

Separation of Powers and Agency Rulemaking¹

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Abstract: Rulemaking is an important avenue for policy change in the American system, but it does not occur in a vacuum. The separation of powers system practically guarantees that, at times, agencies will be pushed and pulled in different directions by Congress and the president. We argue that these forces critically affect the volume of rules produced by an agency. We develop an account of agency rulemaking in light of these factors and test our hypotheses on a dataset of agency rules from 1983 to 2007. Our results show that agency rulemaking activity indeed reflects the influence of separation of powers.

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The U.S. Constitution assigns significant policymaking authority to each branch of government. Congress receives the lion's share of attention, especially with regard to the sphere of its authority and the processes by which it can create new laws. The president also clearly has authority to set policy, both through the legislative process and through alternative methods, such as executive orders, that are viewed as consistent with the powers set out in the Constitution. And the courts similarly have authority to weigh in on policymaking, in particular through the power of judicial review that is drawn (indirectly) from the Constitution.

Yet the most active policymakers at the national level are barely mentioned in the Constitution. Here we refer, of course, to the bureaucracy. In 2001, for example, Congress and the president passed 108 laws, while the Supreme Court issued rulings on scores of cases. At the same time, national-level agencies issued 3,453 rules, and considered thousands more (O'Connell 2008). These rules have the potential to dramatically shift the course of public policy. To take one example, in the spring of 2011 the Department of Education issued final rules that placed restrictions on the recruitment practices of for-profit colleges and universities. The intent of the rules was to curb predatory practices by these institutions, which were suspected of targeting vulnerable populations and misrepresenting the value of their product. The rules, which were controversial in that they were a first step toward government oversight of the rapidly growing \$40 billion for-profit college industry, were promulgated over the industry's protests and in the absence of a congressional mandate.

The Department of Education's use of rulemaking to precipitate a major policy shift was not unusual. Recently, for example, the Environmental Protection Agency has employed rulemaking as a vehicle to tackle climate change in the absence of decisive action from

Congress. Similarly, at the tail end of the Bush administration in late 2008, the Department of Interior issued a controversial rule – over the vehement objections of environmental groups – that relaxed restrictions on the disposal of rock and dirt debris from mountaintop coal mining.

As these examples illustrate, rulemaking is a major (and often controversial) avenue for policy change in the American system. Yet in spite of the prominence, impact, and durability of rules, little is known about the conditions under which agencies are free to pursue policy change using rules and when they are constrained from doing so. In this paper we investigate these conditions and in so doing make several contributions. To begin, we add our analysis to the small but significant set of empirical studies of rulemaking (O'Connell 2008; Yackee and Yackee 2009b, 2009a). We contend that in order to understand when and why agencies engage in rulemaking, scholars need to consider the political forces – in particular, other institutions – that can influence the frequency with which an agency engages in rulemaking. At the same time, we control for factors within agencies that also can influence the extent to which an agency engages in rulemaking.

Furthermore, a focus on rulemaking allows us to contribute to the much larger literature on political influence over agencies. Rulemaking, we argue, uniquely allows us to investigate political influence over agencies *generally* – that is, by not focusing on one agency (Ferejohn and Shipan 1990; Olson 1995, 1996) or a small set of agencies (e.g., Wood and Waterman 1993), but looking instead at similar actions across a broad range of agencies (e.g., MacDonald 2010). As part of our investigation, we consider specific ways in which three prominent institutional actors – Congress, the president, and the courts – might influence agencies.

The Politics of Rulemaking

Studies of political influence over agencies have, until recently, largely neglected rulemaking. What work exists has, by and large, been the province of legal scholars who focus on the normative implications of the notice-and-comment rulemaking process. Such studies, however, provide few insights about why some agencies engage in rulemaking with greater frequency than others, or why an agency finalizes many rules at some times but few at others.

Recently, however, exceptions to this pattern have emerged. Newer work has explored the role of interest groups in affecting regulatory outcomes (Yackee and Yackee 2006; Balla 1998) and the influence of the political environment – and in particular, the institutions of our separations of powers system – on agency rulemaking. O’Connell (2008), for example, analyzes the effect of political transitions in Congress and the White House on the volume of agency regulatory activity. Yackee and Yackee explore whether institutional factors have caused the rulemaking process to become ossified (2009a) and whether divided government impedes the promulgation of agency rules (2009b).

By identifying noteworthy empirical patterns in rulemaking cycles, these studies contribute to our understanding of rulemaking as a political phenomenon. At the same time, they leave several questions unanswered. What, for example, are the specific ways in which other institutions influence rulemaking? Do agencies fear being overturned by Congress, or are they simply wary of the myriad ways in which Congress can make their life more difficult? Does ideological agreement with the president free agencies up to engage in more rulemaking? Although existing empirical analyses highlight important cyclical patterns, in order to fully understand the implications for agency governance and oversight, it is necessary to have a firm understanding of *why* agencies make rules.

Theory and Hypotheses

The pursuit of policy in a separation of powers system often entails a struggle with other branches. As players within this game, agencies (or, more specifically, the bureaucrats that work within these agencies) have good reason to heed the preferences of their political principals, who have numerous outlets for disciplining agencies or individual bureaucrats. Even bureaucrats who are not motivated solely by policy will be affected by such actions, which can result in reputational losses for the agency, thereby affecting the overall trajectory of the agency and the career prospects of individual bureaucrats (Carpenter 2001). Regardless of whether bureaucrats are motivated solely by policy concerns, or instead are motivated by personal concerns such as career advancement or monetary gain (e.g., Gailmard and Patty 2007), they have reason to be attentive to the preferences of Congress and the president. We now turn to each of these institutions.

Congressional influence on rulemaking

Congress's ability to influence the actions of government agencies is well established. Surprisingly, though, scholars tend not to distinguish between two distinct aspects of congressional power over agencies. First, Congress, in conjunction with the president, holds the power to overturn an agency's action or to restrict agency activity by writing a new law. Second, Congress can make life extremely difficult for an agency that is intent on taking actions that it dislikes. Although these two powers are connected – the former underlies the latter in some ways – they are also conceptually distinct and can lead to different empirical predictions.

First consider an agency's concern about statutory action, which consists of two separate concerns: fear of being overturned, and fear of new laws that would restrict the agency's autonomy or discretion. While overturns are rare, they do occur (Kaiser 1979), and the agency must pay attention to this possibility since the resulting new policy is likely to be inconsistent with the agency's preferences.¹ In other words, agencies are less likely to engage in rulemaking that might trigger congressional actions that result in policy losses. Furthermore, agencies suffer reputational costs of the sorts discussed above when their policies – their expert judgments about how to proceed – are overturned.

