# Personnel is Policy: Ideology and Political Misalignment in the Rulemaking Process

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**NBER, Economic Analysis of Regulation**

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# Motivation

- Regulatory policy crucial tool to advance governments' political agendas
- In modern administrative states, **regulators** are tasked to develop regulations:
  - bureaucrats with deep subject-matter expertise
  - civil servants, whose careers are largely protected from political interference
- In principle, **regulators' private ideological views should not matter**: regulations should be technically sound and achieve policy goals of political superiors
- However, anecdotally, regulators' ideological views may sometimes interfere with this mandate

# Potential frictions between political principals and regulators

- Miles Taylor — chief of staff, Department of Homeland Security, first Trump administration:

  *"many of the senior officials in his [Trump's] own administration are working diligently from within to frustrate parts of his agenda and his worst inclinations."*

- Obama administration's attempts to reform national security policies reportedly hindered by career bureaucrats. (Glennon, 2015)

# This paper

**What we do:** we empirically study:

- Consequences of political misalignment between political leaders and regulators
- Trade-off between political alignment and regulators' subject-matter expertise.

**Setting:** U.S. federal rulemaking process 1997–2023

**Data contribution:** Link regulators and rules to voter registration records

- Information on partisan leaning of regulators
- Rich information on characteristics of rulemaking process and text of regulation

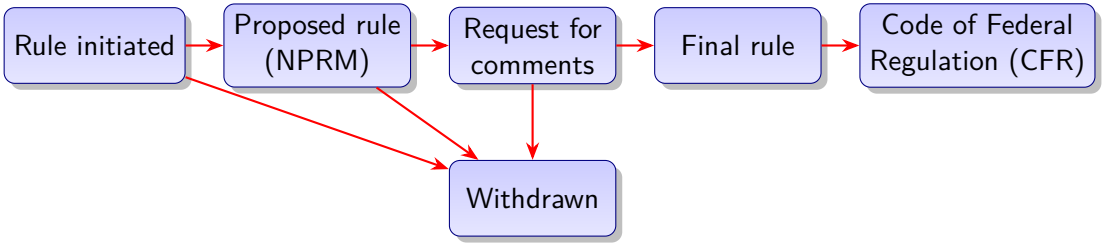
**Research design:** two sources of variation:

- We observe the same rule assigned to aligned vs. misaligned regulators
- We observe the same regulator working on rules while aligned vs. misaligned

# Preview of four main findings

1. Small partisan cycles in assignment of rules to regulators: subject-matter expertise matters much more than partisan alignment
2. Rules overseen by misaligned regulators take systematically longer to complete
3. Misaligned regulators produce rules that are less concise, have lower readability, and are more likely to attract public opposition and to be challenged in court
4. Trade-off between alignment and expertise: assigning rules only to aligned regulators would result in significant loss of expertise in rulemaking process

# Rulemaking process in the US



# Data source on Federal Rulemaking Process

1. **Unified Agenda of Federal Regulatory and Deregulatory Actions (UA)**
   - Published seminannually (Spring and Fall)
   - Uniform reporting of timeline of each rulemaking process (RIN)

# RIN 2050-AG83 from Spring 2015 to Spring 2018

| Agency | Agenda Stage of Rulemaking | Title | Publication | RIN |
|---|---|---|---|---|
| EPA/SWER | Proposed Rule Stage | Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Woods | Spring 2015 | 2050-AG83 |
| EPA/SWER | Long-Term Actions | Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Woods | Fall 2015 | 2050-AG83 |
| EPA/OLEM | Proposed Rule Stage | Non-Hazardous Secondary Materials - Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties and Used Oil | Spring 2016 | 2050-AG83 |
| EPA/OLEM | Proposed Rule Stage | Non-Hazardous Secondary Materials -- Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties and Used Oil | Fall 2016 | 2050-AG83 |
| EPA/OLEM | Final Rule Stage | Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties | Spring 2017 | 2050-AG83 |
| EPA/OLEM | Final Rule Stage | Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties | Fall 2017 | 2050-AG83 |
| EPA/OLEM | Completed Actions | Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties | Spring 2018 | 2050-AG83 |

# Timetable for RIN 2050-AG83 in Spring 2015

**EPA/SWER** **RIN:** 2050-AG83 **Publication ID:** Spring 2015

**Title:** •Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Woods

**Abstract:**

In the 2013 Non-Hazardous Secondary Materials (NHSM) final rule, the EPA established a rulemaking process for categorical determinations for adding NHSMs as non-waste fuels. Persons requesting rulemakings for adding NHSMs to the list of categorical non-wastes will have to demonstrate how the NHSMs successfully meet the criteria listed in 40 CFR 241.4(b)(5). The Treated Wood Council has submitted a petition for various types of treated wood to be added as categorical non-waste fuels.

