’s willingness to reject a regulation and fight the existing

time variables: whether the rule was completed in the last 3 months of an administration; and an indicator for whether the rule was completed in the first 3 months of a new administration.⁹ The two administration variables exist because of Clinton’s famous “midnight regulations” and Bush’s response – a moratorium on regulations for the first few months of his term.

Finally, the model controls for the agency that promulgated the rule using a series of dummy variables. To account for the fact that regulations from the same agency may not be independent of each other, I cluster the standard errors by agency. Given that the coefficients from nonlinear models are difficult to interpret, I also report the percentage point change in the predicted probability that a rule is rejected for each covariate, holding all other covariates at their mean value¹⁰ (Long and Freese, 2006).

Equation 4.1:

$$\Pr(Y_{ra} = 1) = G(X_{ra}\beta + \sum_a \delta_a Z_a)$$

where

Y_{ra} = 1 if the regulation was rejected

r = index for regulation

a = index for agency

X_{ra} = vector including: Statutory Deadline,

statutory requirements may increase. With only ten years of data, however, any observed patterns are suspect. I return to the question of partisan conflict and regulation in Chapter V, which is devoted entirely to the effects of different specifications of divided government on regulatory systems.

⁹I also estimate an alternative model in which I include year dummy variables rather than Split Congress, United Congress, Republican, Last 3 Months of Administration, and First 3 Month if a New Administration. The results are consistent.

¹⁰This calculation is estimated using the prchange command from Stata’s Spost ado program.

Judicial Deadline,
Economically Significant,
Final Stage,
Republican President,
Split Congress,
United Congress,
Last 3 Months of an Administration, and
First 3 Months of New Administration.

Z_a = dummy variable for agency a

$G(z)$ = cumulative logistic distribution = $\exp(z)/[1 + \exp(z)]$

Initial Findings

The initial analysis provides support for the expectations generated by the transaction cost theory. The presence of either type of deadline results in a statistically significant reduction in the President's willingness to reject the regulation. Table 4.3 provides the results of the model, including the percentage-point change in the likelihood a rule is rejected.

The findings of the initial model strongly support both hypotheses. In the case of Hypothesis #1, the presence of a statutory deadline decreases the probability that a regulation is rejected by 3.2 percentage points, holding other covariates at their means. Since on average 9.2 percent of rules without deadlines are rejected, this represent a 35 percent decrease in the probability of rejection. Regarding Hypothesis #2, the presence of a judicial deadline decreases the probability that a regulation is rejected by 4.3 percentage points when

holding other covariates at their means. This represents a 47 percent decrease in the probability that a regulation is rejected.

These main effects represent the average impact of each type of deadline across all regulations. The effects are consistent with the idea that a reduction in agency discretion increases the political transaction costs of control to the President, thereby decreasing the likelihood that he engages in the policy process. There is, however, another side to the equation when the President decides whether to reject a rule – the expected benefits of the policy intervention. The basic calculus of the transaction cost theory suggests that the President will engage in policy control when the benefits of doing so exceed the costs. Thus, the President should be more willing to absorb the increased cost of rejecting a rule with a deadline when the expected policy benefits are greater.

Within the universe of regulations, those rules that comprise the “economically significant” group of regulations have the greatest impact on society when compared to “other significant” regulations. They meet or exceed the \$100 million requirement **and** trip at least one other threshold of significance. They are unquestionably the most important regulations under review, and as such should generate the greatest benefits to the President should he influence their outcomes. Thus, all other things being equal, the President should be more willing to reject “economically significant” regulations with deadlines than he is “other significant” regulations with deadlines.

A Second Model

To investigate whether the impact of reduced agency discretion is consistent for “other significant” and “economically significant” regulations, I estimate a second model that

includes two additional covariates: the interaction between the indicators for statutory deadline and “economically significant” and the interaction between the indicators for judicial deadline and “economically significant.” Table 4.4 provides the results for this model. The interaction between the indicators for statutory deadline and “economically significant” is not statistically significantly different from zero, indicating that the impact of a statutory deadline does not vary by significance status.

The interaction between the indicators for judicial deadline and “economically significant,” however, is statistically significantly different from zero. This indicates that the impact of a judicial deadline does vary depending upon the significance of the regulation. The positive coefficient on the interaction suggests that the impact of a judicial deadline is dampened for “economically significant” regulations relative to “other significant” rules. Given the coding on the dummy variables, the indicator for judicial deadline provides the impact of a judicial deadline on “other significant” regulations. The sum of the coefficients on judicial deadline and the interaction term provide the overall impact of a judicial deadline on “economically significant” regulations. I use a Wald test to determine the statistical significance of this linear combination of coefficients. Table 4.5 provides a summary of these results for both judicial and statutory deadlines across significance thresholds.

As seen in Table 4.5, rules with statutory deadlines are 3.4 percentage points less likely to be rejected regardless of the significance status of the regulation. This represents a 37.6 percent decrease in the probability of rejection. While the benefits associated with “economically significant” rules are higher than those of “other significant” rules, the results suggest that the increase in benefits are insufficient to overcome the additional costs imposed by a proscriptive statute. Thus, the cost side of the transaction cost equation drives

presidential behavior. The impact of judicial deadlines, however, varies considerably for regulations with different thresholds of significance. Among “other significant” regulations, the presence of a judicial deadline decreases the probability that a regulation is rejected by 5.3 percentage points. This translates to a 58 percent decrease in the probability of rejection. In contrast, the presence of a judicial deadline decreases the probability that an “economically significant” rule is rejected by 0.2 percentage points – a result that is not statistically significantly different from zero. The extremely low magnitude of the effect and the lack of statistical significance indicate that judicial deadlines do not affect the probability that a President rejects an “economically significant” regulation. In the case of judicial deadlines, the benefits side of the equation appears to have greater relative weight – enough to tip the scales in favor of rejection.

What accounts for the difference in effects of the two types of deadlines on “economically significant” regulations? Most likely, we are seeing the breadth of Congress’s lawmaking authority. As discussed earlier in Chapter II, Congress generally includes other statutory proscriptions along with statutory deadlines, the combination of which is the full amount of the reduction in agency discretion. These proscriptions are often broad in scope, thus reducing the total amount of policy that the President can expect to influence. Given this, the potential benefits to the President of policy control are reduced to the point where the costs of influence no longer justify the benefits. In contrast, the judiciary does not have the same broad authority to generate new policy boundaries. The proscriptions that accompany a judicial deadline are limited to interpretations of those congressional requirements that are under judicial consideration. The extent of the restrictions that the courts can apply on regulations, therefore, is by definition narrower in scope.

Other Variables of Interest

As expected, the probability that a final regulation is rejected is 2.3 percentage points lower than that for a proposed regulation. On average, 10 percent of proposed regulations are rejected, so this represents a 23 percent decrease in the probability of rejection. This is consistent with the linked nature of proposed and final regulations. If a President finds a rule acceptable at the proposed stage then the final rule generally receives the same treatment. I was mildly surprised that the effect was not larger.

Regarding the institution-specific covariates, the results indicate that divided government does alter the probability that the President rejects a regulation. Relative to unified government, Split Congress increases the probability that a regulation is rejected by 2.3 percentage points, holding other covariates at their means. On average 11.2 percent of rules are rejected when the government is unified, thus this represents a 21 percent increase in the probability that a regulation is rejected. On the other hand, *United Congress* decreases the probability that a regulation is rejected by 2.4 percentage points – a 21 percent decrease in the probability that a regulation is rejected. I include controls for divided government because of the reasonable concern that partisan conflict is driving the analysis. I do not, however, have great confidence that these results will prove robust if the time period of the analysis is increased. From 1994 through 2005 there is only one period of *United Congress* (under Clinton) and one period of *Split Congress* (under Bush II). Thus, only unified government has a significant presence in both administrations. I examine the relationship between partisan conflict and the regulatory process with 25 years of data in the next chapter for a more robust look at the question and find little indication of partisan influence.

A regulation completed in the last three months of an administration is neither more nor less likely to be rejected controlling for the presence of deadlines. This finding is surprising given the significant attention that Clinton's final regulatory push received both inside and outside the White House. I expected the rejection rate to decrease dramatically as Clinton worked overtime to push his agenda through. Consistent with expectations, however, a rule completed in the first three months of a new administration is more likely to be rejected. A regulation completed in the first 3 months of GW Bush's administration is 52 percentage points more likely to be rejected. This undoubtedly results from the January 20, 2001 memo in which President Bush halted all regulatory activity "unless and until a department or agency head appointed by the President after noon on January 20, 2001 reviews and approves the regulatory action" (White House Memo, 2001).

Alternative Specification #1: Rejection Rates as a Function of Resource Constraints

The initial analyses have treated the relationship between deadlines and rejection rates as a set of strategic decisions between two institutions. An alternative view of the process, however, might regard policy implementation as a classic production function. This perspective suggests a pair of alternative, resource-based explanations for the pattern of rule rejection observed in the preceding analysis. Two types of resource constraints can potentially affect the analysis. In the first, the agencies have greater resources with which to promulgate regulations capable of surviving White House review, thereby improving the quality of the regulations. The White House has offered a number of rationales for its decisions to reject regulations since 1994, including incomplete technical analyses, insufficient stakeholder involvement, and confusing or contradictory regulatory

requirements. This suggests that rejection may be the result of poorly constructed regulations rather than the presence of proscriptive statutory language such as deadlines.

If this is the case then increasing agency resources should result in lower rejection rates as agencies generate better regulations through activities such as hiring additional personnel, purchasing capital equipment, and contracting out for necessary expertise. This line of logic presents a potentially serious problem for my analysis. If Congress cares enough about a particular policy initiative to increase the funding to the implementing agency then Congress is also likely to care enough to incur the costs required to write proscriptive statutes. Thus, the number of agency regulations with statutory deadlines will increase at precisely the same time that agency funding increases. If increased funding does result in better agency regulations – and a resulting decrease in the likelihood of rejection – then my initial findings may simply be the result of omitted variable bias.

I measure the resources available to the agencies when formulating the regulation using lagged agency fiscal year budgetary outlays (Historical Tables – Budget of the United States Government Fiscal Year 2007) adjusted for inflation using the 2005 Consumer Price Index. I use a one year lagged variable because any regulations under review in a given year were almost certainly in the final stages of production during the previous year. The budget data are only available for the 23 largest agencies. Consequently, 233 regulations are excluded from this supplementary analysis.

The second potential resource constraint occurs within the White House itself. As mentioned previously, rejection is an expensive and time-consuming process. One could plausibly construct a scenario in which the probability of rejection decreases during periods when the review system is overburdened by a glut of regulatory activity. As the number of

regulations increases the resources devoted to each rule review drops, and a large influx of regulations could force the resource allocation below the threshold necessary to reject the regulation. The potential pathway for omitted variable bias is as follows. Imagine that Congress is paying particular attention to a given policy area. Under congressional scrutiny, the agencies feel pressure to generate more regulations within that policy domain. This increase in the number of regulatory reviews overburdens the White House review process such that the probability of a rule receiving sufficient attention for a rejection to ensue is lower than normal. At the same time, an attentive Congress is writing more proscriptive statutes with deadlines. Thus, the presence of statutory deadlines may coincide with, but not result from, a reduction in rejection rates stemming from a significant uptick in the regulatory workload.

Controlling for regulatory workload requires an absolute measure of regulations in a given subject area during a defined time period. Common resource measures such as “full time equivalents” (FTEs), or budgetary outlays are inappropriate when dealing with the White House review system for two important reasons. First, OIRA’s actual regulatory staff has not been reduced through cuts in FTE allocations during the time period under evaluation. This does not mean, however, that the time spent on reviewing individual regulations is constant, but it does mean that the variation cannot be captured by tracking FTE allocations. Second, reducing OIRA’s budget outside of FTEs is unlikely to have an appreciable affect on the amount of time spent on regulatory review, or even the quality of that review. Regulatory review is a personnel-intensive, rather than a capital-intensive, activity. Rule analysis simply does not require extraordinary expenditures on items such as computing power or extensive travel. Instead, the regulatory workload story is one of

unexpected increases in the volume of regulations under review. Thus, to estimate fluctuations in the workload confronting OMB during a particular regulation review, I constructed a variable that captures the number of regulations completed for the same agency in the 30 days prior and the 30 days after that particular regulation was completed. By using the date in which the regulation was completed I am able to capture both realized and anticipated workload stress. The construction of this workload variable is not possible for regulations completed in the first 30 days of 1994 and the last 30 days of 2005. This results in the exclusion of 136 regulations from this supplementary analysis. On average, an agency completed 7.86 additional regulations during the preceding and following 30 days of a regulation's completion ($SD = 5.99$). The agency workload ranges from 0 to 43 additional regulations.

The results suggest that the earlier statutory and judicial deadline findings were not the result of omitted variable bias stemming from resource or workload constraints. The effects of both types of deadlines remain significant and have similar or greater magnitudes when the workload and lagged agency budget variables are included as covariates in the models. Table 4.6 shows that the magnitude of the impact of statutory deadlines does not change while the magnitude of the impact of judicial deadlines increases somewhat (-4.3 percentage points to -6.0 percentage points). Both coefficients are still significant at the 1 percent level.

Table 4.7 provides the results for the model that includes the interactions between the indicators for deadlines and economically significant. Again, the overall pattern of results does not change. The interaction of the indicators for statutory deadline and economically significant is still not statistically significant. The interaction between judicial deadline and

“economically significant” remains statistically significant. The magnitude of the impact of a judicial deadline on the probability that an “other significant” regulation is rejected increased from -5.3 percentage points to -8.8 percentage points. A Wald test of the impact of a judicial deadline on the probability of rejection for “economically significant” reveals that the impact remains non-significant. Consequently, the resource hypothesis is not confirmed, either in terms of agency resources or OIRA workload.

Looking at the resource measures, two trends emerge. First, both variables are statistically significant, but the magnitudes of the effects are low. Second, and contrary to the expectations of the resource hypotheses, the probability that a rule is rejected actually increases when the agencies receive greater funding or when more rules are under review. An additional agency regulation under review increases the probability of rejection by 0.4 percentage points. Similarly, an additional million dollars in budgetary outlay for an agency during the year prior to the regulation’s review increases the probability of rejection by 0.03 percentage points. These results provide additional confidence that the resource/production theory is not driving the central results of the analysis. In fact, the coefficients are signed positively, indicating that these measures of resource constraints have precisely the opposite effect than predicted by the resource/production hypothesis.

Of these two variables, the workload measure presents the most promising avenue for future research. The counterintuitive finding that increasing the regulatory flow through the White House results in higher rates of rejection offers interesting puzzles to both new institutionalists and scholars of public management. For the former group, the findings raise questions about the design of the oversight process and the interactions between principal and agent. For example, in what ways does White House review anticipate agency efforts to

overload the system, what are the agency incentives to promulgate or withhold regulations during high volume periods, and do patterns in regulatory volume follow shocks to the policy subsystems such as political appointments, election cycles, or changes in presidential preferences? For management scholars, the structure of OIRA may provide clues as to how the office is able to flexibly adjust to changes in workload. For example, OIRA keeps a pool of slack resources in the form of technical specialists (economists, legal analysts, and science advisors) in house to deal with sudden fluctuations in workload. These analysts comprise anywhere from 15 to 25 percent of OIRA's regulatory oversight staff and function as shock troops for the most important regulations. Thus, an unexpected increase in regulatory workload within a policy area presents a less alarming picture than if OIRA did not possess a margin of safety within its FTE pool. In addition, OIRA has a steady stream of specialists culled from the agencies and brought in on 6 month rotations. For example, during one particularly short-staffed period five of the 28 regulatory analysts were temporarily "borrowed" from the agencies. Finally, OIRA routinely rotates its regulatory personnel through accounts. During the same 12 month period I reviewed education, transportation, energy, environment, and agricultural regulations. Anecdotal conversations with members of other federal oversight bodies such as the Congressional Budget Office suggest that management within oversight groups view flexible workforces as an important aspect of handling exogenous shocks to their core missions. It would be fascinating to know whether this pattern does indeed exist, and if that premium on flexibility gives way to an emphasis on specialization in programmatic offices.

Alternative Specification #2: Grouping by Policy Area Rather Than by Agency

The use of an agency fixed effects model has a number of merits given the transaction cost theory. It does, however, assume that the unobserved time-invariant issue area characteristics that influence the probability that a regulation is rejected occur at the agency level. For example, different agencies have markedly different internal regulatory design and review procedures, some of which mirror the goals of the White House and some of which do not. It seems likely, therefore, that rules generated by different agencies will have different probabilities of survival once they reach the White House. If, however, the issue area factors that influence rejection are instead specific to broader policy areas rather than agencies then the model may be misspecified. There are reasons to believe that this might be the case. For example, Jones, True, and Baumgartner (1997) point out that policy areas can migrate among oversight committees. In addition, agencies are inconsistent in terms of the issues that they house. For example, the Department of Defense generated the federal program on breast cancer research, and the Department of Energy housed the human genome project. Finally, an agency does not necessarily control all federal policy on a given issue area. For example, multiple agencies – not just EPA – have responsibilities for the generation and enforcement of environmental policy – much of the Endangered Species Act program resides within the Department of the Interior and the Department of Energy has an environment and health division.

Given these factors, using an agency fixed effects model may be inappropriate if the White House calculus on whether to reject a rule involves characteristics specific to the larger issue areas such as public perception of the issue (rather than the agency), the issue's importance on the President's agenda, or issue area conflict among the institutions. In this case the better option would be to group the regulations by issue area and include fixed

effects for the issue categories. Jones, True, and Baumgartner (1997) created a series of issue categories that allowed them to consistently track budget authority across time and agencies. I use a similar approach for grouping regulations by placing each regulatory action into one of the 19 major issue areas identified by Baumgartner and Jones in their *Agendas Project*.¹¹ To do so, I divided each of the agencies and sub-agencies in my data into policy areas. Appendix Table 4A.5 provides a list of the agencies and the sub-agencies and their corresponding policy areas.

The primary results of the analysis do not change when the regulations are grouped by policy area. When the policy area fixed effects rather than agency fixed effects are included in Model 1 the magnitude of the effects of deadlines increase as seen in Table 4.8. The presence of a statutory deadline is estimated to decrease the probability of rejection by 4.1 percentage points as opposed to a 3.2 percent decrease in the original model. Similarly, the presence of a judicial deadline is estimated to decrease the probability of rejection by 6.4 percentage points as opposed to a 4.3 percent decrease in the original model. This provides additional confidence in the robustness of the central findings. In addition the results from Model 2 with the policy area fixed effects are consistent with the original model.

As seen in Table 4.9, the interaction between the indicators for statutory deadline and economically significant is still not statistically significant. The interaction between judicial deadline and economically significant is statistically significant, while the magnitude of the impact of a judicial deadline on the probability that an “other significant” regulation is rejected increased from -5.3 percentage points to -9.0 percentage points. A Wald test of the impact of a judicial deadline on the probability of rejection for “economically significant” reveals that the impact remains non-significant. While the alternative specification provides

¹¹<http://www.policyagendas.org/codebooks/topicindex.html> (accessed on May 25th, 2008).

a different perspective on average rejection rates by policy area rather than agency, it explains less of the variance in the probability that a regulation is rejected. The original pseudo R-square was 0.1384 and the alternative specification yields a pseudo R-square of 0.1314. The decrease is likely due to the fact that number of issue areas decreased from 30 to 18. These results suggest that the original specification remains the preferred option.

Turning to the coefficients on the policy area dummies in Table 4.9, the excluded policy area is Agriculture which is consistent with the excluded agency from the original model – the Department of Agriculture. The selection of this issue area creates a baseline that is a composite of the activities found throughout federal regulations. Agriculture includes redistributive activities such as farm grants, and regulatory issues such as food production and storage. The coefficients on the remaining policy area dummies demonstrate how the average rejection rates for regulations in each policy area differ from the average among agricultural regulations. As seen in the table, the average rejection rates for the following policy areas are statistically significantly lower than the average rejection rate among agriculture rules: Energy; Public Lands and Water; Health; and Labor, Employment, and Immigration. The rejection rates are statistically significantly higher for Education; Government Operations; Science and Technology; Law, Crime, and Family; Macroeconomics; International Affairs and Aid; Social Welfare; and Housing and Community Development. One must be cautious when interpreting these results, however, in that this model only describes how the probability of rejection varies by policy area. It does not evaluate how the impact of a deadline varies by policy area – the primary focus of this dissertation. In order to evaluate how statutory and judicial deadlines influence rejection

rates across issue areas requires a multi-level model. Such an analysis, which I intend to do at a later date, will be of particular interest to policy scholars.

