



How Political Calculations Delay Important Regulations

Rachel Augustine Potter, University of Virginia

Communities cannot enjoy safe drinking water without public regulations that ensure good water quality. Airliners cannot land safely without many safety rules in place – including regulations to prevent hobbyists from flying drones near airports. As these examples remind us, vital issues of public safety are often at stake in government regulatory decisions. Yet Americans often have to wait a long time for new regulations to be put in place, because federal agencies typically take many years to complete a new rule. For instance, a public health rule that would require chain restaurants to disclose the nutrition information on their menus took the Food and Drug Administration nearly six years to write.

Why is the regulatory process so slow? Some point to onerous procedures and insufficient agency resources. In fact, new proposed rules must meet numerous analytical requirements, such as cost-benefit assessments and documentation of effects on small business, Native American tribes, the environment, and children. But time-consuming procedures are not the only reason why some proposed regulations like the menu-labeling rule move slowly through the process, while others get done at a more rapid clip.

The Political Causes of Regulatory Delay

Politics matters along with complexity in the production of new regulations. In the case of the menu-labeling rule, the policy itself was inherently complex; former Federal Drug Administration Commissioner Margaret Hamburg described it as one of the “thorniest” issues the agency has ever encountered. Yet political opposition to the rule also slowed things down. While the rule was under development, Republicans in Congress introduced no fewer than five bills designed to influence the direction of the agency’s decision-making about menu-labeling.

Congress matters because, in fact, it can overturn agency rules—and the president and the courts have similar powers too. Because there are so many steps and procedures involved in creating a new rule, going through all those steps only to see a new rule overturned by any one of the political overseers is not a desirable outcome for the bureaucrats who devote their careers to fashioning regulations. If a rule is overturned, bureaucrats are sent back to the drawing board and must start over from square one. Further, a rule-making agency’s reputation may suffer if the public perceives a rule that is overturned as having been inadequately or improperly handled in some way.

Delays are often the result of political controversies because the bureaucrats who write rules can also control the pace of decision-making and the timing of release of new rules. Anticipation of political difficulties therefore affects when new rules are likely to be released. Bureaucrats can take more or less time in the rule-making process for substantive reasons – because the issues are complex. But they can also take longer than necessary due to strategic calculations about the political climate. In the menu-labeling case, for instance, both complexity and Congressional pressures help to explain why the rule took so long to write.

Findings from a Study of Rulemaking

How frequently do political pressures delay the production of new regulations? To answer this question, I analyzed the pace of rulemaking for more than 9,000 rules issued by 147 federal agencies over a 20-year period from 1995 to 2014. This gives me a broad portrait of rule-making processes and their pace across many realms of government.

Several striking patterns emerge from my study:

- ***Relationships with the White House matter.*** Agencies move more quickly on rules when the president and his advisors are strongly in support of the new rule. But when the agency's relationship with the White House is strained, the rulemaking process slows down.
- ***Rules are less likely to be issued when Congressional opposition is strong.*** Agencies take into account the composition of Congress—and the relative strength of their congressional allies—when releasing rules.
- ***Politically selected agency leaders are less likely to engage in strategic timing choices.*** When the president and Congress have more influence in selecting agency leaders, those leaders are less likely to “game” the political system. But the opposite is also true: where congressional and presidential influence is diminished, bureaucrats are more likely to make political calculations as they decide when to process and issue new rules.
- ***Resources have little effect.*** Commentators often point to resource constraints such as budget or staffing limits as an explanation for delays in rulemaking; I find no evidence that reductions in the resources at an agency's disposal have important effects on the pace of regulatory production.

Implications

Bureaucrats have considerable control over the timing of agency rulemaking. Often, apparently innocuous delays in issuing new regulations to deal with an important problem are actually a matter of deliberate foot-dragging, due to *strategic* and *political* calculations. Officials may simply be trying to avoid controversies and potential rule-reversals. Such strategic delays are not without cost, however, because economic and social difficulties often continue to fester when necessary rules are delayed.

Democratic accountability is also at stake. If bureaucrats pace rulemaking so as to evade political controversies, new regulations may not receive the level of scrutiny they are supposed to get in our form of government, with separated powers. Indeed, unelected bureaucrats not accountable to voters may end up being the ones to decide which new regulations move forward and which are sidelined. In short, regulatory processes are important and we need to pay close attention to who works in the bureaucracy, what they are doing, and whether they are proceeding efficiently without regard to extraneous political gamesmanship.

Read more in Rachel Augustine Potter, “[Slow-Rolling, Fast-Tracking, and the Pace of Bureaucratic Decisions in Rulemaking](#),” University of Virginia, 2016.