**Agency:** Environmental Protection Agency(EPA)

**RIN Status:** First time published in the Unified Agenda

**Major:** No

**CFR Citation:** 40 CFR 241

**Legal Authority:** 42 U.S.C. 6903 42 U.S.C. 6912 42 U.S.C. 7429

**Legal Deadline:** None

**Priority:** Substantive, Nonsignificant

**Agenda Stage of Rulemaking:** Proposed Rule Stage

**Unfunded Mandates:** No

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/2015 | |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Included in the Regulatory Plan:** No

**Government Levels Affected:** None

**Federalism:** No

# Timetable for RIN 2050-AG83 in Spring 2018

**EPA/OLEM** **RIN:** 2050-AG83 **Publication ID:** Spring 2018

**Title:** Non-Hazardous Secondary Materials--Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties

**Abstract:**

The non-hazardous secondary material (NHSM) regulations under the Resource Conservation and Recovery Act (RCRA) identify which NHSMs are, or are not, solid wastes when burned in combustion units as ingredients and fuels. Under 40 CFR 241.4(b), persons can petition the EPA to list additional NHSMs as categorical non-waste fuels.

The Agency received a petition from the Treated Wood Council in April 2013 requesting that nonhazardous treated wood biomass be categorically listed as non-waste fuels. In August 2015, the Treated Wood Council requested that the Agency move forward on a categorical non-waste listing for a subset of materials that were identified in the April 2013 petition; specifically, other treated railroad ties that are treated with the preservatives creosote-borate, copper naphthenate, and copper naphthenate-borate. On February 7, 2018, EPA issued a final rule that added these other treated railroad ties to the categorical non-waste fuel list.

**Agency:** Environmental Protection Agency(EPA)

**Priority:** Other Significant

**RIN Status:** Previously published in the Unified Agenda

**Agenda Stage of Rulemaking:** Completed Actions

**Major:** No

**Unfunded Mandates:** No

**EO 13771 Designation:** Deregulatory

**CFR Citation:** 40 CFR 241

**Legal Authority:** 42 U.S.C. 6903 42 U.S.C. 6912 42 U.S.C. 7429

**Legal Deadline:** None

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/01/2016 | 81 FR 75781 |
| Final Rule | 02/07/2018 | 83 FR 5317 |
| Final Action Effective | 02/07/2018 | |

**Additional Information:** Docket # EPA-HQ-OLEM-2016-0248

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Small Entities Affected:** No

**Federalism:** No

**Included in the Regulatory Plan:** No

# Data source on Federal Rulemaking Process

1. **Unified Agenda of Federal Regulatory and Deregulatory Actions (UA)**
   - Published seminannually (Spring and Fall)
   - Uniform reporting of timeline of each rulemaking process (RIN)
   - Contact information of **regulator** in charge

# Regulators assigned to RIN 2050-AG83

**Agency Contact:**
Jesse Miller
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Solid Waste and Emergency Response
1200 Pennsylvania Avenue NW, Mail Code 5304T,
Washington, DC 20460
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# Data source on Federal Rulemaking Process