Even if Congress does not explicitly overturn a rule, it may take other statutory actions that limit an errant agency's freedom. Such actions can include altering the agency's jurisdiction, circumscribing the agency's rulemaking authority, enacting moratoriums on certain types of rulemaking by the agency, transferring jurisdiction from that agency to another, or deregulating in the agency's area of jurisdiction (Kaiser 1979). For a variety of reasons, then, agencies will be leery of creating rules under conditions that are more likely to lead to the passage of new laws.

The likelihood of Congress reacting to an agency's rule by passing a new law (either to overturn the rule or to curb the agency) varies over time. At certain points, Congress can easily overcome its internal collective action problem and legislate. At other times, it is considerably harder for the two chambers and the president to agree on policy. If the agency observes that Congress is limited in its ability to pass new legislation, then it gains assurance that the rules it

¹ When overturns do occur, they often take the form of appropriations riders; see MacDonald (2010). This strategy can be used to prevent agency funds from being directed towards the proposal or implementation of objectionable final rules (Copeland 2008).

creates will be safe from statutory retribution. In these scenarios, the agency is more likely to engage in rulemaking, as specified in our first hypothesis:

H1: Legislative Activism. Rulemaking will increase when agencies are less concerned about the possibility of Congress passing a new law.

Even though a single chamber cannot unilaterally overturn an agency's rule, its quiver contains many other arrows. For example, a chamber can drag agency leaders before a hostile committee, which both increases the costs to the agency of doing business and potentially imposes a reputational cost on whomever must testify. An unhappy chamber also can insist on slashing an agency's budget, secure in the knowledge that in order to get the budget passed, the other chamber and the president will likely accede (at least partially) to its demands. It can also conduct additional monitoring (e.g., requesting investigative reports by the Government Accountability Office), or institute onerous reporting requirements. The point is that a single chamber of Congress has no shortage of tactics it can use to make life difficult for an agency.

We expect that the extent to which a chamber of Congress will put pressure on an agency will be an increasing function of the distance between the chamber and the agency. When the two institutions are fairly close, the chamber has little incentive to make life difficult for the agency; indeed, many of the rules that an agency would issue under such conditions are likely to be ones that the chamber would view favorably. On the other hand, when the two institutions are far apart, the chamber will be motivated to do whatever it can to increase the agency's costs of doing business. Under such conditions, an agency will still go through with essential rules, but, where there is discretion, will anticipate the reaction of the more distant chamber and will limit rulemaking, leading to our second hypothesis:

H2: Congressional Pressure. Rulemaking will decrease as the distance between the agency and the farthest congressional chamber increases.

Congress thus can influence agency production of rulemaking in two distinct ways – through legislation, and by putting pressure on the agency. Our first two hypotheses attempt to disentangle these modes of influence, and our empirical analysis will allow us to determine whether one – or both – mechanisms are in effect.

Presidents and Rulemaking

Presidents are in a privileged position with respect to agencies. For executive branch agencies, the chain of command leads directly to the president, giving them a strong incentive to reflect the president's preferences. Furthermore, presidents have centralized power over these agencies, most notably through OIRA, which reviews and approves executive branch rules; and can unilaterally order agencies to take actions (Howell 2003). More generally, presidents have a variety of tools that they can use to punish wayward agencies, including diverting funds from pet programs, firing key agency leaders, packing the agency with friendly appointees, or commanding expertise within agencies (LaRocca 2006). With respect to independent agencies, presidents can limit the agency's budget, rewarding those agencies they like and constraining those they do not. Presidents also have the ability to nominate the heads of these agencies, and generally to create a partisan balance of commissioners that favors their point of view.

Consequently, when presidents come into office and seek to pursue some policies and not others – whether due to their perception of a mandate (Conley 2001) or because of the influence of public opinion (Cohen 1997) – they can enlist agencies to act on their

behalf. And they are more likely to enlist agencies with which they share a general ideological predisposition. Agencies are, of course, keenly aware of the president's powers, leading those agencies that share the president's preferences to be more active and those different ideological leanings to be less active. We summarize this view in the following hypothesis:

H3: President-Agency Agreement. Agencies are more likely to engage in rulemaking when they are in ideological agreement with the president.

Given the powers that the president has over agencies, he can spur them into action on short notice. In particular, there are two conditions under which a president might push agencies to increase their production of rules (Yackee and Yackee 2009b; O'Connell 2008, 2011). First, if an outgoing Democratic president knows that he is about to be succeeded by a Republican president, or vice versa, he will have an incentive to implement "midnight rules" in an attempt to lock in certain policies before leaving office. Second, if an election produces a transition from unified to divided government, the outgoing president will have a similar incentive. We capture these two end-of-term effects in the following hypothesis:

H4: Midnight and Transition Rules. Rulemaking will increase after a presidential election if the current president will be succeeded by a new president from the other party and if government will switch from unified to divided control.

Controlling for Differences Across Agencies

Although our main focus is on how other institutions affect agency rulemaking, we also take into account internal factors that may influence the extent to which agencies engage in rulemaking. Agencies, after all, are unique in their histories, missions, cultures, resource limitations, and capacities (Wilson 1989) and may differ systematically in their pursuit of new

rules. We thus control for three distinct attributes of an agency's type: ideology, capacity, structure.

First, because more liberal agencies may be more activist, and because rulemaking often can increase the regulatory burden on an agency's constituency, we control for agency ideology. Second, because rulemaking is a resource-intensive process, agencies need sufficient capacity both to create a rule and also to enforce it once it is officially on the books. We therefore control for an agency's capacity. Third, because independent agencies are more likely than executive branch agencies to be created to balance opposing interests, they confront a regulatory process that is often long and controversial (Meier 2000). This, combined with their lack of natural political support, inclines them to prefer "adjudication to rulemaking... because adjudication provides greater opportunities for interests to object... [Executive agencies] can often act faster and are usually not charged with functions hostile to their regulatory clientele" (Meier 2000, 78). Thus, we control for whether agencies are independent or within the executive branch.

Finally, we also control for whether the rulemaking occurs before or after the Court's decision in *United States vs. Mead Corporation*. The substantive effect of this pivotal 2001 Supreme Court case was that in order for agencies to merit judicial deference, they must formalize their policies via rulemaking. Thus, we expect that in the aftermath of this ruling, agencies will increase the number of final rules created.

