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## Rulemaking as a Form of Bureaucratic Response

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THE FLORIDA STATE UNIVERSITY  
COLLEGE OF SOCIAL SCIENCES AND PUBLIC POLICY

RULEMAKING AS A FORM OF BUREAUCRATIC RESPONSE

By

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To Mike, Nancy and Thor Terman, this dissertation belongs to you as much as it belongs to me.  
Thank you for your always listening.

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## **ABSTRACT**

There is a vast literature concerning the political control that elected officials have over agency actors in the development of bureaucratic policymaking outputs. In the context of rulemaking, I theorize that, while political signals play a role in agency response, bureaucratic decision-making is also influenced by organizational attention, institutional design and path dependency. Furthermore, I suggest that bureaucrats use different strategies in terms of the magnitude and timeliness of their response. These strategies are determined by the degree of uncertainty surrounding the aforementioned influences. In the context of Florida centralized contracting rules, I use three-level random intercepts poisson models with quasi-likelihood estimation to analyze an original dataset containing 35 years of rulemaking activity. I also conduct a qualitative analysis to examine how the nature of rulemaking changes over time. The results suggest that, in addition to political signals, agency attention, path dependency and institutional design also influence bureaucratic response.

## CHAPTER ONE

### INTRODUCTION

*Imagine that Congress creates a federal agency to deal with a large problem, one that involves a significant part of the national economy. Suppose that Congress instructs the agency: Do what you believe is best. Act reasonably and appropriately. Adopt the legal standard that you prefer, all things considered. (Sustein, 2008, 1407)*

The passage above is from Cass Sustein's 2008 article, "Is OSHA Unconstitutional?" Sustein, a legal scholar and White House official in the Obama administration, makes the argument that, through the Occupational Safety and Health Act (OSHA), the United States Department of Labor (DOL) has been granted almost unbridled legislative power to do what it sees as "reasonably necessary or appropriate to provide safe or healthful employment" (Sustein, 2008, 1407). Although more of an intellectual exercise than policy argument, Sustein suggests that the bureaucratic discretion described in the excerpt above has indeed been granted to hundreds of State and Federal administrative agencies in the United States.

According to Sustein, this agency discretion can produce wildly different regulatory policies. For example, what if DOL decides that employers already have a vested interest in caring about the health and safety of their workers and can, therefore, be trusted to police themselves? Under this rubric of reasonable and appropriate, the agency chooses to allow employers to police themselves rather than imposing external regulations. Alternatively, what if DOL uses a strict cost-benefit analysis and decides that it is reasonable for employers to spend \$900 million for every \$800 million gained in worker safety benefits? Clearly, these standards have distinct and significant consequences for both employers and their employees. Yet, the public managers and agency actors most directly shaping these policies are unelected and are given both the policymaking authority of the legislative branch and the police power of the executive branch (Kerwin, 2011). Although Sustein's argument is tinged with sarcasm, it is nonetheless an important question. What prompts and influences the policymaking behavior of administrative agencies?

This study examines one aspect of this broad governance question by investigating the magnitude and timing of bureaucratic policymaking as understood through agency rulemaking. Specifically, rather than assuming that public managers act arbitrarily on their own preferences

and policy choices, as Sustain implies, this study suggests that agency policymaking efforts and choices are shaped by factors inside and outside of the agency. However, distinct from the political control literature, which focuses on the influence of elected officials, this study incorporates organizational and managerial dynamics to show that agencies are policymaking bodies in their own right. The pattern by which they propose rules and the magnitude of change that those rules introduce are differently influenced by numerous factors, not just the preferences of political actors. Thus, using agency rulemaking, this study creates a larger framework for understanding bureaucratic action.

### **Background**

This framework opens up the agency policymaking process – as opposed to the political policymaking process. For example, in 2010, the Florida Legislature passed 294 pieces of legislation that were then signed by the governor (Florida Legislature, 2010) while Florida Administrative Agencies adopted 2,636 administrative rules (FAC, 2010).<sup>1</sup> Clearly, Florida agencies are engaged in considerable amounts of formal policymaking through the rulemaking process. While there is quite a bit of literature examining the political policymaking process (Baumgartner & Jones, 1993; Fischer, 2003; Ingram & Smith, 1993; Peters, 1982; Peters & Pierre, 2006; Sabatier, 2007), far less is known about the factors that influence agency policymaking (for exceptions see Yackee & Yackee, 2010; Yackee, 2003; Yackee, 2006). What guides this rulemaking? What internal and external agency stimuli are bureaucratic actors in the State of Florida responding to in making these policy choices?

Literature on bureaucratic action in political science has suggested that elected officials have various levers of control – budgetary authority, agency head appointment, executive orders, committee hearings, etc. – through which they can control agencies (Carpenter, 1996; Carpenter, Chattopadhyay, Moffit, & Nall, 2010; McCubbins, 1985; McCubbins, Noll, & Weingast, 1987; McCubbins, Noll, & Weingast, 1989b; McCubbins & Schwartz, 1984). Even literature that incorporates internal organizational structure and routines into political control models focuses on organizational arrangements to the exclusion of managerial action and internal dynamics (May, Sapotichne, & Workman, 2009; May, Workman, & Jones, 2008; see Nowlin, 2011). Thus, much of this literature leaves out the rest of the story of agency behavior (Meier & O'Toole, 2006b). No studies could be found that entirely open the black box of the agency to determine

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<sup>1</sup> While legislation often covers a broader subject matter than administrative rules, the difference is still striking and worth noting here.

how internal organizational, historical, and managerial components affect agency action, particularly in the case of administrative rulemaking. Furthermore, although the design of institutions and bureaucratic discretion has received considerable theoretical attention, the literature has not tested how the design of the institutions that govern bureaucratic discretion affects response over time. In the context of Florida purchasing and contracting rules, this study addresses the two shortcomings detailed above to examine how agencies use their discretion to create formal policymaking outputs.

Understanding the relationship between bureaucrats and elected officials is crucial to the furtherance of democracy. When bureaucrats change their behavior in response to recently legislated statute, new political appointments, budgetary reallocations and other signals sent by elected officials, they are, in essence, responding to the preferences of the citizenry. Their response can come in the form of heightened or relaxed regulatory enforcement and policy implementation (Carpenter, 1996; Waterman, Rouse, & Wright, 2004), rulemaking (Kerwin, 2011; Kerwin & Furlong, 1992; May et al., 2008; West, 2004, 2005; Worsham & Gatrell, 2005) and other tools that agencies use to carry out policy goals. Examining this response in terms of both magnitude and timing explains how bureaucrats use their delegated authority (Carpenter, 1996). The literature makes clear that politicians seek to control the bureaucracy (McCubbins et al., 1987; McCubbins, Noll, & Weingast, 1989a; McCubbins et al., 1989b; McCubbins, Noll, & Weingast, 1990; McCubbins & Schwartz, 1984; Ringquist, Worsham, & Eisner, 2003) and that bureaucrats, to some extent, do respond to political signals (Carpenter, 1996; Ringquist et al., 2003; Wood & Waterman, 1991; Wood & Waterman, 1993, 1994). Unfortunately, the theories on bureaucratic response leave out important agency-related characteristics (Kelleher & Yackee, 2009; O'Toole & Meier, 2004) which results in an oversimplification of the nature of bureaucratic action (Meier & O'Toole, 2006b).

Agency response stretches far beyond the passivity that is implied in the principal-agent relationship outlined in some of the political signaling literature (see Meier & O'Toole (2006a, 2006b) and Meier (1998) for detailed shortcomings of the principal-agent literature regarding bureaucratic action). As active policymaking and administrative bodies, agencies have their own organizational and managerial dynamics that influence how they shape and produce public policy. Agency actions are shaped by history, institutional incentive structures, organizational attention and other factors related to both the structure and management of the agency *in addition to* political signaling. Thus, the decision-makers and managers inside public

organizations respond to many types of stimuli, not just those that come from political principals. Using rulemaking as a form of agency policymaking output – what the political control literature refers to as bureaucratic response – this study examines the magnitude and timing of response to political signals, taking into account institutional design, organizational attention, and path dependent agency histories.

### **Objectives and Significance of this Research**

This study is intended to advance the literature on agency rulemaking and bureaucratic response in four ways. First, I use a different type of bureaucratic output that has not been thoroughly captured by the literature (for exceptions see Worsham and Gatrell (2005) and May, Workman and Jones (2008)). By using rulemaking as a form of response, it is possible to gauge the specific policy choices of agencies in the adoption of rules. This is distinct from agency outputs like regulatory enforcement or clients served, which are rarely well-orchestrated or entirely conscious choices where the outputs are well controlled. Although the behavioral results of rules are uncertain, the actual promulgation of the rule itself is an intentional choice. Thus, rulemaking is a conscious decision on the part of the agency to develop, alter or suspend a given policy (Kerwin, 2011; Kerwin & Furlong, 1992; West, 2005) – it is a “quasi-legislative activity” (Scalia, 1982, xxv). As Justice Scalia has suggested, “The rulemaking agenda – what an agency wishes to do and not to do, within the broad range of alternatives available under its charter – is up to the agency itself” (Scalia, 1982, xxvii). Although, in practice, the rule may not meet the objectives originally intended by the adopting agency, the rule itself represents a policy response to changes in the external environment and the internal dynamics of the agency that can further inform us about the preferences of bureaucrats.

Second, this study looks at bureaucratic response under different institutional designs. The structure and incentives created by political institutions shape behavior so that, under one set of institutional constraints, agency actors might behave one way and under a different set of constraints, they may behave in another way (Knight, 1992). In other words, actors realize the incentive structure within which they are operating and the outcome of various behaviors under that structure (North, 1990). Their choices will be informed by the perceived consequences of their actions.

For example, Lubell, et al. (2005) assert that local political institutions affect the development of environmental conservation policies. The scholars examine how different types

of political institutions – executive and legislative structures – magnify the power of certain community interests thereby influencing the behavior of elected officials. “Different types of political institutions will favor different types of interests, either enhancing or reducing the ability of interests to influence land-use policy” (2005, 208). In this specific case, it is hypothesized that officials elected at-large will be more likely to favor development interests because these officials are accountable to a larger constituency wherein the more powerful actors (real estate and development interests) will make their voices heard over scattered, less organized environmental interests.

This is particularly important in the context of administrative agencies whose policy-making authority is derived from external political institutions. For rulemaking, the Administrative Procedures Act (APA) is the institutional authority that constrains the agency and informs agency actors of how to interpret political signals and the extent to which they can act on managerial and organizational factors that might stimulate response. Ostrom (Ostrom, 1990, 2005) might suggest that the political signals and other factors that incentivize agency behavior are institutions nested in the broader institution of the APA. I examine the effect that changes to the APA – this higher order institution – have on patterns of response in the same issue area<sup>2</sup> – public procurement – across time.

This improves on current literature because research on bureaucratic response and political signals examines the effect of different institutions by looking at agencies in different issue areas (see Carpenter, 1996; Worsham & Gatrell, 2005). The problem with this is that it is difficult to get a meaningful comparison across these areas where the politics and nature of outputs are often different. Since this study uses the same issue area, the comparison of response patterns across time, under different institutional designs, can be more meaningful.

The third contribution is the theorization and empirical testing of bureaucratic action within a larger framework that incorporates both internal and external agency stimuli and develops a theory that distinguishes the two. The empirical literature on bureaucratic response focuses primarily on the political control of agencies without examining internal organizational processes and structures (see Meier & O'Toole, 2006b). Historical and organizational factors also substantially influence agency action and decision-making. Decision-making histories structure

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<sup>2</sup> Public procurement is referred to as an issue area because the centralized purchasing rules examined have authority across multiple policy areas (i.e. building and construction, professional services, IT, etc.). Wright (1988) refers to regulations of this type as “crosscutting regulations.” Wright (1988) described cross cutting regulations as those which apply horizontally across multiple policy areas. Other examples of cross cutting regulations include civil rights laws and environmental protection regulations (Wright, 1988).

how information is processed within the agency because previous decisions influence future decisions (Pierson, 2000a, b). This is because organizations have patterns that are learned and established over time (Argyris, 1993; Senge, 2006). Patterns do not frequently change because, once they are learned, they become difficult to alter. When an agency has a history of promulgating rules, it has organizational learning processes that limit the agency to that pattern of action (March, Schulz, & Zhou, 2000), regardless of the political signals sent or managerial and organizational push back that are being received.

Another internal bureaucratic factor is the structure of organizational attention. Agency action is limited in that information can only be processed so quickly and, therefore, must be prioritized (Cyert & March, 1963; March & Simon, 1958; May et al., 2008; Simon, 1947; Workman, Jones, & Jochim, 2009). While sometimes this prioritization is serendipitous, in other cases it comes from factors that organize the attention of agency actors so that they focus on some policy areas and functions to the exclusion of others (Cyert & March, 1963). For example, although administrative agencies usually have multiple goals and purposes, budgetary allocations and attention from outside actors often inform bureaucrats of the tasks that are truly important and require their attention (May et al., 2009; May et al., 2008; Pandey & Wright, 2006).

Until now, the literature on organizational attention has focused predominantly on the structures and routines that temper political signals thereby influencing response. However, the public management literature (Andrews, Boyne, Law, & Walker, 2009; Boyne & Walker, 2004; Meier & O'Tool, 2003; Meier & O'Toole, 2001; Meier & O'Toole, 2006b) suggests that public managers have different strategies based on whether they are responding to internal or external organizational factors. I incorporate these ideas to suggest that the degree of information that managers have and the outcome uncertainty surrounding how attention is organized influences the magnitude and timing of agency action.

Thus, I build a framework of decision-making that theorizes a better-rounded model of bureaucratic action. It theorizes and empirically tests theories about how managers strategically act in response to internal and external organizational factors. Furthermore, it improves upon current literature by incorporating how the history of agency action and institutional changes alter agency action.

The fourth contribution of this dissertation is that it examines bureaucratic outputs in an area that has important practical implications where the institutions that govern decision-making have been understudied. The federal government is the world's largest purchaser of goods and

services (AAP, 2007), spending more than \$518 billion (GAO, 2009). It is estimated that state governments spend upwards of 40% of their budgets on contracted goods and services (Kelman, 2002). This massive amount of spending underscores the importance of having rules that outline and encourage successful procurement and contracting practices<sup>3</sup>.

A fair amount is known about the process and policy implications of public procurement (Bergeson, 2002; Caggnum & Rahm, 2005; Marion, 2007; Thai, 2001; Watermeyer, 2000) and the determinants of contracting out (Bel, Hebdon, & Warner, 2007; Brown & Potoski, 2003b, 2004; Brown & Potoski, 2003; Hefetz & Warner, 2004) at both the state and local levels. As it stands, political and economic factors are said to influence decision-makers in the adoption and implementation of contracting-out (Fernandez, Ryu, & Brudney, 2008; Hefetz & Warner, 2004). And public procurement, as an umbrella for different types of purchasing and contracting, is said to allow governments to further their substantive policy goals (i.e. minority, small business preferences) and procedural efficiency-oriented goals (Arrowsmith & Hartley, 2002a, b; Arrowsmith, Linarelli, & Wallace, 2000; Thai, 2001).

However, a significant proportion of the decision-making regarding the use of government contractors and vendors is constrained by agency contracting rules and procedures. The development of these rules has gone entirely unexamined in the political science and public administration literatures. For example, little is known about the development of rules that govern state transactions with special groups (i.e. minority/disabled business owners, products produced by prisoners) or for special items like IT or building construction.

This study divides procurement rules into three different categories so that the pattern of each can be traced over time. How these rules are developed and revised can help us understand the preferences of elected officials and bureaucrats in the procurement process in the same issue area (procurement) but in different substantive policy areas (i.e. information technology (IT), building and construction, professional services, etc.). This can shed light on the relationship between agency policymaking outputs and the distributive consequences of certain policies. For example, how does agency policymaking differ when it affects vendors and contractors overall as opposed to minority groups in particular? Furthermore, in the future, this research can help scholars examine the effectiveness of different types of procurement rules.

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<sup>3</sup> Procurement and contracting are interchangeable here. Practitioner and scholarly literature, in addition to interviews done with practitioners in Florida, suggest that they refer to the same function. Interviews conducted for this study suggest that, if any distinction exists, it is that purchasing tends to refer to the purchase of goods while contracting refers to the purchase of services. However, the underlying idea of purchasing is the same.



The fifth contribution is the qualitative examination of how political signals influence the nature of agency response. The majority of the empirical literature on this political signaling uses quantitative analyses to examine how political signals shape bureaucratic response (Carpenter, 1996; Shipan, 2004; Waterman et al., 2004; Wood & Waterman, 1991; Wood & Waterman, 1993). While useful and informative, this research cannot explain variations in the nature of the response that political signals prompt. Using a subset of rules, this study uses content analysis and semi-structured interviews to examine how the characteristics of the political signal influence the nature of bureaucratic response. A framework is created to understand how, given a political signal, the agency will respond.

In general, this study will enhance scholarly knowledge of agency decision-making frameworks from management, political science and policy-oriented perspectives. The decision-making histories, institutional constraints and managerial strategies of public agencies that other research has found to be quite significant are theorized here and incorporated into a decision-making model. The relationship between bureaucrats and their principals is retested with internal agency factors, agency response histories and under different institutional designs to see if the principal-agent relationship is robust when these additional factors are included. And lastly, the variation in response across different procurement policy areas, while not the core contribution of this research, will provide groundwork for future research on purchasing and contracting institutions.

### **Organization of this Study**

Following this introductory chapter, Chapter Two reviews the literature on bureaucratic responsiveness and agency action as it has been discussed in the law, political science and public administration communities. Although this dissertation incorporates different bodies of literature (Golden, 1998; West, 2004, 2005; Yackee & Yackee, 2010; Yackee, 2003; Yackee, 2006) – which are discussed in the theoretical framework – this study treats rulemaking as a form of agency policymaking output and response. For this reason, Chapter Two focuses on and extensively reviews the bureaucratic response literature, rather than literature from all of the theories used in this study.

Following the review of bureaucratic response literature, Chapter Two includes a section on the institutional governance and delegatory nature of agency rulemaking. This provides a background in the procedural agency dynamics of rulemaking by outlining the differences

between statute and administrative code in addition to agency rulemaking authority. Chapter Two closes with a section on the substantive area within which this study is couched: state procurement and contracting. This is useful in understanding the issue area of policymaking outputs as they are examined here.

Chapter Three details the theoretical framework tested in this study. The chapter begins with the importance of studying magnitude and timing in the context of agency policymaking outputs. The sections that follow detail how theories of organizational attention, path dependency and institutional design add to current bureaucratic response literature that, as Chapter Two suggests, focuses primarily on political signaling, control and principal-agent modeling. In each of the respective sections, hypotheses are presented.

Chapter Four presents the research design and mixed methods techniques that are used to test the hypotheses. The quantitative methodology is advanced in the first section of this Chapter. This section is divided into two subsections that describe the two separate quantitative analyses conducted in this study. The first subsection details how path dependency and organizational attention will be tested. The second subsection explains how the analyses testing the institutional design hypotheses will be examined.

The second section in Chapter Four details the qualitative methodology employed in this study. The quantitative and qualitative methodology sections separately detail the sampling, operational procedures, measurement and analytic techniques utilized in this research design.

Chapter Five describes the results of both of the quantitative analyses. This section discusses the statistical results and variations in response across different variables for the 35 years of data examined. The validity and significance of the variables tested in the models are reported here.

Chapter Six discusses the results of the qualitative methodology. This chapter aims to address what the quantitative study fails to capture; namely, the nature of the changes that are ushered in by bureaucratic response and the factors that affect the nature of those changes. Through rich description, it depicts three core changes to a subset of Florida purchasing rules and develops a theory for understanding these changes.

Chapter Seven concludes this study with a detailed discussion of the theoretical and policy implications of the findings from the quantitative and qualitative analyses. The strengths and shortcomings of the study are considered and an agenda for future research in this area is outlined.

## CHAPTER TWO

### LITERATURE REVIEW

The research questions in this study relate specifically to the magnitude and timing of agency policymaking outputs. Since I treat agency rules as a form of agency policymaking output, I build on the political science literature focused on agency outputs, which are often referred to as bureaucratic response. More specifically, the literature has been centered on the magnitude and timeliness of this response. The assumption is that agency outputs are primarily a response to the behavior and preferences of elected officials. If a new piece of legislation is passed and signed by the chief executive, investigating timeliness – as defined in the literature – demands an examination of how long it takes the agency to adjust its outputs to the preferences and signals embedded in the legislation. Similarly, an investigation of magnitude – as defined in the literature – demands an examination of the amount of change that occurs as a result of the political behavior and preferences embedded in the legislation.

This literature review begins by discussing the large body of theoretical and empirical scholarship that began in the 1980s to show that agency policymaking outputs are largely influenced by elected officials (Lowi, 2009; McCubbins, 1985; McCubbins et al., 1987; McCubbins et al., 1989b; McCubbins & Schwartz, 1984; Moe, 2006; Moe, 1987; Wood & Waterman, 1991; Wood & Waterman, 1993, 1994). It will then discuss the more recent scholarship that has begun to theorize and empirically test the role of agency structures and routines in policymaking outputs (May et al., 2009; May et al., 2008). These scholars have focused on the external factors that organize the attention of public agencies such as political response to focusing events and issue salience.

#### **Bureaucratic Behavior and Agency Response**

Research on political control of the bureaucracy originated in the 1980s with principal-agent modeling suggesting that elected principals and administrative agents have conflicting preferences. Therefore, the uncertainty surrounding bureaucratic decision-making has been assumed to require legislative monitoring and oversight. McCubbins and Schwartz (1984; see also McCubbins, 1985; McCubbins et al., 1987; McCubbins et al., 1989b; McCubbins et al.,

1990) suggest that legislators have two types of oversight – police patrol and fire alarm – that they use to monitor the bureaucracy. The type of oversight is based on the degree of discretionary authority that legislators want to give bureaucratic actors. In turn, the degree of discretionary authority is dependent on the degree of outcome uncertainty in decision-making and the goal conflict that legislators perceive between themselves and bureaucrats. Later literature empirically tested the magnitude and timeliness of agency outputs in relation to the signals sent by elected officials.

The literature examining political control of bureaucracies theorizes that political principals influence bureaucratic agents by sending signals in the form of bill introductions, budgetary shifts, agency-head appointments, and other tools of control (McCubbins, 1985; McCubbins et al., 1987; McCubbins et al., 1989a; McCubbins et al., 1989b; McCubbins et al., 1990; McCubbins & Schwartz, 1984; Moe, 2006). Wood and Waterman (1993) find that bureaucratic response is of the greatest magnitude when political signals come from both the legislative and executive branches – what are referred to as joint political signals. Carpenter (1996) suggests that budgetary shifts, coupled with congressional oversight mechanisms, send signals to agency actors that heighten outputs and performance over time; he argues that timely response is rare and political principals must send repeated signals for agencies to respond. Shipan (2004) argues that political control of agency actions is conditional on the policy preferences of the agency, committee and Congress.

First, this literature is limited by its focus on organizational regulatory outputs to examine bureaucratic response. Carpenter (1996) uses FDA and FCC regulatory inspections as a form of bureaucratic response while Wood and Waterman (1993) use EPA regulatory referrals. As opposed to regulatory outputs, rulemaking is a conscious agency decision. Using agency regulatory and enforcement outputs, while quite important, assumes that agencies are making a conscious and concerted effort to produce these outputs, which may be serendipitous or incidental.<sup>4</sup> Alternatively, the nature of change in rulemaking, choice of words, and phrases are intentional because rules and the rulemaking process are subject to litigation, administrative challenge, and intense political scrutiny (Asimow & Levin, 2009; Kerwin, 2011; Kerwin & Furlong, 1992; West, 2005).

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<sup>4</sup> In interviews with purchasing agents for this study, many of them commented on the very intentional nature of rulemaking and the heightened awareness that they and others have regarding the promulgation of rules. Rules provide written evidence regarding policy and procedures, what one interview respondent referred to as “a serious paper trail.”

Recent literature has attempted to address this shortcoming by using rulemaking as a form of bureaucratic response. May, et al (2008) use rulemaking activity as a decentralized response to Congressional signals. They show that when policymaking authority is centralized, agencies are less likely to respond through formal notice and comment rulemaking and when policy is decentralized by delegated policymaking authority, agencies are more likely to respond through formal notice and comment rulemaking. They argue that Congressional and agency leadership communications act as signals that structure organizational attention so that bureaucratic response and performance are uneven across policy areas in the same agency.

Worsham and Gatrell (2005) use rulemaking activity as a form of agency output to model bureaucratic response. The scholars develop a signaling theory between principals and agents in the context of rulemaking across the Federal Energy Regulatory Commission (FERC) and the Bureau of Indian Affairs (BIA). A lack of responsiveness in the context of rulemaking is said to be the result of differences across agency policymaking arenas and institutional histories. Although this later collection of literature underscores the importance of rulemaking in the policymaking process within agencies, it has limitations.

Worsham and Gatrell (2005) use rulemaking to suggest that the FERC and BIA have different response patterns. While a useful comparison and analysis, the problem is that signals do not affect all areas of rulemaking equally within an agency. Within one agency, there are different divisions that are dedicated to substantively diverse goals. And, most signals are aimed at different policy areas within the agency rather than the agency as a whole. In other words, it is important to match the signals and rulemaking efforts in similar policy areas in the agency. For example, political signals regarding nuclear energy should be linked to the promulgation of rules related to the regulation of nuclear energy.

While May, et al. (2008) look at rulemaking, their focus is on comparing the effects of centralized and decentralized response and on the adverse consequences of centralization in the context of the Department of Homeland Security. Outside of understanding that delegated authority prompts rulemaking, their analysis does not focus on empirically identifying the factors that prompt rulemaking activity. Thus, there is much more to be done in the examination of rulemaking as a form of bureaucratic response.

A key component of the bureaucratic response literature reviewed above is the emphasis on external control. Regardless of how agency outputs are measured – agency rules, internal directives or regulatory outputs – this emphasis overlooks internal agency characteristics and the

role of the internal bureaucratic actors as opposed to the role of elected officials in producing these outputs. Some scholars have begun to theorize a larger role for public agencies and bureaucrats in the policymaking process by focusing on the role of organizational attention and information processing.

May, Sapotichne, and Workman (2009) suggest that, because of the focusing event of 9/11, policymakers created the Department of Homeland Security to send a message to agencies to prioritize terrorism prevention.

The initial efforts of the White House Office of Homeland Security were aimed at mobilizing different governmental subsystems in addressing the threat of terrorism. The creation of the Department of Homeland Security (DHS) was justified by the need for a more cohesive approach to homeland security. In creating this agency, policymakers sought to focus attention of the federal bureaucracy on the threat of terrorism and to extend existing preparedness capabilities for addressing natural and technological disasters.  
(May et al., 2009, 172-173)

In other words, attention is such an important commodity that, in creating DHS, Congress actually delegated its policymaking authority and information processing to the bureaucracy in order to deal with the political system's oversupply of information (see Nowlin, 2011). This delegation was intended to focus agency attention on certain problems over others. May, Workman and Jones (2009) actually find that, regardless of the policy disruption of 9/11, and the reorganization of terrorism response through the creation of DHS, the attention of federal agencies was not sufficiently captured. There was not an increase in bureaucratic policymaking outputs and involvement as was expected.

In another study on the effects of 9/11, May and his colleagues (2008) argue that bureaucratic responses are based on how agency attention is organized in terms of whether political policymakers delegate or centralize policymaking. Their core research question focuses on how current routines and organizational structures affect how agencies respond under "new or exceptional demands" (May, Workman, & Jones, 2008, 518). They find that the internal routines and structures of DHS, coupled with political signals, reorganized the agency's attention to anti-terrorism goals. As a result of this reorganization of attention and heavily centralized responses to the anti-terrorism goals of elected officials, the agency was not able to successfully carry out its responsibilities where response was decentralized. They suggest that this organization of attention led to policy failures in other areas of DHS, such as emergency management (e.g. Hurricane Katrina).

Although this literature helps us better understand the coupling of organizational structures and routines with political signals, it still under-theorizes internal agency dynamics. In particular, the political signaling is still assumed to be the driver of agency outputs. May, et al. (2008) use Congressional hearing witness appearances and policymaker speeches as the stimuli that, when coupled with bureaucratic structures and routines, organize bureaucratic response. Similarly, May, et al. (2009) use the content of Congressional hearings across policy areas to test whether widespread policy disruptions and focusing events reorganize the attention of federal agencies in policy subsystems. Policy disruptions are indicative of the salience of issues<sup>5</sup> while focusing events refer to environmental shocks to the policymaking system like terrorist attacks and devastating natural disasters (see Birkland, 1997, 1998).

In both studies identified above, signaling from the Congress and President, which is prompted by focusing events and/or issue salience (see Ringquist et al., 2003), organizes attention in addition to bureaucratic structures and routines. This aforementioned line of research makes a significant theoretical contribution by suggesting that communication from elected officials also organizes attention just as internal agency routines and structures do. This is made clear by the fact that communication from elected officials is referred to as “attention signals” (521). In other words, while early literature (Cyert & March, 1963; March & Simon, 1958; Simon, 1947) focused on organizational hierarchies, routines and structures, this literature theorizes that attention is organized by action-oriented as well as structural factors.

There are, however, some shortcomings. While clearly impressive and noteworthy scholarship, the aforementioned organizational attention literature makes the same assumptions as the political control literature. Namely, it focuses on external factors as stimuli that are processed differently according to agency structures, which then influence agency outputs. In other words, attention is externally organized by attention signals, which are then processed by the agency and result in two forms of organized attention: delegated or centralized authority.

Given the nature of human information processing and bureaucratic structures, we suggest that agencies have two basic ways of organizing attention. One consists of delegated authority and the use of formal routines. The other involves centralized authority and the use of informal procedures. To delegate or centralize is the question. We show that the choice of organizational attention via delegation or

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<sup>5</sup> The salience of issues is determined by policymaker perceptions of governmental performance. For example, the idea of issue salience outlined by the scholars is that “policymakers’ demands after the terrorism events of September 2001 for the federal bureaucracy to both ‘do much more’ and ‘change the way things are done’” (May, Workman, & Jones, 2008, 520).

centralization engenders unique reverberations within bureaucracies that lead to different consequences. (May, Workman, & Jones, 2008, 518)

As stated above, the only internal organizational factors theorized to influence agency outputs are the “formal routines” or “use of informal procedures.” These are structural elements that organize agency attention. In other words, public bureaucrats and managers have no action oriented roles; it is posited that they are primarily influenced by structures and routines. The only action-oriented aspects of organizational attention are entirely external to the organization through the attention signals sent by elected officials.