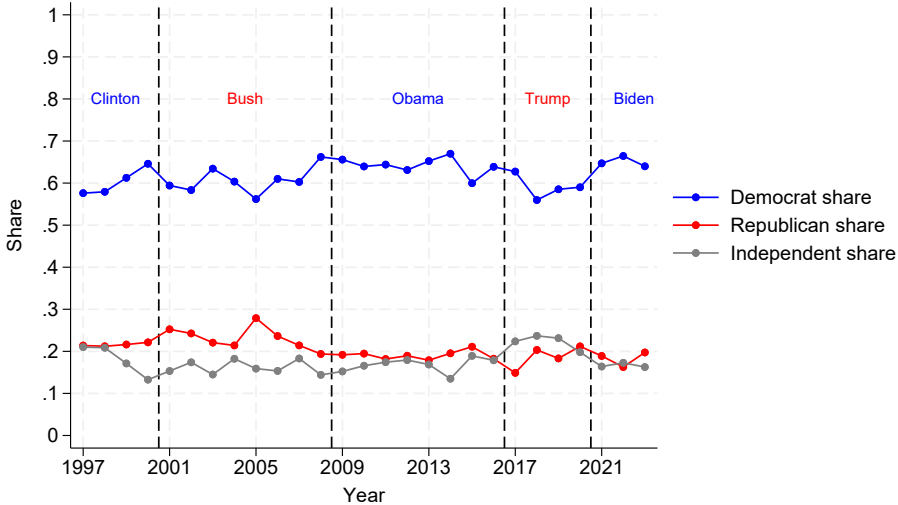
1. **Unified Agenda of Federal Regulatory and Deregulatory Actions (UA)**
   - Published seminannually (Spring and Fall)
   - Uniform reporting of timeline of each rulemaking process (RIN)
   - Contact information of **regulator** in charge
   - 35,657 rules, 14,848 regulators between 1997–2023

2. **Data on partisan affiliation of federal bureaucrats**
   - From Spenkuch, Teso, Xu (2023)
   - Matched universe of bureaucrats from OPM to Voter Registration Data (L2)
   - Recover partisan affiliation for 56% of the regulators in our data

# Three facts about Regulators

1. Regulators are highly specialized: they tend to work on a narrow set of subjects of the CFR
2. Democrats overrepresented among regulators: 63% Democrats, 21% Republicans, 16% independents.
3. Expertise trumps partisan alignment in the assignment of regulators to rules

# Share of rules initiated in a given year by regulator partisanship




Sample restricted to rules that are initiated in given year.

# Expertise and alignment in rule assignment

- We study assignment patterns at the "choice level"
- For each rule $r$, let $i$ denote each potential regulator (all regulators serving in same department at time of choice)

$$d_{ir} = \beta \text{Aligned}_{iT(r)} + \gamma \text{Expertise}_{ir} + \theta_r + \varepsilon_{ir} \quad (1)$$

- $d_{ir} = 1$ if rule was assigned to regulator $i$
- $\theta_r$ are rule FEs for within-rule comparison
- $\text{Aligned}_{iT(r)} = 1$ if regulator $i$ is aligned with president at time $t = T(r)$
- $\text{Expertise}_{ir} = 1$ if regulator has expertise in subject area
  - To measure subject area: Part of the CFR that rule is seeking to amend
  - CFR organized into 50 titles (broad areas), chapters (usually, the agency responsible), and parts (narrow areas of regulation)
  - e.g., Title 12 "Banks and Banking", Chapter 2 "Federal Reserve System", Part 201 "Extensions of Credit by Federal Reserve Banks".

# Expertise trumps partisan alignment

| | (1) | (2) | (3) |
|---|---|---|---|
| | | Assigned to rule ($\times$ 100) | |
| Mean dep. var. no aligned and no expert | 0.358 | 0.358 | 0.358 |
| Expertise match | 6.766*** | 6.664*** | 7.555*** |
| | (0.074) | (0.072) | (0.077) |
| Aligned | 0.043*** | 0.047*** | 0.014 |
| | (0.013) | (0.013) | (0.016) |
| Expertise match $\times$ Aligned | | | |
| Rule FEs | ✓ | ✓ | ✓ |
| Experience FEs | | ✓ | ✓ |
| Regulator FEs | | | ✓ |
| Observations | 2,483,196 | 2,483,196 | 2,483,152 |

# Expertise trumps partisan alignment

| | (1) | (2) | (3) | (4) |
|---|---|---|---|---|
| | Assigned to rule ($\times$ 100) | | | |
| Mean dep. var. no aligned and no expert | 0.358 | 0.358 | 0.358 | 0.358 |
| Expertise match | 6.766*** | 6.664*** | 7.555*** | 7.387*** |
| | (0.074) | (0.072) | (0.077) | (0.090) |
| Aligned | 0.043*** | 0.047*** | 0.014 | -0.018 |
| | (0.013) | (0.013) | (0.016) | (0.014) |
| Expertise match $\times$ Aligned | | | | 0.407*** |
| | | | | (0.121) |
| Rule FEs | ✓ | ✓ | ✓ | ✓ |
| Experience FEs | | ✓ | ✓ | ✓ |
| Regulator FEs | | | ✓ | ✓ |
| Observations | 2,483,196 | 2,483,196 | 2,483,152 | 2,483,152 |