Data

The creation of a rule via the notice-and-comment process is a technical and lengthy process requiring substantial agency resources.² The process is not speedy; the average duration between the issuance of a proposed rule and the publication of the final rule ranges from 8 to 25 months (O'Connell 2008). However, despite the numerous requirements and potential obstacles associated with the production of rules, agencies engage in a substantial amount of rulemaking. During the period under study, there is significant variation in how many final rules are produced each year. For instance, while the mean number of final rules issued per quarter for all of the agencies in our dataset is 3.58 (s.d. = 4.98), the Environmental Protection Agency issued far more rules on average (mean = 12.07, s.d. = 5.53) and the Department of State issued far fewer (mean = 0.88, s.d. = 1.11).

Our data on federal rulemaking come from two sources: the Unified Agenda of Federal Regulatory and Deregulatory Actions (“Unified Agenda”)³ and the Office of Management and Budget (OMB). The Unified Agenda, which is published semi-annually in the *Federal Register*, is a report by federal agencies of their notice-and-comment rulemaking activity. It includes a list of completed rules for the previous period, including the dates of publication as well as a number of other attributes. Since early in the Clinton administration, OMB, or more specifically OIRA,

² Agencies first draft a Notice of Proposed Rulemaking (NPRM), or proposed rule, and publish it in the *Federal Register*. The public is then invited to comment on the proposed rule, typically for a period of 30 to 60 days. Some agencies hold public hearings in conjunction with the comment period. Next, the agency considers the feedback it received in drafting a final rule. The final rule, also published in the *Federal Register*, must either incorporate the changes suggested by commenters or explain why the agency refrained from adopting the suggestions. The published final rule states the rule’s effective date, usually about 30 days hence.

³ We thank [redacted] for generously sharing these data with us.

has reviewed only those agency rules that it deems to be “significant.”⁴ Thus, the OMB data yield information regarding the subset of an agency’s rules that merited the label of “significant.” This measure departs from previous studies of rulemaking, which have relied on the significance data included in the Unified Agenda to cleave the significant rules from the minor ones. However, we believe using OMB determinations of significance rather than significance indicators from the Unified Agenda is a considerable improvement in data quality, as the latter rely on agency self determinations, whereas a party external to the agency conducts the former.⁵

All told, our Unified Agenda data span the rulemaking activity of 21 executive branch and 14 independent agencies from 1983 to 2007, and our OMB data cover a subset that includes all of the executive agencies and 3 independent agencies from the fourth quarter of 1993 through 2007 (see Table 1).⁶ From this we develop two dependent variables: *Final Rules and Significant*

⁴ Under E.O. 12866, OMB has the discretion to decide whether an agency’s rule is significant, based on whether the rule is expected to have an annual effect on the economy of \$100 million or raises novel legal or policy concerns.

⁵ Our comparison of the Unified Agenda significance data and the OMB significance data shows that OMB reports much higher rates of rule significance than the agencies. For instance, for the OMB agencies and years in our study, OMB reported 42% of all rules to be significant, while the Unified Agenda reports only 28% of this subset as significant. This suggests that when preparing the Unified Agenda, agencies may underreport the number of significant actions.

⁶ We exclude a number of agencies from [redacted]’s original dataset in our analysis. To avoid double counting, we drop the Fish and Wildlife Service, the Food and Drug Administration, the Internal Revenue Service, and the Occupational Safety and Health Administration, since these are subagencies of Cabinet departments already included in the dataset. We also omit 11 agencies for which we were unable to locate data for all of the relevant covariates: the Federal Crop Insurance Corporation, the Federal Emergency Management Agency, the Federal Energy Regulatory Commission, the Federal Housing Enterprise Oversight Agency, the Federal Housing Finance Board, the Federal Reserve System, the Office of Management and Budget, the Saint Lawrence Seaway

Final Rules.⁷ Each of these dependent variables is a count of rulemakings issued by agency i in quarter t .

The results of our analysis are similar whether we focus on final rules rather than proposed rules. Since final rules are more theoretically appropriate – proposed rules float policy ideas, while final rules cement them into law – we report exclusively on the latter.⁸

Corporation, the Surface Transportation Board, and two agencies we were unable to identify by name. Finally, we exclude the Department of Defense from the analysis, since, aside from rules relating to procurement and acquisition (i.e., Federal Acquisition Regulations), it is largely exempted from notice-and-comment process.

For the OMB data, we study the same agencies and rules as those in the Unified Agenda, with two exceptions. First, prior to the issuance of the Executive Order 12866, OMB reviewed all rules, not just significant rules. Thus, we begin our analysis of significant rules in the fourth quarter of 1993 (i.e., immediately following the signing of the executive order), rather than in 1983. Second, because OMB does not review the rules of most independent agencies, we cannot include the majority of the independent agencies from the Unified Agenda in our analysis of significant rules.

⁷ We include only final rules that have an associated proposed rule listed in the Unified Agenda. While this truncates our dataset, it ensures that we examine only meaningful policy changes (Yackee and Yackee 2009b). In addition, it excludes interim final and direct final rules, which follow a separate process than the rules in our dataset and may respond differently to the factors under study here.

⁸ The results for proposed rules are available in Table A2 and Table A3 of the online appendix.

Table 1. Agencies Included in the Rulemaking Data*

Executive Agencies	Independent Agencies
Agency for International Development Department of Agriculture Department of Commerce Department of Education Department of Energy Department of Health and Human Services Department of Homeland Security* Department of Housing and Urban Development Department of Justice Department of Labor Department of State Department of the Interior Department of Transportation Department of Treasury Department of Veterans Affairs Environmental Protection Agency General Services Administration National Aeronautics and Space Administration National Archives and Records Administration Office of Personnel Management Small Business Administration	Commodity Futures Trading Commission Consumer Product Safety Commission <i>Equal Employment Opportunity Commission</i> Farm Credit Administration Federal Communication Commission Federal Deposit Insurance Corporation Federal Maritime Commission Federal Trade Commission Interstate Commerce Commission* National Credit Union Administration Nuclear Regulatory Commission <i>Pension Benefit Guaranty Corporation</i> Securities and Exchange Commission <i>Social Security Administration*</i>

Notes: Italicized names are independent agencies whose rules are reviewed by OMB. These agencies are also included in the dataset of OMB-reviewed rules, along with all of the executive agencies. Agencies marked with asterisks appear in our dataset for only a subset of years. DHS was created in 2002 and thus appears in our dataset only for the period 2002 – 2007. Similarly, the ICC was abolished in 1995, so it appears in our dataset through 1994. Finally, since Congress reverted the Social Security Administration to independent status in 1995, it only appears in our dataset from that year onward.

To test our hypotheses, we include a number of explanatory variables, starting with those that allow us to assess the relationship between the agency and its political overseers.⁹ We begin with our *Legislative Activism* hypothesis, which is rooted in an agency’s belief about Congress’s ability to pass a new law. We consider two different avenues that might inform an agency’s

⁹ Table A1 of the appendix summarizes all of the variables included in the empirical analysis.

belief about this threat: the presence of divided government and the volume of new legislation passed.