Table 4.10 provides the rejection rates by policy area to provide greater insight into how rejection rates vary by policy area. These differences raise some interesting questions regarding the relative susceptibility to rejection among regulations in different policy areas.

The categories with the highest rejection rates – Social Welfare (15.1 percent) and Housing and Community Development (14.5 percent) – generally produce agency actions that distribute public goods. In contrast, the policy areas with the lowest rejection rates – Foreign Trade (0.0%), Energy (2.3 percent), and Public Lands and Water (4.2 percent) occur within agencies focused on regulatory activity that affects industry interests. Taken together, this suggests that perhaps the President exerts a relatively large degree of control over redistributive activities – the kind that generate benefits to voting constituents. The President, however, may be less inclined to become involved in regulations that punish constituent groups, thereby allowing the White House to a) blame Congress, or b) plead ignorance.

While this specification of the model generates interesting policy data for future research, it is worth reiterating two points. First, the central findings important to the transaction cost theory remain unchanged. Second, the results suggest that the original specification explains more of the variance.

Alternative Specification #3: A Different Accounting of Time

My original model controls for time through the use of dummy variables capturing periods of divided government (divided Congress and united Congress relative to Unified

government) and indicators for the first 3 months and the last 3 months of an administration. I chose these designations because I believe they capture the most meaningful aspects of time when evaluating the probability that a regulation is rejected. A potential concern, however, is that there are other time-specific characteristics that might affect the analysis, such as attitudes of a given Congress, changing presidential preferences, etc. To account for this possibility, I test an alternative specification that includes year dummies to distinguish varying rejection rates over time. Since the variables for divided government, first 3 months and last 3 months of an administration are based solely on time, I cannot include these variables and the time dummies in the same model.

Table 4.11 provides the results for Model 1 which captures time using year dummies instead of the original specification. The results are consistent with my original specification, although the original model yields more conservative effect sizes. As seen in the table, a statutory deadline decreases the probability of rejection by 4.1 percentage points (the original estimate was -3.2 percentage points). Similarly, the presence of a judicial deadline decreases the probability of rejection by 6.3 percentage points (the original estimate was -4.3 percentages points).

Table 4.12 provides the results for the model that includes the interactions between the indicators for deadlines and economically significant. Again, the overall pattern of results does not change. The interaction between the indicators for statutory deadline and economically significant is still not statistically significant. The interaction between judicial deadline and economically significant is statistically significant. The magnitude of the impact of a judicial deadline on the probability that an “other significant” regulation is rejected increased from -5.3 percentage points to -8.6 percentage points. A Wald test of the

impact of a judicial deadline on the probability of rejection for “economically significant” revealed that the impact is remains non-significant.

Turning to the year dummies in Model 1 (Table 4.11), the excluded year is 1994. The coefficients on the year dummies indicate whether the average rejection rate in each year is statistically significantly different from the average rejection rate in 1994. Only the 2000 and 2001 year dummies have statistically significant coefficients. The average rejection rate in 2000 was lower than 1994 while the average rejection rate in 2001 was higher than 1994. The lower average rejection rate in 2000 is likely due to the fact that this was President Clinton’s last year in office and he was trying to push through as many regulations as possible to secure his legacy. Regulations under consideration were more likely to have been generated by his people and in accordance with his preferences. As such, rejection rates should go down. The higher average rejection rate in 2001 probably corresponds to the fact that Bush put a moratorium on all regulatory activity upon taking office (White House memo, January 2001).

Overall I do not believe that this alternative specification contributes additional insight into my analysis of the probability of rejection. My original specification included two variables to capture the year effects in 2000 and 2001 – an indicator for the last 3 months of an administration and an indicator for the first 3 months of a new administration. The indicator for the last 3 months of an administration was not statistically significant in the first specification. This may be because Clinton was serving his second term and therefore knew for sure that he was leaving office. He may have started his exit strategy prior to his last 3 months. As expected the indicator for the first 3 months of an administration was statistically significant and negative. My original specification also captures the impact of divided

government which is statistically significant. Finally, my original specification explains a larger percent of the variation in the probability that a regulation is rejected. The original pseudo R-squared was 0.1384 while the alternative specification only yields a pseudo R-squared of 0.1026.

Conclusion

The analysis above provides considerable support for the second link in the causal chain of the transaction cost theory. Principals do in fact alter their behavior in response to reductions in agency discretion by other principals at earlier stages in the process. The effects on regulatory outcomes are considerable. Presidents are up to 58 percent less likely to reject regulations, depending upon the type of rule and the source of the reduction in discretion. This level of responsiveness is notable both for its magnitude and the fact that it occurs during the stage in the process where the President has the greatest leverage on the regulatory process. White House review was specifically designed to minimize the effects of Congress, the public, and interest groups (Cooper and West 1988). Clearly, reductions in agency discretion constrain the range of the President's options and the severity of his influence.

Further, this tool to constrain *principal-driven drift* is not limited to the give-and-take relationship between the executive and legislative branches. If Congress was the only principal able to restrict presidential influence then we might reasonably be concerned that the findings were the result of some other aspect of political interdependency (e.g., inter-branch logrolling). To the contrary, however, the findings suggest that multiple types of principals can use reductions in agency discretion to control *principal-driven drift*. This

generalizability enhances confidence in the findings, particularly given the breadth of policy areas in the analysis.

The results are extremely robust, with both statutory and judicial deadlines exhibiting the same or greater magnitude of impact across three alternative specifications of the model. The alternative specifications offered different methods of dealing with time, resource dependence, and policy groupings. None of these analyses provided any concern that the President's responsiveness to deadlines was the result of model misspecification.

Finally, I find that the courts, counter to most conceptions of court authority, have a strong formal pre-decision influence on bureaucratic lawmaking. The impact of the courts is not limited to *ex post* interpretations of agency policy, but can influence regulations well prior to their implementation. This finding is both intriguing and of concern for the inter-institutional system of checks and balances. A conflict in the system may exist if the courts get to take part in designing regulations and also have the authority to adjudicate the appropriateness of regulatory outcomes. Further research is necessary to determine whether a court's preferences predict its pre-decisional impacts of policy, particularly given the rise of specialty courts.

The next step for this analysis, and one that I plan on conducting in the future, would be to use a multi-level model (where the agency is the second level) to determine whether the effect of deadlines varies by agency. An alternative specification would employ policy area as the second level, perhaps using the same definitions as found in the Agendas Project. This would allow me to evaluate presidential behavior within the context of party platforms, budgetary categories, and a host of other considerations that play key roles in Washington politics.

In the world of politics where even minor advantages are used, the effectiveness of reducing agency discretion as a tool to control *principal-driven drift* all but guarantees its use. It works across agencies, issue areas, and time. As a method of political control, principals could hardly ask for more.

CHAPTER V
THE SECOND FACE OF POWER: PRINCIPAL PREFERENCES
AND BUREAUCRATIC GRIDLOCK

Introduction

In this final analytical chapter I am interested in pursuing the predictions of the transaction cost theory to their logical conclusion – selective gridlock of bureaucratic policy. The first four chapters focus on the degree to which principals increase the probability that their policy preferences are implemented by altering the transaction costs of other principals. Of course, a principal will only expend the resources required to influence a policy when the net benefit of doing so is positive. What happens, however, when the benefits do not justify the costs? Until now, the analysis has only examined those policies that are already in the pipeline – regulations nearing codification into law. This restricts the principals to a simple choice between attempting to influence the policy and letting it move forward unhindered. At earlier stages in many bureaucratic processes, however, principals have a viable third option – preventing the policy change altogether.

There are a number of situations in which the transaction cost theory predicts that this option will be the best available. Imagine a scenario in which Principal I wants an agency to institute a specific policy change to the *status quo*. The principal looks forward in time, however, and sees that once the issue is placed on the agenda the agency and other principals with competing interests will exert influence over the policy outcomes. Only by expending

enormous resources on counteracting *agency-driven* and *principal-driven drift* will Principal I be able to move policy in its desired direction. If those expenditures exceed the expected benefit of the policy then the net benefit to Principal I of the policy reaching the agenda is negative. In this case, the principal would prefer that the issue never reach the agenda. Significantly, the net benefit does not even have to be negative for the principal to prefer to keep the issue off of the agenda. In a world of finite political resources, an issue may have a positive net benefit and the principal may still keep it off of the agenda if other policy issues have greater net returns.

Legislative scholarship has a convenient name for the systematic starving of the policy agenda – gridlock. Seen as a form of incrementalism, the concern about policy gridlock is that it reduces the government’s ability to govern. Federal systems will react more slowly to changing environments and outdated policies will stumble on long past the point of inefficiency. Scholars as early as Wilson (1911) have examined the causes and probable effects of gridlock on the health of the nation. Gridlock is frequently linked (although with mixed empirical support) to the presence of divided government. The logic of divided government in American politics is familiar. The design of the federal system requires inter-branch cooperation for the government to generate new law. To the extent that the parties have competing policy priorities, however, the necessary cooperation is less likely when different parties control the policymaking institutions. This heightened difficulty of brokering compromises can generate gridlock (Krehbiel 1998; Sundquist 1988; Wilson 1911).

The transaction cost theory’s predictions for divided government’s effect on bureaucratic policymaking look remarkably similar to the legislative version. A principal’s

expected net benefit of policy control decreases as the probability of *principal-driven drift* increases with each additional competing principal. Thus, divided government should increase the likelihood that the diminishing expected values of policy influence will keep more and more issues off of the agenda. For this reason, divided government provides me with a useful theoretical lever with which to examine the limits of the transaction cost theory of bureaucratic control. In the legislative literature, much of the divided government debate surrounds lawmaking, both for its considerable policy impact and the fact that the design of the federal system requires considerable inter-branch cooperation to generate new law. This reasoning and the institutional structure of rulemaking suggest that the largest category of federal lawmaking – regulations – should be vulnerable to the effects of split-partisan control.

Ironically, the bureaucratic oversight literature provides the most likely competing expectation for divided government's effect on regulatory output. Research on bureaucratic control suggests that divided government will have the opposite effect on regulatory output because policy disagreement among the principals reduces their ability to effectively control agencies' policy decisions (Ferejohn and Shipan 1990; Shipan 2004). As the oversight capabilities of the principals decrease under divided government, then, the agencies should work to increase regulatory output.

To test the competing expectations generated by the two lines of literature – divided government and bureaucratic oversight – I use a dataset of all “economically significant” regulatory actions reviewed by the White House since 1981. I find that divided government substantially reduces the number of “economically significant” regulations promulgated across the bureaucracy, strongly supporting the notion that divided government causes large-

scale lawmaking gridlock. Adding an additional principal that has competing policy preferences dramatically reduces the volume of regulations. The effect, however, is not uniform across types of divided government – the reduction occurs during periods of split-party control of Congress but not during inter-branch conflict between Congress and the President. Finally, the bulk of the gridlock effect occurs as the theory predicts – at the agenda-setting stage.

Divided Government and the Regulatory Process

While the reasoning behind divided government and gridlock makes intuitive sense, empirical examinations of patterns of legislative patterns have yielded mixed results. Mayhew (1991, 2005) and Fiorina (2003) find that split-party control of government has little discernable effect on legislative lawmaking. Other scholarship, however, finds that partisan conflict does cause significant reductions in the number and/or type of legislation (Binder 2003, 1999; Edwards, *et al.*, 1997; Howell *et al.*, 2000). Despite the depth of extant research, the literature has focused almost entirely on the passage of legislation, leaving the implementation of these laws comparatively unexamined. Statutes must be implemented by the bureaucracy through the issuance of regulations. Agencies often have considerable discretion in when and how they interpret their statutory mandates. For example, in Fiscal Year 2001 federal agencies promulgated 4,153 regulations (OMB 2003). In the same stretch, Congress enacted only 136 public laws (CQ Press 2006). To fully understand how partisanship affects lawmaking requires evaluating the regulations that comprise the vast majority of public laws. These regulations impact almost every aspect of public life, from the setting of cancer risks from drinking water to the design of security requirements at

airports.

Policy gridlock certainly occurs during the regulatory process. For example, numerous rounds of legislation and congressional compromise finally succeeded in designating Yucca Mountain as the site for the nation's high-level nuclear waste repository. This ended a 30-year debate among the House, the Senate, and the White House regarding the location of the repository. It did not, however, curb the ferocious partisan and policy battles over site's safety regulations that have been ongoing since the mid-1990s. These implementing regulations have endured numerous rounds of congressional oversight, White House rejection, and legal intervention over more than a decade, and show no signs of reaching a useful conclusion. Thus, even if an issue successfully navigates the legislative process, the policy change may still fail due to regulatory gridlock.

The regulatory process provides ample opportunities for partisan conflict to cause gridlock. Executive Order 12291 (the precursor to 12866) and E.O. 12866 have required White House review since 1981. The executive orders were put into place specifically to increase congressional and presidential control over the regulatory process (Kerwin 2003; Cooper and West 1988).¹² In addition, the House and Senate retain the authority to influence agency lawmaking by crafting statutes to further constrain the agencies (e.g., Shipan 2004; McCubbins, Noll, and Weingast 1987). Due to these oversight options, lawmaking stalemate may result when the political principals disagree over regulatory goals.

Successfully promulgating regulations clearly requires significant cooperation – or at least benign neglect – from the House, Senate, and President. How does the regulatory process respond, then, when the preferred outcomes of the principals differ due to partisan

¹²The Administrative Procedures Act (APA) also provides two periods for public comment. The President and Congress, benefit from the information provided by interested parties during these periods of forced transparency.

conflict? In the following section I extend the logic of divided government to regulatory systems to show why and how gridlock may result from the two major specifications of split-party control. I then contrast these expectations of stalemate with the bureaucratic oversight literature that predicts the opposite – that conflict among the principals may actually increase an agency’s willingness and ability to promulgate regulations.

Divided Government and Regulatory Gridlock

Unified government occurs when the party of the President also controls both chambers of Congress. Divided government is frequently treated as a dichotomous variable defined as periods where at least one chamber of Congress is of a different party than the President. Recent scholarship convincingly demonstrates, however, that divided government has both an inter-branch and an intra-branch component that require independent evaluations for gridlock effects (Binder 1999, 2003). Institutional frictions and agency incentives change dramatically depending upon which flavor of divided government is in place during policymaking.

First consider the classic inter-branch arrangement where one party controls the Presidency and the other party controls both houses of Congress (“*United Congress*”). The President and Congress have independent bureaucratic oversight mechanisms as well as the means to veto significant regulation. This institutional structure means that agencies face three primary sources of gridlock under *United Congress*. First, if the policy preferences of Congress and the President are sufficiently far apart, then one or the other branch may veto the rule no matter which policy option the agency selects. Rules are expensive to research, design, write, shepherd through the process, and promulgate (Kerwin 2003). The agency

may be less likely to go through the costly process of drafting a rule if a veto looks likely. Second, gridlock may occur when either principal slows agency policymaking using oversight authorities other than a veto. Examples include the President's appointment authority (Wood and Waterman 1991) and Congress's control over statutory language (Shipan 2004) and hearings (McCubbins, Noll, and Weingast 1987). Finally, either principal may issue a credible threat of future non-support. This occurs when the principal opposes the policy but is unwilling to incur the public and procedural costs of a veto. Instead, the principal signals that it will withhold some or all of the resources necessary for the agency to meet its responsibilities under the new law. Such threats increase the agency's costs of drafting the rule as well as reduce the future resources available to the agency. As one long-time regulatory analyst at OMB said, "We use the threat of future budgets to convince agencies to abandon bad ideas" (Phone Conversation, 2006).

Regulatory gridlock may also result during periods of intra-branch divided government when one party controls the House and the other the Senate ("*Split Congress*"). Recent scholarship demonstrates that bicameral designs increase the likelihood of gridlock (Binder 1999, 2003; Brady and Volden 2006; Tsebelis and Money 1997). In particular, Binder (1999, 2003) finds that bicameralism interacts strongly with partisan conflict to cause legislative gridlock:

Parties do affect Congress's capacity to legislate, but not strictly according to whether their control is unified or divided... Bicameralism – rather than the separation of power between executive and legislative branches – seems most relevant in explaining stalemate in the postwar period (81).

Binder's research is compelling from a legislative standpoint, but it is unclear that bicameralism will induce regulatory gridlock. Regulations may be more likely to survive under *Split Congress* since at least two of the major congressional veto tools used to control

agency regulations are more difficult to implement under split-party control. To actually repeal a rule through legislation requires a joint decision to punish the agency by both houses of Congress and the President (Shipan 2004; McCubbins, Noll, and Weingast 1987). Similarly, Congress's authority to chastise the agencies through budgetary means also requires a considerable measure of cooperation between the two chambers.

Offsetting these procedural losses in control, however, is the powerful role that oversight committees play in bureaucratic oversight. Committees hold a "privileged actor" position in the design and implementation of federal policy (MacDonald forthcoming; Ferejohn and Shipan 1990; Moe 1985; Wilson 1989). They (and their staffs) serve as the policy experts within the House and Senate, and they have a number of agency oversight and control mechanisms that allow them to intervene in the regulatory process. These include budgetary sanctions (Wilson 1989), hostile hearings that damage the credibility of agencies and career staff (McCubbins, Noll, and Weingast 1987; Wood and Waterman 1993; McCubbins and Schwartz 1984), and burdensome administrative requirements (Balla and Wright 2001). Not only do committees have considerable authority, they also pay closer attention to the agencies' regulatory decisions than does the average floor member (Aberbach 1990; Bawn 1997). The information may come in the form of "fire alarms" sounded by interest groups (McCubbins and Schwartz 1984) or institutionalized reporting requirements. Thus, committees have the information and the tools necessary to knowledgeably enforce regulatory policy. Unsurprisingly, agencies are responsive to the ideology of their oversight committees when crafting law (Shipan 2004; Weingast and Moran 1983).

This responsiveness creates the opportunity for gridlock during periods of split-Congress when partisan disagreements between the chambers results in policy disagreements

between the House and Senate committees. Considerable research supports the idea that the committees reflect the preferences of the majority party (Cox and McCubbins 1993; Krehbeil 1998; but see Weingast and Marshall 1988; and Hall and Groffman 1990) and that policy committees are used to advance the party's policy goals (Rundquist and Carsey 2002; Epstein and O'Halloran 1999). When the parties disagree over policy outcomes, then, the House and Senate committees responsible for agency oversight may also disagree over regulatory content. In this situation the agencies face incentives that increase the likelihood of gridlock.

Regulations can be very expensive undertakings for an agency in two ways. First, the agencies burn considerable material resources during rule design, implementation, and enforcement (Kerwin 2003). For example, EPA's Yucca Mountain rule and many of the Department of Energy's EnergyStar regulations tied up the bulk of the resources in their respective branches for years, and that was just during the initial rule design. Second, promulgating a politically unfavorable rule can incur substantial costs to the agency if one or more of the principals elect to punish the agency. For example, if one of the committees objects to the rule, then the costs of promulgation to the agency may include budget hassles, Hill testimony, and endless reporting requirements. Imagine a scenario in which Committee I wants a new regulation controlling review times on prescription drugs, but Committee II strongly opposes a change to the *status quo*. When the agency (probably the FDA in this fictional case) approaches the committees about the prospective policy change, Committee II "suggests" that this is not the right time for the agency to go forth with the rule. Now the costs to the agency of promulgation the rule may include budget hassles, Hill testimony, and endless reporting requirements. Even if the other committee is willing to punish the agency

to an equal degree for not promulgating the rule, the agency is still better off if it abandons the rule because it avoids the design and implementation costs of promulgation. This simplified scenario ignores other costs and benefits surrounding the promulgation decision. For example, generating policy consistent with the agency's mission comprises at least part of the agency's incentive structure (Golden 2000). In addition, presidential pressure can change the balance of costs and benefits as agencies decide whether to promulgate their rules. The scenario does, however, demonstrate why, all else being equal, committee disagreement should increase the likelihood of gridlock.

A Competing Expectation: Does Divided Government Increase Regulatory Output?