# Does misalignment matter?

- Expertise is by far primary driver for assignment – two interpretations:
  1. Costs of misalignment are small (or perceived to be small by principals)
  2. Frictions prevent principals from fully aligning agents
- **Test for whether alignment matters for rule making outcomes**
- Challenge: even if modest political cycles, assignment is not random.
  - principal might care about alignment for some rules more than others (e.g., for more complex rules).
  - aligned and misaligned regulators might differ (e.g., the best among the aligned are selected)
- Multiple approaches:
  - Within-rule variation, for outcomes measured at multiple points in time (or controls for rule-level observables)
  - Within-regulator variation (plus regulator's experience on specific subjects)

# Misalignment and speed of rulemaking

- Panel at the rule-month level, where each rule appears from date of first publication in UA until date of completion of rulemaking process

$$y_{rt} = \alpha_r + \gamma_{K(r,t)} + \beta \text{Share Aligned}_{rt} + \zeta x'_{rt} + \varepsilon_{rt}$$

- where $y_{rt} = 1$ if rule $r$ was completed in year-month $t$
- Share aligned$_{rt}$ is the share of assigned regulators who are aligned
- $\alpha_r$ are rule FEs (cluster SEs at the rule-level)
- $\gamma_{K(r,t)}$ are agency $\times$ start-time $\times$ duration fixed effects
- $x_{rt}$ are rule-level covariates $\times$ duration fixed effects

**What does $\beta$ measure?** At each point in time, are rules with aligned regulators more likely to be completed, relative to rules with misaligned regulators initiated in the same agency in the same year-month?

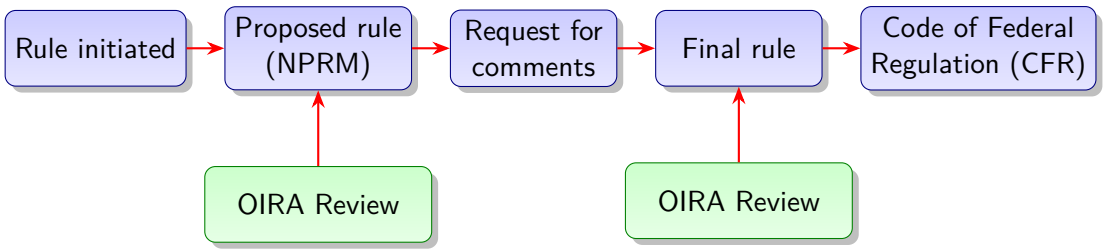
# Rules with aligned regulators are completed faster

| | (1) | (2) |
|---|---|---|
| | Rule completed | |
| Mean dep. var. | 3.826 | 3.826 |
| Share aligned | 0.346** | 0.344** |
| | (0.157) | (0.158) |
| Rule FEs | ✓ | ✓ |
| Agency × Year-Month × Duration FEs | ✓ | ✓ |
| Controls × Duration FEs | ✓ | ✓ |
| Experience control | | ✓ |
| Observations | 342,359 | 342,359 |

# Rules with aligned regulators are completed faster

| | (1) | (2) | (3) | (4) |
|---|---|---|---|---|
| | Rule completed | | Withdrawn | Final |
| Mean dep. var. | 3.826 | 3.826 | 0.856 | 2.971 |
| Share aligned | 0.346** | 0.344** | -0.058 | 0.402*** |
| | (0.157) | (0.158) | (0.101) | (0.123) |
| Rule FEs | ✓ | ✓ | ✓ | ✓ |
| Agency × Year-Month × Duration FEs | ✓ | ✓ | ✓ | ✓ |
| Controls × Duration FEs | ✓ | ✓ | ✓ | ✓ |
| Experience control | | ✓ | ✓ | ✓ |
| Observations | 342,359 | 342,359 | 342,359 | 342,359 |

# Rulemaking process in the US
# Major rules (estimated economic impact $\geq$ \$100 million)




OIRA reviews rules "to ensure [...] the President's policies and priorities are reflected in agency rules" (Administrative Procedure Act)