This is problematic because there is an extensive body of scholarship developed by public management scholars (Andrews et al., 2009; Boyne & Walker, 2004; Meier & O'Tool, 2003; Meier & O'Toole, 2001; Meier, 1993; Meier & O'Toole, 2006b; O'Toole & Meier, 1999, 2000) suggesting that managerial strategy and values play a role in generating the policymaking outputs of administrative actors. “Skillful bureaucratic managers adjust their strategies and tactics to manage potentially disruptive uncertainty from outside while using opportunities to alter the status quo to assist performance (and perhaps longer-term support)” (O'Toole & Meier, 2003, 110). They are more than just implementers of the policy of elected officials. They are policymakers in their own right because they influence agency policymaking outputs.

### **Summarizing Shortcomings in the Literature**

This section will begin by discussing additional shortcomings in the literature and summarizing those in the previous section in order to set the stage for the theoretical framework. Additional shortcomings in the bureaucratic response literature include the neglect of institutional design and organizational history. Institutional design is important to study because it limits uncertainty (North, 1990, 2005; Ostrom, 2005) and sets the standards and expectations of responsiveness to which agency actors are held (Worsham & Gatrell, 2005). The bureaucratic response literature reviewed above is limited in what it can tell us about the role that institutional design plays in altering bureaucratic action. As it stands, the role of institutions is examined by looking at variations in agency outputs across two or more different agencies (Carpenter, 1996; Worsham & Gatrell, 2005) or in terms of political institutions as they are altered by the partisan affiliations of elected officials (Carpenter, 1996; Wood & Waterman, 1991; Wood & Waterman, 1993). Worsham and Gatrell (2005) compare the Bureau of Indian Affairs (BIA) and the Federal Energy Regulatory Commission (FERC), while Carpenter (1996) compares the Food and



Drug and Administration (FDA) and the Federal Communications Commission (FCC). The shortcoming in this approach is that institutions are compared across distinct policy areas where outputs and politics are not necessarily comparable. Therefore, it is not possible to isolate the institutional effects from effects related to politics, policy areas and the nature of outputs.

The other way that political institutions are examined is by how they are altered by the partisan affiliations of elected officials (Carpenter, 1996; Wood & Waterman, 1991; Wood & Waterman, 1993). Carpenter (1996) looks at the differences between regulatory outputs under different partisan compositions in Congress to make the case that variation in partisan affiliation creates different institutional incentives for regulation. It is posited that commissions or agencies with Democratic affiliations are more likely to have heightened regulatory outputs than those with Republican affiliations. Similarly, Wood and Waterman (1993) suggest that political appointees create institutional incentives for different levels of regulatory action in the same way. The shortcoming in this approach is that these low level institutions are subject to a number of higher order constraints, which play a larger role in altering agency action. As Ostrom (1990; 2005) and North (1990) have suggested, institutions are nested within one another. Partisanship is not the actual institution that alters behavior; instead there are higher order political institutions that are developed as a result of these affiliations – legislation, executive orders, etc. More importantly, it is actually the higher order institutions that govern agency behavior that likely have the greatest effect because the lower order institutions are all nested within these higher order institutions. In other words, the influence that the partisanship of elected officials has on agency action can only be understood if we take the higher order institutions that govern agencies into account (i.e. enabling legislation, Constitutional constraints, etc.).

Another important and overlooked factor in models of agency action is agency history. Although agencies may be responsive to political signals and other various stimuli, their ability to respond in terms of timing or magnitude is influenced by expectations and resource allocations set by their previous patterns of response (Pierson, 2000a). Although the newest literature on agency action suggests that public agencies have limitations in terms of attention and therefore must have their attention organized and functions prioritized (May et al., 2009; May et al., 2008), no literature could be found that looks at the role that previous patterns of action have on future patterns of action. This is a significant oversight because public bureaucracies have patterns of response and behavior that are developed over time (Argyris, 1993; Riley, 2007; Senge, 2006). Some organizations experience inertia, which may hamstring the timing and magnitude of their

response to various stimuli while others will develop patterns of rapid responsiveness and will have a relatively low learning curve for dealing with new issues and stimuli (Feldman & Pentland, 2003; Hannan & Freeman, 1984; March et al., 2000; Zhou, 1993). The effects of organizational inertia or lack thereof on agency action are not observed in the political control literature because agency response histories are not taken into account. In other words, the pattern of agency behavior may be due just as much to agency history and inertial effects as it is to political control.

Overall, the shortcomings identified in the political control literature here include: (1) overlooking internal action-oriented agency dynamics, managerial functions, and agency history, and (2) failing to consider higher order institutions that govern agency behavior that can be compared across policy areas. As it stands, the literature focuses primarily on the relationship between agencies and their political principals as a stimulus of bureaucratic response (Heber, Shipan, & Pfahler, 2001; McCubbins et al., 1987; McCubbins et al., 1989b; Shipan, 2004). This study suggests that there is more to the story of agency action. The theoretical framework advanced in Chapter 3 seeks to balance current models of agency action, which limit the decision-making realities of agency actors in terms of the timing and magnitude of response. However, before moving to the theoretical framework, the two following sections below provide a background for understanding the type of response that is examined – rulemaking – and the context that is used – centralized procurement – in this study. The next section of this chapter explores the differences between legislation and administrative rules and the higher order institutions that govern the latter. The section that follows outlines the policy area of contracting and the specifics of centralized contracting and procurement. This section provides the substantive context for the type of response that is examined here.

### **The Institutional Governance and Delegated Responsibilities of Rulemaking**

Many scholars have pointed out the tension between bureaucratic rulemaking authority and (1) the separation of powers between the three branches of government (Kerwin, 2011) and (2) the delegation of policymaking to bureaucratic actors who are not democratically accountable to the electorate (Davis, 1969, 1971; Kerwin, 2011; West, 2004, 2005; West, 1983). Not only have legislators delegated their policymaking authority to administrative agencies but these agencies have also been granted the enforcement authority of the executive branch and the legal

authority of the judicial branch<sup>6</sup> (Asimow & Levin, 2009; Kerwin, 2011). Furthermore, agency rulemaking can leave external agency stakeholders at the discretionary mercy of unelected policymaking bureaucrats (Davis, 1969, 1971). For these reasons, it is important to understand the oversight mechanisms and institutional constraints that govern these agencies. It is these constraints that ensure fairness and reinforce democratic values and accountability in the rulemaking process.

Two types of institutions that govern an administrative agency are: (1) its enabling legislation and (2) the administrative procedures act within its jurisdiction (which is also legislation). Enabling legislation creates the agency and sets the bounds of its substantive and procedural authority. For example, after the September 11<sup>th</sup> terrorist attacks, the Homeland Security Act (HSA) of 2002 authorized the creation of the Department of Homeland Security (DHS). Substantively, the act authorized DHS to have total control of internal American security, which included airports, port authorities, and other points of entry in the U.S., in addition to the emergency management infrastructure. This enabling legislation was specific to the needs and responsibilities of an agency tasked with the internal security of the United States. For an entity with no elected leadership and only political appointees in the upper echelons of the agency, DHS has wide-reaching policymaking authority. Procedurally, DHS has the rulemaking authority that other federal agencies have in addition to heightened discretion around the promulgation of emergency rules and public disclosure. Although few other agencies at either the state or federal level receive that degree of discretion, legislators cannot help but give public agencies discretionary authority, which includes the power to make policy through rulemaking.<sup>7</sup>

The degree of discretion legislatively delegated to an agency is determined by the costs of decision-making, uncertainty, information limitations, and commitment that legislators face in adopting more specific legislation (Horn, 1995). Given these costs, legislators often delegate a great deal of their policymaking authority to public managers and agency actors by structuring agency discretion. Granting agency actors the authority to make rules is one of the structural

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<sup>6</sup> Agencies have judicial authority through the administrative hearing process where interested parties contest rules, the application of rules or other agency grievances in front of an administrative law judge (ALJ). While Courts still have certain oversight authority and are usually able to review the decisions of the ALJ, the initial adjudication is often made within the agency entirely independent of the judicial branch.

<sup>7</sup> A 1994 GAO survey found that 5% of federal agencies had no rulemaking authority (GAO, 1994). Thus, there is wide variation in the procedural policymaking authority granted to agency actors.

choices that legislators have in terms of policymaking (Horn, 1995; Moe, 1990b). This structural choice is articulated in the enabling legislation.

When enabling legislation gives agency actors rulemaking authority, it gives them the power to adopt rules that have the same binding legal authority as statute. In other words, although agency rules have the same binding authority of legislation promulgated by elected officials, they are drafted and adopted in an administrative venue and become part of a given jurisdiction's administrative code rather than statute. The fact that administrative rules have the same legal weight as statute is only made possible through legislative delegation (West, 2005).<sup>8</sup> While scholars have noted that this rulemaking delegation flies in the face of democratic principles because unelected actors are making policy decisions (Davis, 1969, 1971), rulemaking authority itself is tempered by a second governing institution for administrative agencies: administrative procedures acts.

The policymaking authority of Federal and State agencies is governed by administrative procedures acts (APAs). They articulate the agencies that are able to engage in rulemaking and other forms of policymaking and the procedures for and limitations of those processes (Asimow & Levin, 2009; Kerwin, 2011; Kerwin & Furlong, 1992; Rossi, 1996). The Federal Administrative Procedure Act (APA) was adopted in 1946 and, shortly thereafter, the states began to either develop their own APAs or adopted the Federal APA (Kerwin, 2011). In keeping with the values of American democracy, APAs generally require that, in order to engage in formal rulemaking<sup>9</sup> agencies must: (1) give public notice of the rule that they are proposing to adopt; (2) allow interested parties the ability to comment on that proposed rule; and (3) take the record generated from that comment period into consideration before adopting the formal rule (Asimow & Levin, 2009; Kerwin, 2011).<sup>10</sup> Mandating these procedures alleviates some of the tension between democracy and the structural choice of rulemaking. All of this is to say that, the agency rulemaking process is bound by constraints that encourage democracy, fairness and

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<sup>8</sup> It should be noted that, while statute and code are both legally binding, there are different standards of judicial review.

<sup>9</sup> There are key legal distinctions between informal and formal rulemaking that are outside the scope of this study. It should suffice to say that formal rulemaking – as opposed to policy statements and legal interpretations – are held to a different legal standard. Some of the APA guidelines do apply to informal rulemaking because they do not have the same legal authority as formal rules that have gone through the notice and comment and process.

<sup>10</sup> These standards apply in both state and federal rulemaking venues. However, states have various procedures before a rule becomes effective. Florida has the Joint Administrative Procedures Committee (JAPC), which annually reviews rules adopted rules to ensure that they are legally promulgated and substantively within the scope of their authority. Alternatively, the Idaho legislature has the authority to annually review and/or alter the rules before they become effective.

equity. While a number of scholars have emphasized the characteristics of the greedy or self-interested bureaucratic actors (Downs, 1967; Niskanen, 1971), legislators and executives allow for and create this discretion by virtue of the political institutions they adopt – namely enabling legislation and the procedures outlined in the APA (Bowers, 1990; Davis, 1969).

Thus, it is important to recognize agency rulemaking as granted by political principles through enabling legislation but still nested in the larger authoritative framework of the APA. This recognition paves the way for understanding why bureaucrats are expected to respond to political signals in addition to the institutional constraints with which they are faced. The next section explains the substantive area of rulemaking that this study examines: centralized public procurement and contracting rules.

### **Centralization and the Development of Procurement Rules**

Public procurement is defined as “the situation where a public body obtains the goods and services that it needs by making a contract with another entity” (Arrowsmith, Linarelli, & Wallace, 2000, 7).<sup>11</sup> Although no empirical studies could be found that focus specifically on the adoption or development of procurement rules themselves, there is research on the policy area of purchasing goods and services from non-governmental actors (Arrowsmith & Hartley, 2002a, b; Arrowsmith et al., 2000; Brown & Potoski, 2003a; Brown, Potoski, & Van Slyke, 2006; Brown & Potoski, 2003; Brudney, 2005; Fernandez, 2009; Fernandez et al., 2008; Thai, 2001). In both bureaucratic and political venues, there are two decision points around which the politics of procurement are discussed: (1) the initial make or buy decision (Williamson, 1973; Williamson, 1975; Williamson, 1981) and (2) the process for awarding contracts (Kelleher & Yackee, 2009). It is the second decision on which procurement rules are primarily focused.<sup>12</sup> Although the politics of procurement can vary across policy areas (the politics behind the procurement of information technology is different from the politics behind the procurement of defense or construction contracts), at the heart of all types of procurement is the idea that those procuring

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<sup>11</sup> The literature makes no clear distinction between procurement, purchasing and contracting. Furthermore, in interview data collected for this study, procurement officers and managerial staff used the terms interchangeably while recognizing that there are procedural variations in the process depending on the good or service being purchased.

<sup>12</sup> Procurement rules can govern the first decision when there are limits on what government can or cannot produce itself. For example, Circular A-76, which originated under President Eisenhower and followed to different extents since, states that government cannot contract-out for goods or services that are “inherently governmental.” The flip side is that A-76 also underscored that government should not be producing goods or services that are readily available in non-governmental markets because the government should not be competing with its own citizens.

goods and services for public consumption should be acting as stewards of public funds (Kelman, 1990; Kettl, 1993).

In relation to public managers and politicians, the fear is that, without proper constraints, they will award contracts in order to enrich themselves (Schooner, 2001). Public managers may award contracts to vendors with whom they have a personal relationship. Political actors may influence the bureaucracy to steer contracts toward political campaign donors and other supporters (Feiock & Jang, 2009). In both cases, procurement rules constrain these behaviors by putting some impartial standards and external checks on the procurement process from the initial request for proposals to the award and oversight of the contract (Arrowsmith et al., 2000; Mashaw, 1991).<sup>13</sup>

In keeping with these impartial standards and models of decision-maker behavior, there are three key objectives for public procurement laws and rules – competition, transparency and integrity (Schooner, 2001). The push for competition originates primarily from the public choice tradition where it is assumed that market environments deliver better quality goods and services at lower prices (Donahue, 1989; Niskanen, 1968, 1971; Savas, 2000). Transparency highlights the democratic ideal that taxpayer dollars should be publically accounted for (Arrowsmith & Hartley, 2002b; Schooner, 2001). And, integrity is focused on preventing fraud and corruption by public actors tasked with spending taxpayer monies (Schooner, 2001). Administrative procurement rules act as the institutions that directly structure and incentivize good purchasing behavior. Although the three aforementioned objectives for public procurement laws and rules remain, the substance of recently adopted procurement rules has changed (Arrowsmith & Hartley, 2002a, b; Geroski, 1990; Watermeyer, 2000).

Recently, adopted rules, taking cues from legislative statute and executive orders, have become a vehicle for carrying out various social, economic and industrial policies (Arrowsmith & Hartley, 2002a). This is done by mandating or giving preferences to the use of vendors and contractors who use certain products or production practices that have what some have termed as environmentally or socially desirable outcomes (Arrowsmith & Hartley, 2002a, b; Arrowsmith et al., 2000). For example, governments at all levels have starting developing green procurement strategies by creating lists of environmentally responsible production practices and giving

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<sup>13</sup> It should be noted that these impartial standards do not apply in all situations. For example, competitive bidding is a requirement in many contracting situations. However, there are not always enough vendors in a particular market for there to be meaningful competition. As a result, the benefits of competitive bidding are not realized.

preference to vendors that use these practices (Bergeson, 2002). The Federal government and 21 states have “Buy American” laws that mandate contractors to use American-made products in the goods and services that they sell to public agencies (NASPO, 2009). In the 2009 NASPO Survey, thirteen states (up from five in 2007) said they gave certain preferences to minority-owned businesses during the procurement process and eleven states (up from six in 2007) said they gave disabled-owned businesses some preference during the procurement process (NASPO, 2009).<sup>14</sup> In other words, as purchasers of goods and services, governments have begun to realize the power that they have to alter the economic and social landscape of society. They do this through the adoption of administrative rules; and they get the authority to do so from their political principals in both the legislative and executive branches who set these broad policies. However, it is not only the political environment from which these rules evolve.

Procurement practices as outlined in administrative rules and internal agency policy are influenced by state and national organizations. The National Association of State Procurement Officers (NASPO) has outlined a number of best practices that many states adopt. NASPO provides resources regarding cooperative contracts in which states can engage. This enables better organization and use of economies of scale. For example, Minnesota is the lead state in a cooperative contract for legal subscription services (Westlaw and Lexis-Nexis). Membership in NASPO allows other states – Oregon, North Dakota and West Virginia – to also participate in this contract (Brown, Fernandez, & Heckman, 2010; NASPO, 2010).<sup>15</sup> These contracts are then made available in the form of state term contracts to state agencies and some local governments. The best practices most applicable to this study advocate finding a balance between the centralization and decentralization of purchasing (Brown et al., 2010).

Most states have centralized purchasing (NASPO, 2009). This means that one agency is responsible for and/or oversees the contracting and purchasing of all other state agencies. This ensures that qualified and experienced purchasers and contract negotiators are involved in the procurement process. However, in most cases, there is a monetary threshold under which individual agencies can make direct purchases from vendors. Additionally, because of the centralized function, individual agencies have state term contracts and other pre-authorized sources of goods and services so that they are able to act in a reasonably independent manner.

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<sup>14</sup> Forty-five states responded to the 2009 NASPO Survey of State Government Purchasing Practices.

<sup>15</sup> Other organizations that help develop interstate collaboration and cooperative purchasing agreements include the Multi-State Corrections Procurement Alliance, the Minnesota Multistate Contracting Alliance for Pharmacy and the Western State Contracting Alliance.

Centralized purchasing also allows for the equal distribution and imposition of policy goals across an entire government. For example, all state agencies are held to the same standards in terms of using minority suppliers or procuring goods that use a certain percentage of recycled materials. This ensures that the distributional consequences of policies are equal across agencies. Thus, although these administrative rules are adopted by a single agency, they apply across agencies and are relevant to and authoritative in different policy areas.

This centralized rule promulgation is part of what makes this study valuable. These rules are cross-cutting regulations and can therefore pick up the political, managerial, and historical dynamics in a number of different venues. Furthermore, by quantitatively tracking three types of procurement rules in addition to qualitatively examining rules in one subset of policy – minority preference purchasing – it is possible to identify different patterns across policy areas on at least a cursory level. This study is concerned with the development of these rules as agency policymaking outputs.



## CHAPTER THREE

### MODEL FOR AGENCY POLICYMAKING OUTPUTS

The timing of rulemaking activity and the magnitude of change introduced by that activity are important because they affect the daily operations of public agencies, citizens and businesses. Although the procedural and substantive scope of rulemaking are governed by institutional constraints such as an Administrative Procedures Act and enabling legislation, agency actors do have choices in terms of the timing and magnitude of rulemaking activity (Asimow & Levin, 2009; Cooper & West, 1988; Kerwin, 2011; Kerwin & Furlong, 1992; West, 2004, 2005).<sup>16</sup>

Agencies can make small magnitude changes to administrative code by slightly changing current sections to existing rules or by developing entirely new rules or chapters that lead to significant policy adjustments. Small magnitude changes are often more symbolic. With small magnitudes changes, agencies can send the message that they are responsive to the various stimuli that prompt rulemaking without actually changing or disrupting the daily operations of the agency or its stakeholders. Large magnitude changes are more substantive and affect the daily operations of the agency and its contractors. The hardship that these rules introduce can result in heightened interest group attention, which often prompts elected officials to get involved in agency policymaking outputs. This involvement can decrease agency discretion, which agency actors prefer to avoid (Calvert, McCubbins, & Weingast, 1989; Davis, 1969, 1971; Oberfield, 2009; Ringquist et al., 2003; Sowa & Selden, 2003). And, since the rules examined here apply across agencies and the various contractors with whom they work, high magnitude changes affect an even greater number of stakeholders than under normal conditions. Therefore, high magnitude changes in this context represent an even riskier proposition in terms of attracting unwanted attention and potentially decreasing discretion. Thus, while high magnitude changes may usher in necessary improvements, they also introduce significant risks that low magnitude changes are less likely to produce.

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<sup>16</sup> Florida allows administrative agencies tasked with implementing legislation that requires the adoption or amendment of agency rules a period of 180 days from the effective date of the legislative act to *propose* a new rule or amendment to an existing rule.

In addition to the magnitude of change that rules introduce, timing is also a key component that can introduce considerable risks. First, rulemaking is a costly process and prompt responses can result in wasted energy, time and resources if contextual factors change (Kerwin, 2011; Kerwin & Furlong, 1992). Second, with multiple stakeholders both inside and outside of government affected by rules, hasty rulemaking runs the risk of leaving important stakeholders out of the process. This can create political turmoil because these stakeholders can challenge the rule or lobby elected officials to get involved in the process, which can attract unwanted attention and diminish agency discretion. Third, the consequences of rulemaking can be very uncertain. As a result, it is often in the best interest of agencies to collect more information before engaging in rulemaking activity.

All of this is to say that, without even taking into account the factors that stimulate rulemaking activity – a backlog of information, internal demand for improving the purchasing systems, political signaling, etc. – timing and magnitude of rulemaking activity can have consequences that are contrary to the preferences of agency actors. The core preference is a desire to retain discretion in purchasing decisions and oversight. In order to maintain this discretion, public managers pay careful attention to the outcome uncertainty associated with the stimulus prompting the rulemaking action because adverse consequences can result in reduced discretion. This idea is supported by Wood and Waterman's (1993) finding that agencies are more likely to respond to political signals that come from both the legislative and executive branches. Bureaucrats do not want to risk misinterpreting a signal and therefore wait for them to be more definitive. These preferences and concerns on the part of agency actors drive the framework outlined below, which takes path dependent histories, organizational attention and institutional design into account.

### **Path Dependency**

Agency policymaking action is a path dependent process.<sup>17</sup> Agencies often have a choice in rulemaking; they may choose to issue policy statements or internal memoranda instead of engaging in formal rulemaking. In some cases, the latter may be advantageous because the

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<sup>17</sup> This study uses the concept of path dependency to show how the magnitude and timeliness of past behaviors or decisions influence future magnitude and timeliness. This is, to some extent, different from what path dependency is often used to mean: decisions made at a critical junctures in time limit the substantive choice sets for actors. In other words, this study does not focus on path dependency for the nature of change, but path dependency for the magnitude and timeliness of change, following the studies such as March, et al. (2000) and Schulz (2003a).

procedural requirements of formal rulemaking - notice and comment – can insulate agencies from being accused of adopting policies without giving proper due process to interested parties (Asimow & Levin, 2009). Alternatively, agencies may choose less formal implementation methods because the codification of agency policy in formal rules can bind the agency in ways that become overly constraining in the future (see Yackee & Yackee, 2010). This decision to engage in notice and comment rulemaking is affected by how organizations learn and process information over time.

Organizational actors learn to respond to external stimuli with varying strategies. When rules frequently change over time, bureaucratic actors come to rely on them. These actors regularly look to certain rules over others as sources of authority over their daily actions. When external stimuli prompt rulemaking, it is the rules that experience frequent changes that they will revise. This is because actors already pay more attention to these rules. The decision to engage in this rulemaking activity is not serendipitous. With particular rules, agencies have learned to more promptly engage in rulemaking activity. Furthermore, they have learned that both internal and external agency stakeholders are familiar with these rules and they have become more comfortable with amending them.

Frequent changes suggest that a rule is relied upon and therefore, is more important to update and can handle larger changes with less deliberation because stakeholders are more familiar with it. This makes rules that have frequent changes both easier to update and more likely to experience large changes because of actor's reliance on them. Therefore, the timing and magnitude of rulemaking will be positively associated with rules that have frequent response histories.

*Hypothesis 1: The magnitude and timeliness of agency rulemaking are expected to increase with rules that have frequent response histories.*

In addition to the frequency of response, another element of rule history impacting response is the age of a given rule or set of rules (March et al., 2000; Schulz, 2003a; Zhou, 1993). First, rule age can create path dependency for the reason outlined above. Namely, inertial forces can make it difficult to repeal or even amend a rule when it has been in existence over time. Organizational actors come to rely on it and resist moves to alter it. Second, organizations may have learned the best usage or development of given rules over time. For older rules, organizational actors have had time to modify them so that they better suit the needs of the organization over time. This results in smaller magnitude changes.

The argument with timeliness is similar. Organizational actors may feel less pressure to immediately alter older rules in response to organizational stimuli because these rules become institutionalized and are more difficult to change. In other words, rules are simply more stable as they age and more robust to organizational stimuli that might result in more timely responses in other rules. As a result, as a rule ages, the change will be less timely and the size of the change will diminish.

*Hypothesis 2: The magnitude and timeliness of agency rulemaking are expected to decrease as rule age increases.*

### **Organizational Attention and Information Processing:**

#### **The External and Internal Organization of Agency Attention**

The idea that attention is organized originated with Simon's work on bounded rationality (1947). Simon argued that human beings are cognitively limited in their ability to process all of the information at their disposal. Individuals have their rationality bounded by their cognitive limitations and therefore cannot possibly make decisions based on all of the information at their disposal. They *satisfice* – they choose the best option, given the information that is available to them, that they are able to cognitively process. While clearly more complex than the description given here, the idea is that human beings have to prioritize and organize their attention in order to make decisions. They simply have too much information and too many responsibilities to take the time to make decisions under the fully informed conditions that rational choice scholars have proposed.

The concept of organizational attention applies Simon's ideas regarding human beings' limited information processing to organizations (Cyert & March, 1963; March & Simon, 1958). Organizations have multiple functions and responsibilities in addition to varying goals and interests (Chun, 2005; Cyert & March, 1963; Lan & Rainey, 1992). As a result, to get things accomplished, organizations and the actors within those organizations must have their priorities and attention guided. This occurs through organizational routines, hierarchies and structures. These factors help organizational actors determine the responsibilities and functions on which they should be focused (March & Olsen, 1983; May, et al., 2008). The literature in public policy and public administration has had a limited perspective of the factors that organize agency attention and this study aims to expand that perspective.

Among many, there are two particularly interesting insights that can be gained from the literature that combines organizational attention and political signaling. First, rather than simply theorizing that it is the raw political signals that influence response (for examples see Calvert et al., 1989; Cox, McCubbins, & Sullivan, 1984; McCubbins, 1985; McCubbins et al., 1987; McCubbins et al., 1989b; McCubbins & Schwartz, 1984), political signals are actually “attention signals” (May, Workman, & Jones, 2008, 521). In other words, the case is made that the threat of power and authority exerted through the political signal is not the only stimulus for agency output. Rather, the political signal organizes the attention of the agency toward a certain type of response or action. The second insight is the recognition and theorization of internal agency structures and routines as one of the determinants of response. This is particularly insightful since much of the political control and political signaling literature has overlooked and under-theorized the role of the bureaucracy in influencing organizational outputs (Meier & O’Toole, 2006a; Meier & O’Toole, 2006b). While insightful, this scholarship does have shortcomings.

As suggested in Chapter Two, the more dynamic determinants of agency action are external to the organization. The primary focus is on how issue salience and focusing events influence political actors, who then send attention signals that influence the routines and structures through which agency outputs are generated. They overlook the actions of agency actors by emphasizing agency structure and routine. In other words, the core elements of action in their theory and analysis come from the attention signals sent by elected officials, which are influenced by issue salience and focusing events (see Ringquist, et al. (2003) for a discussion of how issue salience determines the conditions under which elected officials try to control the bureaucracy). Agency decision-making behavior is theorized as being externally organized because the elements of action in the model originate from outside of the public bureaucracy. My goal here is to introduce a model of agency action by suggesting that attention can be both internally and externally organized and that the timing and magnitude of agency action is different depending on whether attention is externally or internally organized.

### **Internally Organized Attention: Making the Case**

For decades, scholars in public administration and public management have theorized and analyzed the relationship between managerial strategies and various agency outputs (Brewer & Walker, 2010; Meier & O’Tool, 2003; Meier & O’Toole, 2001; Meier, 2002). Scholars have suggested that managers have different strategies for producing agency outputs depending on the nature and source of the problems with which they are faced (Andrews et al., 2009; Boyne &

Walker, 2004; Walker & Brewer, 2009), and the administrative and discretionary capacity of their organizations (Hill, 2005, 2006), among other factors. Meier and O'Toole (1999, 2002, 2006a, 2006b, 2008) have developed a body of research focusing on how public managers use different managerial strategies to protect or insulate their organization from internal and external forces that might interfere or adversely affect performance or resources (Meier & O'Toole, 2008, 933). They assert that managers are strategic actors who seek to influence organizational outputs and resource allocation by buffering against environmental uncertainty, managing organizational structures and seeking opportunities to exploit the environment (O'Toole & Meier, 1999; O'Toole, Meier, & Nicholson-Crotty, 2005; also see Thompson, 2003). Organizational outputs are different depending on the strategies that managers utilize. While this scholarship focuses primarily on performance as an organizational output, it is the behavior of managers in public organizations that provides important insights for how bureaucratic actors influence policymaking outputs.

There are two key assumptions in this literature that are important to the development of a theory of the internal organization of attention. First, managers are strategic actors that influence organizational outputs (O'Toole & Meier, 1999; O'Toole et al., 2005; Zhu & Meier, 2011). This exposes a shortcoming in the political control literature, because it suggests that public managers actually help to determine public priorities as they are influenced by organizational outputs. Second, managers have different strategies depending on the phenomena to which they are responding. Not only does agency behavior influence organizational outputs independently of political action, but various strategies produce varied responses. Using these two key assumptions about public managers, I suggest that attention can be organized from inside of the agency in a way that influences outputs. This occurs through issue salience and focusing events that originate inside of the agency.

### **Internally Organized Attention through Issue Salience**

The salience of issues is defined by the importance that actors in a given venue ascribe to them (Epstein & Segal, 2000; Ringquist et al., 2003). This influences how they prioritize and act on these issues (Epstein & Segal, 2000; Ringquist et al., 2003). For example, in a political context, the salience of issues is associated with the degree of control that elected officials want over bureaucratic outputs (Calvert et al., 1989; Moe, 1987). Similarly, in the judicial context, studies have shown that Supreme Court Justices over-assign cases with high issue salience to themselves (Epstein & Segal, 2000). The salience of issues in these venues is often determined by political framing and public attention. Within public organizations, I suggest that issue salience is framed by the strategies

in which agency actors engage to maintain internal structure and order in their organizations as they attempt to meet goals.

This idea of internally influencing organizational outputs and direction is supported by a plethora of theoretical and empirical scholarship in public administration that suggests that agency actors behave strategically to get resources for or to enhance the performance of their agencies.<sup>18</sup> Moore (1995) theorizes that public managers should act strategically to produce public value. One way that they do this is by entrepreneurially using resources and building support for the mission and objectives of their organizations (Osborne, 1993; Osborne & Plastrik, 1997; Osborne, 2010). Similarly, Meier and O'Toole make the case that it is management's job to leverage agency inputs and "reshape the structural setting" of the organization in order to make performance improvements for public programs (2003, 268). They make the case that one of the critical tasks for managers "is to maintain structure: to frame goals, set incentives, and negotiate contributions from members and relevant others" (O'Toole Jr & Meier, 2003, 276). The point is that agency actors shape and frame the salience of issues from within their organizations through these various strategies in such a way that they are capable of influencing organizational policymaking outputs like administrative rules.