In contrast to the theory that divided government causes policy stasis, the literature on the political oversight of the bureaucracy suggests that split-party control of government may encourage agencies to promulgate regulations. As principals disagree, the agencies have more tools and/or discretion at their disposal with which to steer policy toward the agencies' preferred outcomes. To the extent that disagreement among the principals is more likely during divided government, agencies should find regulatory promulgation more attractive. This line of reasoning relies upon an important assumption – that the agencies and their principals have policy preferences that are at times in conflict. Agencies have preferences shaped by the desire to defend their missions, expand their resources, and steer policy (Golden 2000; Wood 1988). These preferences can differ from those of the principals, inspiring the agencies to craft policy that “drifts” from the away from the principals' ideal points (Wood 1988; Calvert, McCubbins and Weingast 1989; McCubbins, Noll, and Weingast 1987).

Agencies could find the climate under divided government favorable for rule generation for two reasons. First, as partisan conflict pushes apart the policy positions of the House, Senate, and President, the structure of the bureaucratic oversight process creates policymaking opportunities for the agencies. Formal models predict that under many circumstances the agencies enjoy increasing policy latitude as the policy positions of the principals diverge (Ferejohn and Shipan 1990; Shipan 2004). The models suggest that unpopular agency decisions are more difficult to overturn through the various veto mechanisms – both within Congress and between Congress and the President – as the policy preferences of the principals grow further apart. When the principals cannot agree the agencies should have greater opportunities to pursue their own policy preferences. This provides an incentive for agencies to promulgate regulations during periods of divided government.

In addition to structural changes in the oversight systems, divided government also may allow agencies to strategically exploit policy disagreement among principals. A strategic agency can side with the principal(s) whose policy preference is closest to the agency's own (Wood 1988; Wood and Waterman 1991, 1993), or even play the principals against one another (Waterman, Rouse, and Wright 2004; Wilson 1999; Calvert, McCubbins and Weingast 1989; McCubbins, Noll, and Weingast 1987). Predictably, this strategy does not afford the agencies additional leeway when the principals agree about the policy (Wood 1998). During divided government, however, partisan disagreement may create the policy space necessary for agencies to influence outcomes. The sequential nature of the regulatory process provides an additional tool should agencies choose to act strategically. Research has shown that in sequential policy processes the reactions of principals in later rounds can be

dependent on the agency's responses to principals earlier in the process (Whitford 2005). This reactionary effect enables the agencies to strategically structure their responses to influence the next principal's decision, thereby exerting indirect influence over policy. Again, however, principals who are in agreement over the policy outcome do not leave the agencies nearly as much leeway to affect the process. Assuming that policy disagreement is more likely during split-party control, then, agencies may find regulatory promulgation more attractive during divided government when they have more tools to affect policy.

Taken together, the increase in policy latitude and the expansion of strategic options under divided government provide incentives for agencies to promulgate as many regulations as possible in order to codify their preferred policies. In the following section I will empirically examine whether these incentives are sufficient to counteract the institutional friction working toward gridlock.

Defining Divided Government and Gridlock

In this analysis I specify three categories of partisan control: *Unified Government* in which all three principals share the same party, *Split Congress* in which the majority party in the House and Senate differ, and *United Congress* in which the party of the President differs from that of both houses of Congress. Between 1981 and 2005 there are two periods of united Congress and three periods each of unified government and split Congress. Table 5.1 describes how government has changed among the three states of partisan control over the time period of the analysis.

Regulatory lawmaking occurs in two stages – proposed rules and final rules. Proposed rules are essentially statements of a future policy direction intended by the agency.

It is at this point that the agency identifies the need for the regulation, collects the first round of data, involves the stakeholders, and issues an initial draft of the regulatory language (and the justification for it) in the Federal Register. The sum of all proposed rules during a given time period can be thought of as the regulatory agenda for the next round of policymaking. Once the proposed rule has been out for public comment, the agency then reworks the regulation to reflect any new information. At this point the regulation enters the “final rule” stage. There is no time limit between the proposed and final rule stages,¹³ which means that a final rule passed in 1998 may well have been proposed in 1994. If the agency, the President, and Congress all agree on the text of the rule language then the agency publishes it as law in the Federal Register. Note that final rules are limited in one important way – they cannot contain provisions that do not appear in either the proposed rule or in the public comments received at the proposed rule stage. This adds imprecision to the policy baseline, but it also provides an opportunity to evaluate initiatives that were previously agreed upon but not yet codified into law.

Regulatory gridlock, then, can have two components. The first is composed of new policy initiatives that the government wants to move forward (proposed rules). This is an unambiguous measure of the policy preferences of the institutions at the time. Gridlock here would mean that the government is unwilling or unable to initiate new policy initiatives. The second component of gridlock is composed of those regulatory policies that already have a substantial amount invested in them, but are not yet codified (final rules). Gridlock here would mean that the current institutional mix is unwilling to codify previous policy agreements. The promulgation of a final rule indicates the willingness of the political actors

¹³There is a practical 3-month minimum in most cases due to the public comment period required by the Administrative Procedures Act.

to implement the decisions made at some previous time. It is important to note that final rules are difficult to kill outright. The nature of regulations means that there are winners and losers on virtually every significant regulation. Interests that stood to benefit at the proposed rule stage generally object to an agency's decision not to move forward with the final rule. A proposed rule shifts, in some respects, the understood policy baseline on an issue. Those who approve of the new baseline are likely to apply considerable pressure on recalcitrant officials refusing to finalize the rule. This makes politicians and agency personnel alike less willing to permanently obstruct final regulations. As one OMB analyst said, "Nobody wants the press to start shouting that EPA or the White House is trying to kill the regulation they promised – it becomes a public fiasco" (Conversation with OMB staff, August 2005).

Data and Methods

To quantitatively test the effects of partisan divisions on regulations I return to the dataset containing all regulatory actions that underwent White House review from 1981-2005. These data cover an expanded time period relative to the previous chapter, and I exclude actions those with legal deadlines.¹⁴ In addition, the divided government literature presents a complication I did not face earlier with regards to the thresholds of significance. Much of the disagreement over the legislative examinations of divided government stem from differing definitions of "landmark" laws (see Howell *et al* 2000; also Kelly 1993). Also, Howell *et al* (2000) find that during divided government passage of trivial legislation rises at the same time that the promulgation of landmark legislation decreases. Thus, I restrict the analysis to the "economically significant" rules. The definition of "economically

¹⁴They reflect court interventions into the process or contain statutory restrictions from an unknown period in time. The passage of these regulatory actions does not reflect the effects of divided or unified government at the time the rule was reviewed.

significant” regulations has remained unchanged since 1981, whereas the interpretation of “other significant” category has undergone multiple across time. In addition, Congress uses the same \$100 million threshold when it reviews regulations under the Congressional Review Act, thus ensuring that the executive and legislative branches are using similar measures of importance for the purposes of this analysis. Between 1981 and 2005, OMB reviewed 1,322 “economically significant” regulatory actions from 31 agencies.¹⁵

From the regulation-level dataset, I aggregate the number of regulations completed by agency and month. By breaking the time periods down into months it is possible to correctly identify every period of divided government, including Januarys after presidential elections and the partisan reversal brought by Senator Jefford’s 2001 defection from the Republican Party. I create two outcome variables for each agency and month: total number of proposed actions completed (Mean= 0.07, SD= 0.38) and total number of final actions completed (Mean= 0.08, SD= 0.36).¹⁶ The agency-level dataset includes 299 observations for each agency – one for each month between February 1981 and December 2005.

Given the cross-sectional time series nature of the data and the fact that the outcome variables can only take on non-negative integer values, I estimate the impact of divided government using a conditional agency fixed effects negative binomial model. For both outcome measures, I discarded the fixed effects Poisson model based on a likelihood ratio test for overdispersion – in each case I rejected the null of no overdispersion.¹⁷ Given the

¹⁵OMB does not review regulations from independent agencies and commissions such as the Central Intelligence Agency and the Nuclear Regulatory Commission.

¹⁶To cleanly measure the impact of divided government on the production of regulation, I limit the sample to those regulatory actions where the review was submitted and completed within the same period of divided or unified government. This reduces the sample by 60 actions and does not substantively affect the results.

¹⁷For proposed regulatory actions $\chi^2 = 82.7$ (p-value < 0.01) and for final regulatory actions $\chi^2 = 25.5$ (p-value < 0.01).

time series nature of the data, I also examined the autocorrelation coefficients within each agency to assess whether autocorrelation exists. I find no evidence of autocorrelation in either outcome measure.¹⁸

In addition to the indicators describing divided government, I include dummy variables capturing whether the President is Republican, the first three months of a new President, and the last three months of an outgoing President. The first 3 months fits reasonably well with the 100-day honeymoon period for a new President and the last 3 months covers the time between when the outcome of the election is known and the new President takes office. These presidential measures capture Clinton’s famous “midnight” regulations and President G.W. Bush’s initial freeze on all regulatory activity (Loring and Roth 2005). Equation 5.1 describes the conditional fixed effects negative binomial model.

Equation 5.1:

$$E(Y_{at}) = \text{United}_t \beta_U + \text{Split}_t \beta_S + R_t \beta_R + \text{Last}_t \beta_L + \text{First}_t \beta_F$$

where:

$E(Y_{at})$ = expected number of regulations completed by agency a in month t

United_t = 1 if the party of President differs from that of a united Congress

Split_t = 1 if the majority party of House differs from that of the Senate

R_t = 1 if President is Republican

Last_t = 1 if one of the last 3 months of a President’s term

First_t = 1 if one of first 3 months of a new President’s term

¹⁸As a robustness check, I also estimate a GEE population-averaged negative binomial model correcting for 1st-order autocorrelation. The results are consistent with those from the conditional fixed effects negative binomial model.

I address one additional concern. Does President Reagan's famously anti-regulatory position drive the analysis? The results strongly refute this consideration, and bolster the gridlock patterns shown below.¹⁹ These findings are consistent with Mayhew's (2005) conclusion that Reagan's tenure provides no cause for concern when evaluating the effects of gridlock on lawmaking.

Results and Discussion

The empirical results demonstrate that divided government has a profoundly negative effect on the bureaucracy's ability to promulgate meaningful law, but only under conditions of *Split Congress*. In addition, only new additions to the regulatory policy agenda – *proposed* regulatory actions – experience gridlock. Under *Split Congress* relative to unified government, the expected number of *proposed* “economically significant” regulatory actions generated decreases by 33 percent. Conversely, agencies promulgate just as many “economically significant” final rules under *Split Congress* as they do under unified government. These findings indicate that the political compromises between the House and Senate necessary to place important policy initiatives onto the regulatory agenda are much more difficult to arrange when inter-chamber partisan discord exists. The 33 percent reduction means that average number of “economically significant” proposed regulatory actions completed annually drops from 26 under *Unified Government* to 17.5 under *Split Congress*. This is an enormous reduction considering that these are the most important regulatory issues on the agenda, such as clean air regulations, food safety laws, and nuclear

¹⁹I investigate this alternative hypothesis by dividing the Split Congress indicator into 3 dummy variables – split Congress under Reagan, split Congress under Clinton, and split Congress under Bush. While all the Split Congress dummies are not always statistically significant, the overall pattern provides evidence that split Congress decreases the number of regulations completed regardless of the President in power.

waste disposal. Table 5.2 provides the complete set of results.

The bicameral focus of the results support Binder's finding that partisan conflict is most detrimental to the production of law when the full potential for bicameral disagreement is realized. The findings are also consistent with the expectations of the transaction cost theory. Committees should be less willing to allow new regulations to be added to the agenda as the costs of regulatory control increase. When the chambers are divided the costs to a committee of controlling agency outputs goes up for two reasons. First, the other chamber's committee(s) constitutes a competing principal, thereby increasing the likelihood of *principal-driven drift*. Second, two of the key congressional powers used to punish wayward agencies and reduce *agency-driven drift* – legislation and budgetary control – become more difficult to employ when the chambers are split along partisan lines.

Perhaps the more interesting finding is that the *United Congress* form of divided government does not increase gridlock relative to unified government. This suggests that the President has very little agenda-setting authority. If the President were in control of the regulatory agenda then there should be no difference in the output of proposed regulations among the three specifications of partisan control. The analysis, however, indicates a systematic difference, indicating that the President cannot simply dictate which of the authorized regulations move forward. The easy answer is that this pattern is consistent with the classic conception of "Congress directs and the President implements." In this model of branch responsibility Congress controls which regulations reach the agenda and then stands back and lets the President implement them. The insensitivity of final regulations to partisan conflict offers some support for that interpretation. This analysis, however, falls short of convincingly supporting this claim because the data do not allow me to determine whether

the same types of rules are surviving under the different specifications of partisan control. If, for example, *Split Congress* yielded more discretionary regulations (those where the authorizing statute does not require the regulation) then I may be capturing an effect where the President may refuse to allow the agencies to promulgate these types of rules. This is an important next step in determining with confidence the relationship between the President and Congress over regulatory outcomes.

Two other results stand out. First, outgoing Presidents make a concerted push to finalize their policy agendas through the passage of regulation. The number of final actions increases by 74 percent in the last three months of an outgoing President's term. This result leads to a number of interesting questions, such as what types of regulations are left to the end of an administration and why? Second, and somewhat surprisingly, *Republican President* has a positive and sizeable effect on the output of final actions. This runs contrary to the common wisdom that Democrats are more likely to expand government influence through regulation than are Republicans.

While this may in part be a statistical artifact of the fact that only one Democrat held the office during that time period, it does suggest that the Republican Party is not as anti-regulatory as is generally assumed. Why might this be the case? The most likely reason is that codifying policy into law makes its long-term survival considerably more likely. Making federal policy becomes considerably more difficult when it requires existing administrative law. The presence of existing law tends to generate entrenched interests, legal precedents, and existing bureaucratic systems – all of which increase inertia toward the *status quo*. For these reasons, it is generally in the best interests of whomever is in power to codify its preferences into law through regulations.

Consider a hypothetical case where government is unified under Republican control. The policy question on the docket is how best to handle an industry that emits considerable amounts of toxic gases into the air sinks around major population centers. Assume that the stereotypical Republican preferences are in play – the government is anti-market interference and does not generally prioritize environmental concerns. Despite these preferences, the coalition should still regulate the industry, and the industry may even ask the coalition to do so. The reasons are straightforward. By writing the least coercive standards that current law allows the Republican government makes it that much more difficult for future pro-environment groups to institute more stringent standards. There are a number of incentives against new policymaking in the future. First, the industry will have invested in the control technologies necessary to meet the standard, thereby making any new rule correspondingly more expensive. Second, those technologies will also have reduced the overall level of emissions, thus making the marginal benefit of the second rulemaking lower than it would have been in the absence of the initial pro-industry regulation. Third, because the marginal benefit is lower and the marginal costs are higher, the agency will almost certainly have lower-hanging fruit to pursue. While this is an obviously stylized example, it is not too far a field of an actual regulation I worked on where the industry wanted to be preemptively regulated under a favorable political climate.

From the perspective of the bureaucratic oversight literature, why do the agencies fail to take greater advantage of Congress's relative inability to constrain the bureaucracy during *Split Congress*? As previously discussed, one possibility is that congressional influence stems from the structural controls built into the committee system. Shipan (2004) formally demonstrates the importance of committees to regulatory design. An agency must take the

preferences of the committees – and the committee chairs – into account when crafting regulations to ensure support for the proposed policy changes. Assuming that policy disagreement between the House and Senate committees is more likely when the chambers are controlled by different parties,²⁰ the agency will have a more difficult time generating new policy. As one lobbyist with 30 years of experience said, “We [lobbyists] make a lot of money on agency regulations when the Houses are split. We always have friends on a committee or subcommittee to kill an unfavorable rule” (Conversation with lobbyist, September 2006).

Another possibility is that the observed bureaucratic responsiveness stems from effective institutional controls employed by Congress. These include the design of administrative procedures (see McCubbins, Noll, and Weingast 1987; Bawn 1995) and the design of agency structures and processes (Wood and Bohte 1994; Bawn 1997; McCubbins, Noll, and Weingast 1989). The dataset does not allow for a direct test of these institutional constraints, but future agency-level research may shed light on the relative effectiveness of different control suites under multiple political climates.

Conclusion

The above analyses provide considerable support for the expectations of the divided government literature – the size of the regulatory agenda is remarkably sensitive to partisan conflict. Consistent with Binder’s findings, gridlock results from intra-branch partisan conflict rather than the classic vision of inter-branch partisan friction. When the two houses of Congress disagree, the regulatory agencies reduce their output dramatically relative to unified government. In addition, partisan friction does not affect existing policy initiatives.

²⁰See Binder 2003 for a discussion about the increasing party polarization in Congress.

Taken together, these results indicate that Congress retains a significant measure of control over the agencies precisely when such control should be the most difficult to exercise – i.e., when lawmaking and budgetary constraints are less likely. In contrast, the expectation that agencies may seek to increase regulatory output during divided government to take advantage of increased agency discretion received no support. None of the specifications of partisan control yielded an increase in regulatory output.

The expectations of the transaction cost theory are largely supported by the analysis. The size of the regulatory agenda for the most important regulations decreases as competition among committees reduces the expected net benefits of allowing regulatory activity on the agenda. Additions to the regulatory agenda, then, are least likely when their outcomes are rendered more uncertain – and the corresponding costs of control increase – due to inter-committee conflict and a reduction in the ability to minimize *agency-driven drift*.

The findings presented here raise questions that deserve attention in future research. While this analysis finds strong support for the concern that party dissensus creates policy gridlock, it does not tell us what categories of regulations – e.g., deregulatory actions or partisan priorities – are least likely to reach the agenda. Perhaps more importantly, we do not know how those regulations that survived a divided Congress were changed as the result of bi-partisan disagreement. Epstein and O'Halloran (1999) persuasively argued that knowledge about the content of the policies that survive (or disappear) is vital to understanding the full effects of partisan conflict. In addition, the role of committees in the dissuasion of policy generation is not well understood. A formal examination of agency incentives under split-party control of Congress would add considerably to an analysis of how policy dies at the implementation stage.

CHAPTER VI

CONCLUSION

When evaluating a piece of scholarship read only the theory, the equations, and the tables. The introduction and the conclusion are pure fiction (*Lecture to a graduate seminar by a member of this dissertation committee, 2004*).

One of the basic questions of representative government is how effectively federal institutions translate constituent preferences into public policy. Bureaucratic systems are the fields upon which much of the political, scientific, and legal battles occur as policy directives are translated into concrete outcomes. One of the fundamental questions asked by scholars and practitioners alike is “how do political institutions (and the agencies themselves) manipulate bureaucratic processes to secure policy outcomes?” Part of the answer must come from the fundamental truth that bureaucrats, politicians, and institutions subscribe to the theory that the benefits of controlling a policy must justify the political costs of doing so. Finite political resources force difficult decisions across the policy spectrum as institutions seek to maximize the net benefits of their policy portfolios. This decision calculus has frequently confounded scholarship that tends to focus only on whether a principal **can** control an outcome. Such analyses lead inexorably to the conclusion that sophisticated political thinkers shackle themselves with the worst kind of pyrrhic victories. The better question is whether the net benefits of controlling the policy are sufficient to overcome the opportunity costs of doing so.

Recent work within the bureaucratic control literature has turned to the transaction cost theory to address this question. The transaction cost approach has the advantage of combining a credible micro theory of behavior that is consistent across institutions and policy systems with testable predictions. One of the most interesting of these predictions is that principals expend the resources necessary to restrict agency discretion to reduce *principal-driven drift* as well as *agency-driven drift*. In short, Principal I uses a bureaucratic process to constrain Principal II's control over policy outcomes. Though this makes intuitive sense, until now research had not yet established that Principal II's actions changed in response to changes in agency discretion. This dissertation provides support for that causal link, thereby increasing confidence in the validity of the transaction cost theory.

Further, the transaction cost theory predicts that as the net benefits of controlling a policy change decrease the principal is increasingly likely to prefer the *status quo*. This suggests that under certain circumstances gridlock in bureaucratic policymaking will result. The second major contribution of this dissertation is the empirical examination of this question and the finding that regulatory gridlock occurs in response to partisan conflict within Congress. This finding expands the line of research evaluating the impacts of divided government to include bureaucratic outputs. It also sheds light on a previously-ignored arrow in Congress's bureaucratic oversight quiver – controlling the policy agenda by subtraction rather than addition. Of all of the findings from the dissertation, this substantial gridlock effect presents the largest potential problem for representation. The results suggest that during periods of partisan dissensus stopping an issue from reaching the regulatory agenda is significantly less costly than controlling it once it gets there. Thus policy

initiatives with significant net social benefit may not survive simply because it takes so little effort to stop most initiatives.

