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Document (1)

1. *Shepard's*®: 5 U.S.C. sec. 553 (a) (2)

Client/Matter: -None-

Requested Categories:

History - Requested


Citing Decisions - 'Narrowed by' View

Other Citing Sources - None applied






Shepard's®: Report Content

History:Requested

 **Citing Decisions:**Narrowed By:Analysis:Positive

Other Citing Sources:None Applied

Shepard's®: Cited by the court as [5 U.S.C. sec. 553 \(a\) \(2\)](#)

 [Pending Legislation](#)  [Comprehensive Report](#)
[Subsection reports by specific court citation](#)

History (1)

1. Added Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 383.

Citing Decisions (4)

Narrow by: Analysis: Positive

Analysis: Followed by (3), Constitutional by (1), "Cited by" (1)

6th Circuit - U.S. District Courts

1. [Sherwood v. TVA](#), 925 F. Supp. 2d 906, 2013 U.S. Dist. LEXIS 35600 ▲

G Followed by: 925 F. Supp. 2d 906 p.920

LB Cited by: 925 F. Supp. 2d 906 p.919

... Plaintiff landowners alleged that a vegetation management policy adopted by defendant, the Tennessee Valley Authority, exceeded the scope and purpose of a transmission line easement. The court held that defendant's proposed clear-cutting of trees did not exceed the scope and purpose of the easement because the easement granted defendant the perpetual right to clear or remove brush, timber, and trees. Under **5 U.S.C.S. § 553(a)(2)**, defendant was not required to provide notice and an opportunity ...

Court: Eastern Dist. Tenn. | **Date:** February 19, 2013

7th Circuit - U.S. District Courts

2. [Rodriguez v. Swank](#), 318 F. Supp. 289, 1970 U.S. Dist. LEXIS 10145, 14 Fed. R. Serv. 2d (Callaghan) 1076 ▲

G Constitutional by: 318 F. Supp. 289 p.291

... **5 U.S.C. § 553(a)(2)**. And if it is defendant's claim that the regulations were not published as required by 5 U.S.C. § 552(a)(1)(D), this fact cannot avail him for he concedes in his brief that he had actual notice thereof. The regulations are therefore binding pursuant to the terms of § 552(a)(1): "Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to ...

Court: Northern Dist. Ill. | **Date:** September 23, 1970

D.C. Circuit - U.S. District Court

3. [Alphapointe v. VA](#), 2020 U.S. Dist. LEXIS 134310 **A**

G Followed by: 2020 U.S. Dist. LEXIS 134310

... With respect to Count I, the court determined that "Plaintiffs . . . failed to show that the 2019 Class Deviation . . . is an arbitrary and capricious reading of PDS Consultants ." Id. at 10 . On Count II, the court held that the 2019 Class deviation was likely exempt from notice-and-comment procedures pursuant to the "proprietary rules exception" under **5 U.S.C. § 553(a)(2)** . Id. at 11 . Federal Defendants and PDS now move to dismiss Plaintiff's Complaint under Federal Rules 12(b)(6) ...

Court: District of D.C. | **Date:** July 29, 2020

4. [Munitions Carriers Conf. v. United States](#), 932 F. Supp. 334, 1996 U.S. Dist. LEXIS 8716, 41 Cont. Cas. Fed. (CCH) P77016 ●

G Followed by: 932 F. Supp. 334 p.336

... , provisions of the Administrative Procedure Act ("APA"), which require agencies to provide a notice

Shepard's®: 5 U.S.C. sec. 553 (a) (2)

and comment period for substantive rules. However, Agency Rulemaking, Informal Rulemaking HN2 Matters relating to public property, loans, grants, benefits, or contracts are exempt from the requirements of § 553 of the Administrative Procedure Act, **5 U.S.C.S. § 553(a)(2)** . matters "relating to . . . public property, loans, grants, benefits, or contracts" are exempt from the requirements of § ...

Court: District of D.C. | **Date:** June 19, 1996

Other Citing Sources: (149)

Other Citations

1. [DAB No. 706, 1985 HHS DAB LEXIS 778](#)

... means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. . . . Section 553(b) provides that the notice and comment procedure does not apply to "interpretative rules, general statements of (8) policy, or rules of agency organization, procedure, or practice;. . ." 4 We also note that **5 U.S.C. 553(a)(2)** ...

Content: Other Citations | **Date:** November 21, 1985

2. [DAB No. 573, 1984 HHS DAB LEXIS 1044](#)

... by a cost-of-living-adjustment factor of 1.25. 45 Fed. Reg., 58704 -05 (September 4, 1980); Id. at 48030-31 . Thus, the State benefitted from the 1981 changes. The Administrative Procedure Act exempts matters relating to grants from its notice-and-comment requirements. **5 U.S.C. 553(a)(2)** . However, the Department of Health and Human Services voluntarily subjects itself to the public participation procedures of 5 U.S.C. 553 , except where the Department makes a good cause finding that such ...

Content: Other Citations | **Date:** September 19, 1984

3. [DAB No. 401, 1983 HHS DAB LEXIS 944](#)

... . DHR Reply Brief, p. 10. Under APA section 552(a), publication is not required to bind a party to an Agency policy where (7) there is actual notice of the policy. 3 We note also that matters related to grants are generally exempted from the APA's notice and comment requirements. **5 U.S.C. 553 (a)(2)** . The Department chose to comply with the public participation provisions in See, 36 Fed. Reg. 2532 (1971) . . . DHR even appeared to admit in its early briefs that the Agency's communication ...