# Aligned rules complete OIRA review faster

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| | | Duration of OIRA review | | | Withdrawn |
| Mean dep. var. | 71.30 | 71.30 | 71.58 | 70.66 | 0.06 |
| Share aligned | -7.073*** | -7.346*** | -8.179*** | -13.509** | 0.020 |
| | (2.719) | (2.684) | (2.734) | (5.418) | (0.022) |
| Agency × Year-Month FEs | ✓ | ✓ | ✓ | ✓ | ✓ |
| OIRA review Year-Month FEs | ✓ | ✓ | ✓ | ✓ | ✓ |
| Controls | | ✓ | ✓ | | |
| Experience | | | ✓ | ✓ | ✓ |
| Rule FEs | | | | ✓ | ✓ |
| Observations | 6,789 | 6,772 | 6,496 | 4,756 | 4,755 |

# Does alignment matter for the way in which rules are written?

- Results reject the "Weberian" model of rule-making – (mis)alignment matters
- But unclear whether faster completion of rules is necessarily desirable
- Two possible interpretations
  1. Aligned regulators rush through rules at expense of "quality"
  2. Faster completion reflects greater effort, potentially improving "quality"
- **Challenge:** Difficulty of measuring "quality" of rules
- Suggestive evidence based on a variety of quality-related measures:
  1. Public support for (proposed) rule
  2. Clarity of the final text
  3. Probability that rule is challenged in court

# Estimating how (mis)alignment affects the quality of rulemaking

$$y_r = \beta \text{Share Aligned}_r + \theta_{T(r)} + \gamma x_r' + \varepsilon_r$$

- where $y_r$ is outcome for rule $r$
- Share aligned$_r$ is the share of regulators who are aligned (at rule initiation)
- $\theta_{T(r)}$ are regulator team fixed effects
- $x_r$ are rule-level covariates:
  - agency$\times$time of initiation fixed effects
  - charachteristics of the rule (predicted duration, major rule, priority level,...)
  - experience of the team of regulators on the subject of the rule

# (Mis)alignment and Public Support

- Scraped 12.5 million comments from regulation.gov (10,175 rules received at least one comment)
- Classify whether comment supports rule, opposes rule, or is neutral, using a natural language inference (NLI) model
- Example – RIN 1018-AZ52 – Pr(Positive stance)=0.999

  > *"Thank you for proposing the elimination of the split-listing for captive chimpanzees, which was illegal, ineffective, and harmful to both captive and wild chimpanzees. I am writing to urge you to make the proposed rule final, extending the protections of the Endangered Species Act to all chimpanzees."*

- Outcomes: for each rule, share of negative comments, and share of positive comments

# Aligned rules receive fewer negative comments

| | (1) | (2) | (3) | (4) |
|---|---|---|---|---|
| | Negative stance | | | Positive |
| Mean dep. var. | 0.36 | 0.36 | 0.36 | 0.31 |
| Share aligned | -0.038** | -0.038** | -0.038** | 0.023 |
| | (0.016) | (0.015) | (0.015) | (0.016) |
| Start year ×month ×Agency FEs | ✓ | ✓ | ✓ | ✓ |
| Initial regulator team FEs | ✓ | ✓ | ✓ | ✓ |
| Controls | | ✓ | ✓ | ✓ |
| Experience | | | ✓ | ✓ |
| Observations | 6,226 | 6,226 | 6,226 | 6,226 |

# Downstream effects of final regulation

- For each rule, identify which sections of CFR are amended
- Obtain pre- and post-rule change version of the CFR text sections

# Tracking change in CFR

**RIN 2050-AG83**

**PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS**

■ 1. The authority citation for part 241 continues to read as follows:

**Authority:** 42 U.S.C. 6903, 6912, 7429.

■ 2. Section 241.2 is amended by adding in alphabetical order the definitions "Copper naphthenate treated railroad ties", "Copper naphthenate-borate treated railroad ties", and "Creosote-borate treated railroad ties" to read as follows:

**§ 241.2 Definitions.**

* * * * *

*Copper naphthenate treated railroad ties* means railroad ties treated with copper naphthenate made from naphthenic acid and copper salt.

*Copper naphthenate-borate treated railroad ties* means railroad ties treated with copper naphthenate and borate, including borate made from disodium octaborate tetrahydrate.