Extensions of the Research

These findings generate as many questions as they answer. Three of these involve extensions of the dissertation's empirical analyses. First, which policy areas are most responsive to the imposition of transaction costs? This will require a multi-level model and the logical collapsing of agencies and sub-agencies into cleanly-defined policy categories. My initial suspicion is that issues pitting business against public interest groups will be the most responsive to changes in principal transaction costs relative to redistributive policies. Policy changes that regulate businesses generally require a strong advocate willing to impose substantial transaction costs on the other players. Second, how deliberately do the courts exert pre-decisional influence over regulatory outcomes? As the reach of specialty courts and the influence of agency general counsels increase, the role of judicial review will take on even greater importance. Third, how effectively does the transaction cost theory predict the use of informal methods of control? The executive branch has increasingly turned to guidance documents and executive orders to impose short-term changes on agency behavior. It would be fascinating to see how these informal reductions in agency discretion translate into changes in the behavior of Congress and the courts.

Implications of the Research for Key Questions of Bureaucratic Control

This dissertation took the necessary first steps toward addressing the most hotly debated questions in the bureaucratic oversight literature: just how much influence do the

agencies exert over policy outcomes, and how do they do it? Of all the checks and balances inherent in the structure of federal government, unelected agency officials are not endowed with a single formal mechanism of control over the powers of elected or appointed representatives.²¹ The reverse, of course, is not true. The President, Congress, and the courts have tremendous institutionalized authority over the bureaucracy. How, then, can the bureaucracy succeed in shifting policy away from the preferences of any of the big three institutions? The finding that a pre-existing contract with one principal reduces the likelihood that another principal will exert influence later in the process offers tantalizing glimpses of an answer.

The separation of powers system guarantees that Congress, the President, and the courts will all have an opportunity to engage in a given policy debate. These inputs occur in a sequential fashion, where first one principal and then another has the opportunity to contract with the agency for policy outputs. Whitford (2005) shows that principals anticipate the future actions of other principals when deciding how to influence policy. I demonstrate that principals in later stages are responsive to the decisions of principals in previous stages. Taken together, these two findings point toward a significant opportunity for the bureaucracy to exert policy control. When the preferences of two principals conflict, the agency can use prior agreements with one principal to raise the transaction costs to another at a later stage in the process. It is far more expensive for one principal (e.g., the President) to push a particular policy outcome if it has to override an existing contract between another principal and the agency (e.g., a statutory deadline). Recognizing this, an agency will pursue early contracts with the principal(s) whose preferences most closely align with its own. A contract

²¹One could argue that the basic tenure generally enjoyed by bureaucrats constitutes an institutionalized check against political pressure, albeit an indirect one. I do not include tenure in the checks and balances category because tenure does not allow bureaucrats to force a policy change by the other actors.

of this nature strategically reduces agency discretion to “force” the agency toward policy outcomes consistent with its own preferences. By raising the transaction costs to later principals those proscriptions increase the likelihood that the agency’s preferred outcomes survive the process.

Within the regulatory sphere, the agencies have found proactive ways to obtain these voluntary checks on their discretion. First, consider one method of procuring proscriptive statutory language. Drafting a proscriptive, detailed statute incurs substantial costs, particularly on technically complex issues (Moe 1990; Bawn 1995, 1997; Huber, Shipan, Pfahler 2001). Due to these costs, Congress cannot afford to craft proscriptive statutes on every issue. This opens the door for the agency to use its technical expertise as a bargaining chip. The agencies can compose “Technical Support Documents” (TSDs) for Congress. In many cases, these are thinly-veiled drafts of statutory language. Unlike hearing testimony by the agencies, TSDs do not undergo White House review – in fact, there is no formal administration process through which these documents must pass (and therefore no formal record). TSDs are, however, extremely useful to both Congress and the agencies. Congress gets to reduce the transaction cost of writing a more detailed statute by leveraging agency expertise. The agency gets to draft language that will be closer to its policy preference than had it not participated. In one movement the agency can decrease the transaction costs to the principal that supports its policy position and increase the transaction costs to the negatively-inclined principal that it must face at the next stage.

Do strategic TSDs actually occur? Conversations with agency political appointees indicated that this type of transaction happens with some frequency. As one high-level agency official put it:

We definitely provide technical assistance to Congress to help draft legislation favorable to our point of view. Not just hearing testimony, but actually drafts of the bill. It's useful to have input at that stage, particularly where statutory requirements are concerned. It is tough to trace, though, because these 'technical support documents' don't have a paper history to point to and say, 'here is where we changed the statute in our favor.' (Conversation with agency official on September 10th, 2004)

On the judicial front, court-ordered settlement agreements (COSAs) allow the agency almost as much flexibility as Technical Support Documents do in the statutory setting. COSAs occur when an entity with legal standing (individuals and interest groups are the most common parties) sues the agency, but neither party wants the case to go to trial. Instead, they agree to a settlement that is enforced by a court order. This legally-binding agreement is often drafted jointly by the agency and the plaintiff. There are anecdotal cases of agencies acting in league with interest groups to arrange mutually beneficial lawsuits. This creates the opportunity to raise the transaction costs of control to the President and Congress by crafting judicially-imposed reductions in agency discretion.

COSAs, like Technical Support Documents, are not something that the agencies advertise. What is clear is that the agencies have in the past found ways to enter into voluntary contracts with principals that decrease the agencies' discretion. A finding that these or other mechanisms allow the agencies to strategically control policy outcomes would force a re-evaluation of the current conception of bureaucratic authority. In particular, it would cast a very different light on the debate pitting the value of neutral competency against the concern that unelected bureaucrats are making policy despite the preferences of elected officials.

The Future of the Transaction Cost Approach

In closing I would like to briefly offer what I believe to be the next frontier for the theory writ large – the calculation of discount rates for political costs and benefits. The transaction cost approach is uniquely suited to generate predictions of principal actions and general movements within policy areas due to its ability to handle multiple streams of costs and benefits across different policy options. In other words, the framework should allow scholars to examine several different policy options, calculate the relative value of each to a principal, and predict the principal's actions. To do this, however, we must first generate reasonable discount rates with which to move political costs and benefits through time and account for risk. Without these rates, scholars of bureaucratic systems will remain largely limited to less-than-inspiring evaluations of the relative value of policy options that occur within the same time period. In reality, however, principals, bureaucrats, and interest groups are comparing the current policy options against present **and** future policy opportunities.

Non-quantifiable costs and benefits can only take us so far if the goal is accurate prediction. The reason is simple – bureaucratic structures hardly ever shrink in complexity. Policymaking systems originally designed to keep agencies in check tend to evolve over time as different principals apply additional layers of requirements. The regulatory process is an excellent example. Congress has, over the course of decades, attempted to structure and/or reform the regulatory process with the Administrative Procedures Act, the Federal Advisory Committee Act, the Small Business Regulatory Fairness Act, the Paperwork Reduction Act, the Data Quality Act, the Unfunded Mandates Reform Act, and the Congressional Review Act (among many others). The courts have selectively ruled on the implementation of these statutes and the validity of large portions the regulatory process. The President has implemented more than 30 Executive Orders specifically designed to affect rulemaking and

has instituted a regulatory review process that requires every significant regulation to undergo White House review prior to promulgation. Examples include E.O. 12866 “Regulatory Planning and Review,” E.O. 13045 “Protection of Children,” E.O. 13132 “Federalism,” and E.O. 13211 “Energy.” Each of these actions, including the court rulings, added procedural requirements to the federal rulemaking process.

Increasing complexity means two things. First, the time required to promulgate policy continues to increase. Principals, therefore, find themselves comparing the net present value of a policy that will yield benefits in year two with one that will yield benefits immediately. We cannot predict which one they will choose – and, just as importantly, which one they will not – without some way to compare streams of costs and benefits that occur at different times. Second, risk becomes a larger factor in the equation. As the number of requirements within a bureaucratic system changes the probability that an individual policy survives the process also changes. Appropriate discount rates for risk, therefore, are essential when comparing the value of policy options coming out of different bureaucratic systems. For the transaction cost approach to fulfill its promise as an analytical tool for retrospective explanation and prospective prediction we need to develop estimates that can handle the ever-increasing complexity of policy systems.

Table 2.1. Unconditional Agency Fixed Effects Logit Model Estimating the Probability that a Regulation has a Statutory Deadline (Clustered SEs)

	Estimate	Percent Change
Economically Significant	0.948** (0.212)	9.6%
Agency (USDA omitted)		
ATBCB	0.948** (0.033)	9.6%
DHS	0.070** (0.013)	0.7%
DOC	-0.309** (0.027)	-3.1%
DOD	0.076** (0.028)	0.8%
DOE	1.696** (0.009)	17.2%
DOI	-0.827** (0.020)	-8.4%
DOJ	0.338** (0.057)	3.4%
DOL	0.108** (0.016)	1.1%
DOT	0.572** (0.017)	5.8%
ED	0.855** (0.064)	8.7%
EPA	0.200** (0.007)	2.0%
FAR	1.406** (0.020)	14.3%
FEMA	0.590** (0.026)	6.0%
GSA	-0.273** (0.059)	-2.8%
HHS	0.500** (0.007)	5.1%
HUD	0.124* (0.051)	1.3%
NSF	0.466** (0.073)	4.7%

	Estimate	Percent Change
OFHEO	0.454** (0.038)	4.6%
OPM	-0.850** (0.072)	-8.6%
SBA	-0.262** (0.027)	-2.7%
SSA	-1.267** (0.006)	-12.8%
STATE	-0.020 (0.060)	-0.2%
VA	-0.473** (0.057)	-4.8%
Constant	-2.258** (0.073)	
Observations	6061	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 3.1. Number of Regulations Completed between 1981 and 2005 by Agency

Agency	Freq.	Pct	Cumm. Percent
Department of Agriculture	6,639	18.5%	18.5%
Department of Health and Human Services	4,185	11.7%	30.2%
Environmental Protection Agency	3,895	10.9%	41.1%
Department of Transportation	3,459	9.6%	50.7%
Department of the Interior	2,242	6.3%	57.0%
Department of Commerce	2,190	6.1%	63.1%
Department of Housing and Urban Development	1,600	4.5%	67.5%
Department of Education	1,513	4.2%	71.7%
Department of Veterans Affairs	1,293	3.6%	75.4%
Department of Justice	1,215	3.4%	78.7%
Office of Personnel Management	1,208	3.4%	82.1%
Department of Labor	911	2.5%	84.7%
General Services Administration	805	2.2%	86.9%
Social Security Administration	620	1.7%	88.6%
Department of the Treasury	576	1.6%	90.2%
Small Business Administration	488	1.4%	91.6%
Department of Energy	399	1.1%	92.7%
Department of Defense	293	0.8%	93.5%
Federal Emergency Management Agency	292	0.8%	94.3%
National Aeronautics and Space Administration	219	0.6%	95.0%
Department of State	203	0.6%	95.5%
Civil Aeronautics Board	179	0.5%	96.0%
Railroad Retirement Board	147	0.4%	96.4%
National Archives and Records Administration	129	0.4%	96.8%
Pension Benefit Guaranty Corporation	119	0.3%	97.1%
DOD/GSA/NASA (FAR)	90	0.3%	97.4%
Department of Homeland Security	82	0.2%	97.6%
Agency for International Development	80	0.2%	97.8%
United States Information Agency	72	0.2%	98.0%
Equal Employment Opportunity Commission	63	0.2%	98.2%
Office of Government Ethics	62	0.2%	98.4%
National Science Foundation	56	0.2%	98.5%
Panama Canal Commission	54	0.2%	98.7%
Architectural and Transportation Barriers Compliance Board	45	0.1%	98.8%
Institute of Museum and Library Services	40	0.1%	98.9%
ACTION	36	0.1%	99.0%
Other Temporary Commissions	28	0.1%	99.1%
Selective Service System	24	0.1%	99.2%
Peace Corps	21	0.1%	99.2%
National Endowment for the Humanities	20	0.1%	99.3%
Office of Federal Housing Enterprise Oversight	19	0.1%	99.3%
National Endowment for the Arts	18	0.1%	99.4%
Other Independent Agencies	16	0.0%	99.4%
Federal Mediation and Conciliation Service	15	0.0%	99.5%
Navajo Hopi Indian Relocation Commission	15	0.0%	99.5%
Corporation for National and Community Service	14	0.0%	99.5%

Court Services and Offender Supervision Agency for the DC	14	0.0%	99.6%
National Indian Gaming Commission	14	0.0%	99.6%
Office of Management and Budget	12	0.0%	99.7%
Pennsylvania Avenue Development Corporation	12	0.0%	99.7%
Committee for Purchase from the Blind and Other Severely Handicapped	11	0.0%	99.7%
Advisory Council on Historic Preservation	9	0.0%	99.7%
Office of the United States Trade Representative	9	0.0%	99.8%
African Development Foundation	8	0.0%	99.8%
Tennessee Valley Authority	8	0.0%	99.8%
Commission on Civil Rights	6	0.0%	99.8%
Thrift Depositor Protection Oversight Board	6	0.0%	99.8%
Appraisal Subcommittee of the FFIEC	5	0.0%	99.9%
Inter-American Foundation	4	0.0%	99.9%
Office of Federal Inspector, Alaska Natural Gas Transportation System	4	0.0%	99.9%
Office of Science and Technology Policy	4	0.0%	99.9%
United States Metric Board	4	0.0%	99.9%
Council on Environmental Quality	3	0.0%	99.9%
Emergency Oil and Gas Guaranteed Loan Board	3	0.0%	99.9%
Emergency Steel Guarantee Loan Board	3	0.0%	99.9%
James Madison Memorial Fellowship Foundation	3	0.0%	99.9%
National Capital Planning Commission	3	0.0%	99.9%
Office of National Drug Control Policy	3	0.0%	100.0%
Resolution Trust Corporation	3	0.0%	100.0%
Export-Import Bank of the United States	2	0.0%	100.0%
United States Postal Service	2	0.0%	100.0%
Barry M. Goldwater Scholarship and Excellence in Education Foundation	1	0.0%	100.0%
Executive Office of the President	1	0.0%	100.0%
Farm Credit System Assistance Board	1	0.0%	100.0%
Federal Communications Commission	1	0.0%	100.0%
Interstate Commerce Commission	1	0.0%	100.0%
Merit Systems Protection Board	1	0.0%	100.0%
Office of Special Counsel	1	0.0%	100.0%
Overseas Private Investment Corporation	1	0.0%	100.0%

Table 3.2. Number of Regulations Completed by Agency and Year

Agency	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00
ACTION	3	9	5	0	2	0	7	3	2	2	2	0	0	1	0	0	0	0	0	0
ACHP	3	2	1	0	1	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0
ADF	0	0	0	0	2	0	1	1	2	1	0	0	0	0	0	0	0	0	0	0
AID	6	3	2	1	5	3	4	9	4	12	7	3	4	2	5	2	3	0	0	0
FFIEC	0	0	0	0	0	0	0	0	0	0	1	3	1	0	0	0	0	0	0	0
ATBCB	2	3	0	0	0	0	7	4	1	1	6	2	2	1	1	1	3	3	2	3
BGSEEF	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
CAB	53	51	53	21	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CCR	0	0	0	1	0	1	0	1	1	1	0	0	0	0	0	0	0	0	1	0
CPBSH	1	0	2	0	1	4	1	0	0	0	2	0	0	0	0	0	0	0	0	0
CNCS	0	0	0	0	0	0	0	0	0	0	0	0	2	3	0	0	0	0	0	0
CEQ	1	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CSOSA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
USDA	0	0	0	0	0	0	0	0	1	0	0	0	3	12	42	0	4	3	3	2
DOC	645	681	547	478	406	385	410	435	403	327	398	376	354	105	82	80	63	52	79	63
DOD	158	141	94	86	95	91	107	118	194	229	205	222	192	13	11	18	11	18	46	33
ED	4	9	13	7	17	9	17	12	6	8	25	5	23	14	16	6	16	6	3	4
DOE	76	50	50	106	108	99	174	123	82	66	124	144	102	57	32	16	9	5	24	25
HHS	50	49	33	25	19	16	20	19	16	14	32	25	37	3	6	3	2	1	2	6
DHS	86	225	249	156	171	235	278	294	264	310	353	365	329	61	37	45	68	87	91	81
HUD	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DOJ	74	129	111	108	90	67	60	99	77	63	124	71	104	57	45	35	29	22	39	28
DOL	53	50	72	45	78	46	84	52	96	77	132	78	62	10	6	14	23	27	15	18
STATE	60	49	49	34	38	56	62	76	59	55	43	50	16	9	13	17	16	14	17	29
DOI	13	10	3	4	7	4	19	16	15	9	45	18	9	6	1	1	1	1	3	0
TREAS	265	221	217	216	248	196	203	253	247	237	242	202	206	60	40	42	35	29	35	32
DOT	68	65	68	69	65	62	67	82	95	87	71	91	76	26	18	19	26	12	18	13
VA	146	245	239	132	158	143	183	152	97	101	113	81	103	31	34	26	19	21	24	52
FAR	34	32	51	43	26	20	29	37	46	64	51	69	46	3	3	1	5	2	0	0
EOGGLB	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0
ESGLB	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	1
EPA	703	341	266	300	301	198	192	178	177	152	168	145	162	72	59	48	45	54	48	46

EEOC	7	3	5	0	5	3	6	1	5	0	6	3	4	0	1	1	1	2	2	2
EOP	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EXIMBANK	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
FCSAB	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
FCC	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FEMA	16	6	29	16	26	24	26	30	29	25	19	13	10	3	1	0	1	0	1	6
FMCS	0	1	0	0	0	0	2	4	3	1	1	0	0	0	0	0	0	0	0	0
GSA	56	62	84	63	85	41	59	56	61	35	37	33	42	18	13	20	13	10	4	2
IMLS	0	1	3	3	4	2	3	6	2	5	1	2	1	2	2	0	0	0	0	0
IAF	0	0	0	0	0	0	1	0	2	1	0	0	0	0	0	0	0	0	0	0
ICC	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
JMMFF	0	0	0	0	0	0	0	0	0	0	1	1	0	1	0	0	0	0	0	0
MSPB	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NASA	10	11	13	11	25	15	15	17	15	9	15	8	22	7	7	5	0	0	3	3
NARA	0	0	0	0	9	13	8	17	8	13	7	14	6	1	4	1	2	1	4	4
NCPC	1	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NEA	0	0	2	0	0	0	2	4	1	2	2	3	0	0	0	0	0	0	0	0
NEH	5	0	0	0	0	4	4	3	1	2	0	0	0	0	0	0	0	0	0	0
NIGC	0	0	0	0	0	0	0	0	0	0	1	7	6	0	0	0	0	0	0	0
NSF	1	2	5	2	0	2	1	8	5	5	5	6	7	2	0	0	0	1	0	0
NAVAJO	0	0	1	4	2	3	1	0	0	2	0	1	0	0	0	1	0	0	0	0
OFHEO	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	0	2	1	0
ANGTS	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OGE	0	0	0	0	0	0	0	0	1	7	3	8	4	1	7	5	4	6	2	6
OMB	0	1	1	1	0	0	1	1	1	2	1	1	0	1	0	0	0	0	0	0
ONDCP	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0
OPM	36	49	64	45	69	71	97	73	52	52	87	95	69	42	24	15	18	23	28	37
OSTP	0	0	0	0	2	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0
OSC	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
TRADEREP	0	1	0	0	1	0	0	0	1	1	0	0	0	0	1	1	0	1	2	0
OTHINDAG	0	0	0	1	1	0	0	1	1	0	2	2	1	1	3	2	0	0	0	0
OTHTEMP	0	0	0	0	0	6	12	6	2	1	0	1	0	0	0	0	0	0	0	0
OPIC	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
PANAMA	4	3	8	3	9	6	4	0	7	3	6	1	0	0	0	0	0	0	0	0
PEACE	0	0	2	4	0	1	5	1	2	2	1	2	0	0	0	0	0	0	0	0