### **Internally Organized Attention through Focusing Events**

Focusing events are generally conceptualized as shocks to a given system that result in policy change (Baumgartner & Jones, 1993; Birkland, 1997, 2006; Jones & Baumgartner, 2005). Some of the original work on focusing events looks specifically at the effect of exogenous shocks to the political system and policy venues and suggests that these shocks prompt punctuated policy change (Baumgartner & Jones, 1993; Jones & Baumgartner, 2005). The idea is that these events are unexpected and cause sudden, concentrated harm that focuses policymakers so that they dedicate their attention to the creation of new policies to mitigate current harms and prevent future harms caused by these sorts of events in the future. In the organizational context, scholars have suggested that when agencies experience external events – exogenous shocks – they engage in buffering that protects the organization from the adverse effects of those shocks (Meier & O'Toole, 2008; O'Toole Jr & Meier, 2004; O'Toole & Meier, 1999; Zhu & Meier, 2011). The magnitude of the event is related to the degree of managerial buffering that is required (Meier & O'Toole, 2008; O'Toole & Meier, 1999, 2000; O'Toole et al., 2005; Zhu & Meier, 2011). Recently, however, public

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<sup>18</sup> It should be noted that this scholarship also suggests that managers scan their external environments for opportunities to exploit in order to gain resources and power for their programs (Meier & O'Toole, 2003).

management scholars have asserted that shocks can also be internal to a given venue in a way that also forces change.

It has been theorized that shocks can occur inside of organizations – endogenous shocks – just like shocks can occur outside of organizations. For example, the case is made that one form of internal shock is the structural stability of organizations. Instability caused by endogenous shocks results in managerial buffering in the same way that the instability caused by exogenous shocks does. As Zhu and Meier’s (2011) suggest, environmental changes are shown to be “negatively related to the level of buffering, meaning that there might be a high level of buffering when the external environment generates large shocks” (9). Furthermore, they make the case that “structural stability is inversely related to organizational buffering. Managers may put high levels of effort in buffering if the organizations do not have stable structures. In stable organizations, in turn, managers may put low levels of effort into buffering” (Zhu & Meier, 2011, 9). The strategies and degree of buffering is different but the point is that focusing events can occur inside and outside of organizations.<sup>19</sup>

In this study, I theorize that focusing events influence the magnitude and timing of agency policymaking outputs through the internal and external organization of agency attention. However, the magnitude and timing of action is different depending on whether attention is internally or externally organized. The following section details why agency action is different depending on whether attention is internally and externally organized and lays out the hypotheses that are empirically tested in this study.

### **Differentiating Between Internal and External Organization of Agency Attention**

The primary distinction between internally and externally organized attention for agency actors is the amount of information that they have about the stimuli prompting their response. Knowledge and information decreases outcome uncertainty, which causes trepidation in rulemaking and other agency policymaking outputs. This is particularly the case because agency actors are trying to preserve their discretion and do not want to draw unnecessary attention to

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<sup>19</sup> Meier and O’Toole (2003) also state that, “Shocks to the system can come from a variety of environmental forces. Legislatures or executives can change program priorities, increase or decrease program funding or scope; organizational rivals increase or decrease programs funding or scope; organizational rivals or coalition members can make decisions that directly or indirectly affect the organization; or the economic or social environment can change. All these shocks are exogenous, but there may also be endogenous shifts in the dominant coalition, as well as deliberate, planned shocks. Efforts at organizational development are familiar instances of the latter” (271).



themselves by instituting agency policymaking outputs where they are unsure about the consequences.

When attention is internally organized, agency actors have more information because they have more control since stimuli for action start inside the agency. There is also less outcome uncertainty because, since they have more information, they are able to act more definitively with less fear of interference from political officials or interest groups. In addition to agency actors having more information, external actors, such as elected officials and interest groups, have less information. Therefore, it is less likely that they will be involved in the agency policymaking output *and*, since they have less information, they may allow bureaucrats more discretion to implement change. The opposite is true when attention is externally organized.

When attention is externally organized, there is heightened interest from actors such as elected officials and interest groups outside of the agency (see Ringquist, et al.'s (2003) discussion of issue salience and bureaucratic discretion). There is also more outcome uncertainty associated with action. Therefore, agency actors will be more trepidacious in their responses when attention is externally organized because they have less information about the stimuli prompting that action. Thus, their actions will be more tentative and easier to retract so that they will draw less attention. This leads to the theorization that timing and magnitude of action will be positively associated with the internal organization of agency attention, which occurs when issue salience and focusing events originate from inside of the organization.

In addition to contributing to the literature through the theory of internally and externally organized attention, this study adds an additional variable to the model of externally organized attention: political uncertainty. In politically uncertain environments, more timely and high magnitude responses become a liability because policy can change so rapidly that the time and resources that go into producing the response become sunk costs. For example, election cycles, split partisan affiliation of political institutions or legal challenges to administrative rules heighten the transaction costs of agency action because outcomes are tentative. In the case of gubernatorial election years, agencies are wary of the rulemaking activity in which they engage because new governors often want to brand agencies in unique ways different from their predecessors. Upon entering office, some new chief executives even halt the implementation of new rules so that they can be reviewed to determine whether they are aligned with the policy preferences of the new administration (Asimow & Levin, 2009). Under these conditions, like other periods of heightened uncertainty and ambiguity, there is more outcome uncertainty

associated with rulemaking efforts. As already noted, periods of heightened uncertainty convey the amount of indeterminacy in the agency's environment. These characteristics suggest that political uncertainty, in addition to external focusing events and externally defined issue salience, is another example of externally organized attention. As a result, both magnitude and timeliness are theorized to be negatively associated with the external organization of agency attention, while both magnitude and timing are theorized to be positively associated with the internal organization of agency attention.

*Hypothesis 3: The magnitude and timeliness of agency rulemaking are expected to increase when there is internally organized attention.*

*Hypothesis 4: The magnitude and timeliness of agency rulemaking are expected to decrease when there is externally organized attention.*

### **Institutional Design**

Institutions are designed to produce preferred outcomes by creating incentive structures that encourage some types of action over others (Knight, 1992; North, 1990, 2005). They outline appropriate behavior and limit uncertainty by explaining the consequences that individuals can reasonably expect from their actions (Ostrom, 1990, 2005; Ostrom, Schroeder, & Wynne, 1993; Ostrom & Walker, 2003). The institutions that govern the procedural aspects of agency rulemaking in Florida come from the Florida Administrative Procedures Act (APA). The APA establishes the relationship between regulatory agencies and the populations they govern (Asimow & Levin, 2009). The Florida APA influences administrative action by determining the procedural scope of agency authority and the degree of legislative scrutiny to which an agency is subject. This section will explain two core changes to the Florida APA. Since these two changes are distinct, occurring at different time periods with different policy intentions, I do not make overarching hypotheses for the particular patterns in rulemaking that I expect to observe across the institutional changes. Instead, I describe these two changes and make individual predictions about the expected direction of magnitude and timing for each institutional change.

Since its massive expansion in 1974, the Florida APA has had two significant points of change for administrative rulemaking<sup>20</sup>: in 1991 and in 1996.<sup>21</sup> Before the first change in 1991,

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<sup>20</sup> The Florida APA has been amended virtually every year since 1974. Many of the changes have been minimal and have been moderate but have not affected the rulemaking specifically. Instead, the changes have affected procedures related to adjudication, licensing and other agency responsibilities governed by the APA. These changes are not examined here.

Florida agencies were criticized for getting around the formal rulemaking process by developing and implementing unpublished policy statements (Gluckman, 1994). Given the cost and effort that accompanies formal rulemaking, agencies preferred to make policy internally where they could be more easily adopted, revised and rescinded (Maher, 1992; Rossi, 1997). Those skeptical of this agency activity perceived Florida to be “operating largely in a phantom mode” (Rossi, 1997, 284).

Furthermore, there was considerable concern that, not only were agencies adopting policies without public input, but a situation was created where “the people who need to know an agency’s position on a given issue cannot find it” (Dore, 1991, 438-439; also see Maher, 1992).<sup>22</sup> In 1991, the Florida legislature responded to this problem by reducing agency rulemaking discretion. Rather than having the choice of whether to develop an internal rule or go through the notice and comment process to adopt a formal rule (Asimow & Levin, 2009; Rossi, 1996), the legislature mandated notice and comment rulemaking where possible. Florida Statute 120.535 was created to read:

- (1) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule under s.120.52(16) shall be adopted by the rulemaking procedure provided by s.120.54 as soon as feasible and practicable. Rulemaking shall be presumed feasible and practicable to the extent provided by this subsection unless one of the factors provided by this subsection is applicable.

In short, the decision to engage in rulemaking was less discretionary than it had been previously and agency actors were under heightened pressure to engage in more formal rulemaking and be more transparent in that rulemaking. Thus, agencies were being instructed to engage in more rulemaking, the consequence of which is expected to increase the magnitude of rules. However, with the pressure to engage in rulemaking, agencies were being asked to do more, which likely slowed down the pace of rulemaking.

*Hypothesis 5: The magnitude of agency rulemaking is expected to increase after the 1991 APA amendments.*

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<sup>21</sup> These changes were identified through a thorough review of the administrative law literature in Florida, several interviews with administrative law scholars and interviews with staff members at the Florida Administrative Code.

<sup>22</sup> A by-product of less rulemaking is more adjudication, which is far less visible. Those who were affected by the precedents set during adjudication actually struggled to keep up with the relevant administrative legal precedent because it was embedded in case law more than administrative rule. By forcing agencies to engage in formal rulemaking, the Florida legislature hoped to decrease the amount of adjudication and allow a more open process for the development of administrative law in the state. The intent was to provide an open forum through the rulemaking process for interested parties who would not have gotten access to the adjudicatory proceedings that would have affected their interests.

*Hypothesis 6: The timing of agency rulemaking is expected to decrease after the 1991 amendments.*

The second important change to the Florida APA occurred in 1996. After the 1991 changes, it is not surprising to hear that a common complaint among elected officials about the Florida APA was the rapid promulgation of administrative rules (Rossi, 1996). Acting on the recommendations of the 1995 Administrative Procedure Act Review Commission and concerns about heightened and inflexible regulation, the Legislature revised the APA again. The goal of the two revisions discussed here was to reduce rulemaking activity and create more flexibility in the regulatory environment.

The first 1996 APA amendment relevant to this discussion of rulemaking is referred to as the non-delegation clause (Rossi, 1998). This clause states that agencies are only able to engage in formal notice and comment rulemaking if they are implementing a particular statute. The relevant portion of FL Statute, Chapter 120.52(8) was created to read as follows:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

Thus, unlike the 1991 change, which limited agency discretion by mandating rulemaking activity, the 1996 amendment limited agency rulemaking discretion by curbing the proliferation of administrative rules.

The second 1996 APA amendment relevant to this discussion of rulemaking is the waiver provision (Rossi, 1997, 1998). This addition to the APA enabled agencies to grant variances or waivers to rules in particular circumstances. The relevant sections of FL Statute, Chapter 120.542 were created to read as follows:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section...

- (2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule...
- (4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.

In short, the non-delegation clause prevented agencies from freely engaging in rulemaking. As a result, it is expected that the magnitude of rulemaking decreased because agencies could no longer promulgate rules at will but instead were limited to the implementation of specific statutes. And, the ability to waive or grant variances for some individuals limited the consequences or harm that a proposed rule might create, which is expected to allow agencies to deliver more timely responses. Thus, the combination of the two 1996 amendments is expected to decrease the magnitude and increase the timing of agency rulemaking.

*Hypothesis 7: The magnitude of agency rulemaking is expected to decrease after the 1996 amendments.*

*Hypothesis 8: The timing of agency rulemaking is expected to increase after the 1996 amendments.*

### **The Nature of Change**

While the theoretical framework provides an explanation for the magnitude and timing of agency response, it cannot explain the *nature of the response*. How did the policy change? Was the agency response vague or specific in relation to the policy it was implementing? Was it symbolic or substantive in relation to the policy it was implementing? Nor can it show the mechanism(s) behind the nature of response. What are the factors that account for this variation in the nature of response? To answer these questions, I investigate the nature of response from the perspective of purchasing professionals. I use an inductive-deductive approach to examine these questions. I develop the theory along with an explication of the data in the qualitative results and discussion chapter of the study.

## CHAPTER FOUR

### RESEARCH METHODOLOGY

My research design intensively analyzes the development of centralized procurement rules in the State of Florida between 1975 and 2010. Although focusing on procurement rules as a type of agency policymaking output may lead some to question the generalizability of the study, this concern may be somewhat overstated. First, in relation to other types of state level rules, my research suggests that procurement is fairly comparable across contexts. Out of 50 states, 46 have some sort of administrative agency that sets state procurement policy (NASPO, 2009). Thus, the generalizability of rulemaking in this setting may not be as farfetched as is initially assumed. Furthermore, the fact that a vast majority of states have centralized procurement rules opens up the possibility for multi-state comparisons in the future.

Second, procurement rules offer a unique opportunity for the investigation of agency action because these rules are highly centralized and, although adopted by a single agency in most states, they apply across all state agencies (see LexisNexis, 2010). Therefore, multiple agencies and their stakeholders are involved and affected by the development of these rules. As a result, the rulemaking process is like a microcosm of the political policymaking process. Generally, administrative agencies are assumed to be rather isolated from one another with distinct stakeholder groups. This study allows me to examine agency action in a single administrative venue where the actors from multiple agencies are interacting.

To answer the research questions proposed here, I engage in three separate analyses. There are two quantitative analyses. One tests the effects of path dependency and organizational attention on magnitude and timeliness of response. The second tests the influence that institutional design has on the magnitude and timeliness of response. The third analysis is a qualitative design where interview and archival data are used to examine how political signals influence the nature of agency response.

This chapter is divided into three sections. The chapter begins by explaining the unit of analysis – the centralized contracting rule – and describes how these rules were identified. The second and third sections explain the quantitative and qualitative methodology, respectively. Each section separately details the data, measurement, data collection and analytic techniques used in each set of analyses.

## Identifying Rules

The data were identified through a series of procedures. First, I used the LexisNexus Survey on Comparative Legislation and Regulations to identify the administrative code sections and statutes that govern the centralized procurement of goods and services within each state government. These code sections originally helped to bind my inquiry so that I was able to approach a purposive sample of Florida purchasing agents. These agents helped me further identify what they considered to be the centralized rules that governed their procurement decisions.

Early in the study, Florida purchasing personnel from five agencies with different substantive purposes and more than 100 years combined experience in Florida purchasing were contacted for background interviews. First, these individuals were asked more generally about the factors that governed their purchasing decisions. As was expected, each individual, to differing degrees, identified legislation and administrative code as factors that influence their purchasing decision-making. They were then asked to identify statute and administrative code that helped them in that decision-making. Every person interviewed identified Florida Statute Chapter 287 and Florida Administrative Code, Section 60A, both of which govern centralized purchasing. At this point, each purchasing agent was shown the administrative code and a list of statutes related to centralized purchasing that came from the LexisNexus Survey on Comparative Legislation and Regulations. I asked them for additional comments regarding the various constraints governing their purchasing. Their responses suggested that, because statutes are the higher order law, they look to statute before rule for the factors that govern their decisions. Again, Florida Statute, Chapter 287 was identified. Chapter 287 is titled the “Procurement of Personal Property and Services” and is under Title XIX, which oversees “Public Business” in the State.

As a result of these background interviews, for the purposes of this study I identified centralized purchasing rules as those rules which are governed by Florida Statutes 287.001-287.20 and specifically refer to Florida’s central administrative agency: the Department of Management Services (DMS).<sup>23</sup> Although there are a handful of rules that affect centralized

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<sup>23</sup> Before 1993, the Department of Management Services (DMS) was called the Department of General Services (DGS). Careful review of supplementary documents, rule promulgation patterns and background interviews indicate that, in regard to centralized contracting, the responsibilities of this agency did not change.

contracting in different agencies<sup>24</sup>, DMS is the core administrative agency in Florida. Background interviews indicated that DMS heavily influences contracting rules in these agencies in much the way that it does in its own. Furthermore, DMS has high visibility as the central administrative agency in the State and has a statutory duty to oversee centralized procurement, which suggests that the majority of highly significant or essential rules that apply statewide are promulgated by the agency.

Identifying rules over a thirty-five year period clearly presents some challenges in terms of including all relevant rules. Carefully selected search criteria, procedures and background interviews guided this process. The data came from the *Florida Administrative Weekly*. However, to identify rules that were under the authority of Chapter 287, I began by examining the Chapters and Rules of the *Florida Administrative Code* governing the procurement decisions in DMS from 1975 until 2010 – this data is available online in the years 2003 to 2010 and in hard copies of administrative code from 1975-2002. Although, the data actually came from the *Florida Administrative Weekly*, which contains proposed rules, examining the *Florida Administrative Code* governing DMS centralized purchasing enabled me to see when rules became effective and the source of their statutory authority.

This period of pre-data collection, while time consuming, served a number of important purposes. First, it allowed me to identify the actual rules I would be examining. Since some rules may have been transferred into or out of the authority of Chapter 287 during the 35 years that I examine, this permitted me to include or exclude them based on the information learned from administrative code. Second, I was able to estimate the time period within which a given rule was proposed based on the effective date (which is printed in the administrative code book). This enabled me to identify the appropriate volumes of the *Florida Administrative Weekly* from which I would actually collect data. Thus, after this period of pre-data collection, I had a list of relevant rules for each year in the study for which I would collect the relevant data from volumes of the *Florida Administrative Weekly*.

*The Florida Administrative Weekly*, like in all other states and at the federal level, is where administrative agencies publish public notice and comment, hearings and workshops for proposed rules. This process is federally mandated so that all interested parties have the opportunity to comment on agency regulations that affect them. For the quantitative analyses, the

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<sup>24</sup> For example, rules related to procuring goods and services from the disabled are promulgated by a different agency and operate under different statutory authority than the centralized contracting rules discussed in this study.



relevant data collected from the *Florida Administrative Weeklies* were the quarter within which a given rule was proposed and the length of the rule that was proposed for each quarter from 1975 to 2010. For the qualitative analysis, the relevant data collected from the *Florida Administrative Weeklies* were the actual text of a given rule for each quarter from 1985 to 2010.

## **Quantitative Methodology**

### **Data and Measurement**

This section will articulate the measurement and data sources of the variables used in the quantitative study. The unit of analysis in this study is a given rule within a given quarter. As will be discussed in the section on analytic techniques, some of the variables are measured at different levels.

### **Dependent Variables: Timing and Magnitude**

Timing captures the responsiveness of agency actors (Carpenter, 1996; Waterman et al., 2004; Wood & Waterman, 1994). I assume that the decision to propose a rule is a response to the independent variables examined herein. Thus, timing is measured by whether a rule was proposed in a given quarter. Timing, clearly, is measured at the quarterly level.

Magnitude is operationalized using a variation of measurement originating in the ecology of law literature (van Witteloostuijn, 2003; van Witteloostuijn & de Jong, 2007, 2010). Building on the organizational rules scholarship (March et al., 2000; Zhou, 1993), van Witteloostuijn & de Jong (2007, 2010) examine what they call “rule change events” by using a counting method. For each period, they count the density of the rule by examining whether the number of sentences increases, decreases or stays the same. The actual measurement that they use is the net change in sentences. Thus, the measure is an absolute value. For example, if a rule goes from five sentences to three sentences or from five sentences to seven sentences, the size of the change – 2 sentences – is the same. They use this measure to suggest that, as the rule change events increase, rules become significantly more burdensome. The implication is that, as rules grow, so does administrative activity and regulation.

One of the shortcomings of this approach is that a single rule can be one sentence separated by ten or more semi-colons. This creates problems in terms of accurately assessing the length of a rule because semi-colons often separate complete thoughts and regulations. And, if one were to treat them as no change in magnitude, they may overlook that the change in fact introduces new burdens or significant changes that reflect a change in magnitude. To account for

this, semi-colons are counted as periods (to indicate complete sentences) when they are complete thoughts and separated by “and” rather than “or.” The idea is that when “or” separates semi-colons, the items separated by the semi-colons are interchangeable and therefore are not necessarily a magnitude change. Therefore, if a rule stays the same from year to year, then magnitude of change will be zero. Magnitude is measured at the quarterly level.

### **Independent Variable: Organizational Attention**

Organizational attention has a number of measurements because it includes issue salience, focusing events and political uncertainty. Issue salience and focusing events are theorized to affect agency policymaking outputs by internally and externally organizing attention while political uncertainty is theorized to affect agency outputs by externally organizing attention. Internally organized issue salience is operationalized in two ways: (1) the proportion of the agency budget dedicated to purchasing oversight in a given fiscal year and (2) the proportion of agency personnel dedicated to purchasing oversight in a given fiscal year. These operationalizations are supported by theories suggesting that public managers are strategic actors who seek out resources for their programs within their organizations (Meier & O'Tool, 2003; Meier, 2002; Moore, 1995; O'Toole et al., 2005; Zhu & Meier, 2011). One of the ways that they do this is by framing the functions and responsibilities of their programs as crucial to the organization in order to get more resources (Moore, 1995). Both internally organized attention variables are measured at the level of the fiscal year.

Internally organized focusing events are measured by using the number of advisory ethics opinions in a given quarter involving selected violations regarding purchasing agents and practices. The State of Florida has a nine-member sitting Commission on Ethics. The Commission is tasked with applying and interpreting the State's ethics laws in relation to the disposition of ethics complaints and the issuance of advisory opinions against public employees, public officers or any candidate for public office. The Commission issues what are referred to as advisory opinions, which can be requested by any public employee who has the power to “hire or terminate another public employee,” public officer or candidate for public office. When these opinions are requested, they become legally binding and are published without the name of the people involved.<sup>25</sup>

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<sup>25</sup> Names cannot be published without the permission all parties involved. A review of the advisory ethics opinions suggests that this rarely occurs.

This is a good operationalization of internally organized focusing events because, unlike formal ethics charges or the filing of an administrative hearing or challenge, ethics opinions are confined within the agency and have very low visibility. They, therefore, serve as an internal stimulus for action without grabbing the attention of the media or political actors. The search terms to identify these opinions were obtained through background interviews and thorough analyses of Florida ethics rules. Ethics opinions are measured at the quarterly level.

Externally organized attention is measured through three factors: issue salience, focusing events and political uncertainty. Externally organized issue salience has two operationalizations: (1) rules that involve purchasing from special groups (i.e. minority vendors, inmates, etc.) and (2) rules for contracting for special goods (professional services, information technology, etc.). These rules are likely to have higher salience because they involve particular interest groups who will pay heightened attention to rulemaking activity in these areas. And, with the involvement of interest groups, outcome uncertainty in these areas grows. Additionally, these groups are more likely to prompt the involvement of political actors because these are potential campaign contributors and industries that they have a vested interest in supporting, which heightens the salience of these rules. This definition is also supported by Gormely (1997), who has suggested that the groups involved in a given policy area can help determine the salience of issues in that area. Both externally organized issue salience variables were measured at the rule level and are coded as dummy variables with general rules as the reference category.

Externally organized focusing events are measured as the number of final orders emerging from the Department of Administrative Hearings (DOAH) dealing with purchasing, bid hearings, and delinquent vendors. These search terms were developed from interviews with purchasing officers and a thorough content analysis of final orders released from DOAH. This is a good operationalization because DOAH final orders have high visibility and are carefully monitored by legislators and special interests. They can destabilize purchasing practices, forcing agencies to make considerable changes. And, they are decidedly outside of the agency and have high degrees of outcome uncertainty. Externally organized focusing events are measured at the quarterly level.

Political uncertainty has two operationalizations: (1) split partisanship across political institutions and (2) gubernatorial election year. When political institutions such as the governorship, upper legislative house and lower legislative house are controlled by politicians

from different political parties, agency actors are unsure about the actions they should take. Split partisanship is coded as a dummy variable at the quarter level.

The potential of a new chief executive leaves agency actors somewhat cautious about their actions. However, this cautiousness exists both with the outgoing governor and the new governor. Therefore, this variable is coded using the fiscal year around the gubernatorial election year. This fiscal year begins the July before the following November election and ends the July after the new governor's term began. Gubernatorial election year is measured at the fiscal year level.

### **Independent Variable: Path Dependency**

In line with the idea that patterns of response can create path dependent outcomes for the future of response, response history and is operationalized as the number of times that a rule has been amended. Rules that are infrequently changed are expected to have inertial patterns. The number of previous amendments can help identify this. The problem with using the raw number of amendments to measure path dependency is that older rules have a higher likelihood of being amended. This is by virtue of the fact that they have been in existence for a longer period of time. To resolve this, path dependency is operationalized by dividing the number of times a rule has been amended up until that point in its existence divided by the number of quarters the rule has been in existence. The second path dependency variable – rule age – is operationalized as the number of quarters that the rule has been in existence. Response history and rule age are both measured at the quarterly level.

### **Independent Variable: Institutional Design**

The Florida Administrative Procedures Act (APAs) is the core institution that governs the procedures and processes for agency rulemaking. It defines the rules of the game for the agency rulemaking process. As indicated in the theoretical framework, there are two core changes to the APA that are expected to have an effect on rulemaking – the 1991 and 1996 changes. These are treated as abrupt and permanent changes at the quarterly level (Enders, 2004).

In the case of both changes, the APA amendments were adopted before they actually went into effect. For example, the legislature passed the 1991 change in spring and it was signed by the governor in June but did not go into effect until January 1992. The lag between adoption and effective dates was the same with the 1996 changes. Background interviews with employees at the Florida Administrative Code have confirmed that agencies changed their rulemaking practices in anticipation of the date at which the changes would become effective. To account for

this, the interventions were coded to begin after the quarter in which the bill containing the APA amendments was signed by the governor – July 1991 for the 1991 change and July 1996 for the 1996 change.

Background interviews and analyses of legislative intent and other archival documents support specifying both institutional design changes as abrupt and permanent. The changes were intended to have a permanent effect that would last over time. Furthermore, a number of diagnostic tests were used to ensure that temporary effects occurring directly after the change were altering the results. The analyses were estimated by coding the intervention to begin when the statute became effective (January) rather than when it was signed by the governor (July). Analyses were also estimated by excluding the first year and the first two years from the analyses to ensure that the rulemaking during these periods were not changing the mean to the extent that the estimates were biased. In all of these cases, the estimates did not change in a meaningful way.

### **Control Variables: Political Signals and Growth**

Political signals are control variables in this study because they have been thoroughly examined and theorized to the extent that they are employed in the theory and empirical model tested here. An abundance of extant literature suggests that joint signals are the most effective in controlling agency action (Wood & Waterman, 1993). Therefore, I include three types of joint signals: statutory change, shifts in the purchasing budget, and agency head appointment.

Statutory change is measured as the number of statutory sections for the statutes that went into effect in a given quarter. Per the earlier discussion, the statutes chosen were those that purchasing personnel identified as governing their purchasing decisions. Statutory change is at the quarterly level. Shifts in the purchasing budget are measured as the difference in the purchasing budget from one year to the next. They are measured at the fiscal year level. Agency head appointment is measured as the quarter in which a new agency head was appointed and the two succeeding quarters. It was expected that the period of agency adjustment to the new agency head would last two quarters after the quarter of initial appointment. This choice was supported by background interviews with purchasing personnel who suggested that it took roughly six months for them to adjust to the style of new agency head. They commented on this time period in relation to the adoption and implementation of new policy reforms. Thus, I expect to observe the same sort of pattern with agency rulemaking. Agency head appointment is measured at the quarterly level.

The second set of control variables refers to agency growth. Changes in the overall growth of DMS are expected to influence rulemaking. As the agency grows, one might expect additional regulatory action by virtue of the agency's increase in responsibilities. To account for this growth, I include the number of DMS employees and the DMS budget in the analyses. These are both measured at the level of the fiscal year.

## **Analytic Techniques**

### **Testing the Larger Framework**

The independent variables are measured at three levels in this study: the quarter, the fiscal year and the rule. To account for this, a three-level random intercepts model is used. A hierarchical model allows for the modeling of clustered observations that are nested in one another or are hierarchically related. Case in point: this analysis examines 35 years of data on administrative rules. A fiscal quarter is nested in a fiscal year, which is nested in a given rule. Thus, level one contains variables measured at the quarter level. The values for these variables differ across quarters, years and rules. Level two contains variables measured at the fiscal year. These vary between fiscal years but not within quarters. Level three contains variables that measure rule characteristics. These are time invariant and are associated with the type of rule being analyzed.

Overall, there were 102 rules in the dataset. However, rules came in and out of the dataset over the 35-year, 140-quarter period. There are, therefore, unbalanced panels of data – a different number of rules present across different panels. This is remedied by the use of empirical Bayes estimators in hierarchical modeling, which, in determining estimates, use weights that are calculated by how many observations are in a given panel (Raudenbush & Bruk, 1986; Raudenbush & Bryk, 2002).

Using the software package MLWin, I use penalized quasi-likelihood (PQL) estimation rather than maximum likelihood estimation. With a non-normal dependent variable and measuring three levels of data, maximum likelihood estimation is computationally intensive and has a very low probability of convergence (Goldstein, 2010; Rasbash, 2000). PQL estimation transforms the discrete model to a continuous model using Taylor series expansion, applies linearization and then uses generalized least squares to estimate the model. There was no significant difference between the estimates generated from iterative generalized least squares (IGLS) and reweighted generalized least squares (RIGLS). I chose to use RIGLS.

Two different dependent variables – timing and magnitude – are estimated here. Timing is measured with logit estimation at level 1. Since the dependent variable, magnitude, is a count: the absolute value of sentences added or subtracted from a given rule, poisson estimation is used. However, since the magnitude only changes when a rule is either introduced, amended, repealed or transferred, there is some additional variation to account for. The fact that I am using a multi-level model helps to account for this because the variation is spread out in three distinct levels. However, there is still some additional variation than we would normally find in poisson distributed data. Thus, I use extra-poisson variation so that the variance of the conditional mean, upon which poisson estimation depends, is inflated. This relaxes the poisson assumption that the variance and mean of the data are equal (Breslow, 1984; Goldstein, 2010). Extra variation is also included in the logit models estimated here.

A zero-inflated model would have been preferable. However, with the use of a three level model, zero inflation is so computationally intensive that the model would not converge using the software and computational capacity that was available. I was unable to perform this technique for the analysis here. This did not affect the timing model, because logit estimation was used, but it did affect the magnitude model.

