

Ronald M. Levin,
More on Direct Final Rulemaking: Streamlining, Not Corner-Cutting

51 Admin. L. Rev. 757 (1999)

Abstract by Tricia Choe

This Article responds to concerns surrounding the direct final rulemaking process made by Professor Lars Noah in his article "Doubts About Direct Final Rulemaking." Professor Noah's Article provides a skeptical assessment of the direct final rulemaking process.

This Article responds to Professor Noah's concern about the substantial compliance with section 553 of the Administrative Procedure Act. The Article addresses concerns about an agency's adequate consideration of comments - particularly adverse comments - and a court's ability to perform its substantive review functions when the direct final rulemaking process does not produce detailed records. Furthermore, the author responds to Professor Noah's concern about the "good cause" exemption of section 553(b)(B). After reviewing Professor Noah's concerns, however, the author concludes that the recommendations made by the ACUS, supporting a simplified methods of promulgating administrative regulations, such as the direct final rulemaking process, were basically correct.