Agencies know that all three participants in the lawmaking process – the House, the Senate, and the president – must agree in order to use legislation to overturn an existing policy. As long as the agency is located between any two of these actors – which is much more likely to occur during divided government than unified government – all three actors will be unable to agree on a policy that each prefers over that put forward by the agency. Thus, under divided government an agency is freer to promulgate the sorts of rules it prefers and as a result will produce more rules. Thus, we expect that *Divided Government*, which is a dummy variable with a value of 1 during periods of divided government and 0 during periods of unified government, will have a positive effect on the production of agency rules.

We note that this prediction runs counter to Yackee and Yackee's (2009b) argument that agencies will be *less* likely to issue rules under divided government, in large part because it is unclear how they can please all political principals at the once. But what Yackee and Yackee view as a cost to the agency, we view as an opportunity for the agency to pursue its preferred policies without the concern of being overturned or being otherwise negatively affected by legislation.

Agencies might also look beyond the relatively blunt impact of divided government for indications of the possibility of legislative punishment. For example, the actual number of laws passed by the sitting Congress may provide an agency with more reliable information about the regime's legislative capability and, thus, the threat of legislative activism. In other words, an agency can directly infer the threat of legislative activism by observing how often the current Congress has already reached agreement on policy issues in the passage of new laws. We

operationalize this idea with a second variable, *Public Laws*, which is a count of the number of public laws passed by Congress in a given year. As *Public Laws* increases, we expect that the level of rulemaking should decrease. These data come from *Policy Agendas* (Baumgartner and Jones 2012) and include all laws passed, with the exception of commemorative legislation. We focus on all laws, rather than significant laws (Mayhew 1991) since a legislative strike against an agency need not be contained in a major piece of legislation.¹⁰

The third variable tests the *Congressional Pressure* hypothesis. Developing a measure of the distance between the agency and the farthest chamber is not straightforward. Given the current state of the discipline, we lack an appropriate measure that places all agencies in the same ideological spectrum as Congress and that facilitates comparisons across time.¹¹ Instead, we assume that the president is a privileged actor with respect to the agency (Huber and Shipan 2002) and is able to directly influence the agency's actions. Thus, we rely on the president's ideal point as a proxy for the agency's, and use DW-Nominate scores to calculate the distance between the president and the median member of each chamber of Congress.¹² We then take the maximum of those two values as the value for *Chamber-Agency Distance*.

¹⁰ The results do not change if we use Mayhew's significant legislation instead of *Public Laws*.

¹¹ Bertelli and Grose's (2011) creation of ideal points for agency heads is a partial and notable exception. However, these estimates are only for agency heads, not the entire agency, and are confined to executive branch agencies over a relatively short period of time. These limitations not only further truncate our sample, but also do not leave room for testing all of our hypotheses.

¹² We are not arguing that presidents are able to set the agency's ideal point exactly equal to their own ideal point. Rather, our argument is a much less demanding one that assumes the president's appointment power gives him some leverage to move the agency toward his ideal point, leading to agencies that generally will be in the same vicinity as the president (Shipan 2004). Later, we relax this assumption.

Next, the variable *President-Agency Agreement* tests our argument that an agency is more likely to engage in rulemaking when its ideology is similar to the president's, and less likely when it differs. To operationalize this idea, we use Clinton and Lewis's (2007) measures of agency ideology based on expert surveys. More specifically, we convert these measures into a trichotomous category of liberal, moderate, and conservative; and then create a dichotomous variable that takes a value of 1 either if the president is a Democrat and the agency is liberal, or if the president is a Republican and the agency is conservative.¹³

We also include two additional measures that allow us to test our other presidential hypotheses. The first variable, *Midnight*, represents the desire of outgoing presidential administrations to lock in their preferred policies through rulemaking when the recent presidential election has produced an incoming president from the other political party. The second variable, *Transition*, captures a similar effect for transitions of power after an election where the government shifts from unified to divided control.¹⁴ We expect both of these variables to have a positive effect on the production of agency rules.

¹³ Following O'Connell (2011), we code an agency as moderate if the confidence interval of its Clinton-Lewis score includes zero.

¹⁴ We generally follow Yackee and Yackee (2009b) in creating and coding these variables, albeit with two changes. While they treat *Transition* as a dummy variable that is turned on during the months of November, December, and January, but *Midnight* as a dummy variable that takes a value of 1 during only December and January, we use November through January for both variables. In addition, because our data are quarterly (rather than monthly), we average these monthly values over a quarter. Thus, for example, *Midnight* = 0.66 during the fourth quarter of an outgoing administration that is being replaced by an incoming administration of the opposing party (because two of the three months in the quarter take place after the election) and 0.33 during the first quarter of the next year.

Finally, we control for a set of variables that capture an agency's type. First, we include the agency's overall ideological predisposition (*Agency Ideology*), using the aforementioned Clinton and Lewis (2007) agency ideology scores, which take on positive values for more conservative agencies and negative values for more liberal agencies. Next, to measure agency capacity we create two variables: *Employees (in thousands)* and *Budget (in millions)*. The number of employees in an agency is viewed as critical in the production of rules (Skryzcki 2003). We rely on annual counts of employees by agencies as collected by the Office of Personnel Management. Budgets suggest how much workload an agency is able to handle, which is relevant if we believe agencies are sensitive to the current response and future enforcement workload associated with a new rule. These data, which originate from the Office of Management and Budget, also are annual. We expect both measures to support an increase in rulemaking output. Finally, we include two dummy variables, *Independent*, which identifies whether the agency is independent or part of the executive branch, and *Mead*, which takes a value of 1 if the quarter occurs after the decision in that case.

Analysis

Because our dependent variables are constituted as counts of rules and their distributions are highly non-normal, standard OLS models are not appropriate. Both Poisson and negative binomial regressions produce the same results in the analyses that we present, but we report the latter since we find evidence of overdispersion in most of our regressions.¹⁵

¹⁵ We do not include explicit controls for time or agency effects in these models. However, these effects are accounted for by the inclusion of several fixed-value variables within our models. Two of our agency variables, *Agency Ideology* and *Independent*, do not vary within panel. Similarly, four of our separation of powers variables, *Divided Government*, *Chamber-Agency Distance*, *Midnight*, and *Transition*, do not vary across agency within a

Table 2 presents our results for both *Final Rules* and *Significant Final Rules*. Overall, the results provide support for our hypotheses about separation of powers effects. First, consider our legislative activism variables, *Divided Government* and *Public Laws*, which we present in separate models since they are intended to capture the same underlying theoretical construct. *Divided Government* is not significant for either final rules (i.e., Model 1) or significant final rules (i.e., Model 3). The results for *Public Laws* are mixed. Although insignificant in Model 2, it is significant and negative, as expected, for significant final rules in Model 4, suggesting that for that subset of important rules, agencies consider how adept the current Congress is at passing legislation. Increasing one standard deviation from the mean number of laws passed by Congress results in the agency issuing 0.2 fewer significant rules.¹⁶ Given that agencies finalize about 1.9 significant rules per quarter, on average, this change represents an increase of about 10%.