* * * * *

*Creosote-borate treated railroad ties* means railroad ties treated with a wood preservative containing creosols and phenols and made from coal tar oil and borate, including borate made from disodium octaborate tetrahydrate.

* * * * *

**Text of targeted CFR before and after revision**

A) CFR 2017

**§ 241.2**

the environment considering the nature and toxicity of the non-hazardous secondary material.

*Control* means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in this section shall not be deemed to "control" such facilities.

*Creosote treated railroad ties* means railway support ties treated with a wood preservative containing creosols and phenols and made from coal tar oil.

*Established tire collection program* means a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities through arrival at the combustion facility. This can include tires that were not abandoned and were received from the general public at collection program events.

B) CFR 2018

**§ 241.2**

the environment considering the nature and toxicity of the non-hazardous secondary material.

*Control* means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in this section shall not be deemed to "control" such facilities.

*Copper naphthenate treated railroad ties* means railroad ties treated with copper naphthenate made from naphthenic acid and copper salt.

*Copper naphthenate-borate treated railroad ties* means railroad ties treated with copper naphthenate and borate, including borate made from disodium octaborate tetrahydrate.

*Creosote treated railroad ties* means railway support ties treated with a wood preservative containing creosols and phenols and made from coal tar oil.

*Creosote-borate treated railroad ties* means railroad ties treated with a wood preservative containing creosols and phenols and made from coal tar oil and borate, including borate made from disodium octaborate tetrahydrate.

*Established tire collection program* means a comprehensive collection system or contractual arrangement that ensures scrap tires are not discarded and are handled as valuable commodities through arrival at the combustion facility. This can include tires that were not abandoned and were received from the general public at collection program events.

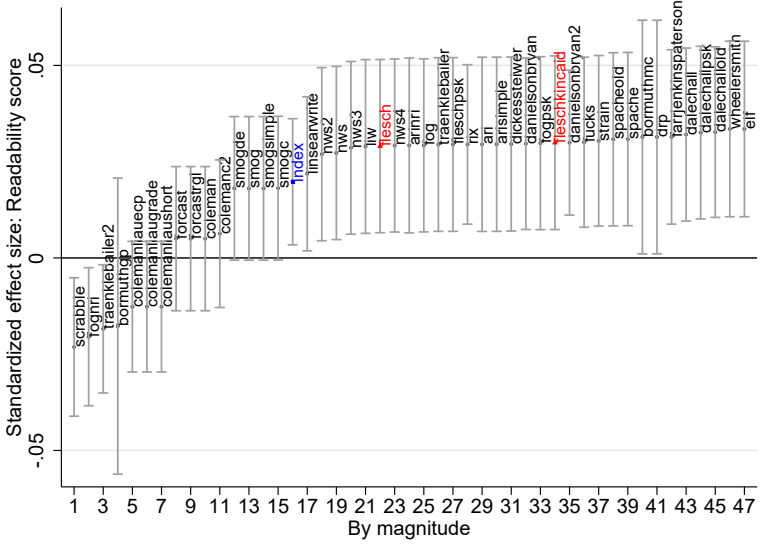
# Downstream effects of final regulation

- For each rule, identify which sections of CFR are amended
- Obtain pre- and post-rule change version of the CFR text sections
- Difficult to assess whether given regulation is "good" or "bad"
  - Rules are highly heterogeneous, varying across industry, setting, scale and scope
- **Our approach:** Rely on well established readability measures
  - E.g., Flesch score, weighted index of mean words/sentence and syllable/word
  - Recommended by agencies (e.g., DoD, EPA)
- Specification at the rule-section level, including part fixed effects (since some topics more complex than others)