### **Testing Institutional Design**

The analytic technique for testing institutional design is the same as that for testing the path dependency and organizational attention hypotheses. However, in order to test the direct effects of institutional design, the dataset has been divided into two subsamples. This is because including both APA amendments in the same analysis would introduce severe multi-collinearity into the model. The subsample of the dataset includes observations from the first quarter of the study, until June 1996 – the quarter before the 1996 APA amendment was signed by the governor. The analysis using the subsample of the dataset tests the 1991 change. The second subsample of the dataset starts in July 1991 – the first quarter of the 1991 amendment the end of the time period examined in this study. The analysis using the second subsample of the dataset tests the 1996 change. In both analyses, the goal is to determine the direct effect that the APA amendment has on rulemaking. Furthermore, by testing institutional design in this way, it is possible to determine whether, when controlling for institutional design, the relationship between the other independent variables and the magnitude and timing of response are different.

## **Qualitative Methodology**

The quantitative analysis cannot explain the nature of the changes that are ushered in by agency response nor can it explain the specific mechanism that accounts for variation in the nature of that change. The qualitative examination of response and change in this study helps to account for these shortcomings by using an inductive-deductive approach (Huberman & Miles, 1994) to examine the nature of bureaucratic response. I bound my investigation of the nature of response in the following ways: (1) by examining change to a subset of purchasing rules over a limited time period; (2) examining only high magnitude change – significant shifts in policy; and (3) examining the nature of change and the factors that influence variation in that change from one particular perspective – that of Florida purchasing professionals.

### **A Subset of Purchasing Rules**

The first step in this design was to identify a subset of rules in which to examine the nature of response over time. Minority Business Enterprise (MBE) preference rules were chosen for examination. These rules were chosen based on background interviews with Florida purchasing personnel from five agencies with different substantive purposes and more than 100 years combined experience in Florida purchasing. These individuals were asked to identify the area in which they felt “Florida purchasing and procurement rules had undergone the most changes that had significant operational impacts on daily work.” MBE preference policies were the most highly identified<sup>26</sup> and the time period of change is relatively recent. Policy changes in the area of MBE preferences are also a good choice for examination because they have high visibility, have undergone significant change and represent an understudied area of contracting and procurement policy.

### **Sample**

Once the subset of rules where change occurred within a reasonable time period was identified, I developed a purposive sample of Florida purchasing professionals across agencies with relatively different functional and substantive responsibilities. My sampling frame was a list of purchasing and contracting officers in all Florida administrative agencies that was provided by DMS. I sent emails to twenty-two purchasing directors and purchasing agents across ten different agencies. The goal was to identify individuals willing to discuss their experiences with Florida purchasing rules who could potentially direct me to others who had been employed with the state during different periods since the adoption of the MBE preference rules. An initial sample of five

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<sup>26</sup> Other areas included printing, bid thresholds and special certifications to negotiate.



high profile purchasing professionals with experience in seven different agencies was identified. Through these individuals, an additional twelve were identified and agreed to be part of the sample.

Purchasing professionals in the final sample had a combined total of 334 years of experience and represented more than fifteen different agencies. Interviewees had an average of 24 (23.86) years of service in purchasing with a minimum of 12 years and a maximum of 37 years. All informants served in managerial capacities in purchasing and contracting or were retired from those positions. The agencies represented in the sample include: Department of Children and Families, Department of Labor, Department of Highway Safety and Motor Vehicles, Department of Business and Professional Regulation, Department of State, Department of Education, Department of Corrections, Department of Juvenile Justice, Commerce Department, Department of Revenue, Department of Management Services, Department of Law Enforcement, Department of Health, Fish and Wildlife Conservation Commission, and Department of Lottery.

### **Interviews**

The interviews were semi-structured, with questions tied to a standard interview protocol. Probes were used on all of the questions, but extensive probing and follow-ups were used on questions related to MBE preference rules and policies. The general interview guideline provided sufficient flexibility to adjust to different interviewees, agency contexts and periods of time. For example, interviewees were employed across a number of agencies, all but three worked at more than one agency over the course of their time in Florida purchasing, and all of them were in different levels in the agency hierarchy during different periods of time in their tenure with the State. Therefore, depending on their background, which they specified at the beginning of the interview, questions were tailored to explore how their experience with MBE preferences was different across different agencies, at different places in the organizational hierarchy during different periods of time.

Interviews started with asking questions about the background of the informant, global questions about the nature of Florida purchasing, changes to general purchasing policies and procedures. These questions enabled the interviewer to get an idea about the context(s) within which the interviewee was currently embedded. They also provided a point of reference for understanding if the respondent's experiences with MBE preference rules were different than other rules and policies occurring at the agency level.

Interviews lasted anywhere from 55 minutes to 3 hours. Prior to interviews, purchasing professionals in the sampling frame had received the initial letter requesting their participation and then a consent form specifying the benefits and detriments associated with participation. Responses were recorded and transcribed. Two interviewees agreed to participate but declined to have their responses recorded. I prepared field notes of the comments made by these two individuals immediately after the interview. Additionally, there were two interviewees who asked to have the tape recorder turned off when they were responding to certain questions related to the MBE office. I took extensive notes during these instances and then prepared them immediately after the interviews.

### **Data Preparation**

The recordings were transcribed verbatim by a professional transcriptionist who provided electronic versions of the transcription. The transcripts were thoroughly reviewed for procurement and legal jargon that may have been unfamiliar to the transcriptionist. Transcripts were coded based on informant accounts of significant change in the MBE preference program. Using word processing software, I then broke up the transcripts into separate accounts of each high magnitude change and put separate accounts of each high magnitude change together. I kept accounts of the same change from each individual together so as not to become confused. Before proceeding, I examined each account of change to ensure that each account matched the correct high magnitude change and that the chunk that I had removed from the transcript contained the full story. In many cases, interviewees jumped back and forth between policy changes in which case it was necessary to carefully connect each change with the relevant respondent descriptions of that change.

### **Data Analysis**

Each individual identified at least one high magnitude change related to the MBE preference program. Interviewees identified three high magnitude changes in particular. These three were chosen by a pretty high margin over the rest that were identified. Furthermore, the purchasing professionals interviewed provided very robust accounts of each change. In supplementing the interview data with content analysis of administrative rules, statute, executive orders and media reports, I was able to confirm that, from an outsider's perspective, these did appear to be relatively high magnitude changes that had garnered significant public attention.

All three changes revolved around the same purchasing phenomena – MBE goals. I looked for three things in relation to the high magnitude changes that were identified: the cause

of the change, the operational characteristics of the change itself, and the nature of the change in relation to the cause. Based on the three high magnitude changes that were identified, I analyzed the data so as to get a complete picture of the operational characteristics of each change itself and the reasons why each change had been identified as high magnitude.

After thoroughly understanding each change, I analyzed the data to determine the factor(s) that interviewees identified as prompting these changes. As the literature suggests (Krause, 2003; Wood & Waterman, 1991; Wood & Waterman, 1993), I assumed that the three high magnitude changes were forms of bureaucratic response – the result to some sort of stimuli. In coding each change I used tentative categories to identify causation for each response. For example, I looked for mention of phenomena associated with political signals, elected officials, agency heads (Carpenter, 1996; Carpenter et al., 2010; Moe, 1990a; Moe, 2005, 2006; Moe, 1990b), media reports (Ringquist et al., 2003), managerial changes, agency reorganizations and the like. In particular, I linked each response to potential stimuli and engaged in pattern matching across the cases (Yin, 2003). As I began analyzing the data, some stimuli began to stand out as associated with each change. For the most part, these stimuli are similar to some of the concepts from the literature but with distinct dimensions.

Having coded the data for the change itself and a stimulus that created the causal conditions for the change, it became apparent that, in their discussions of the change and stimuli, interviewees had characterized each of the changes in similar ways. In other words, they developed judgments of each change that were independent of the change itself. It was, at this point, when I made the choice to examine the nature of the change.

The process for analyzing all three phenomena – the stimulus for the change, the operational changes brought about by the response and the nature of the response – was the same. I engaged in an inductive-deductive approach, going back and forth between theory and data in an iterative process to identify the patterns that stood out.

### **Studying Perceptions**

The qualitative investigation here examines perceptions of high magnitude bureaucratic response, perceptions of the causal conditions and stimuli for that response and the perception of the nature of that response. In other words, the research questions I examine in the qualitative design are: How do purchasing professionals view the nature of high magnitude changes in their agencies? And, how does their perception of the factors that caused the high magnitude change affect their perception of the nature of the high magnitude change?

Although using the perceptions of organizational actors has some shortcomings, there are both theoretical and practical reasons for this model. First, purchasing personnel are a highly professionalized and highly networked group of individuals. The National Institute of Government Purchasing (NIGP) has an enormous Tallahassee Chapter (the location of the interviews). High level purchasing professionals in the centralized agency – DMS – operate in the same policy circles as the purchasing professional in other agencies. With similar backgrounds and frequent interactions, their judgments about purchasing rules and the causal conditions prompting those rules should be similar. This is supported by the fact that one-third of purchasing professionals interviewed here worked within DMS and saw the inner workings of the agency and the rulemaking process. Their judgments and perceptions did not stand out and heavily matched those of the other interviewees.

Second, the examination of perceptions is not without value. The perceptions that purchasing personnel have of the constraints that govern them will affect how they implement and enforce these constraints. In other words, these perceptions have real consequences on the operation of public agencies and their interactions with stakeholders. Thus, this portion of the study is the first step in a larger investigation aimed at determining how perceptions shape agency behavior. And, third, the actors with more accurate knowledge of the cause of the change – those directly involved in the rulemaking – have proven extremely difficult to access. Informants who worked or had worked in the centralized agency – DMS – made clear that they knew most individuals would not agree to be interviewed. In one of the most telling interactions, I received the following response to my request for an interview with one of the individuals involved in DMS rulemaking: “Hello, I have forwarded your request up the chain – I will let you know.” I received no follow up to this email. Needless to say, the political volatility of that characterized the period when these interviews took place and severely limited the willingness of potential interviewees within the rulemaking venue to participate in the study.<sup>27</sup>

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<sup>27</sup> Some individuals who were part of the high magnitude changes examined here either died or could not be found. With one exception, those who were involved in the inner workings of the agency rulemaking process during the high magnitude changes examined here either did not respond to my inquiry, said that they declined to participate or said that they needed to check with those in further up in the organizational hierarchy (as evidenced by the quote above). It is worth noting that interviews for this study began during the first year of a new governor, Richard (Rick) Scott. Those interviewed for this study made a number of comments about the massive number of layoffs and culture of secrecy that saturated Florida after Governor Scott took office. The implication is that many of the individuals that I contacted were fearful about talking with agency outsiders about the government operations.

## **CHAPTER FIVE**

### **QUANTITATIVE RESULTS AND FINDINGS**

This chapter examines the results of the two quantitative analyses conducted in this study. The chapter is organized as follows. In the first section, I examine the descriptive statistics for the data used in the six models estimated here. In the second section, I examine and interpret the results of the six models tested here – the overall effects of organizational attention and path dependency on timeliness and magnitude individually (two models) and the individual effects of the 1991 and 1996 institutional design changes on timeliness and magnitude individually (four models). In the third section, I summarize and discuss the findings for each of the hypotheses individually.

#### **Descriptive Statistics**

The descriptive statistics for all three analyses are in Tables 5.1, 5.2 and 5.3 at the end of this chapter. Many of the variables have similar means across the large dataset and two subsamples. However, the mean for administrative hearings from 1975-1996 is higher than both that from 1991-2010 and from 1975-2010. Similarly, the 1975-1996 subsample had more ethics opinions per quarter than the overall sample for 1991-2010 subsample. In terms of both administrative hearings and ethics opinions, interview and archival data suggest that, during this period, Florida procurement policy was growing exponentially. As a result, more administrative challenges suggest a learning curve for understanding policy and ironing out problematic policies inside organizations through ethics opinions and outside of organizations with administrative hearings. As historical data on Florida politics suggest, split partisanship was much greater after 1991 than before. Prior to 1991, Florida political institutions were dominated by Democrats and the transition from Democratic to Republican controlled government began to occur in the 1990s. The proportion of different types of rules also changed quite a bit over time. From 1975-1996, roughly 50% of rules were those related to purchasing special goods but from 1991-2010, the dataset had roughly equal proportions of rules related to general purchasing, special goods purchasing and purchasing from special persons.

#### **Overall Model Diagnostics**

The diagnostics for all the models evaluating timing and all of the models evaluating magnitude are similar. After all, the data are the same across all six models with the dataset split into subsamples to test the institutional design hypotheses. All of the models were fairly robust. Since quasi-likelihood estimation is used, model fit statistics were somewhat limited. The likelihood statistic is very approximate with quasilielihood estimation techniques (Goldstein, 2010), so I supplemented it by using the Wald statistic. Wald test provides a chi-squared value that tests whether all the parameters in the model simultaneously have no effect. For inference purposes, the Wald statistic was used to test the inclusion of multiple coefficients in the model at one time. In all cases, it indicated a good model fit – I rejected the null hypothesis that the independent variables simultaneously had no effect on the dependent variable for both timing and magnitude.

In checking model diagnostics, one outlier at the first level in the model estimating magnitude was identified. One of the general rules (rule cluster 2) experienced an unusually large change, which was identified in basic plots.<sup>28</sup> This change occurred in 2004. During that year, a number of other rules also experienced large changes. This suggests a larger trend of change around this time period. Interview data suggest that, around this time, there was a restructuring of DMS purchasing rules, at the behest of the Governor. The restructuring was intended to lean out the rules, making them easier to understand and less burdensome for government contractors. When the outlier was removed in the overall analysis, the sign, estimate size and significance level did not yield statistically different results. When the outlier was removed from the analysis to test for the 1996 institutional design change, there was still no discernible difference in the results. As a result, the decision was made to keep the outlier in both of the analyses because it did not significantly alter the results. Furthermore, the removal of outliers is a data driven remedy that, while sometimes unavoidable, can present considerable theoretical problems.

When reading the results, it is important to remember that poisson and logit estimates are in log odds and must be exponentiated in order to have more intuitive meaning in the form of odds ratios. Odds ratios are the probability that a one-unit change in a particular independent variable leads to an increase in the dependent variable, divided by the probability that a one-unit change in a particular independent variable does not result in an increase in the dependent

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<sup>28</sup> Traditional techniques for checking outliers do not generally work for non-normally distributed data (Yang, Xie, Goh, 2011).

variable, controlling for all other variables in the model. The tables contain both odds ratios and log odds.

### **Results for Path Dependency and the Organizational Attention**

The multi-level analysis indicates that there is variation in both timeliness and magnitude. This variation exists at different levels and is displayed in each table under the Variance Components section. As I built up to three level models for both timeliness and magnitude, it became evident that, in most cases, variation was being explained at each level. In the majority of the models, however, level 2 explained the majority of the variation in the model. Although the variance components in models with non-normally distributed data do not have the same interpretation as data that is normally distributed, the basic assumption about the size of components is the same (Browne, Subramanian, Jones, & Goldstein, 2005; Gelman & Hill, 2007; Goldstein, Browne, & Rasbash, 2002).

#### **Magnitude**

The majority of the variation explained in this model resides across years within the rule – at level two. In other words, the greatest difference in the mean magnitude of change is within rules between years (between fiscal years = 3.785). Between the other levels, the variation explained is greater between quarters than between rules.

For magnitude, both of path dependency variables – response frequency and rule age – were statistically significant at less than .05. The odds that a one-unit increase in response frequency will increase the magnitude of rulemaking are 1.012 to 1, controlling all other variables in the model. The odds that a one-unit increase in the age of a rule increases the magnitude of rulemaking are .979 to 1, controlling for all other variables in the model.

The majority of the organizational attention variables were statistically significant except for one of the internal issue salience variables – percentage of the DMS budget dedicated to purchasing. The odds that a one-unit increase in the percentage of agency purchasing staff results in an increase in the magnitude of rulemaking are 1.462 to 1, controlling for all other variables in the model. The odds that a one-unit increase in ethics hearings results in an increase in rulemaking magnitude, controlling for all other variables in the model, are 1.172 to 1. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special goods will increase the magnitude of rulemaking activity are .098 to 1, controlling for all

other variables in the model. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special persons will increase the grand mean magnitude of rulemaking activity are .124 to 1, controlling for all other variables in the model. The odds that a one-unit increase in administrative hearings will increase the magnitude of rulemaking are .93 to 1, controlling for all other variables. In comparison to periods when the partisan control of political institutions is not split, the odds that split partisanship across political institutions increases the magnitude of rulemaking are .81 to 1, controlling for all other variables in the model. In comparison to non-election years, the odds that the magnitude of rulemaking will increase in an election year are 1.567 to 1, controlling for all other variables in the model.

Of the control variables, two of the political signal variables were statistically significant – statutory adoption and agency head appointment. The odds that the appointment of a new agency head would increase rulemaking magnitude, controlling for all other variables in the model, are 1.67 to 1. The odds that a change of one additional statutory section governing centralized purchasing would increase rulemaking magnitude are .98 to 1, controlling for all other variables in the model. Neither of the agency growth variables was statistically significant.

A few of the variables have no effect. For both control variables, the political signal of purchasing budget shifts and both agency growth variables all have odds ratios of one. This is somewhat unusual and indicative of the fact that, even over a 35-year period, these variables simply did not have sufficient variation in the models. A number of alternative measurements were used, none of which yielded meaningfully different estimates.

## **Timing**

The majority of the variation explained in this model resides across years within the rule – at level two. In other words, the greatest difference in the mean magnitude of change is within rules between years (between fiscal years = 3.869). Between the other levels, the variation explained between rules is greater than that between quarters.

For timeliness, both path dependency variables – response frequency and rule age – were statistically significant. The odds that a one-unit increase in response frequency – previous rule changes – increases the timeliness of rulemaking are 1.179 to 1, controlling for all other variables in the model. The odds that a one-unit increase in the age of a rule increases the timeliness of rulemaking are .983 to 1, controlling for all other variables in the model.



The majority of the organized attention variables were statistically significant except for one of the political uncertainty variables – split partisanship – and one of the internal issue salience variables – percentage of the agency budget dedicated to purchasing. The odds that a one-unit increase in the percentage of agency purchasing staff results in an increase in the timeliness of rulemaking are 1.334 to 1. The odds that a one-unit increase in ethics hearing results in an increase in rulemaking timeliness are 1.118 to 1, controlling for all other variables in the model. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special goods will increase the timeliness of rulemaking activity are .215 to 1, controlling for all other variables in the model. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing from special persons will increase the timeliness of rulemaking activity are .213 to 1, controlling for all other variables in the model. The odds that a one-unit increase in administrative hearings will increase the timeliness of rulemaking are .839 to 1, controlling for all other variables. The odds that the timeliness of rulemaking increases in an election year are 1.551 to 1, controlling for all other variables in the models.

Of the control variables, two of the political signal variables were statistically significant – statutory adoption and agency head appointment. The odds that the appointment of a new agency head increases rulemaking timeliness, controlling for all other variables in the model, are 1.233 to 1. Statutory adoption, in general, is less likely to increase the magnitude of agency rulemaking. The odds that a one-unit change in statutory adoption would increase the timeliness of rulemaking are .98 to 1, controlling for all other variables in the model. Neither agency growth variables were statistically significant. As discussed above, these variables were somewhat problematic in that they did not have sufficient variation, even under a number of transformations, to show a meaningful relationship. The control variable – rule characteristics – is also statistically significant. The odds that a one-unit increase in the number of sentences in a given rule increases the timeliness of rulemaking are .981 to 1, controlling for all other variables in the model.

### **Results for Institutional Design: 1991 Changes**

#### **Magnitude**

The majority of the variation explained in the 1991 institutional design magnitude model still resides within rules between years (between fiscal years = 3.55). More variation is explained at level one than at level three.

The main variable of interest – institutional design – does not have a statistically significant effect on either magnitude or timing. However, a fair number of the variables in both models do have a statistically significant effect. For magnitude, both path dependency variables were statistically significant. The odds that previous rule changes increase the magnitude of agency rulemaking are 1.024 to 1, controlling for all other variables in the model. The odds that the magnitude of rulemaking increases as the age of a rule increases are .978 to 1, controlling for all other variables in the model.

Of the organizational attention variables, the internal issue salience variable – percentage of the agency budget dedicated to purchasing, one of the political uncertainty variables – election year, and external focusing events – administrative hearings – were not statistically significant in the model. The rest of the organizational attention variables were statistically significant. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special goods will increase the magnitude of rulemaking activity are .105 to 1, controlling for all other variables in the model. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing from special groups will increase the magnitude of rulemaking activity are .213 to 1, controlling for all other variables in the model. In comparison to quarters where there is no split partisan affiliation among political institutions, the odds that split partisanship increases the magnitude of change are 10.247 to 1, controlling for all other variables in the model. The odds that a one-unit increase in the percentage of agency purchasing staff results in an increase in the magnitude of rulemaking are 1.745 to 1. The odds that a one-unit increase in ethics hearing results in an increase in rulemaking magnitude are 1.126 to 1, controlling for all other variables in the model.

Of the control variables, two of the political signal variables were statistically significant – statutory adoption and agency head appointment. The odds that a one-unit increase in statutory adoptions results in an increase in rulemaking magnitude are .955 to 1, controlling for all other variables in the model. The odds that the appointment of a new agency head increases rulemaking magnitude, controlling for all other variables in the model, are 2.954 to 1.

## **Timing**

The majority of the variation explained in the 1991 institutional design timeliness model still resides within rules between years (between fiscal years = 2.18). Virtually none of the variation in the model is explained by differences between rules. In other words, the odds that a given rule will be proposed at a given time are not statistically different between rules.

For timing, the institutional design variable – APA adoption – does not have a statistically significant effect. One of the path dependency variables – previous rule changes – was statistically significant in the model. The odds that a one-unit increase in previous rule changes results in an increase rulemaking timeliness are .117 to 1.

The majority of the organized attention variables were statistically significant except for one of the internal issue salience variables – percentage of the agency budget dedicated to purchasing – and one of the external issue salience variables – rules for purchasing from special groups. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special goods will increase the timeliness of rulemaking activity are .35 to 1, controlling for all other variables in the model. The odds that a one-unit increase in administrative hearings results in an increase in the timeliness of rulemaking are .788 to 1, controlling for all other variables in the model. In comparison to periods when the partisan control of political institutions is not split, the odds that split partisanship across political institutions increases the magnitude of rulemaking are 2.726 to 1, controlling for all other variables in the model. In comparison to non-election years, the odds that an election year results in an increase in the timeliness of rulemaking are 1.663 to 1, controlling for all other variables in the model. The odds that a one-unit increase in the percentage of agency purchasing staff results in an increase in the timeliness of rulemaking are 1.878 to 1, controlling for all other variables in the model.

Of the control variables, two of the political signal variables were statistically significant – statutory adoption and agency head appointment. The odds that a one-unit increase in statutory adoption results in an increase in the timeliness of rulemaking are .941 to 1, controlling for all other variables in the model. Compared to periods when a new agency head has not been appointed, the odds that the appointment of a new agency head increases rulemaking timeliness increases, are 2.699 to 1. The rule characteristic variable is also significant. The odds that a one-unit increase in the number of sentences in a given rule results in an increase in the timeliness of rulemaking are 1.02 to 1, controlling for all other variables in the model.

## **Results for Institutional Design: 1996 Changes**

The variation explained in the 1996 institutional design models for timing and magnitude exhibits a different pattern than the previous models. A number of variables are statistically significant.

### **Magnitude**

For the magnitude model, the majority of the variation explained resides at the quarter level – within rules, within years, between quarters. However, the variance explained between rules is statistically insignificant. In other words, the mean magnitude of change between rules is not statistically different.

For magnitude, the institutional design change is statistically significant. Compared with the time period before the 1996 APA was adopted, the odds that the 1996 APA increases rulemaking magnitude are 9.806 to 1. Neither path dependency variables are significant in the model.

Of the organizational attention variables, both external issue salience variables, one of the political uncertainty variables – split partisanship – and one of the internal issue salience variables - percentage of the agency personnel dedicated to purchasing – are statistically significant. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special goods will increase the magnitude of rulemaking activity are .068 to 1, controlling for all other variables in the model. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special persons will increase the magnitude of rulemaking activity are .151 to 1, controlling for all other variables in the model. Compared to periods where the partisan affiliation of political institutions is not split, the odds that split partisan affiliation will result in an increase in magnitude are .217 to 1, controlling for all other variables in the model. The odds that a one-unit increase in the proportion of the agency budget dedicated to purchasing results in an increase in rulemaking magnitude are .541 to 1, controlling for all other variables in the model. None of the control variables were statistically significant.

### **Timing**

For the timing model, the majority of the variation is explained is at level two. However, the variation explained is greater at level three than at level one.

For timing, the institutional design change is statistically significant. Compared with the time period before the 1996 APA was adopted, the odds that the 1996 APA increases rulemaking timeliness are 4.802 to 1, controlling for all other variables in the model. Both path dependency variables – previous rule change and rule age – are statistically significant. The odds that a one-unit increase in a previous rule change results in an increase in the timeliness of rulemaking are 1.32 to 1, controlling for all other variables in the model. The odds that a one-unit increase in rule age results in an increase in timeliness are .972 to 1, controlling for all other variables in the model.

The organizational attention variables were statistically significant except for one of the internal issue salience variables – percentage of the agency budget dedicated to purchasing. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing special goods will increase the timeliness of rulemaking activity are .073 to 1, controlling for all other variables in the model. In comparison to general contracting rules, the odds that contracting rules that pertain to purchasing from special groups will increase the timeliness of rulemaking activity are .101 to 1, controlling for all other variables in the model. The odds that a one-unit increase in administrative hearings increases the timeliness of rulemaking are .667 to 1, controlling for all other variables in the model. Compared to periods when there is not a split in partisan affiliations between political institutions, the odds that split partisanship among political institutions results in an increase in the timeliness of rulemaking activity are .498 to 1, controlling for all other variables in the model. Compared to non-election years, the odds that the timeliness of rulemaking increases in an election year are 3.254 to 1, controlling for all other variables in the model. The odds that a one-unit increase in the proportion of the agency dedicated to purchasing results in an increase in the timeliness of rulemaking are 1.425 to 1, controlling for all other variables in the model. The odds that a one-unit increase in ethics opinions results in an increase in the timeliness of rulemaking are 2.594 to 1, controlling for all other variables in the model.

Of the control variables, two of the political signal variables were statistically significant – statutory adoption and agency head appointment. The odds that a one-unit change in statutory adoptions results in an increase in rulemaking timeliness are 1.019 to 1, controlling for all other variables in the model. Compared to periods when a new agency head has not been appointed, the odds that the appointment of a new agency head will result in an increase in the timeliness of rulemaking activity are .359 to 1, controlling for all other variables in the model. The rule

characteristic variable – the number of sentences in a given rule – was also statistically significant. The odds that a one-unit change in the number of sentences results in an increase in the timeliness of rulemaking activity are .952 to 1, controlling for all other variables in the model.

## **Findings for Path Dependency and the Organization of Attention**

### **Path Dependency**

The magnitude of agency rulemaking, in general, is more likely to increase when rules have frequent response histories. The timeliness of agency rulemaking, in general, is more likely to increase when rules have frequent response histories. The results support hypothesis 1.

The magnitude of agency rulemaking, in general, is less likely to increase when rules age. The timeliness of agency rulemaking, in general, is less likely to increase when rules age. The results support hypothesis 2.

Although the effect sizes are small, these findings suggest that rules that are more frequently amended are more likely to experience high magnitude changes and are more likely to increase rulemaking timeliness. This corresponds with the theory presented earlier in this study. Agencies are more familiar with these rules and rely on them to a greater extent than rules that are infrequently amended. This is most likely because, as rule ecology scholars point out (March et al., 2000; Schulz, 2003a; Zhou, 1993), when rules are frequently used to enforce organizational policies and practices, agency actors will update them to ensure that the rules can respond to daily organizational challenges.

It becomes easier in terms of both timing and change magnitude to update these rules in particular because organizational actors are familiar with them, the benefits that they have and the manner in which they are relied upon. Furthermore, frequent response histories prevent rules from suffering the inertial effects that can ossify rules and make them more difficult to change as time goes by (Yackee & Yackee, 2010). In other words, when rules are infrequently changed, they become part of an organization's history or identity (March et al., 2000) and, the longer they are branded as such, the greater the challenges are to revise them.

The theory is similar with rule age. Older rules are more stable in terms of both the change that they are likely to experience and the timeliness of that change. Organizational actors feel less pressure to push change through *and* the rule has been in existence long enough that high magnitude changes are rare because the organizational learning that has taken place over the

course of time has resulted in the majority of timely, high magnitude change taking place when the rule was younger.

### **Internally Organized Attention**

**Internal Issue Salience:** The magnitude and timeliness of agency rulemaking, in general, are more likely to increase with heightened issue salience. These results support hypothesis 3.

**Internal Focusing Event Findings:** Internal focusing events, in general, are more likely to increase the magnitude and timeliness of agency rulemaking. These results support hypothesis 3.

### **Externally Organized Attention**

**External Issue Salience:** External issue salience, in general, is less likely to increase the magnitude and timeliness of agency rulemaking. These results support hypothesis 4.

**External Focusing Events:** External focusing events, in general, are less likely to increase the magnitude and timeliness of agency rulemaking. These results support hypothesis 4.

**Political Uncertainty:** The results for the effects of political uncertainty on magnitude and timeliness are split. The magnitude of agency rulemaking, in general, is less likely to increase when political institutions have different partisan affiliations. However, the magnitude and timeliness of agency rulemaking is more likely to increase, in general, during a gubernatorial election year. Thus, hypothesis 4 is only partially supported.

The result that the magnitude and timeliness of rulemaking increases during the gubernatorial election cycle is surprising. One explanation for this is that during the election year when a governor is leaving office, he or she is often interested in leaving their mark on the bureaucracy. One of the ways that they do this is by pushing through rules and regulations during their last year in office in anticipation of leaving (O'Connell, 2008). Some scholars refer to this phenomenon as "midnight rulemaking." In her empirical analysis of how federal rulemaking is affected by the political cycle, O'Connell (2008) finds that agencies alter their rulemaking activities in the period immediately preceding and following a political transition (973).

Thus, the pressure coming from the governor's office as he or she seeks to make their mark on State government before leaving office may trump the political uncertainty that bureaucrats feel during the election year. At other periods, this political uncertainty might result

in less rulemaking and small rule changes, but governors likely exercise more control over the bureaucracy during these periods, not less.

### **Control Variables**

**Political Signals:** The results for political signals are split. The appointment of a new agency head, in general, is more likely to increase the magnitude and timeliness of agency rulemaking. However, statutory adoption, in general, is less likely to increase the magnitude and timeliness of agency rulemaking.