To assess the Congressional Pressure hypothesis, we turn to the *Chamber-Agency Distance* variable, which we predict to be negative. Here we see that rulemaking is indeed decreasing in ideological distance, with this variable reaching statistical significance in Models 2, 3, and 4.¹⁷ Given that a more distant chamber has the capacity and incentive to make life very difficult for an agency, the agency has a strong motivation to take this into account. The results indicate that as the farther chamber becomes more distant, agencies are less likely to complete

given time period. Essentially, these six variables function as fixed effects for both agency and time.

¹⁶ Figures about changes in the number of rules presented in this section are predicted values with all other variables held constant at their means.

¹⁷ Although we argue that *Divided Government* and *Chamber-Agency Distance* capture distinct theoretical concepts, we were concerned that these variables might be too related to disentangle the separate effects of each. However, the models here are robust to the exclusion of *Divided Government*. In addition, the correlation between the two variables is low ($\rho = 0.37$).

the rulemaking process. Substantively, this means that moving from the maximum observed value (during the 110th Congress) of *Chamber-Agency Distance* to the minimum observed value (during the 103rd Congress) results in a decrease of 1.2 final rules (Model 2) or 3.1 significant final rules (Model 4) in a given quarter.

Second, the results provide some support for the existence of presidential influence. Our key variable here, *President-Agency Agreement*, is positive and strongly significant for final rules, indicating that agencies that are on the same ideological page as the president engage in rulemaking more frequently. Substantively, agencies that are ideologically congruent with the president issue about 0.8 more final rules per quarter (Models 1 and 2). In addition, although the lack of significance for *Transition* indicates that agencies are not more likely to finalize rules during periods of transition from unified to divided government, we find that agencies are more likely to finalize significant “midnight rules” during the period before a president of a new party takes office.¹⁸ The fact that *Midnight* is significant for significant final rules but not for all final rules is unsurprising; agencies are often accused of doing important (and ideologically driven) rules during the midnight period, suggesting that only the significant subset of rules should be meaningful.

¹⁸ Substantively, the results indicate that agencies issue 2.6 (Model 3) or 4.1 (Model 4) more significant final rules during these midnight periods.

Table 2. Final Rules (1983–2007) and Significant Final Rules (1993 4thq–2007) by Quarter

	Model 1	Model 2	Model 3	Model 4
	Final	Final	Significant	Significant
	Rules	Rules	Final	Final
	Rules	Rules	Rules	Rules
<i>Divided Government</i>	-0.138		-0.151	
	-0.111		-0.149	
<i>Public Laws</i>		0.000		-0.001*
		0.000		0.000
<i>Chamber-Agency Distance</i>	-0.165	-0.481**	-1.226*	-1.932***
	-0.302	-0.163	-0.510	-0.322
<i>President-Agency Agreement</i>	0.230***	0.233***	-0.018	-0.017
	-0.044	-0.044	-0.074	-0.074
<i>Midnight</i>	0.290	0.295	0.878**	1.177***
	-0.176	-0.177	-0.305	-0.333
<i>Transition</i>	0.288	0.285	0.430	0.414
	-0.221	-0.221	-0.259	-0.257
<i>Employees</i>	0.005***	0.006***	0.006***	0.006***
	-0.001	-0.001	-0.001	-0.001
<i>Budget</i>	0.000*	0.000*	0.000	0.000
	0.000	0.000	0.000	0.000
<i>Agency Ideology</i>	0.142***	0.140***	-0.394***	-0.393***
	-0.026	-0.026	-0.049	-0.049
<i>Independent</i>	-1.150***	-1.150***	-1.424***	-1.420***
	-0.052	-0.052	-0.137	-0.138
<i>Mead</i>	-0.266*	-0.140*	0.108	0.380***
	-0.116	-0.060	-0.195	-0.111
<i>Constant</i>	1.640***	1.752***	1.336***	1.889***
	-0.153	-0.132	-0.262	-0.288
N	3296	3296	1326	1326
Ln α	0.130***	0.130***	0.05	0.043
	-0.033	-0.033	-0.068	-0.068

Note: Table entries are maximum likelihood coefficients obtained from negative binomial models, with Huber/White standard errors in parentheses. The quarter is the unit of analysis. One-tailed tests: * $p < .05$, ** $p < .01$, *** $p < .001$.

Taken together, these results support the theoretical argument regarding the effect of separation of powers on agency rulemaking activity.¹⁹ Importantly, these factors matter even when we control for an agency's type, which also influences the level of rulemaking activity. To begin, the positive and significant coefficients on our two agency capacity variables – *Budget* and *Employees* – demonstrate that agency rulemaking is, at least in part, a function of the agency's internal characteristics.²⁰ *Independent*, is, as expected, negative and significant, indicating support for Meier's suggestion that independent agencies are less likely to engage in rulemaking.

Agency Ideology is strongly significant; but interestingly, the sign flips between final rules and significant final rules. Given that this variable is coded such that more conservative agencies take on higher values, the positive coefficients in Models 1 and 2 indicate that, all else equal, conservative agencies are more likely to issue a greater number of final rules. At the same time, the negative coefficients in Models 3 and 4 indicate that liberal agencies are much more likely to issue significant final rules than conservative agencies. This is an intriguing wrinkle to the conventional wisdom that liberal agencies “regulate more.” The results demonstrate that conservative agencies are more likely to produce smaller, and possibly less consequential, rules,

¹⁹ We also considered whether the different results we saw above with respect to final rules and significant final rules were an artifact of the varying years under study. To analyze this, we re-ran all of the final rules models using the same time period found in the significant final rules models (1993 4thq – 2007). The results did not meaningfully change.

²⁰ We do not read too much into these findings because political principals also affect internal agency characteristics. At the agency's inception the president and Congress determined whether it would be independent and also prescribed its mission. These factors affect perceptions of the agency's ideological bent. In addition, the recent Congress and president set the agency's budget, which also impacts the number of personnel.

while liberal agencies are more likely to produce significant, major rules that garner more political attention, and thus may help explain recent findings about the high volume of rules by conservative agencies (O'Connell 2011).