PADC	0	2	2	1	2	1	3	1	0	0	0	0	0	0	0	0	0	0	0	0
PBGC	21	12	9	10	19	6	4	3	1	2	7	9	4	0	0	1	0	2	0	0
RRB	3	3	6	4	15	8	11	14	21	7	21	9	14	0	0	2	6	1	0	0
RTC	0	0	0	0	0	0	0	0	1	1	0	0	1	0	0	0	0	0	0	0
SSS	3	6	2	1	4	0	4	1	2	0	0	1	0	0	0	0	0	0	0	0
SBA	10	15	20	32	19	26	15	35	38	35	34	28	30	20	22	0	2	17	10	18
SSA	27	43	44	42	41	45	37	25	18	41	42	35	39	7	5	7	6	5	4	8
TVA	0	0	3	1	0	2	0	1	0	1	0	0	0	0	0	0	0	0	0	0
OB	0	0	0	0	0	0	0	0	1	0	1	4	0	0	0	0	0	0	0	0
USIA	1	4	2	0	5	6	8	7	6	8	6	5	4	4	2	1	1	0	2	0
MB	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
USPS	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Agency	'01	'02	'03	'04	'05
ACTION	0	0	0	0	0
ACHP	0	0	0	0	0
ADF	0	0	1	0	0
AID	0	0	1	2	2
FFIEC	0	0	0	0	0
ATBCB	0	1	0	1	1
BGSEEF	0	0	0	0	0
CAB	0	0	0	0	0
CCR	0	0	0	0	0
CPBSH	0	0	0	0	0
CNCS	0	2	2	4	1
CEQ	0	0	0	0	0
CSOSA	4	2	8	0	0
USDA	11	1	3	2	3
DOC	65	48	69	50	38
DOD	24	18	11	26	29
ED	8	19	16	13	17
DOE	4	9	10	11	7
HHS	7	2	5	5	2
DHS	86	65	91	75	83

HUD	0	0	22	36	24
DOJ	34	26	42	36	30
DOL	47	49	32	26	23
STATE	19	24	37	38	31
DOI	0	2	6	3	7
TREAS	57	49	56	47	24
DOT	69	41	47	20	18
VA	47	19	28	29	19
FAR	0	0	11	3	0
EOGGLB	1	0	0	0	0
ESGLB	0	0	0	0	0
EPA	69	37	29	39	66
EEOC	0	2	2	1	1
EOP	0	0	0	0	0
EXIMBANK	0	0	1	0	0
FCSAB	0	0	0	0	0
FCC	0	0	0	0	0
FEMA	6	4	1	0	0
FMCS	0	1	2	0	0
GSA	6	1	3	0	1
IMLS	2	0	1	0	0
IAF	0	0	0	0	0
ICC	0	0	0	0	0
JMMFF	0	0	0	0	0
MSPB	0	0	0	0	0
NASA	5	0	1	1	1
NARA	2	7	3	2	3
NCPC	0	0	0	0	0
NEA	0	0	2	0	0
NEH	0	0	1	0	0
NIGC	0	0	0	0	0
NSF	2	1	1	0	0
NAVAJO	0	0	0	0	0
OFHEO	2	2	3	1	4
ANGTS	0	0	0	0	0

OGE	1	1	2	2	2
OMB	1	0	0	0	0
ONDCP	0	0	1	0	0
OPM	28	25	30	36	43
OSTP	0	0	0	0	0
OSC	0	0	0	0	0
TRADEREP	0	0	0	0	0
OTHINDAG	0	0	1	0	0
OTHTEMP	0	0	0	0	0
OPIC	0	0	0	0	0
PANAMA	0	0	0	0	0
PEACE	0	0	1	0	0
PADC	0	0	0	0	0
PBGC	0	1	1	2	5
RRB	0	0	2	0	0
RTC	0	0	0	0	0
SSS	0	0	0	0	0
SBA	11	18	16	6	11
SSA	24	10	20	10	35
TVA	0	0	0	0	0
OB	0	0	0	0	0
USIA	0	0	0	0	0
MB	0	0	0	0	0
USPS	0	0	0	0	0

Table 3.3. Number of Regulatory Actions by Significance Status

Year	“Other Significant”	“Economically Significant”	Percent “Economically Significant”
1981	2,664	52	2%
1982	2,514	76	3%
1983	2,370	62	3%
1984	2,020	56	3%
1985	2,125	59	3%
1986	1,860	65	3%
1987	2,195	59	3%
1988	2,210	69	3%
1989	2,104	70	3%
1990	2,012	70	3%
1991	2,324	126	5%
1992	2,127	117	5%
1993	2,002	95	5%
1994	548	110	17%
1995	483	62	11%
1996	374	64	15%
1997	361	71	16%
1998	360	68	16%
1999	439	78	15%
2000	434	88	17%
2001	544	98	15%
2002	407	80	16%
2003	532	90	14%
2004	453	74	14%
2005	457	74	14%
Total	33,919	1,933	5%

Table 3.4. Number of Proposed and Final Regulations by Year

Year	Proposed	Final	Percent Proposed
1981	1,005	1,711	37%
1982	1,037	1,553	40%
1983	1,046	1,386	43%
1984	972	1,104	47%
1985	1,058	1,126	48%
1986	785	1,140	41%
1987	1,074	1,180	48%
1988	992	1,287	44%
1989	937	1,237	43%
1990	849	1,233	41%
1991	1,171	1,279	48%
1992	949	1,295	42%
1993	958	1,139	46%
1994	304	354	46%
1995	220	325	40%
1996	155	283	35%
1997	195	237	45%
1998	190	238	44%
1999	240	277	46%
2000	208	314	40%
2001	271	371	42%
2002	204	283	42%
2003	229	393	37%
2004	228	299	43%
2005	220	311	41%
Total	15,497	20,355	43%

Table 3.5. Decision for All Regulatory Actions between 1981 and 2005

Decision	Frequency	Percent	Cumm. Percent
Consistent without Change	24,579	68.6%	68.6%
Consistent with Change	9,222	25.7%	94.3%
Withdrawn by agency	1,290	3.6%	97.9%
Returned (reconsider)	419	1.2%	99.0%
Suspended	202	0.6%	99.6%
Returned (improper)	140	0.4%	100.0%

Table 4.1. Number of Rules with Statutory Deadlines – By Agency

	Total Number of Rules	Total Number of Rules with Statutory Deadlines	% of Agency's Rules with Statutory Deadline	Agency's Share of All Rules with Statutory Deadlines
HHS	870	165	19%	21%
USDA	793	95	12%	12%
DOT	505	94	19%	12%
EPA	601	88	15%	11%
HUD	423	48	11%	6%
ED	207	42	20%	5%
DOJ	290	39	13%	5%
DOL	264	33	13%	4%
FAR	86	30	35%	4%
DOC	255	21	8%	3%
VA	327	21	6%	3%
DOE	44	19	43%	2%
DOI	348	18	5%	2%
DOD	137	16	12%	2%
OPM	349	15	4%	2%
SBA	151	13	9%	2%
DHS	82	10	12%	1%
GSA	91	7	8%	1%
ATBCB	17	5	29%	1%
FEMA	23	5	22%	1%
SSA	141	5	4%	1%
OFHEO	19	3	16%	0%
STATE	31	3	10%	0%
NSF	7	1	14%	0%
AID	17	0	0%	0%
IMLS	7	0	0%	0%
NARA	34	0	0%	0%
NASA	33	0	0%	0%
OGE	39	0	0%	0%
RRB	11	0	0%	0%

Table 4.2. Number of Rules with Judicial Deadlines – By Agency

	Total Number of Rules	Total Number of Rules with Judicial Deadlines	% of Agency's Rules with Judicial Deadline	Agency's Share of All Rules with Judicial Deadlines
AID	17	0	0%	0%
ATBCB	17	0	0%	0%
DHS	82	0	0%	0%
DOC	255	18	7%	6%
DOD	137	0	0%	0%
DOE	44	1	2%	0%
DOI	348	77	22%	26%
DOJ	290	2	1%	1%
DOL	264	4	2%	1%
DOT	505	6	1%	2%
ED	207	0	0%	0%
EPA	601	169	28%	57%
FAR	86	1	1%	0%
FEMA	23	0	0%	0%
GSA	91	0	0%	0%
HHS	870	5	1%	2%
HUD	423	0	0%	0%
IMLS	7	0	0%	0%
NARA	34	0	0%	0%
NASA	33	0	0%	0%
NSF	7	0	0%	0%
OFHEO	19	0	0%	0%
OGE	39	0	0%	0%
OPM	349	3	1%	1%
RRB	11	0	0%	0%
SBA	151	0	0%	0%
SSA	141	0	0%	0%
STATE	31	0	0%	0%
USDA	793	5	1%	2%
VA	327	3	1%	1%

Table 4.3. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected (Clustered SEs)²²

	Estimate	Percent Change
Statutory Deadline	-0.668** (0.192)	-3.2%
Judicial Deadline	-1.099** (0.120)	-4.3%
Final Stage	-0.391** (0.082)	-2.4%
Economically Significant	0.261 (0.205)	1.7%
Republican President	0.048 (0.207)	0.3%
Congress Split	0.350* (0.173)	2.3%
Congress United	-0.411** (0.155)	-2.4%
Last 3 Months of Administration	0.452 (0.336)	3.2%
First 3 Months of New Administration	3.090** (0.279)	51.7%
Observations	6202	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

²²The complete results including the coefficient estimates for the agency dummy variables can be found in the Appendix Table 4A.3.

Table 4.4: Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected including Interactions between Indicators for Deadlines and Economically Significant (Clustered SEs)²³

	Estimate	Percent Change
Statutory Deadline	-0.728** (0.196)	-3.4%
Judicial Deadline	-1.585** (0.188)	-5.3%
Final Stage	-0.389** (0.083)	-2.3%
Economically Significant	0.179 (0.176)	1.1%
Republican President	0.047 (0.210)	0.3%
Congress Split	0.354* (0.174)	2.3%
Congress United	-0.412** (0.154)	-2.4%
Last 3 Months of Administration	0.453 (0.336)	3.2%
First 3 Months of New Administration	3.119** (0.288)	52.3%
Statutory*Economically Significant	0.225 (0.553)	1.2%
Judicial*Economically Significant	1.546** (0.282)	15.7%
Observations	6202	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

²³ The complete results including the coefficient estimates for the agency dummy variables can be found in the Appendix Table 4A.4.

Table 4.5. Impact of Deadlines on Probability Rejected By Significance Status

	Percentage Point Change in Probability Rejected	Percent Change
Statutory Deadline	-3.4% (0.00)	-37.6%
Judicial Deadline		
"Other Significant"	-5.3% (0.00)	-58.1%
"Economically Significant"	-0.2% (0.86)	-2.1%

p-values in parentheses

Table 4.6. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected Including OMB Workload and Lagged Agency Budgetary Outlays (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.577** (0.174)	-3.2%
Judicial Deadline	-1.066** (0.200)	-6.0%
OMB Workload by Agency	0.066** (0.013)	0.4%
Lagged Agency Outlays (in 1,000,000s)	0.006* (0.003)	0.03%
Final Stage	-0.395** (0.082)	-2.2%
Economically Significant	0.218 (0.212)	1.2%
Republican President	0.167 (0.311)	0.9%
Congress Split	0.419* (0.182)	2.3%
Congress United	-0.193 (0.156)	-1.1%
Last 3 Months of Administration	-0.136 (0.473)	-0.8%
First 3 Months of New Administration	2.720** (0.400)	15.2%
Agency (USDA omitted)		
DHS	-0.137 (0.278)	-0.8%
DOC	1.089** (0.218)	6.1%
DOD	-0.538 (1.017)	-3.0%
DOE	0.240 (0.197)	1.3%
DOI	0.542** (0.204)	3.0%
DOJ	1.159** (0.201)	6.5%

	Estimate	Percent Change
DOL	0.509** (0.155)	2.9%
DOT	0.620** (0.095)	3.5%
ED	0.699** (0.132)	3.9%
EPA	0.589** (0.200)	3.3%
GSA	2.354** (0.210)	13.2%
HHS	-2.816* (1.134)	-15.8%
HUD	1.534** (0.148)	8.6%
NASA	1.340** (0.209)	7.5%
NSF	2.198** (0.246)	12.3%
OPM	0.591** (0.135)	3.3%
SBA	1.534** (0.230)	8.6%
SSA	-1.442 (1.321)	-8.1%
STATE	1.226** (0.267)	6.9%
VA	0.267** (0.101)	1.5%
Constant	-3.883** (0.269)	
Observations	5833	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4.7. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected Including Interactions between Indicators for Deadlines and Economically Significant and OMB Workload and Lagged Agency Budgetary Outlays (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.651** (0.178)	-3.6%
Judicial Deadline	-1.577** (0.129)	-8.8%
OMB Workload by Agency	0.067** (0.013)	0.4%
Lagged Agency Outlays (in 1000,000s)	0.006 (0.003)	0.03%
Final Stage	-0.394** (0.082)	-2.2%
Economically Significant	0.116 (0.162)	0.6%
Republican President	0.166 (0.313)	0.9%
Congress Split	0.425* (0.185)	2.4%
Congress United	-0.194 (0.156)	-1.1%
Last 3 Months of Administration	-0.136 (0.474)	-0.8%
First 3 Months of New Administration	2.752** (0.409)	15.3%
Statutory Deadline*Economically Significant	0.284 (0.578)	1.6%
Judicial Deadline*Economically Significant	1.640** (0.239)	9.1%
Agency (USDA omitted)		
DHS	-0.133 (0.280)	-0.7%
DOC	1.077** (0.218)	6.0%
DOD	-0.548 (1.054)	-3.0%
DOE	0.228	1.3%

	Estimate	Percent Change
	(0.206)	
DOI	0.625**	3.5%
	(0.209)	
DOJ	1.148**	6.4%
	(0.196)	
DOL	0.501**	2.8%
	(0.154)	
DOT	0.608**	3.4%
	(0.091)	
ED	0.695**	3.9%
	(0.127)	
EPA	0.560**	3.1%
	(0.206)	
GSA	2.346**	13.0%
	(0.207)	
HHS	-2.833*	-15.7%
	(1.161)	
HUD	1.525**	8.5%
	(0.142)	
NASA	1.323**	7.3%
	(0.198)	
NSF	2.187**	12.1%
	(0.238)	
OPM	0.575**	3.2%
	(0.123)	
SBA	1.532**	8.5%
	(0.229)	
SSA	-1.455	-8.1%
	(1.366)	
STATE	1.220**	6.8%
	(0.262)	
VA	0.244**	1.4%
	(0.089)	
Constant	-3.869**	
	(0.261)	
Observations	5833	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4.8. Unconditional Policy Area Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.685** (0.187)	-4.1%
Judicial Deadline	-1.061** (0.139)	-6.4%
Final Stage	-0.368** (0.098)	-2.2%
Economically Significant	0.258 (0.184)	1.6%
Republican President	-0.015 (0.197)	-0.1%
Congress Split	0.380* (0.168)	2.3%
Congress United	-0.387** (0.132)	-2.3%
Last 3 Months of Administration	0.419 (0.328)	2.5%
First 3 Months of New Administration	3.080** (0.249)	18.6%
Policy Area (Agriculture Excluded)		
Macroeconomics	0.346** (0.036)	2.1%
Civil Rights/Liberties	0.052 (0.074)	0.3%
Health	-0.365** (0.020)	-2.2%
Labor, Employment, and Immigration	-0.197** (0.063)	-1.2%
Education	0.119* (0.059)	0.7%
Environment	-0.019 (0.032)	-0.1%
Energy	-0.998** (0.062)	-6.0%
Transportation	0.042 (0.029)	0.3%
Law, Crime, and Family	0.345**	2.1%

	(0.071)	
Social Welfare	0.709**	4.3%
	(0.073)	
Housing and Community Development	0.790**	4.8%
	(0.048)	
Banking and Commerce	-0.031	-0.2%
	(0.034)	
Defense	0.025	0.2%
	(0.069)	
Science and Technology	0.222**	1.3%
	(0.059)	
International Affairs and Aid	0.561**	3.4%
	(0.088)	
Government Operations	0.137**	0.8%
	(0.044)	
Public Lands and Water	-0.577**	-3.5%
	(0.040)	
Constant	-2.361**	
	(0.142)	
Observations	6200	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4.9. Unconditional Policy Area Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected including Interactions between Indicators for Deadlines and Economically Significant (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.740** (0.190)	-4.4%
Judicial Deadline	-1.511** (0.296)	-9.0%
Final Stage	-0.366** (0.098)	-2.2%
Economically Significant	0.183 (0.169)	1.1%
Republican President	-0.015 (0.199)	-0.1%
Congress Split	0.382* (0.169)	2.3%
Congress United	-0.389** (0.132)	-2.3%
Last 3 Months of Administration	0.420 (0.329)	2.5%
First 3 Months of New Administration	3.103** (0.257)	18.6%
Statutory*Economically Significant	0.208 (0.568)	1.3%
Judicial*Economically Significant	1.402** (0.363)	8.4%
Policy Area (Agriculture Excluded)		
Macroeconomics	0.343** (0.034)	2.1%
Civil Rights/Liberties	0.039 (0.065)	0.2%
Health	-0.370** (0.024)	-2.2%
Labor, Employment, and Immigration	-0.203** (0.066)	-1.2%
Education	0.114* (0.056)	0.7%
Environment	-0.040 (0.039)	-0.2%

Energy	-1.009** (0.097)	-6.0%
Transportation	0.034 (0.029)	0.2%
Law, Crime, and Family	0.336** (0.067)	2.0%
Social Welfare	0.704** (0.071)	4.2%
Housing and Community Development	0.782** (0.044)	4.7%
Banking and Commerce	-0.038 (0.033)	-0.2%
Defense	0.014 (0.067)	0.1%
Science and Technology	0.208** (0.052)	1.2%
International Affairs and Aid	0.552** (0.084)	3.3%
Government Operations	0.128** (0.040)	0.8%
Public Lands and Water	-0.508** (0.057)	-3.0%
Constant	-2.348** (0.140)	
Observations	6200	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4.10. Regulation Rejection Rates by Policy Area

Policy Area	Percent Rejected
Social Welfare	15.1%
Housing and Community Development	14.5%
Law, Crime, and Family	11.3%
International Affairs and Aid	10.4%
Defense	10.4%
Macroeconomics	9.9%
Transportation	8.8%
Government Operations	8.2%
Agriculture	8.1%
Environment	7.6%
Science and Technology	7.5%
Banking and Commerce	7.0%
Education	6.6%
Civil Rights/Liberties	6.3%
Labor, Employment, and Immigration	5.6%
Health	5.5%
Public Lands and Water	4.2%
Energy	2.3%
Foreign Trade	0.0%

Table 4.11. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected – Including Year Dummies (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.686** (0.174)	-4.1%
Judicial Deadline	-1.050** (0.106)	-6.3%
Final Stage	-0.403** (0.072)	-2.4%
Economically Significant	0.309 (0.204)	1.9%
Republican President	0.611 (0.469)	3.7%
Year (1994 Omitted)		
1995	-0.052 (0.297)	-0.3%
1996	-0.198 (0.190)	-1.2%
1997	-0.257 (0.303)	-1.5%
1998	-0.571 (0.420)	-3.4%
1999	-0.372 (0.265)	-2.2%
2000	-0.482* (0.239)	-2.9%
2001	1.168** (0.440)	7.0%
2002	-0.420 (0.480)	-2.5%
2003	-0.318 (0.512)	-1.9%
2004	-0.425 (0.543)	-2.5%
2005	-0.463 (0.517)	-2.8%
Agency (USDA omitted)		
AID	1.175** (0.099)	7.0%

	Estimate	Percent Change
ATBCB	0.083 (0.084)	0.5%
DHS	-0.718** (0.122)	-4.3%
DOC	-0.058 (0.044)	-0.4%
DOD	0.606** (0.045)	3.6%
DOE	-1.350** (0.067)	-8.1%
DOI	-0.384** (0.025)	-2.3%
DOJ	0.253** (0.056)	1.5%
DOL	-0.407** (0.048)	-2.4%
DOT	0.035 (0.024)	0.2%
ED	0.031 (0.070)	0.2%
EPA	-0.022 (0.024)	-0.1%
FAR	-0.095 (0.083)	-0.6%
FEMA	0.585** (0.076)	3.5%
GSA	0.971** (0.071)	5.8%
HHS	-0.439** (0.027)	-2.6%
HUD	0.743** (0.043)	4.5%
IMLS	1.002** (0.079)	6.0%
NARA	-0.382** (0.064)	-2.3%
NASA	-0.378** (0.072)	-2.3%
NSF	0.135	0.8%