The result that statutory adoption is negatively related to the magnitude of rulemaking is surprising because, as suggested in the literature (Wood & Waterman, 1993), joint signals are more likely to prompt bureaucratic response. Thus, the changes brought about by the number of section changes to the statutes that govern purchasing rules would be expected to stimulate rulemaking activity.

There are a few possible explanations for this. First, as the number of section changes increases, signals may become more confusing to decipher. Therefore, agency actors might actually be cautious in their rulemaking activity. As a result, the magnitude of rulemaking is not likely to increase. Alternatively, additional statutory section changes may suggest that legislators are delegating less of their authority to agency actors and are choosing to be more specific in legislation. Under this scenario, we would expect that high magnitude rulemaking does not need to occur because implementation has been better guided and specified by lawmakers.

Another important question related to the results of the political signal variables is that joint political signals are shown to have differing effects. While one makes the timeliness and magnitude of rulemaking response more likely, the other makes it less likely. This is a unique finding because in the bureaucratic response literature, shared political signals tend to result in a shared directional change. For example, Wood and Waterman show that the determinants of response that are most important are “the shared administrative tools of the president and Congress (i.e., the budget and political appointments)” (1993, 518).

There are two potential reasons for this. First, signals at the state level may be substantially different than those at the federal level. When an agency head is appointed, their presence and influence within the agency may be more pervasive because, in general, agencies are smaller, the span of their responsibilities and authority may be less significant. Therefore, they exercise significant control *within* the agency. Alternatively, the signals sent by statutes



occur outside of the agency – legislation is passed entirely outside of the agency and therefore has a distinct type of influence than agency head appointment *As a result*, statutory adoption may have less sway over organizational actors than the appointment of a new agency head.<sup>29</sup>

The second potential reason is the measure of statutory adoption that is used. The statutory adoption measure uses the number of relevant sections made effective within a given quarter. Thus, *the size* of the statute is partially captured here. Longer statutory changes may actually lead to more specific instructions that, therefore, do not force agencies to act so quickly or with enormous force to begin implementation. In other words, the actual statute provides much of the necessary information that agency staff require to appropriately implement policy.

**Rule Size:** The timeliness of rulemaking, in general, is less likely to increase the size of the rule grows. This makes intuitive sense because, presumably, it takes agencies to alter or create longer rules. Thus, even though the stimuli for the rulemaking come during a particular period, the agency may not be able to act immediately. This is because they have to sort through a verbose rule.

### **Findings for Institutional Design: 1991 Changes**

#### **Magnitude**

**Institutional Design:** The 1991 institutional change to the APA had no statistically significant effect on the magnitude of rulemaking. Hypothesis 5 is not supported.

#### **Does Controlling for the 1991 Institutional Change Affect Magnitude?**

Controlling for the 1991 institutional change and all other variables in the model changes the sign and effect size of the split partisanship variable – one of the measures of political uncertainty. In general, split partisan affiliation between political institutions is more likely to result in an increase in rulemaking magnitude.

I suggest that, when the partisan affiliations across political institutions are split that, rather than refusing to engage in rulemaking or making low magnitude changes under conditions of uncertainty, agency actors are actually trying to please everyone. They are attempting to incorporate various preferences into rules at the same time. Since the institutional design change

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<sup>29</sup> This is probably compounded by the fact that, in Florida, as in many other States, legislatures have term limits that also limit their control over government agencies. Unlike the federal level, State legislators under term limits usually do not develop relationships with agencies that would allow them to exert this type of influence. Although agency head appointments can often be short, this brevity may be attenuated by the concentrated influence that they have within a given agency.

made agency actors even more acutely sensitive to the importance of rulemaking, split partisanship among political institutions that began in 1991 compounds these affects.

Although the APA change is not significant in the model tested here, it still had the potential to affect the way that agency actors interpreted political preferences. Namely, the institutional mandate that rulemaking take place whenever “feasible and practicable,” encouraged agencies to take *all* political preferences into account when engaged in rulemaking. Since split partisanship across multiple institutions meant that there were more preferences to take into account across political institutions, this meant higher magnitude rulemaking.

The sign change to split partisanship underscores the importance of political institutions in shaping behavior. Before controlling for the 1991 institutional design change, the uncertainty associated with split partisanship made high magnitude response less likely. However, in taking the 1991 institutional change into account, uncertainty has a different effect on behavior.

## **Timing**

**Institutional Design:** The 1991 institutional change to the APA had no statistically significant effect on the timeliness of rulemaking. Hypothesis 6 is not supported.

### **Does Controlling for the 1991 Institutional Change Affect Timeliness?**

Controlling for the 1991 institutional change and all other variables in the model changes the internal issue salience variable – percentage of agency budget dedicated to purchasing – to be statistically significant and negatively associated with timeliness. In general, the percentage of the budget dedicated to purchasing is less likely to result in an increase in rulemaking timeliness. At first blush, the findings of this particular internal issue salience variable – percentage of agency budget dedicated to purchasing – are puzzling here. First, it is negatively associated with timeliness. And, second, it is in the opposite direction as the other internal issue salience variable – percentage of agency personnel dedicated to purchasing. The negative association may be a product of measurement. Although agencies have some influence and control over internal agency budgetary, this is heavily influenced by political principals. Perhaps, agency actors have less information regarding this particular measure of internal issue salience, which suggests that there is substantial outcome uncertainty. And, outcome uncertainty is theorized here to be negatively associated with the timing and magnitude of agency rulemaking. Although it does not reach statistical significance in all of the models, the relationship between the percentage of the purchasing budget and both magnitude and timeliness is negative in all of the models tested here.

This also suggests the potential that the measurement for internal issue salience has some shortcomings.

The other puzzling aspect of the findings is that the two internal salience constructs have opposite relationships with timing. In addition to the argument above, it is highly likely that percentage of agency budget dedicated to purchasing is influenced by political principals more than the original theory allowed and, interviews with purchasing professionals suggest, that agencies have more control over the allocation of staff than they do over the allocation of money. While political principals tend to almost always control agency purse strings, they do not always control their personnel allocation. In accordance with theories regarding agency expertise and legislative deferral to agency actors, personnel allocation is likely an area where, if budgetary allocation is the same, agencies may get more discretion and control. Under these circumstances, it makes sense that the percentage of agency budget dedicated to purchasing and the percentage of agency personnel dedicated to purchasing have the opposite effect on agency response.

### **Institutional Design: 1996 Changes**

#### **Magnitude**

**Institutional Design:** The 1996 institutional change to the APA, in general, was more likely to increase the magnitude of agency rulemaking. Hypothesis 7 is not supported.

The 1996 change was hypothesized to have a negative relationship with magnitude of change and the empirically tested relationship suggests a positive relationship with *very high* odds of change. Interviews with APA scholars and Florida Administrative Code staff, in addition to a thorough examination of the archival documents, help to explain this by elaborating on the APA's waiver component. The language in the APA requires that agencies thoroughly explain the conditions for granting waivers. In requiring this, they force agencies to extend the magnitude of their rules because agencies are inserting language that tells organizational stakeholders the circumstances under which the rules can be waived for them.

Background interviews with Florida Administrative Code staff also revealed another potential reason for this magnitude increase. It was suggested that, although agency rules may be decreasing, the size of those rules actually ends up increasing. The mandate that rules implement a specific statute forces agencies to economize the number of rules that they have. However, those additional rules do not disappear. They end up being tacked onto other rules. In some cases the text is changed and they become part of a rule whose implementing statute is obvious. In

other cases, the text is simply added onto other existing rules. In either case, the *number* of rules decreases, but the *magnitude* of each rule increases.

### **Does Controlling for the 1996 Institutional Change Affect Magnitude?**

Controlling for the 1996 institutional change and all other variables in the model changes the issue salience variable – percentage of agency budget dedicated to purchasing – to be statistically significant and negatively associated with the magnitude of change. The percentage of the agency budget dedicated to purchasing, in general, is less likely to increase the magnitude of agency rulemaking. Although this result is surprising, as I argued in the section above, the percentage of the agency budget dedicated to purchasing may be less under the control of the agency than my original argument suggested. Whereas, internal agency actors may have greater discretion in the allocation of agency personnel, these findings suggest that they may have substantially less discretion over the allocation of agency resources.

### **Timing**

**Institutional Design:** The 1996 institutional design change to the APA, in general, was more likely to increase the timeliness of agency rulemaking. Hypothesis 8 is supported.

The APA's design was intended to make rulemaking less prevalent. Agencies received a great deal of pressure to decrease the amount of rules promulgated. This was done by forcing agencies to link each rule with the implementation of a specific statute. This reduced the discretion given to agency bureaucrats, making them more responsive to the stimuli prompting agency rulemaking. In other words, their responses were timelier.

### **Does Controlling for the 1996 Institutional Change Affect Timeliness?**

Controlling for the 1996 institutional change and all other variables in the model, changes one of the political signals – agency head appointment – to be negatively associated with timeliness of rulemaking activity. Agency head appointment, in general, is now less likely to increase the timeliness of agency rulemaking.

This may be because the 1991 APA is already in effect for the entire model tested here. New agency heads may actually be more likely to implement policy statements and internal memoranda upon entering office. Although the 1991 change encouraged rulemaking, new agency heads, as political appointees, may feel somewhat buffered from that in implementing new policies and procedures. In other words, they may enter the agency, use policy statements and internal memoranda instead of rulemaking. However, once they become settled into the

agency, they may play a smaller role in new agency policymaking and therefore, career servants and agency bureaucrats have a more significant role. With more career servants and bureaucrats involved in rulemaking, they may feel more pressure from political principals and under more scrutiny because they do not have a new agency head directly behind their actions, buffering them from political flack. Therefore, they try to immediately propose rules and response with greater alacrity to political principals.

**Table 5.1: Descriptive Statistics 1975-2010**

	N	Mean	SD	Min	Max
<b>Independent Variables</b>					
<b>Path Dependency</b>					
Previous Rule Changes	6312	3.670	6.204	0	100
Rule Age	6312	49.264	41.450	0	186
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules for Purchasing Special Goods	6312	0.428	0.495	0	1
Rules for Purchasing from Special Groups	6312	0.250	0.433	0	1
General Purchasing Rules	6312	0.322	0.467	0	1
<b>External Focusing Events</b>					
Administrative Hearings	6312	0.647	1.126	0	6
<b>Political Uncertainty</b>					
Split Partisanship	6312	0.119	0.324	0	1
Election Year	6312	0.242	0.429	0	1
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	6312	3.033	1.140	1.078	5.257
Percentage Purchasing Employees	6312	5.491	1.311	3.514	7.504
<b>Internal Focusing Events</b>					
Ethics Opinions	6312	0.580	0.892	0	7
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	6312	3.598	7.733	0	36
New Agency Head	6312	0.124	0.330	0	1
Purchasing Budget Shifts	6312	7377.283	30783.470	-63169.8	114000
<b>Agency Growth</b>					
Agency Budget	6312	3.03E+08	2.25E+08	2.64E+07	6.58E+08
Agency Employees	6312	1425.002	286.0793	924	1846
<b>Dependent Variables</b>					
Magnitude	6312	0.313	2.807	0	120
Timing	6312	0.059	0.235	0	1

**Table 5.2: Descriptive Statistics 1975-1996**

	N	Mean	SD	Min	Max
<b>Independent Variables</b>					
<b>Path Dependency</b>					
Previous Rule Changes	3260	4.2	7.045	0	100
Rule Age	3260	37.207	31.239	0	128
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules for Purchasing Special Goods	3260	0.536	0.489	0	1
Rules for Purchasing from Special Groups	3260	0.15	0.357	0	1
General Purchasing Rules	3260	0.315	0.465	0	1
<b>External Focusing Events</b>					
Administrative Hearings	3260	1.097	1.37	0	6
<b>Political Uncertainty</b>					
Split Partisanship	3260	0.051	0.22	0	1
Election Year	3260	0.247	0.431	0	1
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	3260	2.925	1.063	1.39	5.257
Percentage Purchasing Employees	3260	5.301	1.335	3.514	7.096
<b>Internal Focusing Events</b>					
Ethics Opinions	3260	0.748	1.07	0	7
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	3260	3.182	7.407	0	31
New Agency Head	3260	0.158	0.364	0	1
Purchasing Budget Shifts	3260	1761.72	5762.933	10353.71	19520.01
<b>Agency Growth</b>					
Agency Budget	3260	1.04e+08	5.33e+07	2.64e+07	1.98e+08
Agency Employees	3260	1323.237	293.4357	924	1846
<b>Dependent Variables</b>					
Magnitude	3260	.392	2.598	0	55
Timing	3260	.084	.278	0	1

**Table 5.3: Descriptive Statistics 1991-2010**

	N	Mean	SD	Min	Max
<b>Independent Variables</b>					
<b>Path Dependency</b>					
Previous Rule Changes	3959	3.597	5.455	0	50
Rule Age	3959	59.266	44.921	0	186
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules for Purchasing Special Goods	3959	0.337	0.473	0	1
Rules for Purchasing from Special Groups	3959	0.348	0.476	0	1
General Purchasing Rules	3959	0.314	0.464	0	1
<b>External Focusing Events</b>					
Administrative Hearings	3959	0.509	1.063	0	5
	3959				
<b>Political Uncertainty</b>					
Split Partisanship	3959	0.168	0.374	0	1
Election Year	3959	0.231	0.421	0	1
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	3959	3.149	1.1	1.078	4.957
Percentage Purchasing Employees	3959	5.846	1.216	3.849	7.504
<b>Internal Focusing Events</b>					
Ethics Opinions	3959	0.457	0.676	0	3
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	3959	4.134	8.297	0	36
New Agency Head	3959	0.105	0.306	0	1
Purchasing Budget Shifts	3959	10569.04	38443.7	-63169.83	11400
<b>Agency Growth</b>					
Agency Budget	3959	4.38e+08	1.76e+08	1.53e+08	6.58e+08
Agency Employees	3959	1580.465	239.553	1261	1846
<b>Dependent Variables</b>					
Magnitude	3959	.262	2.975	0	120
Timing	3959	.04	.196	0	1



**Table 5.4: The Effect of Path Dependency and Organizational Attention on Magnitude**

	Odds Ratios	Log Odds	S.E.	95% Confidence Interval	
<b>Constant</b>		-3.884	0.482	-4.829	-2.939
<b>Path Dependency</b>					
Previous Rule Changes	1.012*	0.012	0.005	0.002	0.022
Rule Age	0.979*	-0.021	0.003	-0.027	-0.015
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules for Special Goods	0.098*	-2.323	0.288	-2.887	-1.759
Rules for Special Groups	0.124*	-2.09	0.345	-2.766	-1.414
<b>External Focusing Events</b>					
Administrative Hearings	0.930*	-0.073	0.028	-0.128	-0.018
<b>Political Uncertainty</b>					
Split Partisanship	0.806*	-0.216	0.094	-0.400	-0.032
Election Year	1.567*	0.449	0.192	0.073	0.825
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	0.867	-0.143	0.107	-0.353	0.067
Percentage Purchasing Employees	1.462*	0.38	0.103	0.178	0.582
<b>Internal Focusing Events</b>					
Ethics Opinions	1.172*	0.159	0.027	0.106	0.212
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	0.977*	-0.023	0.004	-0.031	-0.015
New Agency Head	1.670*	0.513	0.089	0.339	0.687
Purchasing Budget Shifts	1.000	<0.001	<0.001	<0.001	<0.001
<b>Agency Growth</b>					
Agency Budget	1.000	<0.001	<0.001	<0.001	<0.001
Agency Employees	1.000	<0.001	<0.001	<0.001	<0.001
<b>Variance Components</b>					
Between Rules		0.427*	0.165	0.104	0.750
Between Fiscal Years		3.785*	0.318	3.162	4.408
Between quarters		0.997*	0.019	0.960	1.034

\* Statistically significant at  $p < .05$ .

Likelihood Statistic: -3717.52

Joint Chi-Square (16df): 846.122

**Table 5.5: The Effect of Path Dependency and Organizational Attention on Timeliness**

	<b>Odds Ratios</b>	<b>Log Odds</b>	<b>S.E.</b>	<b>95% Confidence Interval</b>	
<b>Constant</b>		-4.101	0.190	-4.473	-3.729
<b>Path Dependency</b>					
<b>Previous Rule Changes</b>	1.179*	0.165	0.012	0.141	0.189
<b>Rule Age</b>	0.983*	-0.017	0.003	-0.023	-0.011
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
<b>Rules for Special Goods</b>	0.215*	-1.536	0.254	-2.034	-1.038
<b>Rules for Special Groups</b>	0.213*	-1.546	0.313	-2.159	-0.933
<b>External Focusing Events</b>					
<b>Administrative Hearings</b>	0.839*	-0.176	0.036	-0.247	-0.105
<b>Political Uncertainty</b>					
<b>Split Partisanship</b>	1.186	0.171	0.137	-0.098	0.440
<b>Election Year</b>	1.551*	0.439	0.177	0.092	0.786
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
<b>Percentage Purchasing Budget</b>	0.875	-0.134	0.10	-0.330	0.062
<b>Percentage Purchasing Employees</b>	1.334*	0.288	0.095	0.102	0.474
<b>Internal Focusing Events</b>					
<b>Ethics Opinions</b>	1.119*	0.112	0.030	0.0532	0.171
<b>Control Variables</b>					
<b>Political Signals</b>					
<b>Statutory Adoption</b>	0.980*	-0.020	0.004	-0.028	-0.012
<b>New Agency Head</b>	1.234*	0.210	0.102	0.010	0.410
<b>Purchasing Budget Shifts</b>	1.000	<0.001	<0.001	<0.001	<0.001
<b>Internal Focusing Events</b>					
<b>Agency Budget</b>	1.000	<0.001	<0.001	<0.001	<0.001
<b>Agency Employees</b>	1.000	<0.001	<0.001	<0.001	<0.001
<b>Rule Characteristics</b>					
<b>Rule Size</b>	0.981*	-0.019	0.006	-0.031	-0.007
<b>Variance Components</b>					
Between Rules		0.265*	0.121	0.028	0.502
Between Fiscal Years		3.869*	0.278	3.324	4.413
Between Quarters		0.241*	0.005	0.231	0.250

\* Statistically significant at  $p < .05$ .

-2\*Log Likelihood: -18862.3

Joint Chi-Square (17df): 1786

**Table 5.6: The Effect of 1991 APA Institutional Change on Magnitude**

	Odds Ratios	Log Odds	S.E.	95% Confidence Interval	
<b>Constant</b>		-1.567	0.403	-2.357	-0.777
<b>Institutional Design</b>					
1991 APA	0.5466	-0.6040	0.5770	-1.735	0.527
<b>Path Dependency</b>					
Previous Rule Changes	1.024*	0.0240	0.0080	0.0083	0.040
Rule Age	0.978*	-0.0220	0.0070	-0.0357	-0.008
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules for Special Goods	0.105*	-2.255	0.455	-3.147	-1.36
Rules for Special Groups	0.213*	-1.547	0.646	-2.813	-0.281
<b>External Focusing Events</b>					
Administrative Hearings	1.0030	0.0030	0.032	-0.060	0.066
<b>Political Uncertainty</b>					
Split Partisanship	10.247*	2.327	0.227	1.882	2.772
Election Year	1.285	0.251	0.252	-0.243	0.745
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	0.718	-0.332	0.237	-0.797	0.133
Percentage Purchasing Employees	1.745*	0.557	0.212	0.142	0.973
<b>Internal Focusing Events</b>					
Ethics Opinions	1.126*	0.119	0.033	0.054	0.184
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	0.955*	-0.046	0.007	-0.060	-0.032
New Agency Head	2.954*	1.083	0.1110	0.865	1.301
Purchasing Budget Shifts	1	<0.001	<0.001	<0.001	<0.001
<b>Agency Growth</b>					
Agency Budget	1.0000	<0.001	<0.001	<0.001	<0.001
Agency Employees	0.9990	-0.001	0.001	-0.003	0.001
<b>Variance Components</b>					
Between Rules		0.620*	0.234	0.161	1.079
Between Fiscal Years		3.553*	0.363	2.842	4.265
Between Quarters		1.110*	0.031	1.049	1.171

\* Statistically significant at  $p < .05$ .

-2\*Log Likelihood: 999.235

Joint Chi-Square (16df): 584.983

**Table 5.7: The Effect of 1991 APA Institutional Change on Timing**

	Odds Ratios	Log Odds	S.E.	95% Confidence Interval	
<b>Constant</b>		-2.759	0.232	-3.214	-2.304
<b>Institutional Design</b>					
1991 APA	0.545	-0.604	0.577	-1.735	0.527
<b>Path Dependency</b>					
Previous Rule Changes	0.117*	0.012	0.094	0.141	1.124
Rule Age	0.997	-0.003	0.004	-0.011	0.005
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules for Special Goods	0.350*	-1.051	0.236	-1.514	-0.588
Rules for Special Groups	0.759	-0.276	0.344	-0.950	0.398
<b>External Focusing Events</b>					
Administrative Hearings	0.788*	-0.238	0.048	-0.332	-0.144
<b>Political Uncertainty</b>					
Split Partisanship	2.727*	1.003	0.238	0.537	1.470
Election Year	1.664*	0.509	0.189	0.1386	0.880
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	0.585	-0.537	0.182	-0.894	-0.180
Percentage Purchasing Employees	1.878*	0.630	0.161	0.314	0.946
<b>Internal Focusing Events</b>					
Ethics Opinions	1.160*	0.148	0.041	0.068	0.229
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	0.941*	-0.061	0.009	-0.079	-0.043
New Agency Head	2.699*	0.993	0.139	0.721	1.27
Purchasing Budget Shifts	1.000	<0.001	<0.001	<0.001	<0.001
<b>Agency Growth</b>					
Agency Budget	1.000	<0.001	<0.001	<0.001	<0.001
Agency Employees	1.000	-0.002	0.001	-0.004	0.0000
<b>Rule Characteristics</b>					
Rule Size	1.020*	0.020	0.005	0.010	0.030
<b>Variance Components</b>					
Between Rules		<0.001	<0.001	<0.001	<0.001
Between Fiscal Years		2.178*	0.213	1.761	2.560
Between Quarters		0.397*	0.011	0.375	0.419

\* Statistically significant at  $p < .05$ .  
-2\*Log Likelihood: -5385.08  
Joint Chi-square (17df): 1251.053

**Table 5.8: The Effect of 1996 APA Institutional Change on Magnitude**

	Odds Ratios	Log Odds	S.E.	95% Confidence Interval	
Constant		-2.467	0.669	-3.778	-1.156
<b>Institutional Design</b>					
1996 APA	9.806*	2.283	0.668	0.974	3.593
<b>Path Dependency</b>					
Previous Rule Changes	0.992	0.04	0.031	-0.021	0.101
Rule Age	0.978	-0.008	0.005	-0.018	0.002
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules Special Goods	0.068*	-2.689	0.63	-3.924	-1.454
Rules for Special Groups	0.151*	-1.893	0.542	-2.955	-0.831
<b>External Focusing Events</b>					
Administrative Hearings	0.928	-0.075	0.132	-0.334	0.184
<b>Political Uncertainty</b>					
Split Partisanship	0.216*	-1.531	0.464	-2.440	-0.622
Election Year	1.759	0.565	0.496	-0.407	1.537
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	0.541*	-0.614	0.275	-1.153	-0.075
Percentage Purchasing Employees	1.150	0.14	0.228	-0.307	0.587
<b>Internal Focusing Events</b>					
Ethics Opinions	1.246	0.220	0.174	-0.121	0.561
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	0.990	-0.01	0.014	-0.037	0.017
New Agency Head	1.459	0.378	0.487	-0.577	1.333
Purchasing Budget Shifts	1.000	<0.001	<0.001	<0.001	<0.001
<b>Agency Growth</b>					
Agency Budget	1.000	<0.001	<0.001	<0.001	<0.001
Agency Employees	1.000	<0.001	<0.001	<0.001	<0.001
<b>Variance Components</b>					
Between Rules		0.233	0.375	-0.502	0.968
Between Fiscal Years		7.134*	1.062	5.0525	9.216
Between Quarters		15.498*	0.375	14.763	16.233

\* Statistically significant at  $p < .05$ .

-2Log Likelihood: 13060

Joint Chi-Square (16df): 83.243

**Table 5.9: The Effect of 1996 APA Institutional Change on Timing**

	Odds Ratios	Log Odds	S.E.	95% Confidence Interval	
Constant		-5.715	0.522	-6.738	-4.692
<b>Institutional Design</b>					
1996 APA	4.802*	1.569	0.501	0.587	2.552
<b>Path Dependency</b>					
Previous Rule Changes	1.320*	0.278	0.031	0.217	0.339
Rule Age	0.972*	-0.028	0.005	-0.038	-0.018
<b>Externally Organized Attention</b>					
<b>External Issue Salience</b>					
Rules Special Goods	0.073*	-2.618	0.545	-3.686	-1.550
Rules from Special Groups	0.101*	-2.29	0.519	-3.307	-1.273
<b>External Focusing Events</b>					
Administrative Hearings	0.667*	-0.405	0.056	-0.515	-0.295
<b>Political Uncertainty</b>					
Split Partisanship	0.498*	-0.697	0.155	-1.000	-0.393
Election Year	3.254*	1.18	0.358	0.478	1.882
<b>Internally Organized Attention</b>					
<b>Internal Issue Salience</b>					
Percentage Purchasing Budget	0.756	-0.28	0.215	-0.701	0.141
Percentage Purchasing Employees	1.425*	0.354	0.153	0.054	0.654
<b>Internal Focusing Events</b>					
Ethics Opinions	2.694*	0.991	0.075	0.844	1.138
<b>Control Variables</b>					
<b>Political Signals</b>					
Statutory Adoption	1.019	0.019	0.005	0.009	0.029
New Agency Head	0.359*	-1.025	0.167	-1.352	-0.698
Purchasing Budget Shifts	1.000	<0.001	<0.001	<0.001	<0.001
<b>Agency Growth</b>					
Agency Budget	0.756	-0.28	0.215	-0.701	0.141
Agency Employees	1.425*	0.354	0.153	0.054	0.654
<b>Rule Characteristics</b>					
Rule Size	0.952*	-0.049	0.009	-0.067	-0.031
<b>Variance Components</b>					
Between Rules		0.981*	0.392	0.213	1.749
Between Fiscal Years		6.046*	0.624	4.823	7.269
Between Quarters		0.179*	0.004	0.171	0.187

\* Statistically significant at  $p < .05$ .

-2\*Log Likelihood: -19866.2

Joint Chi-Square Test (17df): 912.812

**Table 5.10: Hypothesized Relationships and Findings**

	<b>Hypothesized Relationship</b>	<b>Empirical Relationship</b>
<b>Institutional Design</b>		
<b>1991 APA</b>		
Magnitude	+	NS
Timeliness	--	NS
<b>1996 APA</b>		
Magnitude	--	+
Timeliness	+	+
<b>Path Dependency</b>		
<b>Previous Rule Changes</b>		
Magnitude	+	+
Timeliness	+	+
<b>Rule Age</b>		
Magnitude	--	--
Timeliness	--	--
<b>Externally Organized Attention</b>		
<b>External Issue Salience</b>		
<b>Rules for Special Goods</b>		
Magnitude	--	--
Timeliness	--	--
<b>Rules for Special Groups</b>		
Magnitude	--	--
Timeliness	--	--
<b>External Focusing Events</b>		
<b>Administrative Hearings</b>		
Magnitude	--	--
Timeliness	--	--
<b>Political Uncertainty</b>		
<b>Split Partisanship</b>		
Magnitude	--	--
Timeliness	--	NS
<b>Election Year</b>		
Magnitude	--	--
Timeliness	--	NS
<b>Internally Organized Attention</b>		
<b>Internal Issue Salience</b>		
<b>Percentage Purchasing Budget</b>		
Magnitude	+	NS
Timeliness	+	NS
<b>Percentage Purchasing Employees</b>		
Magnitude	+	+
Timeliness	+	+
<b>Internal Focusing Events</b>		
<b>Ethics Opinions</b>		
Magnitude	+	+
Timeliness	+	+

**Table 5.10: Hypothesized Relationships and Findings – Continued**

	<b>Hypothesized Relationship</b>	<b>Empirical Relationship</b>
<b>Control Variables</b>		
<b>Political Signals</b>		
<b>Statutory Adoption</b>		
Magnitude	+	--
Timeliness	+	--
<b>New Agency Head</b>		
Magnitude	+	+
Timeliness	+	+
<b>Purchasing Budget Shifts</b>		
Magnitude	+	NS
Timeliness	+	NS
<b>Agency Growth</b>		
<b>Agency Budget</b>		
Magnitude	+	NS
Timeliness	+	NS
<b>Agency Employees</b>		
Magnitude	+	NS
Timeliness	+	NS



## CHAPTER SIX

### A QUALITATIVE INVESTIGATION: THE CASE OF MINORITY PREFERENCE RULES

This chapter qualitatively investigates the nature of change in a subset of Florida purchasing rules. Although the quantitative portion of this study can inform one about bureaucratic response from a bird's eye view, a qualitative approach can tell a more robust story about agency response. It does so in two different ways. First, the quantitative chapter only uses shared signals to describe response. Therefore, it cannot explore the tension between conflicting signals, which can cause bureaucratic confusion and uncertainty. The qualitative chapter is able to describe these tensions and how bureaucrats operate in this environment. Second, the quantitative chapter cannot explain how signals specifically affect responses because magnitude is captured using the purely quantitative measurement of rule length. The quantitative portion of this study also cannot explain the substance and nature of the changes that administrative rules undergo. For example, a low magnitude rule change can have significant operational implications. The qualitative investigation in this chapter describes the mechanisms that affect bureaucratic actors' responses to particular signals.

To add richness and depth to the qualitative story of agency behavior, this chapter focuses on changes made in a specific area of purchasing policymaking. This area was chosen based on responses from purchasing agents who were asked to identify an area that had undergone significant changes that had operational impacts on daily work. Having identified a particular purchasing policy area, each individual was asked to identify three significant changes in that policy area. An analysis of these responses suggests that there were three primary shifts in purchasing policymaking.

I examine these three shifts using extensive archival and interview data. In doing so, I go between the literature and the data to identify the causes of each shift which, in each case, are political signals. Additionally, I examine how the signal is evaluated and the nature of the rulemaking effort ushered in by that signal. After presenting the first three shifts, I will discuss my findings and present a framework to shed light on how bureaucratic evaluation of political signals actually influences the *nature* of rulemaking response. Thus, not only does this study capture overall the factors that influence the timeliness and magnitude of bureaucratic response, it also captures the factors that influence the nature of that response. Before moving to the three

policy shifts, I will provide a brief background of the rulemaking area that has been chosen for examination here.