Finally, the results for the *Mead* variable are mixed. It is negative and significant for final rules (Model 4), and positive in the significant final models. This result is somewhat counterintuitive, but may suggest that agencies took *Mead* to heart with respect to the more important significant rules, but that it actually caused them to do fewer of the less important rules.

Models 1 through 4 thus provide solid support for the influence of both separation of powers and an agency's type on an agency's rule output. Specifically, agencies are more likely to increase their production of final rules and significant final rules when Congress is adept at passing legislation, when they are in general ideological agreement with the president, and when they have greater capacity (as measured by their budget and number of employees). In terms of the effects of Congress, the results suggest that agencies worry more about congressional pressure than legislative activism, with the effects of congressional pressure being both strong and more consistently significant than measures capturing the threat of legislation. Moving beyond Congress to the president, we find evidence of presidential influence, with more significant rules produced during midnight periods. And in terms of agency characteristics, we find that agencies are less likely to engage in rulemaking if they are independent rather than a part of the executive branch; and furthermore, that the effect of the agency's ideology and the *Mead* decision are contingent on the level of significance of the rules under consideration.

In addition to the models presented here, we also conducted a number of robustness checks. First, we acknowledge that periods of divided government might not be the only time

that an agency has little to fear from legislation, an important note since there are null findings with respect to this variable. During periods when Democrats control both chambers of Congress as well as the presidency, for example, liberal agencies can be relatively certain that their final rules will not trigger congressional laws. Similarly, conservative agencies will have little to fear from unified government when Republicans are in charge. Thus, in all three of these situations, agencies have little to worry about. To capture this idea, and to broaden our test, we also re-ran Models 1 and 3 with a new variable called *Low Risk Environment*, intended to capture these times when an agency is less concerned that congressional laws will override its rules or otherwise adversely affect its actions. This variable is coded as a 1 when a) control of government is divided, or b) an agency faces unified government that is ideologically sympathetic (e.g., a liberal agency and unified Democratic government, or a conservative agency and unified Republican government). When this variable is included in the place of *Divided Government*, the results are very similar for all of the other variables (see Table A4). Surprisingly, *Low Risk* itself is negative for both final rules and significant final rules, and significant in the latter case.

Thus far our analysis has used the president as a proxy for the agency in order to develop a measure of the distance between the agency and the farthest chamber of Congress. This is a strong assumption, but we can evaluate its merit by examining the subset of those agencies where we know that the assumptions rings true empirically (i.e., where *President-Agency Agreement* equals 1). Looking at this subset of the data, we would expect our findings to remain robust, which they do. This model specification, shown in Table A5, yields similar results, although neither legislative overturn variable achieves statistical significance.

Incorporating the Judiciary

While the models in Table 2 are compelling, they omit the possibility of judicial influence on agency rulemaking, an important part of the separation of powers story. Although scholars have produced fewer systematic studies about judicial influence on agencies (as compared to congressional or presidential influence), a handful of recent studies (Howard and Nixon 2002; Canes-Wrone 2003; Howard 2008; Hume 2009) have employed large-*N* analyses to demonstrate the sensitivity of agencies to the predilections of judicial overseers.

Agencies have practical reasons to attend to judicial preferences when crafting a new rule. Courts can overturn agency policy, of course, if they find it to be inconsistent with legislative intent or if they find that the agency did not follow due process principles (Meier 2000). But even when it does not result in an agency action being overturned, an appearance before the court is rarely a favorable experience for the agency. Even if it wins, an agency gains very little from these appearances, which are costly in terms of time, resources, and autonomy. High profile cases are likely to invite negative media coverage of an agency, highlighting agency wrongdoing (or perceived wrongdoing).

Appearances before the courts further introduce the unwelcome opportunity for additional oversight and scrutiny from Congress, the president, and the public. In addition, the implementation of judicial decisions can impose anticipated and unanticipated budgetary costs on an agency (Straussman 1986; Horowitz 1983). When the agency is forced to reallocate its budget in this way, funds are diverted away from other favored projects and tasks (Straussman 1986; Horowitz 1983; Hale 1979). This budgetary redirection, combined with the additional oversight from the court and other actors, can result in a net transfer of power from the agency to the courts, thereby limiting bureaucratic discretion (O'Leary 1989; Straussman 1986; Hale 1979).

Finally, even if an agency has been victorious before the courts in recent memory, past victories do not guarantee future victories and may still invite closer scrutiny.

In light of the negative repercussions associated with court appearances, we contend that agencies attempt to limit such appearances. Although there are a number of ways they can do so, among the most expedient is to limit rulemaking activity. Agencies thus should behave cautiously following high levels of court activity, scaling back their rulemaking activity in an attempt to avoid once again being dragged before the courts.

To assess this argument, we rely on Songer's (2008) and Kuersten and Haire's (2011) appellate court databases to create a count of the number of cases in which each agency was either a plaintiff or defendant before the federal appellate courts. We focus on the appellate courts here, because from an agency's perspective this is the most critical level of the judiciary (Shipan 1997). The political costs are higher to an agency when it appears before the court of appeals than before the trial court for two reasons. First, an appeal suggests that there may have been controversy about the agency's actions that warranted a second look from the courts. Second, the decision from the circuit court is likely to be binding on the agency. While appearances before the Supreme Court arguably represent higher stakes for an agency, they are also extremely rare; the vast majority of conflicts involving agencies are resolved at the appellate level.

In Table 3, we incorporate *Court Appearances*, which is a running total of an agency's appellate court appearances in the previous four quarters, into the models from Table 2 (Models 3 and 4).²¹ We find that the effect of *Court Appearances* is negative and significant, indicating that, as expected, when the number of recent appearances increases, agencies are likely to temper

²¹ Because these data are only available for a limited time period our sample size is further truncated.

their rulemaking activity. More specifically, increasing one standard deviation from the mean number of agency cases before the courts results in .15 fewer significant final rules (Model 5) or .15 fewer significant final rules (Model 6). Overall, then, the models provide support for the argument that agencies are influenced by the threat of having to appear before the court, due to the costs associated with these appearances.

In addition, the results in Table 3 for our other key variables remain similar to those shown in Table 2. In particular, we still find that *Chamber-Agency Distance* is negative and significant, indicating that pressure from Congress influences the level of agency activity. Consistent with the previous models *Divided Government* is negative and insignificant, while *Public Laws* remains negative and significant, as it was in Model 4. In addition, the ideological agreement between the president and the agency, while still positive, is no longer significant in these models.