	Estimate	Percent Change
	(0.073)	
OFHEO	-0.581**	-3.5%
	(0.058)	
OGE	0.295**	1.8%
	(0.056)	
OPM	-0.125*	-0.8%
	(0.060)	
RRB	2.257**	13.5%
	(0.137)	
SBA	0.301**	1.8%
	(0.029)	
SSA	0.166**	1.0%
	(0.053)	
STATE	-0.069	-0.4%
	(0.100)	
VA	-0.100	-0.6%
	(0.062)	
Constant	-2.429**	
	(0.167)	
Observations	6202	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4.12. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected including Interactions between Indicators for Deadlines and Economically Significant – Including Year Dummies (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.761** (0.192)	-4.5%
Judicial Deadline	-1.440** (0.205)	-8.6%
Final Stage	-0.403** (0.073)	-2.4%
Economically Significant	0.232 (0.166)	1.4%
Republican President	0.611 (0.470)	3.6%
Statutory*Economically Significant	0.267 (0.579)	1.6%
Judicial*Economically Significant	1.235** (0.309)	7.3%
Year (1994 Omitted)		
1995	-0.056 (0.295)	-0.3%
1996	-0.198 (0.188)	-1.2%
1997	-0.261 (0.303)	-1.6%
1998	-0.569 (0.420)	-3.4%
1999	-0.366 (0.265)	-2.2%
2000	-0.479* (0.240)	-2.9%
2001	1.177** (0.440)	7.0%
2002	-0.420 (0.481)	-2.5%
2003	-0.315 (0.510)	-1.9%
2004	-0.429 (0.543)	-2.6%
2005	-0.463	-2.8%

	Estimate	Percent Change
	(0.517)	
Agency (USDA omitted)		
AID	1.163**	6.9%
	(0.092)	
ATBCB	0.083	0.5%
	(0.089)	
DHS	-0.717**	-4.3%
	(0.123)	
DOC	-0.068	-0.4%
	(0.041)	
DOD	0.603**	3.6%
	(0.045)	
DOE	-1.380**	-8.2%
	(0.123)	
DOI	-0.330**	-2.0%
	(0.043)	
DOJ	0.244**	1.5%
	(0.052)	
DOL	-0.416**	-2.5%
	(0.046)	
DOT	0.025	0.2%
	(0.024)	
ED	0.026	0.2%
	(0.068)	
EPA	-0.041	-0.2%
	(0.028)	
FAR	-0.083	-0.5%
	(0.077)	
FEMA	0.597**	3.6%
	(0.066)	
GSA	0.963**	5.7%
	(0.070)	
HHS	-0.447**	-2.7%
	(0.032)	
HUD	0.735**	4.4%
	(0.038)	
IMLS	0.984**	5.9%
	(0.078)	
NARA	-0.398**	-2.4%
	(0.050)	

	Estimate	Percent Change
NASA	-0.396** (0.074)	-2.4%
NSF	0.118 (0.071)	0.7%
OFHEO	-0.613** (0.066)	-3.6%
OGE	0.281** (0.047)	1.7%
OPM	-0.138** (0.049)	-0.8%
RRB	2.252** (0.134)	13.4%
SBA	0.299** (0.030)	1.8%
SSA	0.162** (0.051)	1.0%
STATE	-0.075 (0.096)	-0.5%
VA	-0.114 (0.058)	-0.7%
Constant	-2.416** (0.163)	
Observations	6202	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 5.1. Description of Divided Government over Time

Time Period	Divided Government Status
Jan. 1981 - Dec. 1986	Split Congress
Jan. 1987 - Jan. 1993	United Congress
Feb. 1993 - Dec 1994	Unified Government
Jan. 1995 - Dec. 2000	United Congress
Jan. 2001 - Jan. 2001	Split Congress
Feb. 2001 - May 2001	Unified Government
Jun. 2001- Nov. 2002	Split Congress
Dec. 2002 - Dec. 2005	Unified Government
Months of Split Congress:	90
Months of United Congress:	145
Months of Unified Government:	64

Table 5.2. Impact of Divided Government on Number of Regulatory Actions Completed - Conditional Fixed Effects Negative Binomial Results

	Number of Proposed Regulatory Actions Completed		Number of Final Regulatory Actions Completed	
	Model Estimates	Percent Change	Model Estimates	Percent Change
Split Congress	-0.395** (0.135)	-33%	-0.120 (0.120)	-11%
United Congress	0.082 (0.112)	9%	-0.010 (0.107)	-1%
Republican President	0.087 (0.101)	9%	0.197* (0.097)	22%
Last 3 Months of President's Term	-0.330 (0.282)	-28%	0.555** (0.194)	74%
First 3 Months of New President's Term	-0.124 (0.262)	-12%	-0.016 (0.240)	-2%
Constant	-0.088 (0.204)		0.540* (0.275)	
Number of Agencies	27		28	
Number of Months per Agency	299		299	
Standard errors in parentheses				
* significant at 5%; ** significant at 1%				