### **Minority Business Preference Purchasing: A Background**

The subset of rules that were chosen for investigation here are minority business enterprise (MBE) preference rules. Florida is one of more than thirteen states that have preference programs aimed at helping women or minority-owned businesses successfully compete for government contracts (NASPO, 2009). In general, these programs are based on the premise that providing assistance to businesses that have traditionally been discriminated against is in the government interest (Arrowsmith & Hartley, 2002a; Arrowsmith et al., 2000).

Operationally, these programs can look very different. At one time, having preferences enabled governments to set aside contracts to be awarded to Minority Business Enterprises (MBEs) or gave them additional points in the bidding and/or negotiation process so that, even if they did not offer the lowest bid, they could still potentially win a given contract (Arrowsmith & Hartley, 2002b; Arrowsmith et al., 2000). While courts have limited these programs in terms of enabling them to have set-asides or give outright preferences (Bott, 1989; Washington, 1989), MBE programs are still quite active at all levels of government (NASPO, 2009). Florida's MBE Office and program has been in existence since 1985.<sup>30</sup> The program has experienced a myriad of changes since its inception, the shifts of which are examined here.

The rest of this section will discuss the vernacular and basic operational procedures used by purchasing personnel to help the reader through understanding MBE preference purchasing policies. Policies that give preference or allow set-asides for purchasing and contracting from

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<sup>30</sup> The first MBE preference set aside was adopted by the legislature in 1982. It encouraged state agencies to direct five percent of all contract/procurement monies toward MBEs. However, no program or office for MBE assistance or outreach was developed and interview data suggest that set asides were rarely used. The 1982 Statute permitting set asides gave agencies responsibility for the:

Development of procedures to be used by an agency in identifying contractual services that could be provided by minority owned firms, companies or individuals. Each agency is encouraged to annually set aside a sum of money not to exceed five percent of monies actually expended for contractual services during the previous fiscal year and reported to the Legislature...for the purpose of entering into contracts with qualified, responsive, minority-owned firms, companies or individuals...For the purposes of this subsection minority owned firms or companies shall mean any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by minority persons. Minority person means a member of a socially or economically disadvantaged group which for the purposes of this section shall include blacks not of Hispanic origins, Hispanics, American Indians, Alaska natives, Pacific islanders, women and the physically or mentally disabled. (1982. Public Business: 1823-1824. USA: Florida Statute.)

special groups often center on goals that identify the amount of money that agencies are expected to spend on contracting with or purchasing from MBEs. All three shifts identified in this chapter revolve around changes to MBE goals. The spending that goes into reaching these goals is generally referred to as “spend.” In this context, purchasing personnel refer to it as “MBE spend.” Organizations engaged in preference purchasing generally use percentages or total dollar amounts to set MBE spend.<sup>31</sup> Percentages are developed out of the total amount of budgetary spending on agency contracting and purchasing – known as “MBE industry dollar goals”. In determining MBE industry dollar goals, the total amount of budgetary spending is important. If agencies want to decrease the MBE spend goal, they will advocate for certain contracts or purchases to be “off budget” for the purposes of decreasing MBE industry dollar goals. As will be described later in this chapter, in decreasing MBE industry dollars goals, agencies also decrease their MBE spend goal, making it easier to achieve.

Another important feature of most MBE programs is certification. MBE’s often get preference by virtue of the fact that they have been formally certified by a governmental body. This ensures that firms with MBE status are, in fact, minority vendors and not shell companies. In this context, a “shell company” refers an MBE firm that produces no substantive output and instead acts as a front for a non-minority owned firm. Interviewees suggested that this can be a problem because non-MBE firms want to game the system in order to receive preference in the bidding process. The certification process is lengthy, in-depth and often requires significant effort on the part of the MBE. This effort is also a way to ensure that the MBE recognizes the importance and value of preference that they are being given in the governmental contracting process. Counting only certified MBE-awarded contracts in MBE spend makes MBE spend goals more difficult to achieve. Therefore, as will be shown later in this chapter, another way to increase MBE spend is to count certified *and* non-certified MBEs.

### **1985: The First Significant Shift in MBE Policy**

Interviewees identified the first significant change as occurring in 1985<sup>32</sup>. The overall policy change represented a serious shift in the daily activities of purchasing professionals and

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<sup>31</sup> A review of state preference statutes and administrative code suggests that percentages are used more frequently.

<sup>32</sup> The first MBE preference set aside was adopted by the legislature in 1982. It was for five percent of all contract/procurement monies of State agencies to be spent with MBEs. DMS did not promulgate rules and interview data suggests that this legislation was not enforced or even widely implemented.. Florida agencies were given the

the trajectory of the state as a whole. Although the transition to minority preference purchasing was significant overall, operationally speaking, interviewees identified two particular changes. The first was the MBE spend goal of 15% of total contract monies. The second was the submission of the mandated MBE utilization plan to the newly created Minority Business Enterprise Assistance Office<sup>33</sup> identifying how that goal was to be achieved.

### **The Signal**

The first shift was prompted by the *Florida Small and Minority Business Assistance Act of 1985* (1985), which amended Florida Statute Chapter 287, *Procurement of Personal Property and Services*. The original act was significant in that it was one of the first in the State to identify the survival of minority businesses as “central to the overall welfare of Florida’s economy.” The relevant text of this Act started with the following:

...WHEREAS, an important part of promoting the economic growth in Florida involves fostering economic diversification through the development of new industries and the expansion of existing businesses, and

WHEREAS, the health of small and minority businesses is central to the overall welfare of Florida’s economy, and...

WHEREAS, a strong small and minority business sector in Florida can protect an endangered right, the right of the individual to enter productive activity as a self-reliant, independent entrepreneur, and...

WHEREAS, the time has come to eliminate the economic crippling and demeaning disparities between blacks and other Floridians, and

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authority to implement a five percent set aside. Florida Statute Chapter 287.042(f) gave agencies the responsibility for the:

Development of procedures to be used by an agency in identifying contractual services that could be provided by minority owned firms, companies or individuals. Each agency is encouraged to annually set aside a sum of money not to exceed five percent of monies actually expended for contractual services during the previous fiscal year and reported to the Legislature...for the purpose of entering into contracts with qualified, responsive, minority-owned firms, companies or individuals...For the purposes of this subsection minority owned firms or companies shall mean any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by minority persons. Minority person means a member of a socially or economically disadvantaged group which for the purposes of this section shall include blacks not of Hispanic origins, Hispanics, American Indians, Alaska natives, Pacific islanders, women and the physically or mentally disabled.

<sup>33</sup> The MBE Office has undergone at least three names. As of spring 2012, it is referred to as The Office of Supplier Diversity (OSD). However, to simplify the discussion throughout this study, it will be referred to as the MBE Office.

WHEREAS, there is a great disparity in the economic and social well-being of black Floridians as compared to both the general population and other minority groups, and...

WHEREAS, because of past discrimination and persistent unwritten social prejudices, blacks face substantial barriers in obtaining the major elements necessary for business ownership such as availability of capital, technical assistance, and market opportunities, and...

WHEREAS, successful strategies to advance business development should reduce crime and social dependence, save state resources in the long run, and enhance self-esteem and the quality of life among black Floridians, NOW, THEREFORE, Be it enacted by the Legislature of the State of Florida... This act shall be known and may be cited as the "Florida Small and Minority Business Assistance Act of 1985." (Florida Small and Minority Assistance Act, 1985)

The corresponding statute governing this shift was Florida Statute Chapter 287, Procurement of Personal Property and Services. The relevant portion of this statute, 287.042(4)(f), was amended to give the Division of Purchasing the following responsibilities.

Development of procedures to be used by an agency in identifying commodities, contractual services, and construction contracts...that could be provided by minority-owned firms or companies or minority persons. Each agency is encouraged to spend 15 percent of the moneys actually expended for commodities, contractual services, and construction during the previous fiscal year and reported to the Legislature pursuant to s.216.023, for the purpose of entering into contracts with certified minority business enterprises as defined in this act. (Florida Statute, ch.287.042(4)(f), 1985)

The Legislation also established the Minority Business Enterprise Assistance Office in Chapter 287.094. The relevant portions of the statute established the Office as follows.

The Legislature finds that the lack of minority participation in the economy as a whole is reflected in state contracting for the purchases of commodities and services and in construction contracts. The purpose and intent of this section is to provide the maximum practicable opportunity for increased participation by the largest number of minority business enterprises in the state procurement system. The purpose will be accomplished by encouraging the full use of the largest

number of existing minority business enterprises and the entry of new and diverse minority business enterprises into the marketplace.

The Minority Business Enterprise Assistance Office is established ... to assist minority business enterprises in becoming suppliers of commodities, services and construction to state government.

The Minority Business Enterprise Assistance Office shall have the following powers, duties, and functions:

Adopt rules to determine what constitutes a “good faith effort” for purposes of state agency compliance with the 15-percent minority business enterprise procurement goal set forth in s.287.042, Florida Statutes...[the legislation list 4 criteria for “good faith effort,” which were then listed, verbatim, in the administrative rule] (Florida Statute, ch.287.094(1) - (3)(a), 1985)...

Adopt rules and do all things necessary or convenient to guide all state agencies toward the goal of making 15 percent of expenditures for commodities, services and construction with minority business enterprises. (Florida Statute, ch.287.094 (3)(c), 1985)

Through Chapter 287.0947, the legislature then gave individual state agencies the following responsibilities and authority.

Adopt a minority business enterprise utilization plan for review and approval by the Minority Enterprise Assistance Office. (Florida Statute, ch.287.0947 (1))

In order to strive to meet the minority business enterprise goals set forth in s.287.042, an agency may reserve any contract for competitive bidding only among certified minority business enterprises. Agencies shall review all their contracts each fiscal year and shall determine which contracts may be reserved for bidding only among minority business enterprises. This reservation may only be used when it is determined before the invitation to bid that there are capable, qualified certified minority business enterprises available to bid on a contract to provide for effective competition...(Florida Statute, ch.287.0962(4))

The statute above is characterized as a shared signal (Wood & Waterman, 1993) because it was sent by two political principals – passed by the legislature and signed by the governor.

### **Evaluating the Signal**

In characterizing the political signal that prompted the change, interviewees reported that the motives of lawmakers appeared to be genuine. As evidence of this genuineness, interviewees cited trends and policies aimed at minority advancement and the desire of Florida politicians to be part of that. The purchasing professional with the most seniority and knowledge of the MBE program interviewed for this research explained the 1985 changes in the following way: “The State program was heavily influenced by what was going on at the time in the federal government. I mean, now, the federal government had a program that started in the late ‘70s, early ‘80s. Theirs was 10% of spend at the time alright. And, you know, in 1985, when the legislature passed this program, it established those goals, I think, to catch up.” Another commented that, “Well, you know the Democrats were pretty responsive in these matters and [Governor] Bob Graham came in and wanted to catch up with the rest of the country.” Yet another stated, “Well, Graham may have been a politician, but I still think he cared about these issues.”

All of the interviewees employed during the 1985 change connected the change with what they referred to as the election of Tallahassee’s first Black mayor. “We had recently elected a black mayor here in town, so this big caucus of elected officials came down. Oh, and, you know, we got lots of attention and people were interested in serious change I think.” Informants appeared to be talking about Mayor James Ford, who was elected the first black mayor of Tallahassee in 1972. He served until 1986, after which he played a significant role in North Florida developing local employment initiatives aimed at employing blacks (Barnes & Roberts, 2000). Although thirteen years had elapsed between the 1985 shift and Ford’s election, one can speculate that the election of the first black mayor had a normalization period wherein, although he had been elected thirteen years earlier, it was still a novel occurrence in the minds of individuals. Therefore, they associated the election of the first black mayor with the 1985 shift. Another discussed the appointment of “Wally York, a black man, to the Department of Labor and Employment” adding, “and there was just more influence and care about minorities at that time in the Graham administration.”

## The Agency Response

The Department of Management Services (DMS) responded to this signal by engaging in rulemaking. The relevant administrative rules associated with the shifts identified by informants – 15% MBE spend goal and mandatory development of a MBE Utilization Plan – were created to read as follows.

### 13-8.02. Minority Business Assistance Utilization Plan.

Agencies shall submit to the Minority Business Enterprise Assistance Office a minority business utilization plan for review and approval. The plan should include the following:

- (1) By category (supplies and equipment, services and construction), the estimated total procurement dollars spent with minority business enterprises during the previous fiscal year, the amount projected to be spent with minority business enterprises during the current fiscal, and the amount projected to be spent with minority business enterprises during the next fiscal year.
  - (2) A description of the methods and procedures to be implemented to meet the 15% goal set forth in Section 287.042(4)(f), Florida Statutes.
    - (a) Targeting bid solicitations to MBEs.
    - (b) Reserving contracts for competitive bidding only among contractors who agree to utilize certified MBEs as subcontractors or sub-vendors.
    - (c) Dividing large contracts into small units to afford opportunities for MBEs, where feasible,
    - (d) Development of procedures for timely payments to vendors.
- (Florida Administrative Code, ch.13-8.002, 1986)

13-8.003. State Agency Compliance. For the purpose of determining whether a state agency has made a “good faith effort” to comply with the fifteen (15) percent minority business enterprise goal set forth in Section 287.042, Florida Statutes, the Department shall consider the following factors.

- (1) Whether the agency scheduled pre-solicitation or pre-bid meetings for the purpose of informing minority business enterprises of contracting and subcontracting opportunities.



- (2) Whether the agency provided interested minority business enterprises or minority persons with adequate information about the places, specifications and requirements of contractors or the availability of jobs.
- (3) Whether the agency effectively used services and resources of available minority community organizations, minority contractors' groups, local, state and federal minority business assistance offices, and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.
- (4) Whether the agency provided written notice to a reasonable number of minority business enterprises that their interest in contracting with the agency was being solicited in sufficient time to allow the minority business enterprise to participate effectively.
- (5) Whether the agency promulgated rules and procedures governing the award of commodity, services, and construction contracts to achieve MBE procurement goals set forth in Section 287.042, Florida Statutes.
- (6) The extent to which the agency implemented its Minority Business Utilization Plan.
- (7) Whether the agency established a list of commodities, construction contracts, and contractual services that could be provided by MBEs.
- (8) Whether the agency divided bid invitations by dollar amounts, units of production, or duration of contract to facilitate meeting MBE procurement goals set forth in Section 287.042, Florida Statutes.
- (9) Whether the agency implemented specific initiative to encourage MBE participation in its contracting program.
- (10) Whether the agency implemented procedures for participation by MBEs on purchases of \$2500 or less.
- (11) Whether the agency implemented procedures of waiver of bonds for construction contracts...for competitive bidding only among certified MBEs.
- (12) Whether the agency implemented procedures to determine MBE responsiveness to procurement solicitations.
- (13) Whether a senior level employee with appropriate background and

experience was designated in the agency as a minority enterprise assistance officer, responsible for overseeing the agency's minority business enterprise utilization activities.

- (14) Whether the agency negotiated in good faith with interested minority business enterprises or minority persons, not rejecting minority business enterprises or minority persons as unqualified without sound reasons based on a thorough investigation of their capabilities.
- (15) Whether the agency utilized Florida Minority business enterprises.  
(Florida Administrative Code, ch.13-8.003, 1986)

### **Specificity of Compliance Guidelines and Discretion**

In discussing the nature of DMS's efforts to implement the 15% MBE goal and the mandated MBE Utilization Plan, purchasing professionals depicted the compliance guidelines outlined in DMS's rules as being specific and less discretionary than the other shifts<sup>34</sup>. As evidence of specificity, informants cited DMS's relatively detailed instructions and support in the face of what was perceived to be vague, poorly designed and "enigmatic" legislation.<sup>35</sup> No one interviewed who worked for the State during that period could identify where the specific amount of 15% came from. "Well, the first serious one [the first goal] that I remember as important was the 15%, which really was just pulled out of the air. Nobody knew where it came from." Another informant likened the choice of the 15% to the children's fairytale, *Goldilocks*:

When the program was set up in '85, the goal was fifteen percent of all purchases should go to minority vendors. And nobody knows where the number came from. I guess that was back in the days when legislators compromised and somebody probably thought the number should be zero, and maybe others thought it should be twenty or whatever, and they thought, "Well, we'll take fifteen. It's not too big. It's not too small." Like Baby Bear's porridge or something, it was just right.

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<sup>34</sup> It should be noted that in centralized administrative rule, just as in statute, there is likely to be more discretion allowed because they apply to a such a large group of actors engaged in purchasing and contracting across multiple agencies and policy areas.

<sup>35</sup> Although not mentioned by any of the interviewees, newspaper articles from the period indicate that the Florida Legislature debated the *Florida Small and Minority Business Assistance Act of 1985* for upwards of five hours in the State Senate (Foster, 1987 Jan.11). This may suggest that the statute was watered down or written to be exceptionally vague so that it could be passed by the legislature.

Although the 15% determined by the legislature was perceived to be arbitrary, informants made sense of DMS's support for the legislation through specific rules and policies as making an effort to guide agencies in this incredibly new implementation effort. One procurement official remarked, "The trend toward minority preference was huge. I don't know where any of that stuff came [from] but the agency knew it was coming and was already in the process of preparing something." In explaining DMS's efforts to support the rules and program, a number of informants recounted that to get agencies involved, DMS would call the purchasing people together and "walk us through the implementation process. We'd ask about good faith effort. What's permissible and not. Stuff like that." Another commented on the early activity of DMS in getting enough vendors so that agencies actually had MBEs with which to do business. "I think the DMS Minority Office, in the early years, did a phenomenal job outreaching to agencies – and vendors and, you know, teaching them how to do business, teaching them how to respond to bids, helping them, guiding them. They did that for us too."

And, as evidence that the rules had substantial effects, informants cited the considerable change that DMS implemented in the face of what was recognized to be the undertones of racism and institutionalized purchasing practices that were difficult to change. One respondent recounted that when the program was first started, "One agency had put responsibility for it [the MBE Program] in its so-called human rights office, not in the purchasing office – probably because they didn't trust the white purchasing officers, with some reason, to carry out the program." In other words, there was suspicion that racist attitudes would get in the way of proper implementation of the MBE rules. Another described that five years after the implementation of the 1985 preferences he was transferred to head of purchasing in an agency that had never achieved its goals.

When I transferred, [agency name omitted] had file cabinets full of documents attesting to their outreach to minorities to show their good faith effort. They were requiring each office in the [division name omitted], [division name omitted], and [division name omitted] to send in a memo each week describing what outreach efforts they had made to minority vendors for their needs. And they had filing cabinets filled with these things...

They suggested to me that I continue and that I take charge of their inventory of these documents of good faith effort. I told them, "I'm not going to continue that. We're going to end that immediately. I don't want these documents." "Well, what

should we do with them?" "Don't care." "Why don't you care?" "We're not going to have to document good faith efforts." "Why not?" "Because we're actually going to meet the goals of the program." And so that's what we did. And of course we used the tools the law gave us – set asides, price preference, and required minority participation.

The implication, of course, is that some agencies hid behind the good faith efforts rather than working to achieve MBE goals. Additional stories suggest that this was, in part, due to undertones of racism within agencies.

In a number of cases, purchasing agents used the specificity of the compliance guidelines outlined in the rules as a sword to enforce preference purchasing when others would not. The following story illustrates the mindset that DMS was faced with when it developed the MBE preference rules.

Well, one year we achieved our goal fairly early and I announced that at a staff meeting. And [name omitted] was at the staff meeting. So he came up to see me later and he said, "I understand we met our minority goal this year." I said, "That's right." He says, "So I don't have to call anymore minority vendors when I need something done, do I?" I said, "No, that's wrong. See, that would be discriminating. What we're not going to do anymore since we met our goals is, we're not legally entitled to use price preferences or set asides. So we're not going to do that. But you absolutely must call minority vendors.

If you need to have your central air systems furnished and there's minority vendors here in Tallahassee that can do that kind of work, you need to call. You can't exclude people because they're minority." "Oh." Well, he was disappointed. These affirmative action programs didn't drop out of thin air. Racism was the cause.

As illustrated by the story above, the specificity of the rules acted to limit discretion so that agency actors would abide by the preference rules. As one individual commented, "I think a lot of resistance to the MBE program initially came from racism – in other words, from white purchasing directors and purchasing agents not wanting to do things designed to help minorities."

There were clearly some challenges associated with the specificity of the rules and the limited discretion allowed. "We had to spend this much. And they put ya on the naughty list if ya

didn't. So to meet a goal, you were allowed to do set-asides. So we would do set-asides." Informants described 15% as "that magic number" that seemed unattainable when it first emerged. The MBE policy emerged so suddenly and was so drastically different from anything that agencies had done before that, in describing the difficulty of meeting the 15% MBE spend goal, one informant explained that "MBE came out like gang busters in the 80s."

As described during several interviews, the challenge was that, not all industries had sufficient competition to do set-asides in this way. Furthermore, the relationships that purchasing agents had built with vendors over time were disrupted. Non-minority vendors who had had an ongoing relationship with the state were finding the contracts that they had once been awarded now going to minority vendors because of the introduction of preferences and set asides. "The non-minorities boo-hooed and screamed and yelled and gnashed their teeth because it hit a lot of markets."

The newness of the MBE program coupled with the limited discretion granted to purchasing personnel created additional problems. Various interviewees reported that finding vendors with the capacity to contract with the State and deliver a quality product proved difficult. The introduction of racial and gender preferences into state purchasing brought numerous inexperienced vendors who were unable to meet the demands of doing business with the State and yet submitted bids. However, a vendor's low bid, coupled with their minority status gave them an advantage in the process. This created a number of challenges. As one informant lamented, "It's too bad, but one company comes in, and under-bids and doesn't know what they're doing." Another recounted a story where a minority vendor was "lowballing" bids for cleaning services: "She had her husband down there cleaning the entire basketball facility every night...the athletic department basically told us, 'We will kill you if she wins again.' She didn't win. We had to rewrite it [the bid solicitation] so that we probably paid more." The implication, of course, is that, although the relatively limited discretion had benefits, it also put purchasing agents in situations where it was difficult to successfully engage in purchasing.

### **1991: The Second Significant Shift in MBE Policy**

The second shift in MBE policy described here occurred in 1991. Operationally speaking, the particular change that interviewees identified was the shift of the MBE goals from 15% of

total contract monies to formulaic percentages out of total contract monies for each race category across different industries – referred to as MBE industry dollar goals.

### **The Signal**

This shift was prompted by the legislation amending Florida Statute Chapter 287, *Procurement of Personal Property and Services*. All references to the 15% MBE spend goal made in the 1985 statute were removed and replaced with a reference to 287.042(4)(f)(1)-(3), which identified the new goals. Thus, 287.042(4)(f) was amended to give the MBE Assistance Office the following responsibilities.

1. Development of procedures to be used by an agency in identifying commodities, contractual services, architectural and engineering services, and construction contracts, except those architectural, engineering, construction, or other related services or contracts...that could be provided by minority business enterprises.
2. Each agency is encouraged to spend 21 percent of the moneys actually expended for construction contracts, 25 percent of the moneys actually expended for architectural and engineering contracts, 24 percent of the moneys actually expended for commodities, and 50.5 percent of the moneys actually expended for contractual services during the previous fiscal year and reported to the Legislature pursuant to s.216.023, for the purpose of entering into contracts with certified minority business enterprises as defined in 288.703(2). However, in the event of budget reductions pursuant to s.216.221, the base amounts may be adjusted to reflect such reductions. The overall spending goal for each industry category shall be subdivided as follows:
  - a. For construction contracts: 4 percent for black Americans, 6 percent for Hispanic Americans, and 11 percent for American women.
  - b. For architectural and engineering contracts: 8 percent for Hispanic Americans, 1 percent for Asian Americans, and 15 percent for American women.
  - c. For commodities: 2 percent for black Americans, 4 percent for Hispanic Americans, 0.5 percent for Asian Americans, 0.5 percent for Native Americans, and 17 percent for American women.

d. For contractual services: 6 percent for black Americans, 7 percent for Hispanic Americans, 1 percent for Asian Americans, 0.5 percent for native Americans, and 36 percent for American women...

3. In determining the base amounts for assessing compliance with this paragraph, the Minority Business Enterprise Office within the Department of Management Services shall develop, by rule, guidelines for all agencies to use in establishing such base amounts. These rules must include, but are not limited to, a deadline for the agencies to submit base amounts to the Minority Business Enterprise Assistance Office, and procedures for adjusting the base amounts as a result of budget reductions...

(Florida Statute, ch.287.042 (4)(f)(1)-(3), 1991)

Additional relevant portions of Chapter 287.045(1) were amended to read as follows.

The Legislature finds that there is evidence of systematic pattern of past and continuing racial discrimination against minority business enterprise and a disparity in the availability and use of minority business enterprises in the state procurement system. It is determined to be a compelling state interest to rectify such discrimination and disparity. Based upon statistical data profiling this discrimination, the Legislature has enacted race-conscious and gender-conscious remedial programs to ensure minority participation in the economic life of the state in state contracts for the purchase of commodities and services and in construction contracts.<sup>36</sup> ~~the lack of minority participation in the economy as a whole is reflected in state contracting for the purchases of commodities and services and in construction contracts.~~<sup>37</sup> The purpose and intent of this section is to increase ~~provide the maximum practicable opportunity for increased~~ participation by ~~the largest number of existing~~ minority business enterprises in the state procurement system. This purpose will be accomplished by encouraging the full use of ~~the largest number of existing~~ minority business enterprises and the entry of new and diversified minority business enterprises into the marketplace.  
(Laws of Florida, ch.91-162, 287.045(1), 1991)

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<sup>36</sup> The underlined sections indicate additions that occurred during this shift.

<sup>37</sup> The crossed out sections indicate changes that occurred during this shift that altered the statute.

The literature would characterize the above legislation as a shared signal (Wood & Waterman, 1993) because it was sent by two political principals – passed by the legislature and signed by the governor.

### **Evaluating the Signal**

In characterizing the political signal that prompted the change, respondents reported that the motives of lawmakers appeared to be disingenuous. As evidence of this, they cited the legislature’s knowledge of the faulty methods behind a racial disparity study on which the 1991 goals were based and the basic infeasibility of those goals. The change from a flat 15% to formulaic, percentage-based goals was prompted by a Supreme Court decision, *Richmond v. J.A. Croson Co.* (1989), in which the Court held that “generalized assertions” of previous racial discrimination do not justify the use of “rigid” racial or ethnically based quotas for awarding public contracts.

Virtually every person interviewed knew about and could thoroughly explain the holding of the *Croson* decision. Furthermore, each of them was aware of the circumstances under which governments were allowed to use racial set-asides. One particularly experience procurement officer explained *Croson* in the following way.

The *Croson* decision held that, if governments wanted to use racial set-asides or preferences, they had to complete a disparity study—but some states are doing availability studies, not sure what the difference is. But, anyway, in the disparity study they are supposed to identify businesses in a geographic area that are ‘ready, willing and able’ [accompanied by quotation hand signals] to perform the work in a particular industry. That’s why the statute uses those crazy percentages for each race group in different industries. Those are the percentages that Florida’s disparity study found. But the Florida study was BS, they didn’t do it the way the Court said.

Another purchasing officer explained the problems in Florida’s disparity study, conducted by consulting firm KPMG in the following way.

One of the problems with the original KPMG survey – which I think they had in the drawer when they were hired – was that they counted businesses that had not been developed because of discrimination, so these people never started doing



business. They [KPMG] counted them. Well, of course *Croson* is ready, willing and able.

In other words, the Florida disparity study counted individuals in minority groups across the state without taking into consideration whether or not these individuals were actually able to and capable of doing business with the state.

An examination into the *Croson* (1989) decision verified the basic facts presented above. In order to comply with *Croson*, governments doing racial set-asides or preferences had to complete a disparity study identifying the proportion of firms owned by the minority groups identified in statute who could do business with the state in a particular industry –i.e. architecture, construction, etc. (*City of Richmond v. Croson*, 1989). If the proportion of MBEs identified for a particular race group, in a particular industry was lower than that doing business with the State, then a set-aside could be put in place. The Court also indicated that the disparity study had to be conducted every five years. The key was that the minority-owned businesses identified in the study had to be “ready, willing and able” to do business with the State. The latter criterion was the problem that informants identified with Florida disparity study. As one informant suggested,

It’s like saying 12 percent of the population of the State of Florida is African American. But if you survey brain surgeons, would you expect 12 percent to be African American? Well, you can’t answer the question for the population. You have to know, of the people who have had training as a surgeon, what percentage are African American?

The problems with the disparity study were pervasive and tainted the perceptions of purchasing personnel. Four interviewees in separate agencies actually referred to the 1991 goals in statute as “bogus goals.” One commented, “We all knew the disparity study was crap and when they put those bogus goals in the statute, it was even worse.” Another explained, “Anyway, the ’91 study came up with those bogus goals that are still on the law.” Yet another told the following story.

Yeah — oh no, the law is based on — the law says that 50.5 percent of contractual services have to go to women, and the huge numbers that are in there — but those numbers were based on businesses — not ready, willing, and able — but businesses that never opened, because they assumed that women and minorities were discouraged from going into business for themselves. That’s

really hard to do business with those people. KPMG — they came down and I met with them. They didn't know anything about purchasing. I don't know what in the world — we were just like, "Oh they've got that thing [the disparity study] sewed up, and now they're building it up from behind." We saw the numbers — those bogus goals — and we just laughed. It's just hysterical.

The repeated use of the term “bogus goal” is noteworthy here. As discussed in the methods section, Florida purchasing professionals are a highly networked group of individuals who may have constructed the notion of bogus goals among themselves through their interactions with one another.

### **The Agency Response**

DMS responded to this statutory signal referenced above by engaging in rulemaking. The relevant administrative rules associated with the shift identified by purchasing professionals — the shift from 15% of total contract monies expended to formulaic percentages — were amended to read as follows.

60A-2.0021 Determination of MBE Industry Dollar Goal.

- (1) The agency dollar base for each industry will be the actual year-end expenditures for the previous fiscal year less the amount of all approved exclusions. The MBE dollar goals will be the industry dollar base, multiplied by the total industry goals. Each industry dollar goal will be further divided across the minority status categories set forth in section 287.042(4)(f)1.
- (2) The [MBE] Office may exclude funds from the base amount when it has determined that an agency is without the authority or discretion to expend the funds with certified minority business enterprises...The Office will provide a list of exclusions that have been approved by the Office and that are applicable to all agencies. The Office will approve additional agency specific exclusions on an annual basis. It is the responsibility of each agency to request any additional exclusions and to submit written documentation supporting each. Exclusions must state the reason that the agency is unable to expend the funds with certified minority business enterprises. Examples of such additional exclusions include, but are not limited to, purchases from PRIDE

[goods sold/produced by prison inmates], RESPECT [goods sold/produced by disabled vendors] or a single source.

- (3) The Office will set MBE dollar goals within sixty (60) days of the mailing of all utilization plan request letters, plus any applicable extensions granted by the Office.
- (4) In the event of agency budget reductions, the Office will review budget adjustment requests.