Table 3. Significant Final Rules with Courts by Quarter, 1993 (4thq) – 2002

	Model 5 Significant Final Rules	Model 6 Significant Final Rules
<i>Divided Government</i>	-0.550	
	-0.304	
<i>Public Laws</i>		-0.001*
		-0.001
<i>Chamber-Agency Distance</i>	-0.851	-2.417***
	-0.716	-0.363
<i>Court Appearances</i>	-0.030*	-0.031*
	-0.014	-0.014
<i>President-Agency Agreement</i>	0.130	0.133
	-0.113	-0.114
<i>Midnight</i>	0.944**	1.346***
	-0.289	-0.332
<i>Transition</i>	0.285	0.250
	-0.353	-0.325
<i>Employees</i>	0.005***	0.005***
	-0.001	-0.001
<i>Budget</i>	0.000	0.000
	0.000	0.000
<i>Agency Ideology</i>	-0.322***	-0.320***
	-0.063	-0.064
<i>Independent</i>	-1.900***	-1.910***
	-0.224	-0.222
<i>Mead</i>	-0.056	0.342*
	-0.207	-0.160
<i>Constant</i>	1.681***	2.504***
	-0.292	-0.318
N	698	698
Ln α	-0.202*	-0.208*
	-0.088	-0.087

Note: Table entries are maximum likelihood coefficients obtained from negative binomial models, with Huber/White standard errors in parentheses. The quarter is the unit of analysis. One-tailed tests: * $p < .05$, ** $p < .01$, *** $p < .001$.

Discussion and Conclusion

Rulemaking is an extraordinarily important, if understudied, political activity, touching on many of the most prominent and controversial policies in American politics. Aside from the few pioneering studies by O'Connell (2011, 2008) and Yackee and Yackee (2009a, 2009b), political scientists have paid little systematic attention to its causes. This is unfortunate, as rulemaking is fundamentally a political activity. A focus on rulemaking has the potential to speak to an important, even essential, political activity and also to generate insights about the broader question of political influence over agencies.

Our study adds to this growing literature in a number of ways. Most basically, our results indicate that agencies take other institutions into account when deciding whether to engage in rulemaking. In particular, we find that agencies, recognizing the myriad ways in which a dissatisfied chamber of Congress can make life their lives difficult, produce fewer rules when faced with an ideologically incompatible chamber. Thus, a primary mode of congressional influence over rulemaking appears to be due to this congressional ability to put pressure on agencies.

The findings about the susceptibility of agencies to new congressional laws are more mixed. Although we generally found that agencies reduce rulemaking when Congress is more legislatively productive, the results with respect to divided government were not significant in our models, an important departure from Yackee and Yackee's (2009b) finding that divided government is a key predictor of agency rule production. Overall, then, while there is limited support for the *Legislative Activism* hypothesis, further exploration is clearly warranted, especially regarding the effect of divided government and the conditions under which it is likely to have either a positive or negative effect on rulemaking.

In addition, we also find that to the extent that agencies share ideological similarities with the president, they are more likely to engage in rulemaking. Finally, we find that the potential costs of having to appear before the appellate courts weigh heavily on an agency, with the incidence of rulemaking decreasing as the threat of court appearances increases. This finding contributes, then, to the small empirical literature that demonstrates that agencies are influenced by the potential action of courts.

Although these are important findings, they also leave us with a number of questions. First, the count aspect of our data has forced us to combine two distinct types of rules in our analysis: rules that are regulatory and rules that are deregulatory. While analyzing the content of the rules under study is beyond the scope of this analysis, we think it is a worthy pursuit and one that ought to be taken up by future researchers. Second, we have separately considered the influence of each institution – Congress, the president, and the courts – on agency rulemaking, but like all elements in a complex system, these forces almost certainly interact with one another and compound the effects identified here. Future work would be well served by a careful interrogation of this interaction and its effect on agency behavior.

Nevertheless, this study contributes to a new and more political view of rulemaking. Although ideas and arguments that have long been central to the voluminous legal literature on rulemaking, such as on the proper scope of rulemaking, the legitimacy of legal foundations for rulemaking, and the consequences of rulemaking activity, will continue to be important, they should be considered in light of the findings that emerge here. In particular, patterns of agency rulemaking activity clearly demonstrate the influence of other political actors in the separation of powers system.

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**SUPPLEMENTARY INFORMATION/
ONLINE APPENDIX**

Table A1. Explanation of Variables Included in the Models

Table A2. Proposed Rules (1983–2007) and Significant Proposed Rules (1993 4thq–2007) by Quarter

Table A3. Significant Proposed Rules with Courts by Quarter, 1993 (4thq) – 2002

Table A4. Analysis of Final Rules and Significant Final Rules during *Low Risk* Periods

Table A5. Analysis of Significant Final Rules for Agencies that Agree with the President, 1993 (4thq) – 2007

Table A1. Explanation of Variables Included in the Models

Variable Name	Description	Expected Sign
<i>Final Rules</i>	A count of the number of final rules issued by agency <i>i</i> in quarter <i>t</i> , as reported in the Unified Agenda.	
<i>Significant Final Rules</i>	A count of the number of significant final rules issued by agency <i>i</i> in quarter <i>t</i> , as reported by OMB.	
<i>Divided Government</i>	A dichotomous variable that takes a value of 1 during periods of divided government.	+
<i>Laws Passed</i>	The number of laws passed by the current congress in the year of which the quarter under study is part, as reported by the Policy Agendas Project (Baumgartner and Jones 2012).	-
<i>Chamber-Agency Distance</i>	The farthest of the ideological distances between each chamber of Congress and the agency using DW-NOMINATE scores and using the president's ideal point as a proxy for the agency's ideal point.	-
<i>Agency-President Agreement</i>	A dichotomous variable that takes a value of 1 if the president and the agency share the same ideological orientation.	+
<i>Midnight</i>	A dichotomous variable that takes a value of 1 for the November, December, and January before the transition to a new presidency in a different party.	+
<i>Transition</i>	A dichotomous variable that takes a value of 1 during the November, December, and January after an election leading up to a government transition from unified to divided government.	+
<i>Court Appearances</i>	Running total of the number of cases where agency <i>i</i> was a party in a case before the appellate court in the previous four quarters using Songer's (2008) and Kuersten and Haire's (2011) data.	-
<i>Budget</i>	The budget for agency <i>i</i> in the previous fiscal year in millions of real 2005 dollars.	+
<i>Employees</i>	The number of employees (in thousands) in agency <i>i</i> in a fiscal year.	+
<i>Agency Ideology</i>	The agency's ideological score using Clinton and Lewis's (2007) measure.	-
<i>Independent</i>	A dichotomous variable that takes a value of 1 if the agency is not a part of the executive branch or the Cabinet.	-
<i>Mead</i>	A dichotomous variable that takes a value of 1 if the quarter occurs after the pivotal Supreme Court case <i>U.S. vs. Mead Corporation</i> (2001).	+