Figure 1.1. Two-Principal, Two-Stage Transaction Cost Model

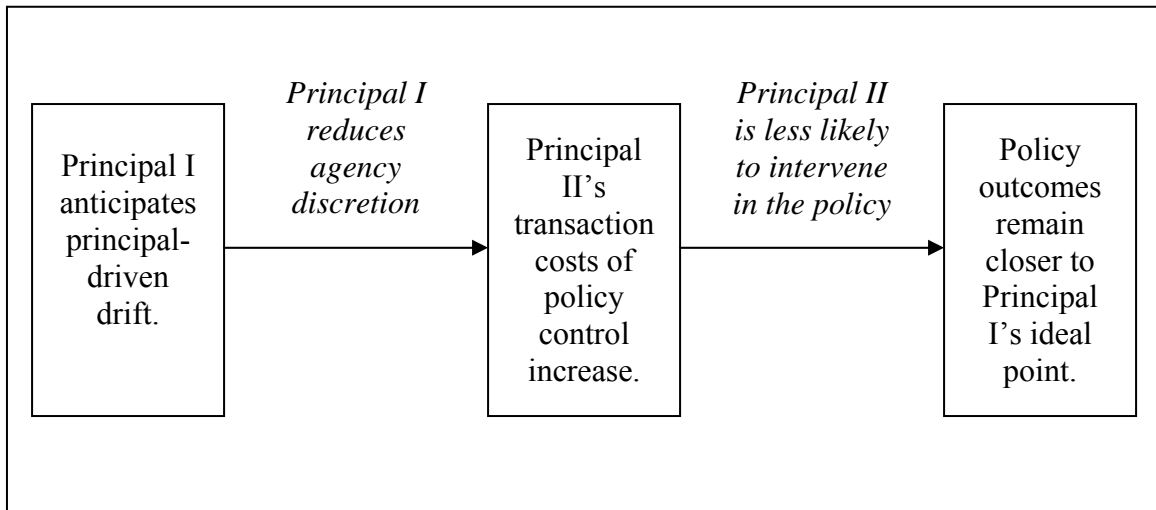


Figure 2.1. The Regulatory Process

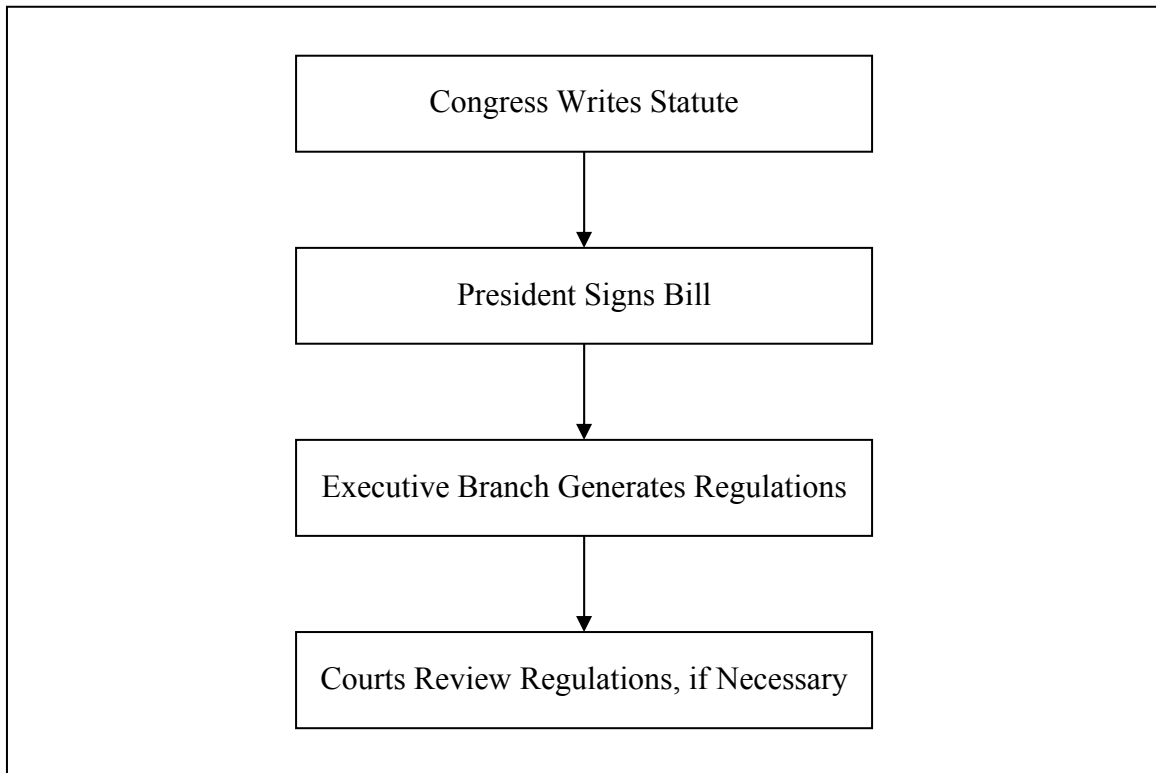


Figure 2.2. The White House Regulatory Review Process

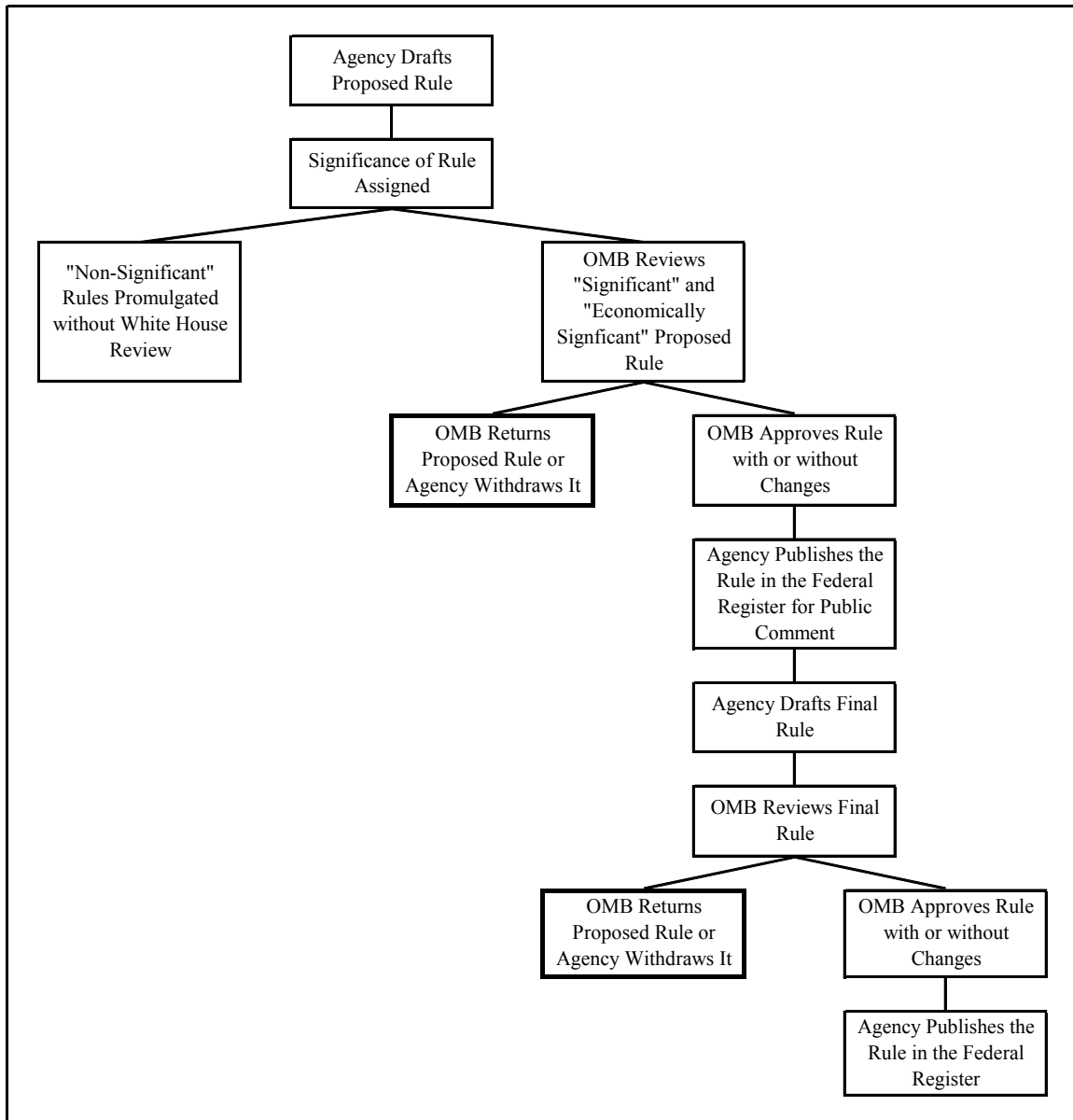


Figure 3.1. Number of Regulations over Time by Significance Status

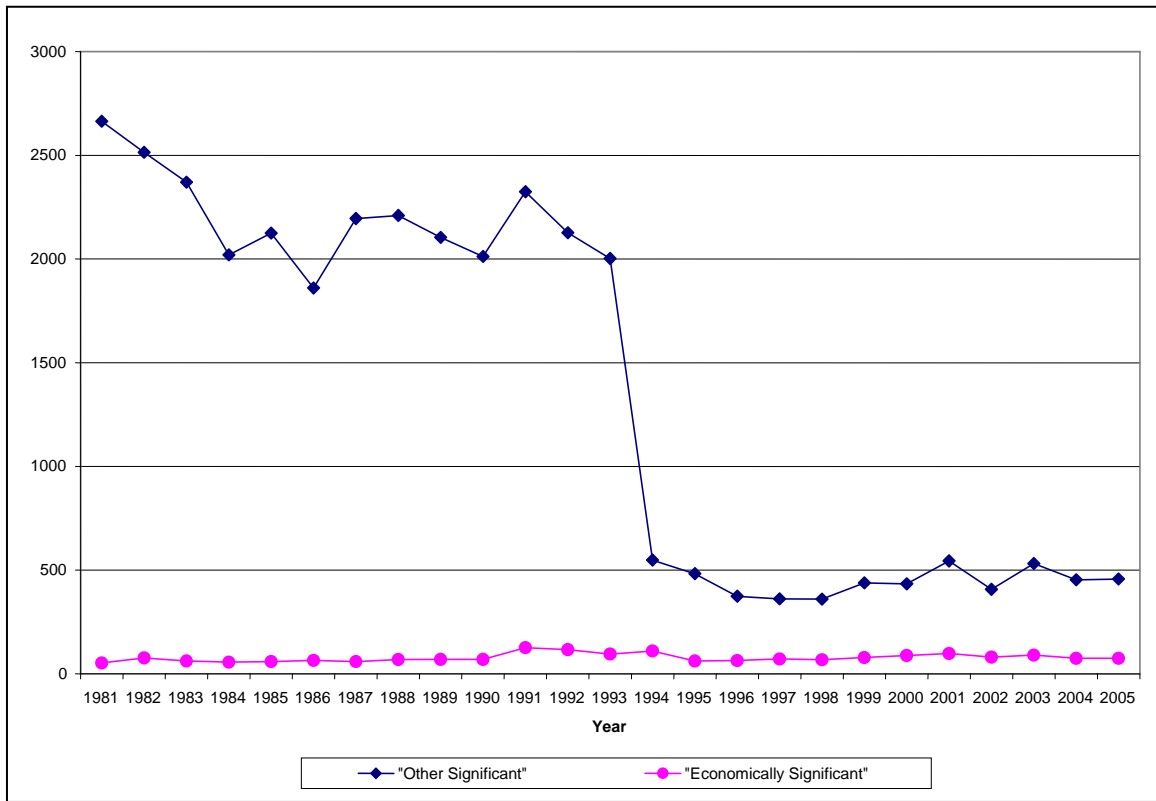


Figure 3.2. Number of Reviewed Regulations by Year and Stage

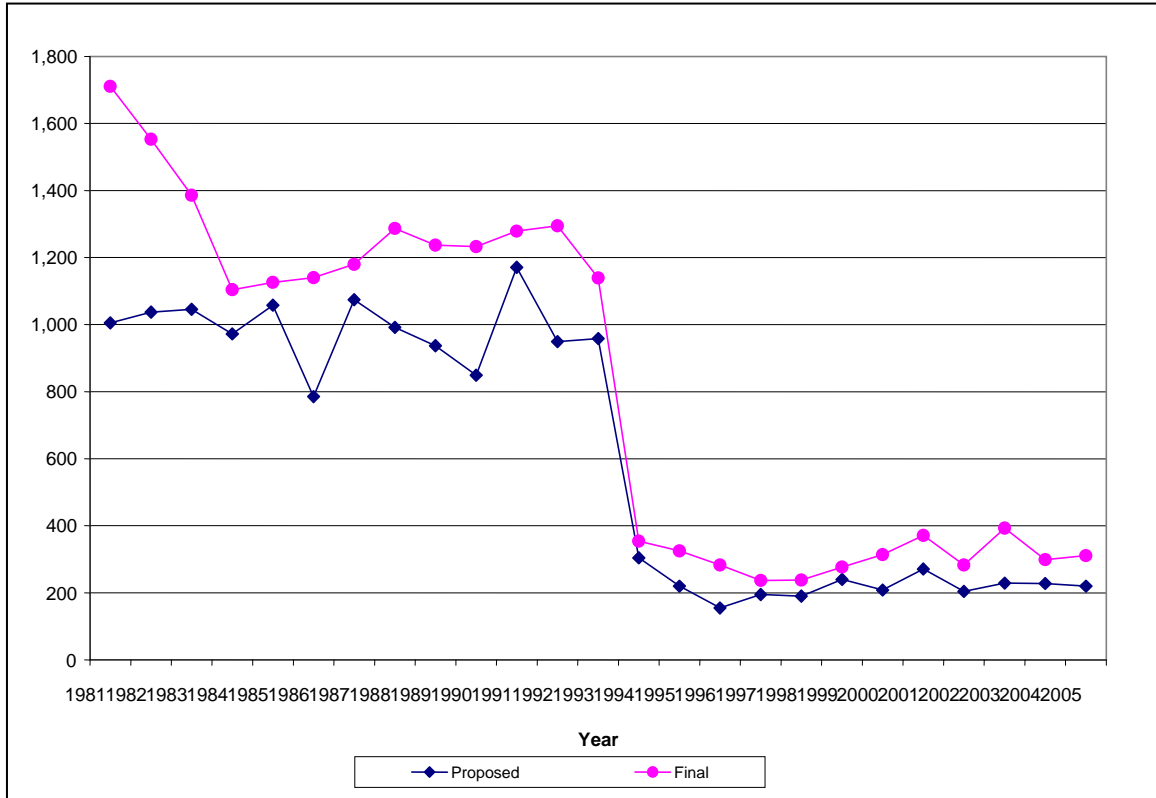


Figure 3.3. Proportion of Regulations with Legal Deadlines by Year

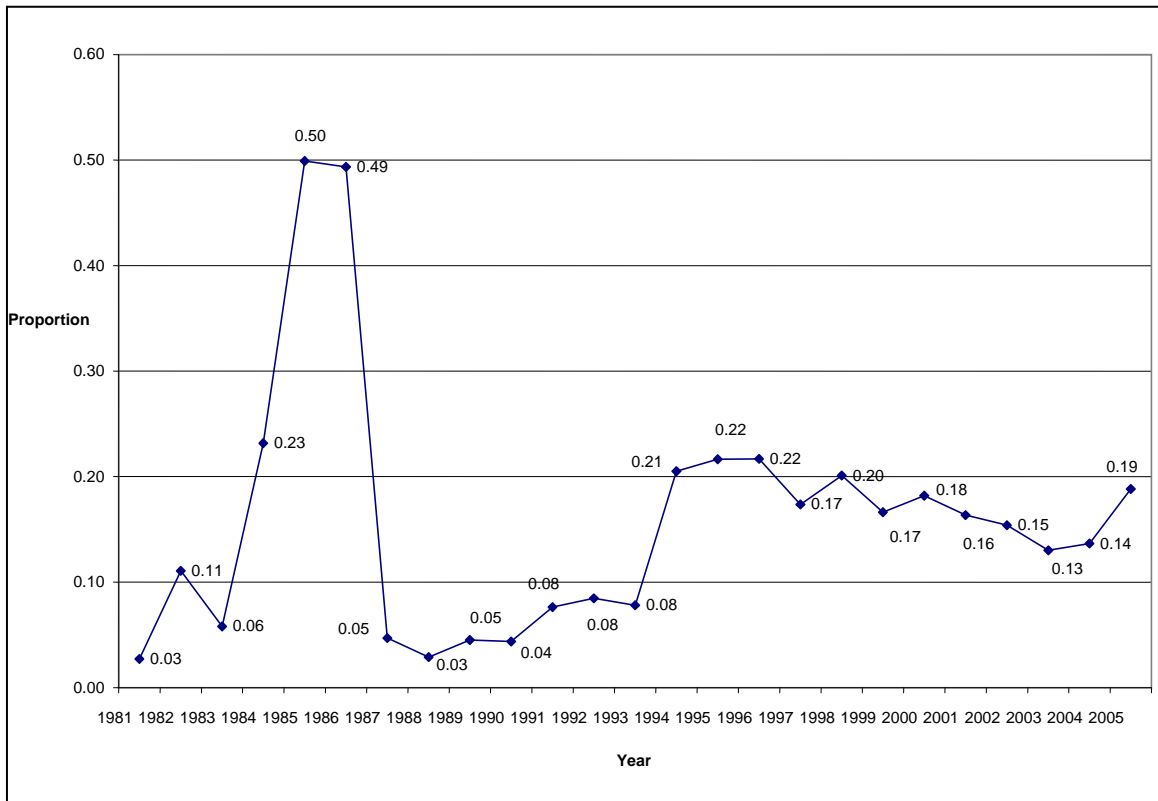


Figure 3.4. Number of Regulations by Deadline Status and Year

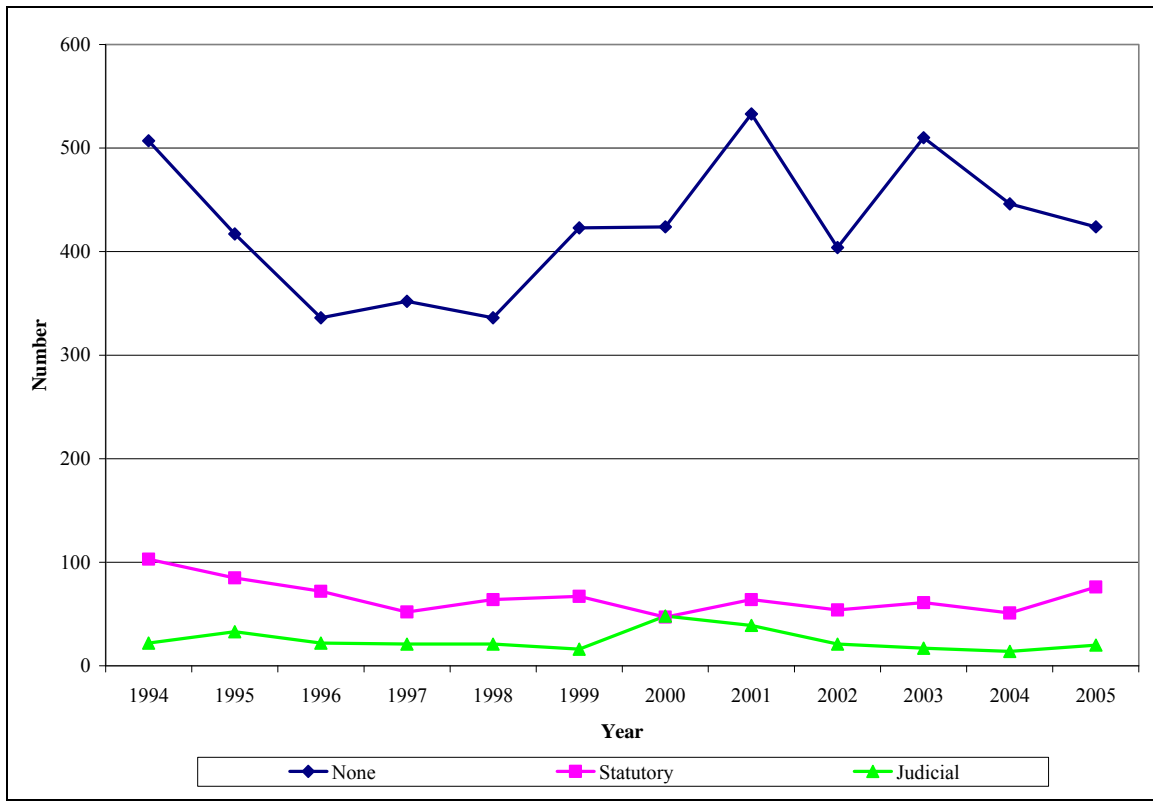


Figure 3.5. Proportion of Regulations by OMB Decision over Time

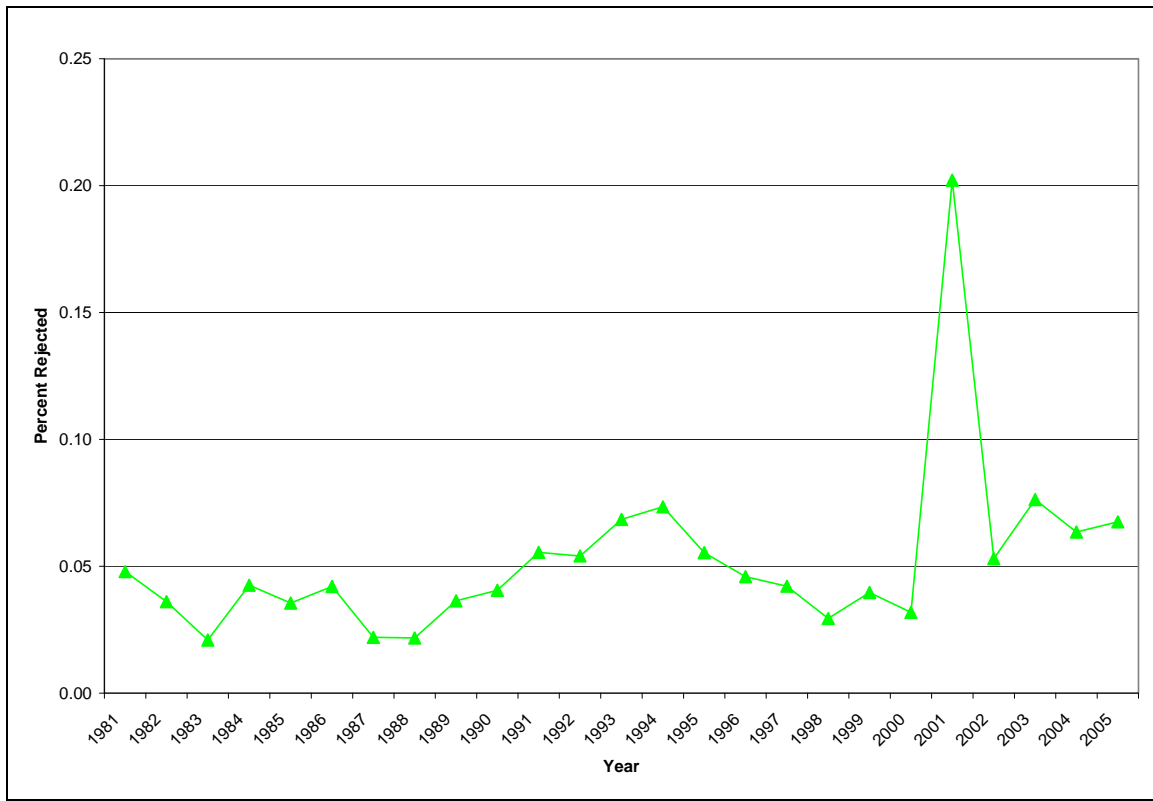


Figure 3.6. Percent of Proposed and Final Regulatory Actions Rejected over Time

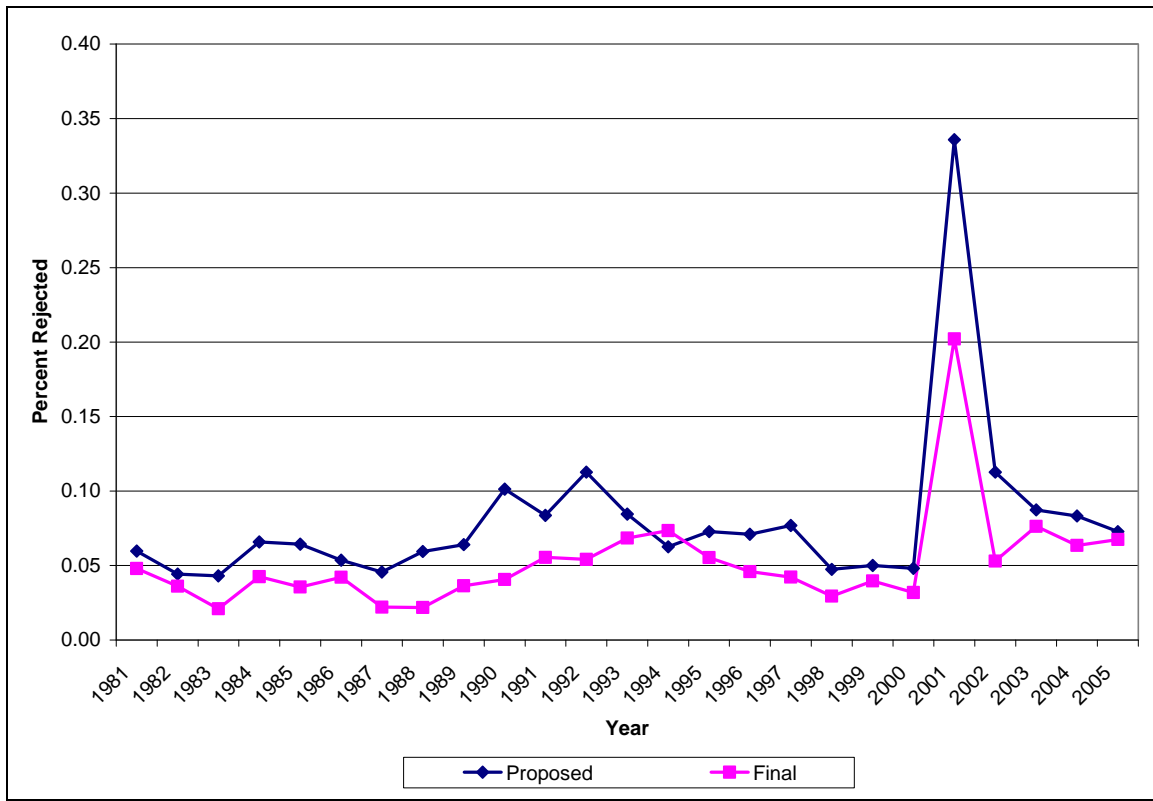


Figure 3.7. Percent of Regulations Rejected by Significance Status over Time

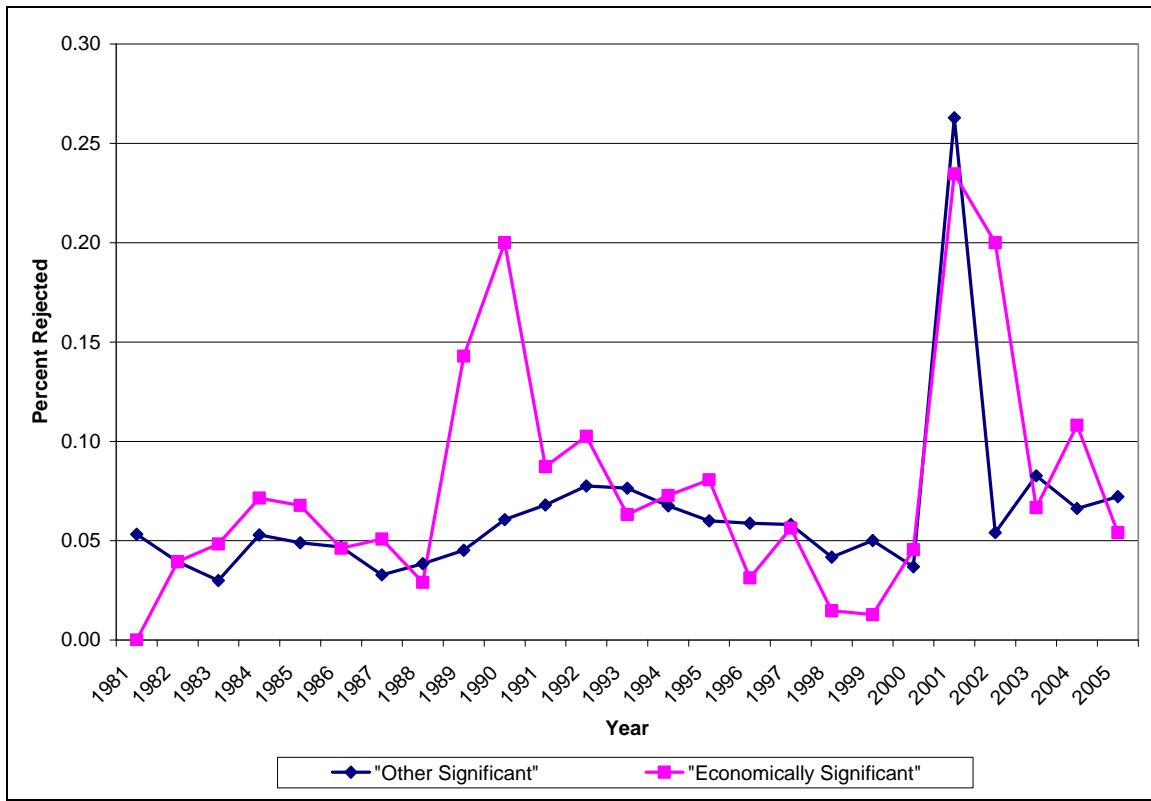


Figure 4.1. Predicted Effect of a Legal Deadline

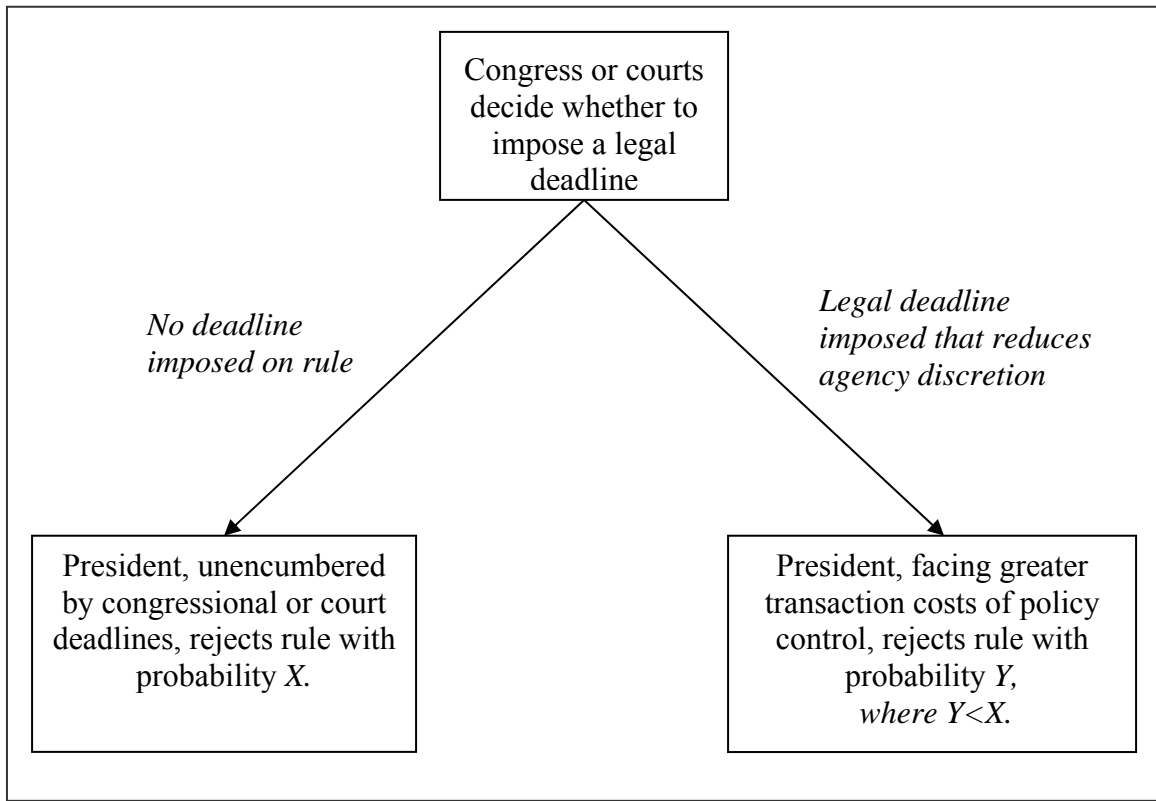
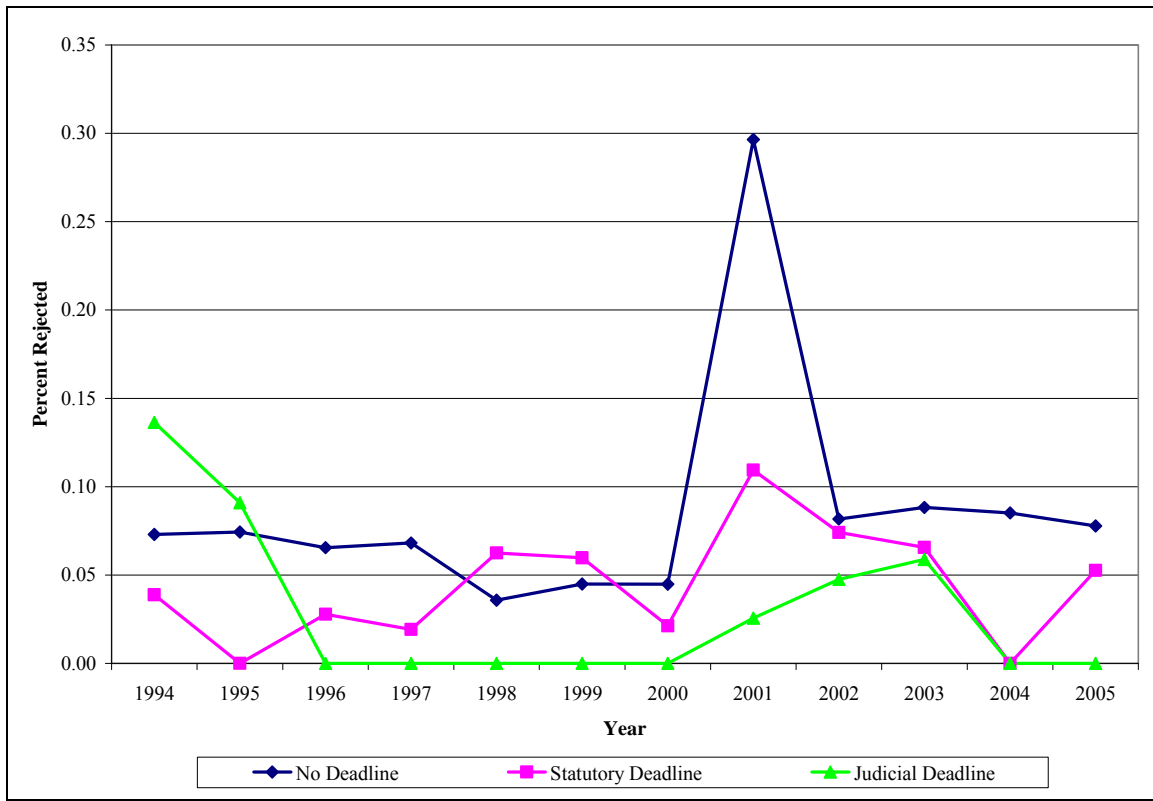