#### 13-8.003. State Agency Compliance.

- (1) For the purpose of determining whether a state agency has met the minority business enterprise goals set for in Section 287.042, Florida Statutes, the agency shall receive credit only for funds expended within a certified minority business enterprise's speciality area, as listed in the Office's Certified Minority Business Enterprise Director.
- (2) For the purpose of determining whether a state agency has made a "good faith effort" to comply with the ~~fifteen (15) percent~~ minority business enterprise goal set forth in Section 287.042, Florida Statutes, the ~~Office Department~~ shall consider the following factors.
  - (a) ~~(1) Those factors set forth in section 287.0945(3)(a) Florida Statutes Whether the agency scheduled pre-solicitation or pre-bid meetings for the purpose of informing minority business enterprises of contracting and subcontracting opportunities.~~
  - (2) ~~Whether the agency provided interested minority business enterprise or minority persons with adequate information about the places, specifications and requirements of contractors or the availability of jobs.~~
  - (3) ~~Whether the agency effectively used services and resources of available~~
  - (4) ~~minority community organizations, minority contractors' groups, local, state and federal minority business assistance offices, and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.~~
  - (5) ~~Whether the agency provided written notice to a reasonable number of~~

~~minority business enterprises that their interest in contracting with the agency was being solicited in sufficient time to allow the minority business enterprise to participate effectively...[the ellipsis indicates that nothing was changed from the 1991 rule until subsection (m)]~~

(m) Whether the agency attended or participated in trade fairs, conferences, matchmakers and workshops relating to MBEs.

### 13-8.02. Minority Business Assistance Utilization Plan.

[Entire introductory paragraph and first section rescinded]

- (1) Within the first quarter of each fiscal year, the Office will send a letter requesting agency utilization plans to each agency...[sets a 30-day timeline]
- (2) The Office will approve agency utilization plans...[sets a 90-day timeline]
- (3) ~~Agencies shall submit to the Minority Business Enterprise Assistance Office a minority business utilization plan for review and approval.~~ The utilization plan should, but is not limited to, the following elements
  - (a) A statement of the agency's objectives for accomplishing the goals set forth in section 287.0945(1).
  - (b) An explanation ~~A description~~ of the methods and procedures to be implemented to meet the ~~15%~~ goals set forth in 287.0945(4)(f), Florida Statutes. The explanation shall include, but not be limited to, detailed plans for:...
    1. ~~(a)~~ targeting bid solicitation to certified MBEs.
    2. ~~(b)~~ reserving contracts for competitive bidding only among ~~contractors~~ who agree to utilize certified MBEs, as subcontractors or subvendors
    3. setting goals for certified MBE participation as subcontractors on contracts, including, but not limited to, construction contracts
    4. ~~(e)~~ identifying those ~~dividing~~ large contracts that can be divided into smaller units to afford opportunities for certified MBEs, where feasible
    - ~~(d)~~ development of procedures for timely payments to vendors
- (c) The development of a spending timetable, projecting how each agency plans to reach each of the industry goals;

- (d) A spending plan that illustrates how the agency plans to subdivide actual industry expenditures by minority status categories. The plan may also identify moneys to be spent with certified MBEs in categories where no industry goals are set.
- (e) A report of total procurement dollars spent during the previous fiscal year, by industry and category;
- (f) A report of total dollars spent with certified MBEs, by industry and minority status categories;
- (g) The agency's determination of the appropriate certified MBE industry dollar base and goals.

(Florida Administrative Code, ch.13-8.002, 1991)

### **The Specificity of Compliance Guidelines and Discretion**

In discussing DMS's efforts to implement the new goals, purchasing professionals depicted the compliance guidelines outlined in DMS's rules as non-specific and highly discretionary. As evidence of the non-specific nature of the rules, interviewees reported that DMS rules gave little guidance on how to meet the detailed and demanding racially-based goals identified in the statute. Virtually every informant expressed how challenging the MBE goals were to meet and many pointed out that the rules on how to meet goals changed very little from the 1985 changes. "I told him, 'This is outrageous. Nobody can meet these goals...There aren't even this many Hispanic architects in the State.'" Another recounted telling the purchasing director of her agency, "Oh, don't be ridiculous, we can't meet those goals." And yet another described the goals as being "gigantic." The frustration with what were perceived to be infeasible goals was accentuated by the lack of guidance provided by DMS. As one manager explained, DMS left agencies "hanging out on our own to figure out how to implement these things within our agencies."

As evidence that the agency's response allowed for high levels of discretion, informants cited the extreme flexibility that agencies had to alter their MBE industry dollar amount. Every informant interviewed for this research reported having to ask the MBE Office to alter their industry dollar amount in order to meet the statutory goals. One interviewee described the problem in the following way.

And at that time [after the 1991 statute], the problem that they were having with Florida's program was that they were trying to establish the goals based upon total dollars spent and what had to evolve around an understanding was you're basing it on the large figure, which then becomes an impossible task for the agencies to meet this goal because you're basing a goal upon salaries, based upon insurance contributions, things of this nature which you could never contract out to a minority business. Their concept was wrong...What was more logical to do, and what we did was that we looked at the agency's total dollar spend – total budget dollars and backed out those things that had no contract opportunity to the point of, okay here is what you really spent on contract obligations. Now, we'll take that percentage of this amount, which then basically really transformed the entire program [and] became now reachable goals by the agencies to do.

Other informants suggested that, to meet the goals, they intentionally altered the MBE industry dollar amount. "...we didn't have as much as heartburn about the goals as [other agencies]... We used to get our goals so that we were like 500 percent of our goal, and I would tell people, 'Shhhh. It doesn't mean anything. It's meaningless, because the things you're allowed to delete and all that.'"

Respondents pointed out that the DMS rules and Purchasing Office could have specifically identified exclusions to determining the MBE industry dollar amount rather than relying on the discretion of agencies and the MBE office. As indicated by the stories that were recounted, this flexibility resulted in significant manipulation of the MBE industry dollar amounts. One informant described how, after the 1991 change, she frequently had to adjust the agency budget to exclude certain items so that the MBE industry dollar amount would be lower and the goals easier to achieve. "Sometimes we met our goals, and then sometimes they changed and we had to look around and see what we could do with the budget."

Another explained that, "There was no way any state agency could possibly – they had to get into the budget and start taking out appropriated and discretionary spend, contracts and grant funds. They had to get in there and do that. There was no other way." And yet another recounted a story where her boss approached her concerned about meeting the MBE goals. "I was like, 'Look, don't worry about it. Look, we can pretend to comply, or we can whatever, we don't have to fight this. So, we went along, we reported. Everybody did different things to look like they were complying. I was particularly good at it. I had done it for years.'" She went on to say, "You

know, I would tell [my supervisor], ‘Don’t look too deep, and don’t brag. Just put it [the MBE utilization report] in.’”

The goal achievement tactics were widely discussed to imply that the 1991 rule changes allowed for significant discretion. Many even used the same language to describe how they warned their agency heads not to “brag” about their success in meeting the MBE goals because of the compliance tactics that they were using. “I’m like, I said to him [the agency head], ‘Please do not brag because you could just blow this.’ But it was true of the whole state,” one informant said in describing how the agency decreased the MBE industry dollar amount in order to decrease the amount that needed to be spent with MBEs to meet the statutory percentage goals.

### **1999: The Third Significant Shift in MBE Policy**

The third shift in MBE policy described here occurred in 1999. The entire sample of purchasing professionals interviewed for this study reported that the changes made to Florida procurement and contracting operations in 1999 were the most significant in the history of the program.<sup>38</sup> Operationally speaking, the particular changes that interviewees identified were the complete removal of set asides and goals, the governor’s heightened involvement in public procurement and the informal expectations that he set in newly mandated monthly meetings with purchasing directors and agency heads.

#### **The Signal**

This third shift was prompted by an executive order signed by then Governor Jeb Bush. The relevant portions of Executive Order 99-281 – also known as *One Florida* – are as follows.

WHEREAS, the use of racial and gender set-asides, preferences and quotas is generally inconsistent with the obligation of government to treat all individuals as equals without respect to race or gender;

WHEREAS, the use of racial and gender set-asides, preferences and quotas is considered divisive and unfair by the vast majority of Floridians, produces few, if

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<sup>38</sup> Of all the interviewees, only one purchasing officer was not working for the State at the time that the third MBE policy shift was implemented. He worked in purchasing for the State before *One Florida*, left before its implementation and then returned to State procurement a few years later.

any, long-term benefits for the intended beneficiaries, and is of questionable legality...

## Section 2: Non-Discrimination in State Contracting

- a. It is the policy of my Administration to provide equal state contracting opportunities to all qualified businesses, to prohibit discrimination in contracting because of race, gender, creed, color or national origin, and to promote the full realization of equal contracting opportunities through a positive, continuing program in each executive agency and the Office of the Governor. This policy of equal contracting opportunities applies to every aspect of contracting policy and practice in my administration.
  
- b. Unless otherwise required by law or administrative rule, neither the Office of the Governor nor any executive agency may utilize racial or gender set asides, preferences or quotas when making state contracting decisions. Any law or administrative rule requiring or allowing the use of racial or gender set-asides, preferences or quotas, or artificial, arbitrary goals in state contracting shall be brought to the attention of my General Counsel by any affected Executive Agency no later than December 31, 1999. (Bush, 1999)

Governor Bush's executive order was supplemented by his *Equity in Contracting Plan* (1999). The relevant portions of the *Governor's Equity Plan* were created to read:

### **1. Implement Truth in Measurement**

The present voluntary goal system actually obscures the true amount of minority business spending. The vast majority of State spending evades serious examination because it is excluded from the base to which minority business percentage goals are applied.<sup>39</sup>

The present goal system is deceptive and too easily allows the State to give the inaccurate perception that minority businesses have received fair and equal opportunities at State dollars. The system should be changed. A much better approach would be to hold each agency accountable for all of its spending,

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<sup>39</sup> This section directly addresses the manipulation of the 1991 MBE industry dollar amounts discussed by purchasing professionals in the previous section.



with an emphasis not on artificial and truncated goals, but on the bottom line – total actual dollars spent with minority firms.

The measure of success – total dollars actually spent – provides a much more accurate gauge of how the State is performing in this area. It is this measure by which our agencies should be judged. And it is this measure by which we intend to succeed, as we seek to increase the total dollars actually spent with minority firms each year...

Legislation is necessary to eliminate the present goal system, and a legislative appropriation may be necessary to fund the changes in the state automated accounting systems that are required to measure all minority business spending.

## **2. Reform Procurement to Encourage the Pursuit of Diversity...**

The Florida procurement system must be reformed to procure the highest quality products at advantageous prices...it must come out of the cover of darkness, as spending decisions will be subjected to increased scrutiny and observation. ..

...Procurement agents toil in relative obscurity. These agents do good work, but if their decisions are exposed to greater visibility and if they receive clear messages from leadership that the State values relationships with minority businesses, spending with these businesses will increase.

In this vein, my office has identified over 100 key procurement agents in my agencies, the Cabinet agencies...these agents will soon report directly to me and to their agency the amount of minority business spending for which they are personally responsible, using the new, more accurate measurement of minority business spending that DMS will implement. We have asked the agents located in my agencies to assemble for a meeting following the press conference at which this initiative is announced. We have even flown some of these agents in from other cities. At this meeting, I will explain the One

Florida Initiative and the philosophies laid out herein, and will emphasize to these agents that we can and should do better in minority business spending.

...No further action is necessary to require procurement agents in my agencies...to report to me; once we have implemented our new minority business measurement system, these agents will begin reporting to me and their agency heads immediately...

The literature would characterize the above legislation as an executive signal (Wood & Waterman, 1993) because it originates solely with the governor. Furthermore, it is important to point out here that the Executive Order directly contradicted the 1991 statutory MBE goals and the corresponding administrative rules. In other words, the adoption of the Executive Order meant that there were now conflicting political signals governing the MBE program.

### **Evaluating the Signal**

In characterizing the political signal that prompted the shift, respondents reported that the motives of the Governor appeared to be disingenuous. As evidence of this, interviewees cited the Governor's public pretense that goals were no longer enforced while he was privately pressuring agencies to meet his own informal goals, which many perceived as infeasible, and the expansion of the definition of MBE spend to include contracts with non-certified MBEs.

It was striking how open respondents were about the pressure that Governor Bush privately exerted on agencies to increase MBE spend. Many discussed the Governor's desire to increase MBE spend so that he could prove that racial preferences and set-asides were not necessary and that his *One Florida Initiative* was a success. "When we started enforcing *One Florida* and our report of spending went down, and they [the Governor's office] said, 'Why did it go down?' And, I'm like 'Okay, duct tape me to my chair for a while. What do you mean why did it go down?'" She went on to say. "Of course it went down, we couldn't do set-asides." Another recounted something similar: "...when *One Florida* reporting came in, I don't think it [MBE spend] was any better. They wanted it to be, but then they saw that – when they did away with it [set-asides], the spending went down. I told general counsel, 'I'm sorry, you're surprised?'"

Although many had expressed frustration at the infeasible nature of the formulaic MBE percentage-based goals that were enacted in 1991, the changes ushered in by the Executive Order stood out in the minds of many. This is because, while failing to meet the percentage-based goals

codified in statute and implemented in rule had attracted little attention from previous administrations, the failure to meet Governor Bush's goals, which were not formally codified, would earn agency heads "a browbeating" by the governor.

It was particularly striking that, although the Governor's expectation of increasing MBE spend from the previous year was not formally written, those expectations and the mandated monthly meeting between agency heads, purchasing directors and the governor were mentioned by every informant – even those whose agencies did not have to attend (e.g. Department of Law Enforcement). There were a number of first and second hand stories recounted by informants characterizing the monthly meetings with Governor Bush.

We received less informal attention under [Governor Crist] than under Bush. But there was nothin' formal about that [the attention received from Bush]. I read some transcripts of the meetings with the purchasing directors, agency heads, governor and the cabinet. And particularly, Governor Bush was abusive with some of his department heads on minority spend...The reaction was to just beat up on agency heads. And of course the agency heads come back. And you know how that stuff goes downhill. So they would come to me, and say, 'How are we doin' on minority spend?' I tracked that every month.

The Governor's demeanor in the meetings had such a profound effect on some purchasing agents that when one informant was asked who he perceived to be the most adversely affected by *One Florida*, he responded in the following way: "You mean besides purchasing professionals like me that caught flack every day because people had to get minority vendors and bid on things and they couldn't get them? It did make my job more difficult."

Other informants shared about the inconsistencies between the Governor's public and private expectations.

In '99 or 2000, Governor Bush promulgated his One Florida Initiative, where he said we were not going to do set asides and preferences anymore. And he didn't change the law. He issued an executive order. We were all told, "All of your discretionary purchases, everything \$25,000 and below [the threshold below which competitive bidding is not required] you are to see if you can reserve that for minorities. If there's a minority, we want you to give it to them.

Thus, although set-asides had been made illegal by the Executive Order, purchasing personnel were being instructed to essentially engage in set-asides when purchases were low enough that

competitive bidding was not required. Another interviewee commented that, “*One Florida* may as well have been in statute for how much attention we had to pay to it.”

Many cited the benefits that the Governor and his allies could receive when agencies increased spend. “Who benefitted? Well, the politicians that were able to say that yes, we spent more money this year with minority vendors than last year, which was pandering to their voter base.” Another described Jeb Bush and his political allies – not MBEs – as the primary beneficiaries of *One Florida*. “I think the primary interest group is the politicians. I don’t know if that’s what you mean but, you know, they do things that will help them get reelected. And then they are feeling, in this case, all about equal opportunity. Bush and his cronies weren’t any different with *One Florida*.”

The motives behind *One Florida* were also perceived as disingenuous because, in an effort to increase MBE spend, the governor’s office began to allow non-certified, self-reported minority vendors to be included in the MBE spend. By counting non-certified MBEs toward MBE spend, it became easier to increase MBE spend from year to year. The change was perceived as engineered by Governor Bush so that he could claim that racial set-asides were unnecessary to increase State business with MBEs. “*One Florida* would have never been able to increase spend...Had they not suddenly counted non-certified, which we had never done, the numbers would have been pitiful – beyond pitiful. When they’re self-reporting, that means they say, “Oh yes, we’re Asian, we’re – whatever. We don’t really know.” She went on to say, “So, who really cares an awful lot about the minority business program?” Another commented:

*One Florida* is just, I mean, you can count non-certified and certified and the non-certified is self-reporting. Okay? I remember one year when they did it. It looked like we weren’t going to show an increase...they decided to report non-certified, which we had never been allowed. We reported them. There was considered to be an advantage to be a certified minority vendor, and other small businesses didn’t want to have to compete against them if they weren’t — if they hadn’t gone through the certification process.

In his Executive Order the Governor reasoned that he wanted to count non-certified vendors because he wanted to acknowledge the breadth of minorities with whom the State was contracting and he saw the certification process as a bureaucratic impediment. However, many saw the move to count uncertified vendors as politically motivated in order to raise MBE spend while publically denouncing and abolishing goals. As one informant cynically commented,

“Generally, from the politician’s point of view, it boils down to their perceptions of what will help them get reelected.”

### **Agency Response**

No rulemaking took place in response to Governor Bush’s Executive Order. The agency did not remove the references to the 1991 statutory goals – which the legislature did not change after the Executive Order was implemented either – nor did it adopt rules to abolish the use of set asides. In other words, if purchasing professionals looked at the rules or statute independent of Bush’s Executive Order, they would assume that set-asides and preferences were still in place. In referencing the elimination of set asides and the statutory goals ushered in by *One Florida*, every individual commented on the fact that neither statute nor administrative rules were altered in response to the order. As one purchasing professional noted, “The last big MBE Program change was significant for the lack of rule change.” In other words, in the face of conflicting signals, the agency did not engage in rulemaking.

### **Specificity of Compliance Guidelines and Discretion**

With no agency rulemaking response, there were no compliance guidelines for purchasing professionals implementing the *One Florida* Initiative. Unsurprisingly, this resulted in a significant amount of discretion for agency actors. This is because, although the MBE program and informal goals were now being directly overseen by the most powerful actor in state government – the Governor, they were responsible for meeting his goals but had a significant amount of discretion within which to do so. What one informant described as DMS’s failure to engage in rulemaking in this case as an “abdication of responsibility,” now allowed agencies to use a number of discretionary tactics to meet the informal goals set by Governor Bush.

The discretion allocated to agencies for meeting goals stood out to many because prior to *One Florida*, DMS was perceived to be the “fulcrum” of administrative agencies in the State. As one interviewee suggested, “I mean, when you’re in a sister agency like we are, we look at DMS as a – they’re our – they’re our father to look to, to ask for or look to for direction.” In other words, the expectation was that DMS would direct agencies on how to use their discretion to fulfill the Governor’s goals, which were considered to be fairly unrealistic. “I mean, one day it’s like far more than we could do, and then they take it away. The problem is that they were just – it

was like zoop, it's gone. And then, we're supposed to meet all these goals, but now we're not allowed to do any of the things we were allowed to do before.”

Three informants characterized DMS as being the “go-to agency” during the 1980s and 90s. And yet another explained DMS rulemaking in the following way.

In fact, agencies are extremely interested in the rules in the administrative code. And it was very common when we [DMS] would announce a hearing on a proposed new rule to have several agency members come. You have the directive, law or whatever from the politicians. These things are fairly general. They establish entities, organizations, and their scope of authority and detail some of the tasks they're responsible for – but they usually don't give a great deal of detail on how those tasks are carried out.

All of this is to say that, by giving no response to the Executive Order, DMS ensured that agencies would have a significant amount of discretion in fulfilling the informal goals enforced by the Governor.

### **Discussion: A Framework for Understanding Signals and Response**

The three major shifts in MBE rules show a distinct pattern in understanding the relationship between signals and bureaucratic response. In accordance with the literature (Carpenter, 1996; McCubbins et al., 1989b; McCubbins & Schwartz, 1984; Wood & Waterman, 1991; Wood & Waterman, 1993, 1994; Wood & Bohte, 2004), signals do appear to prompt bureaucratic response. The results of a very thorough content analysis of Florida Statute, Florida Administrative Code, internal government documents and media reports confirm this relationship. However, this is only a small part of the story because, although the signal prompts each shift, agency actors have discretion to influence the nature of that shift through their responses to the signal. Table 6.1 provides a structure for understanding the relationship between the signal and the nature of agency response in each shift.

Agency actors begin by examining whether the signal is shared or conflicting. When the signal is shared, the data here indicate that the agency formally responds through notice and comment rulemaking. When the signal is conflicting, agency actors do not engage in rulemaking because, as a formal method of response, this would attract the unwanted attention of at least one of their political principals. The informants confirm this through their comments regarding the Legislature's reticence to alter the 1991 statutory goals. “But they never took it out of statute.

And they never took it out of a rule. And it was funny. Because the first couple weeks I was over here, I asked, ‘Why isn’t that gone?’ ‘Oh, it’s a political hot potato’ – because the minority groups don’t ever want the language removed from statute.” In other words, in choosing to formally respond to one of the conflicting signals, agency actors would have to ignore or contradict the other. This would likely attract the ire of the political principal whose signal was disregarded.

The more high-level informants interviewed here reported the political volatility around *One Florida* as one of the reasons why the agency did not engage in rulemaking. They commented that, by not engaging in rulemaking, the agency was making a conscious decision to remove itself from decision-making related to the *One Florida* Initiative.

DMS would have been stupid to change the rules after *One Florida* .... When it [the statute] was trying to be changed at that time, the various groups that make up the program and the legislature were not willing to go along with Governor Bush. They felt that ‘if we don’t have that commitment from the top with the next governor then we will have already changed the statutes.’ That’s why you still have those goals in statute. Black caucus members, Hispanic caucus members, as well as the women caucus members would not indicate at all – we would not vote to change the statute at this point in time. We would rather let it [MBE goals] stay in statute.

Furthermore, with conflicting signals, the durability of the signal can also become an issue. This is because, if the agency adopts rules to respond to one of the conflicting signals and that signal changes – as hypothesized in the quote above – then the newly adopted rules have no constitutional authority because they contradict the existing signal. As expressed by a former DMS employee, “We didn’t want to change the MBE rules if *One Florida* was just going to go away with the next governor. We also would have been stuck because the goals were still in statute.” Underscoring this sentiment, another interviewee explained the rulemaking process in the following way. “The rulemaking process in Florida can really be about sending a message. We [DMS] are under such close supervision that, if the politicians want different things, we just don’t do anything.” In this case, it was the Governor and Legislature who wanted different things because the Legislature refused to remove the percentage-based formulaic goals from statute and the Executive Order actually told agencies to ignore those goals. Thus, if the signals are shared, rulemaking takes place. If the signals are conflicting, rulemaking does not take place.

Thus, since rulemaking is a public and formalized response to political principals, agencies are careful in whether they respond in this way and in how they respond. This explains the difference between the rulemaking in 1985 and 1991 under shared signals and the lack of rulemaking in 1999 under the conflicting signals.

Once it becomes clear that rulemaking will take place because the signal is not conflicting, agency actors look to whether the motivations behind the signal are genuine. To assess motives, they appear to look to the context of the signal in addition to the professional appropriateness of the policy embedded in the signal. In this case, informants looked to the political payoffs of supporting MBE policy coupled with the feasibility of the goals.

Characterization of the 1985 signal juxtaposed with the 1991 and 1999 signals indicate clear differences in motivation. While purchasing professionals gave limited comments on the policy feasibility of the 1985 signal (the 15% MBE spend goal), they heavily cited the context of the policymaking to support their conclusion that the motivation behind the 1985 signal was genuine. They did this through their comments on the obstacle of institutional racism and the entrance of black politicians to political office.

However, in characterizing the 1991 and 1999 shifts, informants cited the political payoffs of supporting the signals in addition to the infeasibility of the MBE spend goals. It was not just the infeasibility; it was the fact that, in public, elected officials' signals were perceived one way and in private they were perceived in another way. For example, with the 1991 shift, informants perceived that elected officials had knowledge of the flawed disparity study and supported the formulaic statutory goals nonetheless. With the 1999 shift, the Governor's public decrying of racial preferences and goals juxtaposed with his unwritten expectations for MBE spend and the pressure he exerted on agencies in the mandated monthly meetings made his support of the MBE program appear hollow.

These characterizations of political signals inform the specificity of agency compliance guidelines and implementation discretion. When the motives behind the signal are genuine, the agency response is more likely to have heightened compliance guidelines (more specific) and less discretion. Whereas when the policy is less professionally feasible and the motives behind the signal are perceived as less genuine, the agency response is likely to have low compliance guidelines and more discretion. In other words, when political principals do not have genuine interest in their own policies, agencies pick up on this (Ingram & Smith, 1993; Schneider & Ingram, 1997) and are less likely to create rigid, formalized policies because it takes time, effort



and resources. Agency actors are less likely to put the time and effort into creating meaningful implementation guidelines because they recognize that political principals are less interested in the policies.

This theory is supported in the literature. In their explanation of policy design, Schneider and Ingram (1993; 1997) suggest that elected officials are often engaged in symbolic policymaking. In these cases, they leave it entirely up to the bureaucracy to create the implementation strategies that are often the crux of policy success (Pressman & Wildavsky, 1984). Agencies may respond disingenuously to what is perceived to be a disingenuous signal because, as long as the response gives the appearance of responsiveness, that is all political principals care about (Ingram & Smith, 1993; Schneider & Sidney, 2009; Schneider & Ingram, 1997).

In creating the 1985 rules, the agency compliance guidelines and implementation discretion were aimed at facilitating meaningful implementation of the MBE program and corresponding goals. In 1991, however, the agency compliance guidelines and implementation discretion were loose compared to the program's expectations. DMS's guidelines did not keep up with the program changes. In other words, DMS did not really give agencies the guidance to successfully implement the 1991 policy. The case is somewhat different for the response to the Executive Order because no rulemaking took place. This provided the most discretion of all three agency responses examined here. The nature of the discretion is different, however; DMS was entirely absent in the implementation process and agencies were left to their own devices. The primary source they had for guiding their behavior was the Governor's Office.

Thus, there is a decision tree for agency response. The first decision comes at the point of the political signal. Are the signal(s) in concurrence or conflicting? If they are conflicting, then no rulemaking occurs. If they are in concurrence, the second decision evaluates the political signal. Is the policy motivation behind the signal genuine? This is informed by the political payoffs from supporting the signal, contextual factors and feasibility of the policy that is embedded in the signal. If the policy motivation is genuine then compliance guidelines are specific and discretion is limited. If the policy motivation is not genuine, then compliance guidelines are non-specific and discretion is heightened.

Overall, the story explained in this chapter is consistent with the quantitative conclusions that were reached in the earlier chapter. Indeed, agencies do formally respond to signals. However, they exercise discretion in their responses and are cautious in the face of uncertainty.

In this case, conflicting signals represent that uncertainty. Furthermore, agency actors develop their own judgments of signals and these judgments affect how they respond. In responding, compliance guidelines are likely to be less specific and with heightened implementation discretion when political motivation appears to be disingenuous and more specific with more discretion when political motivation appears to be genuine. Agency actors play an important role in the policymaking process because although legislation determines the bounds of policy, the specific implementation procedures that shape policy success rely on administrative decision-making.

Before moving on the final chapter of this study, it is important to point out the significant contributions that the qualitative investigation makes to quantitative investigation in this study. The qualitative portion of this study complements the quantitative investigation in three different ways. First, it explores how formal political signals work to stimulate bureaucratic response. Bureaucrats recognize the genuineness of signals in developing rules and these rules affect implementation. In the latter two shifts, there was a clear recognition that the political signals were not genuine and therefore the nature of response was different. In other words, the qualitative examination in this chapter describes how bureaucrats make judgments about the seriousness of signals that are sent. It describes how not all signals are meant to lead to instrumental outcomes. Instead, some signals are politically motivated and symbolic. These types of signals shape the way in which bureaucrats craft and implement agency rules and policies. In other words, the way that bureaucrats characterize signals influences the nature of their response to these signals. It helps us understand the variation in the formal signals and responses that are analyzed in the quantitative investigation, in addition to the responses that the quantitative investigation cannot capture.

Second, it also describes how informal signals influence response and reinforce policy preferences. In monthly meetings with agency heads, purchasing directors and Governor Bush, interviewee stories suggest that informal signals were conveyed that strengthened the formal signal – the Executive Order. Bureaucrats judged the seriousness of the policy shifts by gauging the time and effort that Governor Bush exerted to increase MBE spending. Third, the qualitative investigation suggests that there is a larger story to be investigated in bureaucratic response. While the quantitative study provides an aerial view of how the political and agency environment influences formal response, it cannot capture the way that bureaucrats are actually implementing policy on the ground level. In other words, the interview data suggests that there is more to

response than is shown by the development of formal agency rules. It implies that bureaucrats negotiate policy implementation and compliance in informal ways.

**Table 6.1: Patterns Between Signals and Response**

Shift	Signals	Is the signal professionally "appropriate" or "feasible"?	Is the motivation genuine?	Rule Making	Agency Compliance Guidelines	Implementation Discretion
1985	Shared	Moderate	Yes	Yes	Specific	Lower
1991	Shared	No	No	Yes	Not specific	High
1999	Conflicting	No	No	No	N/A	N/A

## CHAPTER SEVEN

### IMPLICATIONS AND FUTURE RESEARCH

I conclude here in three separate sub-sections: (1) practical implications of the findings; (2) theoretical implications of the findings; and (3) limitations of the study and future research issues.

#### **Practical Implications**

With the significant expansion of government's responsibilities, the role that administrators have in policymaking has expanded exponentially. This expanded role is necessary because political officials cannot write detailed implementation instructions into every piece of legislation (Bowers, 1990; Calvert et al., 1989; Horn, 1995; Moe, 1990b). As it stands, elected officials have limited time, expertise and information processing capabilities that force them to rely on administrative agencies (Calvert et al., 1989; Horn, 1995; May et al., 2008; McCubbins, 1985; McCubbins et al., 1987; McCubbins et al., 1989b; Spence, 1997; Yackee, 2006). This study has investigated how administrative agencies respond to this reliance. The findings from both the quantitative and qualitative analyses suggest that agencies are responsive but also use their discretion in terms of how they respond. This has implications in terms of democratic accountability and the training of public administrators.

In electing politicians, we assume that they make the majority of our governance choices. We assume that they are proxies for us. However, as the quote by Cass Sustein at the beginning of this study suggests, the role of administrative agencies is somewhat at odds with this. These agencies are tasked with actually implementing the policies that citizens elect politicians to adopt. From the literature on street level bureaucracy (Lipsky, 1980) and implementation (Pressman & Wildavsky, 1984), we recognize that administrators have an enormous role in what these policies actually look like and how they affect citizens. This is why the study of bureaucratic response has so much practical importance. Unresponsive bureaucracies have the potential to undermine the democratic system.