Table A2. Proposed Rules (1983–2007) and Significant Proposed Rules (1993 4thq–2007) by Quarter

	Model A1	Model A2	Model A3	Model A4
	Proposed	Significant	Proposed	Significant
	Rules	Proposed	Rules	Proposed
	Rules	Rules	Rules	Rules
<i>Divided Government</i>	0.047		0.284	
	-0.110		-0.146	
<i>Public Laws</i>		0.000		0.000
		0.000		0.000
<i>Chamber-Agency Distance</i>	-0.549	-0.438**	-2.141***	-1.378***
	-0.298	-0.155	-0.504	-0.288
<i>President-Agency Agreement</i>	0.311***	0.310***	0.049	0.052
	-0.045	-0.045	-0.068	-0.068
<i>Midnight</i>	0.134	0.134	0.424	0.363
	-0.207	-0.207	-0.389	-0.404
<i>Transition</i>	-0.068	-0.067	-0.100	-0.096
	-0.193	-0.193	-0.236	-0.236
<i>Employees</i>	0.006***	0.006***	0.007***	0.007***
	-0.001	-0.001	-0.001	-0.001
<i>Budget</i>	0.000**	0.000**	0.000	0.000
	0.000	0.000	0.000	0.000
<i>Agency Ideology</i>	0.112***	0.112***	-0.433***	-0.434***
	-0.026	-0.026	-0.044	-0.044
<i>Independent</i>	-1.060***	-1.060***	-1.414***	-1.416***
	-0.053	-0.053	-0.148	-0.147
<i>Mead</i>	-0.164	-0.207***	0.670***	0.360***
	-0.118	-0.058	-0.196	-0.102
<i>Constant</i>	1.920***	1.886***	1.538***	1.304***
	-0.148	-0.129	-0.244	-0.257
N	3296	3296	1326	1326
Ln α	0.162***	0.162***	-0.092	-0.087
	-0.032	-0.032	-0.068	-0.068

Note: Table entries are maximum likelihood coefficients obtained from negative binomial models, with Huber/White standard errors in parentheses. The quarter is the unit of analysis. One-tailed tests: * $p < .05$, ** $p < .01$, *** $p < .001$.

Table A3. Significant Proposed Rules with Courts by Quarter, 1993 (4thq) – 2002

	Model A5	Model A6
	Significant Proposed Rules	Significant Proposed Rules
<i>Divided Government</i>	-0.048	
	-0.331	
<i>Public Laws</i>		0.000
		0.000
<i>Chamber-Agency Distance</i>	-1.642*	-1.772***
	-0.826	-0.318
<i>Court Appearances</i>	-0.007	-0.007
	-0.008	-0.008
<i>President-Agency Agreement</i>	0.210*	0.209*
	-0.104	-0.103
<i>Midnight</i>	0.390	0.419
	-0.389	-0.401
<i>Transition</i>	-0.189	-0.189
	-0.349	-0.346
<i>Employees</i>	0.006***	0.006***
	-0.001	-0.001
<i>Budget</i>	0.000	0.000
	0.000	0.000
<i>Agency Ideology</i>	-0.350***	-0.350***
	-0.058	-0.058
<i>Independent</i>	-1.832***	-1.833***
	-0.207	-0.207
<i>Mead</i>	0.559*	0.592***
	-0.228	-0.142
<i>Constant</i>	1.733***	1.796***
	-0.315	-0.273
N	698	698
Ln α	-0.339***	-0.339***
	-0.091	-0.091

Note: Table entries are maximum likelihood coefficients obtained from negative binomial models, with Huber/White standard errors in parentheses. The quarter is the unit of analysis. One-tailed tests: * $p < .05$, ** $p < .01$, *** $p < .001$.

Table A4. Analysis of Final Rules and Significant Final Rules during *Low Risk* Periods

	Model A7	Model A8
	Final Rules	Significant Final Rules
<i>Low Risk</i>	-0.048	-0.260*
	-0.089	-0.125
<i>Chamber-Agency Distance</i>	-0.404*	-1.128**
	0.206	0.344
<i>President-Agency Agreement</i>	0.244***	0.084
	0.049	0.090
<i>Midnight</i>	0.293	0.863**
	0.176	0.304
<i>Transition</i>	0.283	0.444
	0.220	0.257
<i>Employees</i>	0.006***	0.007***
	0.001	0.001
<i>Budget</i>	0.000*	0.000
	0.000	0.000
<i>Agency Ideology</i>	0.141***	-0.376**
	0.026	-0.050
<i>Independent</i>	-1.151***	-1.445***
	0.053	-0.137
<i>Mead</i>	-0.168*	0.076
	-0.076	0.132
<i>Constant</i>	1.732***	1.341**
	0.127	0.206
N	3296	1326
Ln α	0.130***	0.047
	0.033	0.067

Note: Table entries are maximum likelihood coefficients obtained from negative binomial models, with Huber/White standard errors in parentheses. The quarter is the unit of analysis. One-tailed tests: * $p < .05$, ** $p < .01$, *** $p < .001$.

Table A5. Analysis of Significant Final Rules for Agencies that Agree with the President, 1993 (4thq) – 2007

	Model A9 Significant Final Rules	Model A10 Significant Final Rules
<i>Divided Government</i>	-0.188	
	-0.334	
<i>Public Laws</i>		-0.001
		-0.001
<i>Chamber-Agency Distance</i>	-0.281	-1.071*
	-1.058	-0.442
<i>Midnight</i>	1.190***	1.459***
	-0.349	-0.420
<i>Transition</i>	0.314	0.299
	-0.314	-0.312
<i>Employees</i>	0.006***	0.006***
	-0.002	-0.002
<i>Budget</i>	-0.000*	0.000
	0.000	0.000
<i>Agency Ideology</i>	-0.446**	-0.424**
	-0.154	-0.137
<i>Independent</i>	-1.955***	-1.955***
	-0.221	-0.220
<i>Mead</i>	-0.132	0.130
	-0.373	-0.306
<i>Constant</i>	0.848	1.428**
	-0.577	-0.445
N	415	415
Ln α	-0.294*	-0.301*
	-0.130	-0.131

Note: Table entries are maximum likelihood coefficients obtained from negative binomial models, with Huber/White standard errors in parentheses. The quarter is the unit of analysis. One-tailed tests: * $p < .05$, ** $p < .01$, *** $p < .001$.