

Michael Asimow,  
*Interim-Final Rules: Making Haste Slowly*

51 Admin. L. Rev. 703 (1999)

Abstract by Stefanie Birbrower

This piece discusses "interim-final rules," which are rules that have been adopted by federal agencies without having gone through the normal rulemaking requirements set out in the Administrative Procedure Act. The "good cause" exception, which allows the agency to surpass the cumbersome prior notice and public comment process, applies when normal procedures are impracticable, unnecessary, or not in the public interest. A good-cause claim requires the agency demonstrate the exigent circumstances that necessitated the use of an interim-final rule. Under the good-cause exception, agencies are not legally required to solicit comment after the enactment. But the author proposes that such a requirement would increase the chance that the rule will hold up against judicial scrutiny. Furthermore, the Article suggests that agencies should be required to use post-effective comment procedures before interim-final rules are finalized. The Article concludes by criticizing the popular notion that agencies should be required to finalize interim-final rules within a specified time period, and emphasizes the importance of agencies finalizing rules as quickly as possible.