The findings here support the idea that bureaucrats operate within a window of discretion. They are prompted by agency heads, statutes or other political directives to engage in rulemaking, but the nature of that rulemaking, timing and magnitude are *somewhat* outside of their control. As citizens and policymakers look ahead into the future of our democratic system,

it is important to keep an eye on the size of this window of discretion and the responsibilities that are incorporated therein.

The finding that public managers affect agency policymaking outcomes independent of elected officials suggests that more attention should be paid to how public administrators are trained. Although the politics-administration dichotomy has been dead for some time, the next step is recognizing how to practically deal with the policymaking roles that administrators have. This requires that public administration programs consider their role in the training and socialization of administrators as policymakers (Friedrich, Friedrich, & Mason, 2000; Wamsley, 1990). Some have suggested that one way to do this is to train administrators as active agents working in the public interest (Denhardt & Denhardt, 2000). Others assert that external constraints must be put on administrators to force them into particular compliance behaviors (Finer, 1949). These arguments on how to socialize administrators have been ongoing for the better part of five decades. Regardless of what the appropriate training is, the findings in this research suggest that these questions deserve additional discussion because administrators are not technocrats. They are active participants in shaping public policy and their training should reflect that.

The findings in this research have implications in terms of administrator training in another way. Very few public affairs and public administration schools are actively training students on the role that administrative rulemaking plays in the daily affairs of agencies. Both the qualitative and quantitative findings here suggest that administrative rules help agencies carry out policy and provide guidance to both public managers and external organizational stakeholders. As the administrative state continues its expansion, the rulemaking process will become even more important. Therefore, it would be advantageous for the institutions training the public administrators of tomorrow to develop curricula aimed at teaching students about operating under administrative constraints in addition to teaching them how to help shape these constraints in the rulemaking process.<sup>40</sup>

This research also has implications for the substantive area chosen for investigation here. Government purchasing and contracting-out have become critically important areas in contemporary public management (Frederickson & Frederickson, 2006; Milward & Provan,

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<sup>40</sup> All of the informants interviewed mentioned being involved in the rulemaking process to different extents. Some attended hearings in an effort to influence the rules that would constrain them while others were actually involved in submitting drafts of proposed rules.

2000; Terry, 2005). The findings here suggest that these rules are important through the entire stage of the contract and that they help managers overcome resistance to new contracting policies (e.g. minority business enterprise rules). As agencies develop more innovative ways to partner with the private sector for the delivery of goods and services, learning how to improve rules and policies for better outcomes will become a priority.

In addition to improving rules and policies, the results regarding the different patterns of rule change across contracting categories – purchasing special goods and purchasing from special groups – have important implications. Public agencies engage in many different types of contracting that make some transactions with the private sector more successful than others. The quantitative results here suggest that high magnitude changes to rules dealing with the purchase of special goods and purchasing from special persons are more difficult than changes to general rules. The qualitative results suggest that, one of the consequences of this is that the administrative rules do not always reflect what is going on within the agency. Therefore, different contracting and purchases may be governed by different forms of constraints. General, simpler purchases and contracting will be subject to formalized rules, whereas, the purchase of special goods or purchase from special groups may be subject to more informal or decentralized constraints. Moving forward, public managers and policymakers should consider this as they look at various systems of contract management and oversight. Paying attention to these constraints and their consequences is crucial to the appropriate stewardship of public dollars.

Overall, this study investigates two under-examined areas in public management – administrative policymaking and contracting-out. It should attract the attention of public managers and policymakers in addition to the institutions training and advising these actors.

### **Theoretical Implications**

This study has significant theoretical implications in two specific areas: the relationship between the bureaucracy and elected officials and the organization of attention for agency actors.

The findings in this study support a more nuanced perspective on the relationship between the bureaucracy and elected officials. Administrators are relevant to the agency policymaking process in a way that current studies on bureaucratic response have neglected. Even controlling for political signals, internal organizational dynamics and the path dependent nature of agency histories influence administrative outputs. Thus, political signals are only part of the story. This should encourage scholars of bureaucracy and administrative institutions to

allow the public management literature to influence their work. Furthermore, this will enable us to better articulate the behavioral assumptions and mechanisms that shape the behavior of agents. The findings here support the ideas that: (1) agents take their cues for response from political principals but alter the nature of their response according to a handful of both internal and external factors; and (2) the mechanism for influencing the nature of response comes from actor preferences to have heightened information, which helps to limit uncertainty and preserve discretion.

In looking to holistically move the bureaucratic response literature forward, we may be able to assume that political signals influence agency actors. This is not a novel supposition and there are a number of exceptionally well-developed theoretical and empirical studies to support this (Carpenter, 1996; Carpenter, 2002; Carpenter et al., 2010; Shipan, 2004; Wood & Waterman, 1991; Wood & Waterman, 1993, 1994). However, it is not enough to say that agencies are responsive or non-responsive to political signals because public agencies have a heightened awareness of the environments within which they operate. The question is: what influences what agency actors do with the discretion that they have after signals are sent?

The research here suggest (1) that controlling for the effects of institutional design shapes responses to signals – e.g. agency head appointment – and (2) that the contextual elements in different periods also alter response. Depending on the incentive structures for action that different institutions create, response will differ. In this case, when institutional design makes it more likely for high magnitude response, agency head appointment makes high magnitude response less likely. More needs to be known about the relationship between institutional regimes and political signaling.

The changing relationships between the variables during different time periods suggest that response is context driven. While this appears obvious, current studies have examined this only in the sense that they have looked at response under different agency heads. For example, Wood and Waterman (1993) look at distinctions in response under different EPA appointees. Theoretically, this literature could go much further because, in different time periods and contexts, the same signals can have different meanings. In this research, the analysis of the data from 1991-2010, included a series of governors who were focused on outcome-based management (e.g. Governors Jeb Bush and Charlie Crist). In other words, they were not particularly interested in how their policies were accomplished, but instead were focused on whether the outcomes that they desired were accomplished. The implication is that, they may

have cared less about whether rules were being made to implement policy but instead cared about whether the correct policy outcomes were being achieved. There is significant room for theoretical development in this area.

The results imply something else about context and political signals. The qualitative findings suggest that the governor is more than a source of political signals. The measurement choices in the quantitative analysis do not reflect this. However, the qualitative findings clearly suggest that the governor heavily influences the context of bureaucratic response and the nature of response. He or she can have direct influence in the agency and this has separate effects than when that influence originates with formal signals.

The role that Governor Bush played in the altering MBE policy was considerable. He sent a signal – the *One Florida* Executive Order; but his leadership style and heightened attention to MBE policy implementation suggests that governors are can also be a contextual consideration in examining response. Treating the governor’s role as a contextual factor in addition to a source of signaling is supported by the fact that other governors did not exert the control that Governor Bush did. Thus, my qualitative findings hint that, under different governors, my quantitative findings may have different meanings and effects.

The relationships between path dependency and response are also important here. When agencies are accustomed to patterns of response, they are often unable to alter these patterns to quickly or significantly respond to political signals. The basic path dependent nature of behavior makes political control of agencies this much more difficult. The control is superseded by basic organizational dynamics that are ingrained in administrative action over time. This suggests another reason why the nature of bureaucratic response to signals is more nuanced than the political control literature suggests. It is not that they are choosing to respond to political signals in a particular way, but it is that they cannot overcome the patterns of rulemaking behavior, institutional reliance and information processing that are embedded in their administrative structures.

In addition to the basic relationship between political principals and agency actors, the findings extend theories on the organization of agency attention. Current work in this area focuses on how attention prioritizes information (May et al., 2009; May et al., 2008) but it does not speak to the mechanisms behind that prioritization. The findings here suggest that the sourcing that organize agency attention matter because the mechanisms are different. And, different mechanisms result in distinct responses. This speaks to the argument made here about



the internal and external nature of organizational attention. This idea has profound effects in terms of how agencies implement management reforms that originate from inside versus outside of the agency. For example, will we find more robust, less cautious implementation of managerial reforms when the ideas and strategies for these reforms originate from inside the agency? And, what are the consequences of this for agency performance?

Sixty-five years ago, Simon (1947) suggested that the decision-making of administrative actors is tied up in sources of authority related to the structures and hierarchies of organizations. It was asserted that these structures and hierarchies bound cognition and prioritize decision-making. The theory on external and internal organizational attention explicated here can help develop these ideas.

### **Limitations**

There were a variety of limitations in this study that can be addressed by future research. First, this is a single state case study, which leads to questions about the external validity of the design. This limits the generalizability of the research in terms of applying it in different state contexts with different political institutions, political cultures and bureaucratic environments. However, since 46 out of 50 states have comparable centralized contracting rules (NASPO, 2009), and these rules have been chronicled through the legal database Lexis-Nexus (LexisNexis, 2010), a multi-state study is the next step. In conducting a multi-state study, one can more directly engage the question of whether different institutional designs affect bureaucratic response (i.e. Do states with full time legislatures have different patterns of response than states with part time legislatures?)

Second, another issue related to the external validity of the research design employed in this study is the choice of rules. Centralized contracting rules are cross-cutting regulations. They are regulations that apply across multiple policy areas and are binding of multiple agencies. As a result, they are more politically salient because they are binding on a greater number of stakeholders – private actors in addition to other agencies. With more stakeholders, there is greater preference divergence, which can create heightened uncertainty. Thus, rulemaking may exhibit a different pattern of change and agencies may respond differently. This is also the case for the subset of rules examined in the qualitative analyses. Minority preference rules have the potential to distribute public goods to some private actors over others. As a result, political

officials and external stakeholders will pay more attention to these rules and this also influences response. Therefore, one must be careful in generalizing the findings here to other policy areas.

Third, the complex nature of the model made it infeasible to produce the best analysis given the research question. The large proportion of zeros in the magnitude model could have been better dealt with using Bayesian techniques with zero-inflation estimation. This model, however, did not converge. The model used here is not incorrect – it just could be improved.

Fourth, the large amount of variation at level 2 in the models suggests that, in some cases, the magnitude analysis should have been conducted at the yearly level. While this may have improved the model, theoretically this is problematic because, the interview and archival data suggest that response to the independent variables identified here take significantly less time than a year.

Fifth, the measure of magnitude has some obvious limitations. The number of sentences is not necessarily a good proxy for responsiveness. Although this measure is used in the literature (March et al., 2000; van Witteloostuijn & de Jong, 2007, 2010), it is a quantitative not substantive magnitude measure. It is for this reason that the qualitative investigation, which measures something different, has particular value. However, the qualitative portion of this study cannot generate inferences to answer the question of substantive magnitude the way that large n analyses can. In the future, more content analysis of a randomly chosen set of rules would be useful in getting at the question of substantive magnitude. For example, Yackee (Yackee, 2003; Yackee, 2006) has used content analysis to examine the influence that interest groups have in the notice and comment process. In much the same way, content analysis could be conducted on a random sample of rules over time to determine the substantive magnitude of change that they experience over time.

Sixth, although the qualitative analysis conducted here introduces a new way to understand bureaucratic response in addition to exploring an understudied contracting area – minority business preferences – it has ontological limitations. The story that was told used the perspectives of high level purchasing professionals to examine the factors that prompt agency response. These actors are highly networked with those involved in DMS decision-making and, therefore, probably provided a reasonably accurate depiction of the factors influencing response. However, this is a significant limitation. In the future, I may gain access to these decision-makers at DMS, which will greatly inform this research. Additionally, the rule records on MBE

rulemaking activity have just been made available by the General Counsel's Office at DMS that may shed additional light on the decision-making that occurred during the three shifts.

Beyond future research to address these shortcomings, there are a number of important areas into which this research can be expanded. While the decision to contract-out has received quite a bit of attention in the literature, little is known about the institutions that govern this contracting. The study at hand examines these institutions. The results show that different types of contracting of rules – contracting with special persons or for special goods – have different patterns of development. This suggests that what is being contracted for should be treated differently in the literature. In the future, scholars should consider how political, economic and managerial factors differently affect contracting decisions. Furthermore, it is worthwhile to examine whether contracting institutions like administrative rules lead to different contracting outcomes in different areas.

In investigating the important shifts in contracting rules, the qualitative analysis only investigated the perceptions of agency actors. To fully understand the substantive magnitude of change, it is necessary to get the perspective of external organizational stakeholders – the contractors who are also governed by the administrative rules. Not only are these actors influenced by these administrative rules, but they can also influence these administrative rules in the notice and comment process. Without taking their role into account, the story of the development and substantive magnitude of rule change is not complete.

In conclusion, this research contributes both practically and theoretically to three different areas. Administrative rulemaking, the relationship between the bureaucracy and elected officials and the development of contracting institutions are all areas that need additional attention. As the role of the administrative state expands, research in these areas will become increasingly important.

**APPENDIX A**

**IRB APPROVAL LETTER**

APPROVAL MEMORANDUM

Date: 10/18/2011

To: Jessica Terman

Address: 637 Bellamy Building, Tallahassee, FL 32306

Dept.: PUBLIC ADMINISTRATION AND POLICY

From: Thomas L. Jacobson, Chair

Re: Use of Human Subjects in Research

Rulemaking as a Form of Bureaucratic Response: The Effects of Organizational Attention, Path Dependency and Institutional Design on Contracting Rules

The application that you submitted to this office in regard to the use of human subjects in the proposal referenced above have been reviewed by the Secretary, the Chair, and one member of the Human Subjects Committee. Your project is determined to be **Expedited** per 45 CFR Â§ 46.110(7) and has been approved by an expedited review process.

The Human Subjects Committee has not evaluated your proposal for scientific merit, except to weigh the risk to the human participants and the aspects of the proposal related to potential risk and benefit. This approval does not replace any departmental or other approvals, which may be required.

If you submitted a proposed consent form with your application, the approved stamped consent form is attached to this approval notice. Only the stamped version of the consent form may be used in recruiting research subjects.

If the project has not been completed by 10/15/2012 you must request a renewal of approval for continuation of the project. As a courtesy, a renewal notice will be sent to you prior to your

expiration date; however, it is your responsibility as the Principal Investigator to timely request renewal of your approval from the Committee.

You are advised that any change in protocol for this project must be reviewed and approved by the Committee prior to implementation of the proposed change in the protocol. A protocol change/amendment form is required to be submitted for approval by the Committee. In addition, federal regulations require that the Principal Investigator promptly report, in writing any unanticipated problems or adverse events involving risks to research subjects or others.

By copy of this memorandum, the Chair of your department and/or your major professor is reminded that he/she is responsible for being informed concerning research projects involving human subjects in the department, and should review protocols as often as needed to insure that the project is being conducted in compliance with our institution and with DHHS regulations.

This institution has an Assurance on file with the Office for Human Research Protection. The Assurance Number is FWA00000168/IRB number IRB00000446.

Cc: **Kaifeng Yang, Advisor**

HSC No. **2011.6932**

**APPENDIX B**

**INFORMED CONSENT FORM**

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## INFORMED CONSENT FORM

**Title of Research: Rulemaking as a Form of Bureaucratic Response: The Effects of Organizational Attention, Path Dependency and Institutional Design on Contracting Rules**

**Principal Investigator:** Jessica Terman, MPA

I, \_\_\_\_\_, being 18 years of age or older freely and voluntarily and without undue inducement or any element of force, fraud, deceit, duress, or other form of coercion, consent to be a participant in the above research project of Jessica Terman, a doctoral candidate at Florida State University supervised by Dr. Kaifeng Yang. Listed below are the procedures to be followed in this study and the measures that will be taken to ensure confidentiality, to the extent allowed by law, of the information obtained.

**Purpose of the Research:** This project is being conducted by Jessica Terman who is being trained by Dr. Kaifeng Yang, Ph.D., Associate Professor and Ph.D. Director in the Askew School of Public Administration and Policy at Florida State. I understand that the purpose of this study is to understand the factors that affect changes in administrative purchasing rules in the State of Florida. I will receive no pecuniary benefit by participating in this study and will not experience any risks greater than those ordinarily encountered in daily life.

**Voluntary Participation:** I understand that involvement in this study is entirely voluntary. I may discontinue participation at any point in which I choose. There is no penalty for nonparticipation.

**Procedures for the research:** My participation in this research involves an interview lasting approximately one hour. The scope of this interview will be related to my experiences with purchasing rules and policies in Florida. If I have agreed, a digital audio recording of this interview will be made. This digital audio recording will be transcribed. Once the audio recording is transcribed, it will be destroyed.

The Principal Investigator is the only person who will know my identity. The Principal Investigator is the only person participating in data collection. The data, as it is being collected, is not anonymous but it is confidential to the extent allowable by law. The names associated with the interviews will be removed by the Principal Investigator. No names will be associated with the audio recordings of the interviews and anything connecting me to my responses in the interview will be removed. At no time will anyone other than the Principal Investigator have



access to my interview responses. All documents, including this consent form, will be kept in a locked file cabinet separate from the interview transcriptions. Any hard copies of interview transcriptions will be kept in a separate location also in a locked file cabinet. Electronic copies of the transcriptions will be kept in a password safe and encrypted electronic file on a segment of the computer from which there is no internet access.

If I have questions about my rights as a participant in this study, or if I feel I have been placed at risk because of my participation, I may contact the FSU Human Subjects Committee, Institutional Review Board, through the FSU Office of the Vice President for Research at (850) 644-8633. If I have any questions about this study or any aspect of this research, I am encouraged to contact the PI or the professor supervising her research, Dr. Kaifeng Yang.

Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

Jessica Terman, MPA Florida State University Askew School of Public Administration and Policy 637 Bellamy Tallahassee, FL 32306	Kaifeng Yang, PhD Florida State University Askew School of Public Administration and Policy 637 Bellamy Tallahassee, FL 32306
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**APPENDIX C**

**INTERVIEW QUESTIONS**

## **Jessica Terman IRB Application September 2011**

### **Interviews with Former or Present Employees with experience in Centralized State Purchasing**

1. What is your position?
2. How long have you been in your position?
3. How long have you been employed with the State of Florida?
4. How would you describe the patterns of change in purchasing rules at DMS?
5. What factors do you think affect these patterns?
6. Can you give me examples?
7. Can you identify times when rulemaking changed drastically? By drastically, I mean when the pattern of purchasing rulemaking changed overall?
8. The Joint Administrative Procedures Committee (JAPC) clearly affects these patterns as do changes to the Administrative Procedures Act. What significant or high magnitude changes to the Florida APA would you identify? By high magnitude, I mean, what you would consider important departures from previous policies that affected rulemaking?
9. Who do you think has benefitted from these changes?
10. Who do you think has been adversely affected by these changes?
11. How does DMS monitor JPAC policy changes and the APA?
12. Can you give me examples?
13. What are some examples of how the DMS Purchasing Division has had to adjust because of these changes?
14. What are other examples of legislative or political changes that have affected rulemaking patterns and the rulemaking process in purchasing?
15. Please explain.
16. What are examples of organizational or agency-related changes that have affected rulemaking patterns, the rulemaking process and your work in purchasing?
17. What effect have reorganizations at DMS had on purchasing rulemaking?
18. Please explain

19. What reorganizations or restructuring efforts would you identify as being high magnitude or having a large impact on purchasing rulemaking efforts? By high magnitude, I mean, what you would consider important departures from previous policies?
20. How have minority preference purchasing rules changed during your tenure in Florida purchasing?
21. What significant or high magnitude changes to the minority preference purchasing rules would you identify? By high magnitude, I mean, what you would consider important departures from previous policies?
22. What factors account for those changes?
23. Who benefitted most from these changes?
24. Who do you think has been most adversely affected by these changes?
25. How have minority preference purchasing policies changed as a result of executive and legislative action during your tenure at DMS?
26. Of these executive and legislative changes, what significant or high magnitude changes would you identify? By high magnitude, I mean, what you would consider important departures from previous policies?
27. If any, what formal administrative rules or policies were adopted to reflect these changes?
28. Can you give me examples?
29. When were formal rules not adopted to reflect these changes?
30. Please explain.

### **Interviews with Former or Present Employees with Experience in Departmental Purchasing**

1. What is your position?
2. How long have you been in your position?
3. How long have you been employed with the State of Florida?
4. How have minority preference purchasing rules changed during your tenure in Florida purchasing?
5. What would you identify as the most significant or high magnitude changes? By high magnitude, I mean, what you would consider important departures from previous policies?

6. What factors account for those changes?
7. Who benefitted most from these changes?
8. Who has been most adversely affected by these changes?
9. How have minority preference purchasing policies changed through executive and legislative action during your tenure at DMS?
10. Of these executive and legislative changes, what significant or high magnitude changes would you identify? By high magnitude, I mean, what you would consider important departures from previous policies?
11. How did these changes affect purchasing practices within the agency?
12. Can you give me examples?
13. If any, what formal rules or policies were adopted at DMS or departmentally to reflect these changes?
14. Can you give me examples?
15. When were formal rules not adopted at DMS or departmentally to reflect these changes?
16. Please explain.
17. Over time, who are the political groups or interested parties involved in minority preference purchasing policies? Are there any patterns you would identify?
18. Over time, which groups have benefitted from changes in minority preference purchasing? Are there any patterns you would identify?
19. Please explain.
20. Over time, which groups have been adversely affected by these changes?
21. Please explain.

**APPENDIX D**  
**DATA CODEBOOK**

<b>Data Codebook</b>				
<b>Variable</b>	<b>Source</b>	<b>Operationalization</b>	<b>Coding</b>	<b>Analysis Level</b>
<b>Institutional Design</b>				
1991 APA	Interviews APA archival data collection	July 1991-Dec.2010	(0,1)	Quarter
1996 APA	Interviews APA archival data collection	July 1996-Dec. 2010	(0,1)	Quarter
<b>Path Dependency</b>				
Previous Rule Changes	Florida Administrative Weeklies	Previous amendments divided by number of quarters the rule has existed	Interval	Quarter
Rule Age	Florida Administrative Weeklies	Number of quarters the rule has existed	Interval	Quarter
<b>Externally Organized Attention</b>				
<b>External Issue Saliency</b>				
Rules for Special Goods	Interviews Florida Administrative Weeklies	Rules identified through content analysis and interviews as affecting the purchase of special goods	(0,1), general rules as the reference category	Rule
Rules for Special Groups	Interviews Florida Administrative Weeklies	Rules identified through content analysis and interviews as affecting purchasing from special groups	(0,1), general rules as the reference category	Rule
<b>External Focusing Events</b>				
Administrative Hearings	Florida Department of Administrative Hearings	Number of final orders issued in a quarter dealing with purchasing	Interval	Quarter
<b>Political Uncertainty</b>				
Split Partisanship	Book of States	Split partisan control of either house in the Florida legislature or the governorship	(0,1)	Quarter
Election Year	Florida Department of State	Fiscal year surrounding the election year	(0,1)	Year
<b>Data Codebook – Continued</b>				
<b>Variable</b>	<b>Source</b>	<b>Operationalization</b>	<b>Coding</b>	<b>Analysis</b>

				Level
<b>Internally Organized Attention</b>				
<b>Internal Issue Salience</b>				
Percentage Purchasing Budget	Laws of Florida	Proportion of DMS budget dedicated to purchasing	Interval	Year
Percentage Purchasing Employees	Laws of Florida	Proportion of DMS personnel dedicated to purchasing	Interval	Year
<b>Internal Focusing Events</b>				
Ethics Opinions		Number of ethics opinions issued in a given quarter dealing with purchasing	Interval	Quarter
<b>Control Variables</b>				
<b>Political Signals</b>				
Statutory Adoption	Laws of Florida	Number of statutory sections governing purchasing rules that became effective in a given quarter	Interval	Quarter
New Agency Head	Florida Statute	First quarter and two following quarters when a new agency head was appointed	(0,1)	Quarter
Purchasing Budget Shifts	Laws of Florida		Interval	Year
<b>Agency Growth</b>				
Agency Budget	Laws of Florida	Size of DMS budget	Interval	Year
Agency Employees	Laws of Florida	Number of DMS employees	Interval	Year
<b>Rule Characteristics</b>				
Rule Size	Florida Administrative Weekly	Number of sentences in the rule proposed in a given quarter	Interval	Quarter
<b>Dependent Variables</b>				
Magnitude	Florida Administrative Weekly	Absolute value number of sentences added or subtracted from a given rule	Interval	Quarter



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**Data Codebook – Continued**

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<b>Variable</b>	<b>Source</b>	<b>Operationalization</b>	<b>Coding</b>	<b>Analysis Level</b>
Timeliness	Florida Administrative Weekly	New rule is proposed, rule is amended, transferred or repealed	Interval	Quarter

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**APPENDIX E**  
**DATA SEARCH TERMS**

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**Data Search Terms**

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	<b>Search Term</b>		<b>Source</b>
<b>Administrative Hearings</b> (External Issue Salience)	“Bid” hearings “Delinquent vendor” hearings “Purchasing” hearings	Florida Division of Administrative Hearings	<a href="http://www.doah.state.fl.us/ALJ/">http://www.doah.state.fl.us/ALJ/</a>
<b>Ethics Opinions</b> (Internal Issue Salience)	“Contracting” + “state worker” “Purchasing agent” + “state worker” “Doing business with” + “state worker”	Florida Commission on Ethics	<a href="http://www.ethics.state.fl.us/">http://www.ethics.state.fl.us/</a>

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**APPENDIX F**  
**CORRELATION MATRICES**

**Correlation Matrix: 1975-2010**

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
1. Previous Response																	
2. Rule Age	.36																
3. Special Goods Rules	-.288	-.147															
4. Special Person Rules	-.135	-.291	-.499														
5. General Rules	.43	.426	-.597	-.398													
6. Admin Hearings	.078	-.077	.039	-.015	-.027												
7. Split Partisanship	.03	.001	-.029	.102	-.064	-.15											
8. Election Year Proportion	.013	.028	-.000	.009	-.008	.003	.103										
9. Purchasing Budget Proportion	.058	.102	-.145	.1	.066	.14	-.046	-.074									
10. Purchasing Staff	.122	.092	.162	.189	-.004	.131	.467	.046	.629								
11. Ethics Opinions	.033	-.085	.045	-.053	.002	.088	-.054	-.116	-.024	-.040							
12. Statutory Adoption	.022	.038	-.016	.034	-.015	-.084	.013	.123	-.011	.042	.011						
13. New Agency Head	-.081	-.048	.039	-.062	.017	-.025	.001	.112	-.051	.013	-.053	-.081					
14. Purchasing Budget Shifts	.017	.026	-.052	.04	.017	-.092	.082	.032	.298	.228	-.002	.017	.003				
15. Agency Budget	.059	.343	-.239	.224	.046	-.352	.081	.061	.111	.134	-.214	.059	-.063	.126			
16. Agency Employees	.125	.161	-.129	.266	-.109	.096	.357	.033	-.108	.367	-.123	.125	-.026	.002	.629		
17. Magnitude	-.02	.011	-.052	-.012	.066	.004	.006	.004	.003	.01	.015	-.02	.014	-.011	.003	.01	
18. Timing	-.023	.012	.084	-.043	.129	-.007	.021	.022	.002	.028	.051	-.023	.043	-.022	.002	.028	.395

**Correlation Matrix: 1975-1996**

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
1. Previous Response																	
2. Rule Age	.292																
3. Special Goods Rules	-.418	-.452															
4. Special Persons Rules	.113	-.264	-.451														
5. General Rules	.363	.688	-.728	-.284													
6. Admin Hearings	.049	.113	-.088	.149	-.020												
7. Split Partisanship	.044	.056	-.036	.059	-.007	-.101											
8. Election Year	.022	.046	-.014	.037	-.015	-.002	.139										
9. Proportion Purchasing Budget	.169	.138	-.198	.243	.026	.328	.006	.553									
10. Proportion Purchasing Staff	.211	.244	-.250	.333	.013	.319	.212	.804	.739								
11. Ethics Opinions	.013	-.031	-.005	-.026	.025	-.015	-.055	-.067	.029	-.009							
12. Statutory Adoption	.028	.045	-.028	.044	-.003	-.107	-.038	.156	.055	.103	.098						
13. New Agency Head	-.042	-.03	.028	-.064	.019	-.071	-.100	-.147	-.117	-.095	-.022	-.067					
14. Purchasing Budget Shifts	.053	.008	-.032	-.015	.046	.118	-.124	-.004	.248	.334	-.007	.003	.109				
15. Agency Budget	.156	.316	-.209	.343	-.038	.294	.214	.907	.197	.654	-.072	.154	-.097	-.041			
16. Agency Employees	.083	.266	-.148	.308	-.077	.345	.008	.806	.248	.503	-.153	.118	.06	.019	.839		
17. Magnitude	.108	.048	-.077	.010	.075	.011	.078	.029	-.018	.023	.005	-.034	.033	-.024	.023	.006	
18. Timing	.224	.091	-.138	.006	.144	-.074	.006	.006	.026	.021	.036	-.057	.066	.007	-.017	-.045	.459

**Correlation Matrix: 1991-2010**

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
1. Previous Response																	
2. Rule Age	.504																
3. Special Goods Rules	-.242	.097															
4. Special Persons Rules	-.277	-.46	-.522														
5. General Rules	.531	.373	-.483	-.495													
6. Admin Hearings	.105	-.069	.055	-.006	-.050												
7. Split Partisanship	.036	-.094	.041	.037	-.08	-.179											
8. Election Year Proportion	-.013	.028	.000	.003	-.003	.069	.055										
9. Purchasing Budget	-.052	.032	-.058	-.025	.085	.022	-.144	-.061									
10. Proportion Purchasing Staff	.059	-.115	.032	.002	-.034	.125	.507	.034	.515								
11. Ethics Opinions	.048	-.039	.026	.003	-.03	.230	.032	-.247	-.056	.006							
12. Statutory Adoption	.022	.004	.021	.000	.021	-.099	.012	.1497	-.073	-.052	-.107						
13. New Agency Head	.012	-.027	.002	-.007	.005	.013	.054	.2283	.114	.246	-.116	-.094					
14. Purchasing Budget Shifts	-.026	-.023	-.019	-.002	.022	-.112	.064	.056	.357	.228	.032	.007	.019				
15. Agency Budget	-.177	.168	-.092	-.027	.121	-.514	-.146	.152	-.012	-.381	-.192	-.032	.011	.032			
16. Agency Employees	.131	-.134	.09	.076	-.169	.353	.319	.062	-.45	.177	.159	.108	.041	-.143	-.584		
17. Magnitude	.078	.016	-.049	-.014	.064	.02	-.017	-.019	-.008	-.001	.016	-.010	-.003	-.008	-.05	.031	
18. Timing	.187	.018	-.086	-.024	.112	.036	.05	-.4	.00	.083	.076	.028	.015	-.013	-.139	.113	.346

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## **BIOGRAPHICAL SKETCH**

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