Figure 4.2. Percent of Regulations Rejected by Deadline Type



APPENDIX

Table 4A.1. Probability a Regulation is Rejected: Fixed and Random Effects

	Conditional Fixed Effects Logit (Standard SEs)	Random Effects Logit (Standard SEs)
Statutory Deadline	-0.664** (0.192)	-0.710** (0.191)
Judicial Deadline	-1.095** (0.379)	-1.211** (0.374)
Final Stage	-0.388** (0.101)	-0.371** (0.100)
Economically Significant	0.259 (0.143)	0.220 (0.141)
Republican President	0.047 (0.174)	0.001 (0.172)
Congress Split	0.348* (0.148)	0.369* (0.147)
Congress United	-0.409* (0.168)	-0.408* (0.167)
Last 3 Months of Administration	0.448 (0.276)	0.387 (0.275)
First 3 Months of New Administration	3.065** (0.192)	3.088** (0.190)
Constant		-2.220** (0.173)
Observations	6202	6202
Number of Agencies	30	30
Standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4A.2. Probability a Regulation is Rejected: Alternative Statistical Models

	Unconditional Fixed Effects Logit (Clustered SEs)	Conditional Fixed Effects Logit (Clustered SEs)	Unconditional Fixed Effects Probit (Clustered SEs)	Unconditional Fixed Effects Gompit (Clustered SEs)
Statutory Deadline	-0.668** (0.192)	-0.664** (0.191)	-0.317** (0.080)	0.219** (0.051)
Judicial Deadline	-1.099** (0.120)	-1.095** (0.119)	-0.482** (0.040)	0.300** (0.023)
Final Stage	-0.391** (0.082)	-0.388** (0.082)	-0.193** (0.042)	0.138** (0.031)
Economically Significant	0.261 (0.205)	0.259 (0.203)	0.127 (0.107)	-0.091 (0.083)
Republican President	0.048 (0.207)	0.047 (0.206)	0.019 (0.106)	-0.012 (0.080)
Congress Split	0.350* (0.173)	0.348* (0.171)	0.168 (0.089)	-0.120 (0.067)
Congress United	-0.411** (0.155)	-0.409** (0.154)	-0.215** (0.071)	0.166** (0.049)
Last 3 Months of Administration	0.452 (0.336)	0.448 (0.333)	0.209 (0.169)	-0.137 (0.125)
First 3 Months of New Administration	3.090** (0.279)	3.065** (0.277)	1.768** (0.160)	-1.678** (0.189)
Agency (USDA omitted)				
AID	1.316** (0.071)		0.702** (0.027)	-0.561** (0.015)
ATBCB	0.073 (0.073)		-0.001 (0.024)	0.028* (0.014)
DHS	-0.608**		-0.300**	0.224**

	Unconditional Fixed Effects Logit (Clustered SEs)	Conditional Fixed Effects Logit (Clustered SEs)	Unconditional Fixed Effects Probit (Clustered SEs)	Unconditional Fixed Effects Gompit (Clustered SEs)
	(0.142)		(0.069)	(0.050)
DOC	0.022		0.011	-0.010
	(0.037)		(0.016)	(0.011)
DOD	0.679**		0.335**	-0.239**
	(0.052)		(0.024)	(0.015)
DOE	-1.004**		-0.522**	0.394**
	(0.058)		(0.042)	(0.040)
DOI	-0.333**		-0.138**	0.076**
	(0.025)		(0.016)	(0.016)
DOJ	0.352**		0.161**	-0.101**
	(0.068)		(0.035)	(0.026)
DOL	-0.248**		-0.115**	0.081**
	(0.062)		(0.028)	(0.017)
DOT	0.051*		0.020	-0.009
	(0.024)		(0.015)	(0.014)
ED	0.078		0.034	-0.020
	(0.065)		(0.030)	(0.019)
EPA	-0.069*		-0.050**	0.058**
	(0.028)		(0.016)	(0.016)
FAR	-0.117		-0.040	0.009
	(0.062)		(0.033)	(0.028)
FEMA	0.621**		0.358**	-0.374**
	(0.057)		(0.035)	(0.026)
GSA	1.128**		0.577**	-0.437**
	(0.059)		(0.026)	(0.017)
HHS	-0.356**		-0.185**	0.145**

	Unconditional Fixed Effects Logit (Clustered SEs)	Conditional Fixed Effects Logit (Clustered SEs)	Unconditional Fixed Effects Probit (Clustered SEs)	Unconditional Fixed Effects Gompit (Clustered SEs)
	(0.018)		(0.011)	(0.010)
HUD	0.800**		0.408**	-0.306**
	(0.051)		(0.021)	(0.012)
IMLS	1.140**		0.578**	-0.402**
	(0.061)		(0.027)	(0.022)
NARA	-0.174*		-0.057	0.024
	(0.085)		(0.039)	(0.025)
NASA	0.087		0.007	0.021
	(0.069)		(0.035)	(0.028)
NSF	0.731**		0.452**	-0.405**
	(0.089)		(0.034)	(0.028)
OFHEO	-0.238**		-0.141**	0.121**
	(0.087)		(0.048)	(0.038)
OGE	0.427**		0.220**	-0.165**
	(0.056)		(0.023)	(0.013)
OPM	-0.092		-0.053	0.049*
	(0.069)		(0.033)	(0.022)
RRB	2.368**		1.294**	-1.098**
	(0.046)		(0.018)	(0.014)
SBA	0.366**		0.185**	-0.140**
	(0.040)		(0.018)	(0.011)
SSA	0.507**		0.242**	-0.167**
	(0.077)		(0.037)	(0.026)
STATE	-0.021		-0.008	0.006
	(0.100)		(0.047)	(0.031)
VA	-0.209**		-0.114**	0.095**

	Unconditional Fixed Effects Logit (Clustered SEs)	Conditional Fixed Effects Logit (Clustered SEs)	Unconditional Fixed Effects Probit (Clustered SEs)	Unconditional Fixed Effects Gompit (Clustered SEs)
	(0.070)		(0.033)	(0.024)
Constant	-2.385**		-1.356**	0.878**
	(0.159)		(0.074)	(0.050)
Observations	6202	6202	6202	6202
Robust standard errors in parentheses				
* significant at 5%; ** significant at 1%				

Table 4A.3. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.668** (0.192)	-3.2%
Judicial Deadline	-1.099** (0.120)	-4.3%
Final Stage	-0.391** (0.082)	-2.4%
Economically Significant	0.261 (0.205)	1.7%
Republican President	0.048 (0.207)	0.3%
Congress Split	0.350* (0.173)	2.3%
Congress United	-0.411** (0.155)	-2.4%
Last 3 Months of Administration	0.452 (0.336)	3.2%
First 3 Months of New Administration	3.090** (0.279)	51.7%
Agency (USDA omitted)		
AID	1.316** (0.071)	13.7%
ATBCB	0.073 (0.073)	0.5%
DHS	-0.608** (0.142)	-2.8%
DOC	0.022 (0.037)	0.1%
DOD	0.679** (0.052)	5.3%
DOE	-1.004** (0.058)	-3.9%
DOI	-0.333** (0.025)	-1.7%
DOJ	0.352** (0.068)	2.4%
DOL	-0.248** (0.062)	-1.3%
DOT	0.051* (0.024)	0.3%
ED	0.078 (0.065)	0.5%
EPA	-0.069* (0.028)	-0.4%
FAR	-0.117 (0.062)	-0.7%

	Estimate	Percent Change
FEMA	0.621** (0.057)	4.8%
GSA	1.128** (0.059)	10.8%
HHS	-0.356** (0.018)	-1.9%
HUD	0.800** (0.051)	6.4%
IMLS	1.140** (0.061)	11.1%
NARA	-0.174* (0.085)	-1.0%
NASA	0.087 (0.069)	0.5%
NSF	0.731** (0.089)	6.0%
OFHEO	-0.238** (0.087)	-1.3%
OGE	0.427** (0.056)	3.0%
OPM	-0.092 (0.069)	-0.5%
RRB	2.368** (0.046)	35.4%
SBA	0.366** (0.040)	2.5%
SSA	0.507** (0.077)	3.7%
STATE	-0.021 (0.100)	-0.1%
VA	-0.209** (0.070)	-1.1%
Constant	-2.385**	
Observations	6202	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4A.4. Unconditional Fixed Effects Logit Model Estimating the Probability that a Regulation is Rejected including Interaction between Deadlines and Economically Significant (Clustered SEs)

	Estimate	Percent Change
Statutory Deadline	-0.728** (0.196)	-3.4%
Judicial Deadline	-1.585** (0.188)	-5.3%
Final Stage	-0.389** (0.083)	-2.3%
Economically Significant	0.179 (0.176)	1.1%
Republican President	0.047 (0.210)	0.3%
Congress Split	0.354* (0.174)	2.3%
Congress United	-0.412** (0.154)	-2.4%
Last 3 Months of Administration	0.453 (0.336)	3.2%
First 3 Months of New Administration	3.119** (0.288)	52.3%
Statutory*Economically Significant	0.225 (0.553)	1.2%
Judicial*Economically Significant	1.546** (0.282)	15.7%
Agency (USDA omitted)		
AID	1.302** (0.062)	13.4%
ATBCB	0.076 (0.085)	0.5%
DHS	-0.607** (0.143)	-2.8%
DOC	0.011 (0.037)	0.1%
DOD	0.676** (0.050)	5.3%
DOE	-1.017** (0.096)	-3.9%
DOI	-0.265** (0.043)	-1.4%
DOJ	0.342** (0.063)	2.3%
DOL	-0.255** (0.063)	-1.3%
DOT	0.042 (0.023)	0.3%
ED	0.072	0.4%

	Estimate	Percent Change
	(0.062)	
EPA	-0.098**	-0.5%
	(0.026)	
FAR	-0.113	-0.6%
	(0.058)	
FEMA	0.627**	4.8%
	(0.054)	
GSA	1.119**	10.5%
	(0.058)	
HHS	-0.362**	-1.9%
	(0.022)	
HUD	0.791**	6.3%
	(0.046)	
IMLS	1.122**	10.7%
	(0.053)	
NARA	-0.189*	-1.0%
	(0.074)	
NASA	0.071	0.4%
	(0.062)	
NSF	0.719**	5.8%
	(0.084)	
OFHEO	-0.258**	-1.3%
	(0.075)	
OGE	0.413**	2.9%
	(0.049)	
OPM	-0.107	-0.6%
	(0.060)	
RRB	2.362**	35.0%
	(0.044)	
SBA	0.363**	2.5%
	(0.038)	
SSA	0.504**	3.6%
	(0.074)	
STATE	-0.028	-0.2%
	(0.096)	
VA	-0.228**	-1.2%
	(0.065)	
Constant	-2.371**	
	(0.158)	
Observations	6202	
Robust standard errors in parentheses		
* significant at 5%; ** significant at 1%		

Table 4A.5. Division of Agencies and Main Agencies into Policy Areas

Main Agency	Sub-Agency	Policy Area
Small Business Administration	No sub-agencies designated	Macroeconomics
Department of Education	Office for Civil Rights	Civil Rights/Liberties
Department of Education	Office of Special Education and Rehabilitative Services	Civil Rights/Liberties
Office of Government Ethics	No sub-agencies designated	Civil Rights/Liberties
Department of Health and Human Services	Includes all regulations without specific sub-agency designated	Health
Department of Health and Human Services	Administration for Children and Families	Health
Department of Health and Human Services	Centers for Disease Control and Prevention	Health
Department of Health and Human Services	Centers for Medicare and Medicaid Services	Health
Department of Health and Human Services	Food and Drug Administration	Health
Department of Health and Human Services	Health Resources and Services Administration	Health
Department of Health and Human Services	National Institutes of Health	Health
Department of Health and Human Services	Office of Public Health and Science	Health
Department of Health and Human Services	Office of the Secretary	Health
Department of Health and Human Services	Substance Abuse and Mental Health Services Administration	Health
Department of Agriculture	Includes all regulations without specific sub-agency designated	Agriculture
Department of Agriculture	Agricultural Marketing Service	Agriculture
Department of Agriculture	Animal and Plant Health Inspection Service	Agriculture
Department of Agriculture	Farm Service Agency	Agriculture
Department of Agriculture	Federal Crop Insurance Corporation	Agriculture
Department of Agriculture	Food Safety and Inspection Service	Agriculture
Department of Agriculture	Food and Nutrition Service	Agriculture
Department of Agriculture	Foreign Agricultural Service	Agriculture
Department of Agriculture	Grain Inspection, Packers and Stockyards Administration	Agriculture
Department of Agriculture	Office of General Counsel	Agriculture
Department of Agriculture	Office of the Secretary	Agriculture
Department of Agriculture	Rural Business-Cooperative Service	Agriculture
Department of Homeland Security	Bureau of Citizenship and Immigration Services	Labor, Employment, and Immigration
Department of Labor	Includes all regulations without specific sub-agency designated	Labor, Employment, and Immigration
Department of Labor	Employee Benefits Security Administration	Labor, Employment, and Immigration

Main Agency	Sub-Agency	Policy Area
Department of Labor	Employment Standards Administration	Labor, Employment, and Immigration
Department of Labor	Employment and Training Administration	Labor, Employment, and Immigration
Department of Labor	Mine Safety and Health Administration	Labor, Employment, and Immigration
Department of Labor	Occupational Safety and Health Administration	Labor, Employment, and Immigration
Department of Labor	Office of the Assistant Secretary for Administration and Management	Labor, Employment, and Immigration
Department of Labor	Office of the Assistant Secretary for Veterans' Employment and Training	Labor, Employment, and Immigration
Department of Labor	Office of the Secretary	Labor, Employment, and Immigration
Department of Education	Includes all regulations without specific sub-agency designated	Education
Department of Education	Office of Elementary and Secondary Education	Education
Department of Education	Office of Innovation and Improvement	Education
Department of Education	Office of the Chief Financial Officer	Education
Department of Agriculture	Natural Resources Conservation Service	Environment
Department of Commerce	National Oceanic and Atmospheric Administration	Environment
Department of the Interior	United States Fish and Wildlife Service	Environment
Environmental Protection Agency	Includes all regulations without specific sub-agency designated	Environment
Environmental Protection Agency	Air and Radiation	Environment
Environmental Protection Agency	Office of Environmental Information	Environment
Environmental Protection Agency	Office of Prevention, Pesticides and Toxic Substances	Environment
Environmental Protection Agency	Regional Office Seattle	Environment
Environmental Protection Agency	Solid Waste and Emergency Response	Environment
Environmental Protection Agency	Water	Environment
Department of Agriculture	Rural Utilities Service	Energy
Department of Energy	Includes all regulations without specific sub-agency designated	Energy
Department of Energy	Departmental and Others	Energy
Department of Energy	Energy Efficiency and Renewable Energy	Energy
Architectural and Transportation Barriers Compliance Board	No sub-agencies designated	Transportation
Department of Transportation	Includes all regulations without specific sub-agency designated	Transportation

Main Agency	Sub-Agency	Policy Area
Department of Transportation	Federal Aviation Administration	Transportation
Department of Transportation	Federal Highway Administration	Transportation
Department of Transportation	Federal Motor Carrier Safety Administration	Transportation
Department of Transportation	Federal Railroad Administration	Transportation
Department of Transportation	Maritime Administration	Transportation
Department of Transportation	National Highway Traffic Safety Administration	Transportation
Department of Transportation	Office of the Secretary	Transportation
Department of Transportation	Research and Special Programs Administration	Transportation
Department of Homeland Security	Bureau of Customs and Border Protection	Law, Crime, and Family
Department of Homeland Security	Bureau of Immigration and Customs Enforcement	Law, Crime, and Family
	Directorate of Border and Transportation Security	
Department of Homeland Security	(Undersecretary)	Law, Crime, and Family
Department of Justice	Includes all regulations without specific sub-agency designated	Law, Crime, and Family
Department of Justice	Bureau of Alcohol, Tobacco, Firearms and Explosives	Law, Crime, and Family
Department of Justice	Bureau of Prisons	Law, Crime, and Family
Department of Justice	Drug Enforcement Administration	Law, Crime, and Family
Department of Justice	Executive Office for Immigration Review	Law, Crime, and Family
Department of Justice	Federal Bureau of Investigation	Law, Crime, and Family
Department of Justice	Legal Activities	Law, Crime, and Family
Department of Justice	Office of Justice Programs	Law, Crime, and Family
Institute of Museum and Library Services	No sub-agencies designated	Social Welfare
Railroad Retirement Board	No sub-agencies designated	Social Welfare
Social Security Administration	No sub-agencies designated	Social Welfare
		Housing and Community
Department of Agriculture	Rural Housing Service	Development
		Housing and Community
Department of Housing and Urban Development	Includes all regulations without specific sub-agency designated	Development
		Housing and Community
Department of Housing and Urban Development	Office of Community Planning and Development	Development
		Housing and Community
Department of Housing and Urban Development	Office of Fair Housing and Equal Opportunity	Development
		Housing and Community
Department of Housing and Urban Development	Office of Housing	Development
		Housing and Community
Department of Housing and Urban Development	Office of Public and Indian Housing	Development

Main Agency	Sub-Agency	Policy Area
Department of Housing and Urban Development	Office of the Secretary	Housing and Community Development
Department of Commerce	Includes all regulations without specific sub-agency designated	Banking and Commerce
Department of Commerce	Bureau of Industry and Security	Banking and Commerce
Department of Commerce	Economic Development Administration	Banking and Commerce
Department of Commerce	International Trade Administration	Foreign Trade
Department of Commerce	Patent and Trademark Office	Banking and Commerce
Department of Housing and Urban Development	Government National Mortgage Association	Banking and Commerce
Office of Federal Housing Enterprise Oversight	No sub-agencies designated	Banking and Commerce
Department of Defense	Includes all regulations without specific sub-agency designated	Defense
Department of Defense	Defense Acquisition Regulations Council	Defense
Department of Defense	Department of the Army	Defense
Department of Defense	Office of Assistant Secretary for Health Affairs	Defense
Department of Defense	Office of the Secretary	Defense
Department of Energy	Defense and Security Affairs	Defense
Department of Homeland Security	Includes all regulations without specific sub-agency designated	Defense
	Directorate for Emergency Preparedness and Response (Undersecretary)	Defense
Department of Homeland Security	Office of the Secretary	Defense
Department of Homeland Security	Transportation Security Administration	Defense
Department of Homeland Security	U.S. Coast Guard	Defense
Department of Veterans Affairs	No sub-agencies designated	Defense
Federal Emergency Management Agency	No sub-agencies designated	Defense
National Aeronautics and Space Administration	No sub-agencies designated	Science and Technology
National Science Foundation	No sub-agencies designated	Science and Technology
Agency for International Development	No sub-agencies designated	International Affairs and Aid
Department of State	No sub-agencies designated	International Affairs and Aid
DOD/GSA/NASA (FAR)	No sub-agencies designated	Government Operations
General Services Administration	No sub-agencies designated	Government Operations
National Archives and Records Administration	No sub-agencies designated	Government Operations
Office of Personnel Management	No sub-agencies designated	Government Operations
Department of Agriculture	Forest Service	Public Lands and Water
Department of the Interior	Includes all regulations without specific sub-agency designated	Public Lands and Water
Department of the Interior	Assistant Secretary for Policy, Management and Budget	Public Lands and Water

Main Agency	Sub-Agency	Policy Area
Department of the Interior	Bureau of Indian Affairs	Public Lands and Water
Department of the Interior	Bureau of Land Management	Public Lands and Water
Department of the Interior	Bureau of Reclamation	Public Lands and Water
Department of the Interior	Minerals Management Service	Public Lands and Water
Department of the Interior	National Park Service	Public Lands and Water
Department of the Interior	Office of Hearings and Appeals	Public Lands and Water
Department of the Interior	Office of Surface Mining Reclamation and Enforcement	Public Lands and Water

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