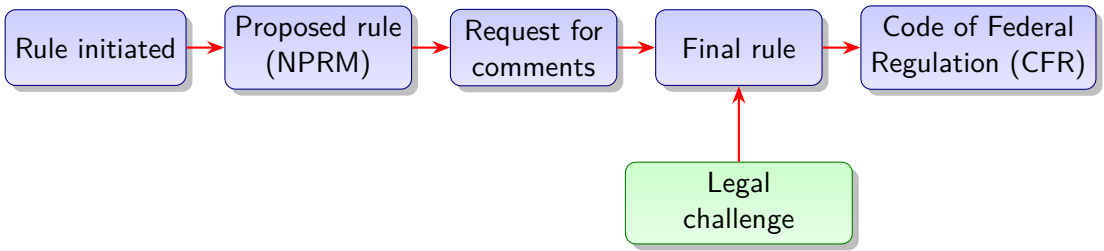
# Alignment increases text readability

| | (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|---|
| | Text readability | | | | |
| | Flesch score | | | Words/ sentence | Syllables/ word |
| Mean dep. var. | -0.008 | -0.008 | -0.008 | 57.62 | 1.74 |
| Share aligned | 0.031** | 0.029** | 0.029** | -1.451** | 0.001 |
| | (0.014) | (0.014) | (0.014) | (0.656) | (0.001) |
| Initial regulator team FEs | ✓ | ✓ | ✓ | ✓ | ✓ |
| Time × Agency FEs | ✓ | ✓ | ✓ | ✓ | ✓ |
| CFR Title-Part FEs | ✓ | ✓ | ✓ | ✓ | ✓ |
| Controls | | ✓ | ✓ | ✓ | ✓ |
| Experience controls | | | ✓ | ✓ | ✓ |
| Observations | 129,260 | 129,260 | 129,260 | 129,260 | 129,260 |

# Alignment increases the readability of regulation



# Legal challenges to final rule




Data from Institute for Policy Integrity, which tracks federal court challenges to major rules (estimated economic impact $\geq$ \$100 million)

# Aligned rules are less likely to be challenged in court

| | (1) | (2) | (3) | (4) |
|---|---|---|---|---|
| | | Rule is challenged | | |
| Mean dep. var. | 0.25 | 0.25 | 0.25 | 0.21 |
| Share aligned | -0.068** | -0.084** | -0.087*** | -0.275*** |
| | (0.033) | (0.033) | (0.033) | (0.095) |
| Year × Agency FEs | ✓ | ✓ | ✓ | ✓ |
| Controls | | ✓ | ✓ | ✓ |
| Experience control | | | ✓ | ✓ |
| Regulator team FEs | | | | ✓ |
| Observations | 1,043 | 1,043 | 1,043 | 439 |

# Trade-off Between Alignment and Expertise

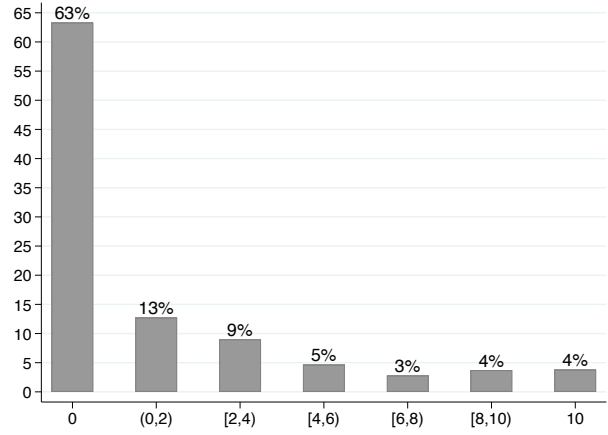
- Misalignment between regulators and political principals comes with significant costs
- Should principals simply replace misaligned regulators with aligned ones?
- We showed that expertise very relevant driver of assignment
- Principal faces a trade-off if aligned regulators have lower expertise than misaligned ones.
- Calculate variable Expertise Match$_{ir}$ for each rule $r$ and regulator $i$ who could potentially be assigned.
- Among all rules between 1997-2023:
  - 75% have at least one expert regulator available
  - 57% have at least one expert **aligned** regulator available

$\Rightarrow$ Principal limiting assignment to aligned regulators would have lost expertise on 18% of rules

# Trade-off Between Alignment and Expertise

$$\text{Expertise score}_{ir} = \frac{1}{S_r} \sum_{s=1}^{S_r} \text{Assignments}_{is}$$

- For 37% of rules: gap in Expertise score$_{ir}$ if only aligned regulators are selected
- Back of the envelope: excluding misaligned regulators from selection process would result in the loss of 36% of the stock of expertise in the U.S. rulemaking process.



# Conclusion

- Reject "Weberian" ideal of bureaucracy – bureaucrats not "cogs in a wheel"
- Evidence consistent with costs of misalignment for the principal
- **Welfare implications, however, are unclear**
  - Significant trade-off between alignment and expertise (and gains from expertise may outweigh agency frictions due to misalignment)
  - Misalignment can act as "check" on executive, dampening sharp partisan shifts