Content: Other Citations | **Date:** March 30, 1983

4. [2 Law of Federal Oil and Gas Leases @ 19.04](#)

... (6th Cir. 1997) ; Cambridge Mining Co., 74 IBLA 26 , 28–29 , GFS(MIN) 158(1983). Under the APA, these rulemaking standards do not apply to any "matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 11 **5 U.S.C. § 553(a)(2)** . The exact meaning of the public property exception is not clear from the legislative history; however, the U.S. Department of Justice has interpreted the exception as "intended generally to cover the 'proprietary' ...

Content: Other Citations

5. [11 Immigration Law and Procedure 83 FR 8321](#)

... As this rule is the finalization of an interim final rule, further request for comment is not required. Alternately, comment is unnecessary because this final rule is a rule of management or personnel as well as a rule of agency organization, procedure, or practice. See **5 U.S.C. 553(a)(2)** , (b)(A) . For the same reasons, this rule is not subject to a 30-day delay in effective date. See **5 U.S.C. 553(a)(2)** , (d) . B.

Regulatory Flexibility Act Under the Regulatory Flexibility Act (RFA), “[w]henever ...

Content: Other Citations

6. **11 Immigration Law and Procedure 80 FR 75631**

... A. Inapplicability of Public Notice and Delayed Effective Date Requirements Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), rulemaking generally requires prior notice and comment, and a 30-day delayed effective date, subject to specified exceptions. Pursuant to **5 U.S.C. 553(a)(2)** , matters relating to agency management or personnel are excepted from the requirements of section 553. This rule expands the San Ysidro Class A port of entry to include the CBX facility. ...

Content: Other Citations

7. **11 Immigration Law and Procedure 73 FR 41256**

... its discretionary reconsideration by the Bureau of Consular Affairs of a finding of loss, and as such this review is not intended to serve as a formal “appeal procedure” that may affect the running of the statutory statute of limitations contained in 8 U.S.C. 1503 . Regulatory Findings Administrative Procedure Act The Department is publishing this rule as an interim final rule, with 60 days for post-promulgation public comments, in accordance with the exemption contained in **5 U.S.C. 553(a)(2)** ...

Content: Other Citations

8. **11 Immigration Law and Procedure 73 FR 62196**

... rule was discussed in detail in Public Notice 6298, as were the Department’s reasons for making the changes to the regulations. There were no comments to the interim final rule published July 18, 2008. The Department is now promulgating a final rule with no changes. Regulatory Findings Administrative Procedure Act The Department published this rule as an interim final rule on July 18, 2008, with 60 days for post-promulgation comment, in accordance with the exemption contained in **5 U.S.C. 553(a)(2)** ...

Content: Other Citations

9. **11 Immigration Law and Procedure 72 FR 53673**

... the appointment of an anti-fraud officer, and new general provisions relating to training, support, and review of the quality of the adjudicatory process, reflecting several of the directives contained in the Attorney General’s memorandum of August 9, 2006. All of these changes are a matter of agency organization, management, or personnel and do not require prior [[Page 53676]] notice and comment, and accordingly they are being included in this final rule relating to EOIR. See **5 U.S.C. 553(a)(2)** ...

Content: Other Citations

Annotated Statutes

10. **5 U.S.C. sec. 500**

... Annotations: Judicial relief against, or review of, actions or orders of Occupational Safety and Health Review Commission under Occupational Safety and Health Act of 1970 (29 USCS §§ 651 et seq.). 22 ALR Fed 508 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act’s rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . Procedural due process requirements ...

Content: Statutes

11. **5 U.S.C. sec. 551**

...), providing that Act does not apply to working conditions of employees with respect to which other federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. 40 ALR Fed 147 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR ...

Content: Statutes

12. **5 U.S.C. sec. 552a**

... 28 USCS § 2112(b) and Rule 16(a) of Federal Rules of Appellate Procedure. 32 ALR Fed 648. Applicability of Administrative Procedure Act (5 USCS §§ 551 et seq.) to federal prison disciplinary proceedings. 39 ALR Fed 808 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . Right under Federal ...

Content: Statutes

13. **5 U.S.C. sec. 554**

...), which allows any party aggrieved by Federal Reserve Board order under Act to obtain judicial review. 36 ALR Fed 349 . Applicability of Administrative Procedure Act (5 USCS §§ 551 et seq.) to federal prison disciplinary proceedings. 39 ALR Fed 808 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR ...

Content: Statutes

14. **5 U.S.C. sec. 555**

...), which allows any party aggrieved by Federal Reserve Board order under Act to obtain judicial review. 36 ALR Fed 349 . Applicability of Administrative Procedure Act (5 USCS §§ 551 et seq.) to federal prison disciplinary procedures. 39 ALR Fed 808 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR ...

Content: Statutes

15. **5 U.S.C. sec. 557**

...), which allows any party aggrieved by Federal Reserve Board order under Act to obtain judicial review. 36 ALR Fed 349 . Applicability of Administrative Procedure Act (5 USCS §§ 551 et seq.) to federal prison disciplinary proceedings. 39 ALR Fed 808 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR ...

Content: Statutes

16. **5 U.S.C. sec. 591**

... 26 Admin L Rev 259 , Summer 1974 . Sohn. Can't the PTO Get a Little Respect? 26 Berkeley Tech LJ 1603 , Fall 2011 . Cortez. Adverse Publicity by Administrative Agencies in the Internet Era. 2011 BYUL Rev 1371, 2011. Annotations: Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . Economic feasibility ...

Content: Statutes

17. **5 U.S.C. sec. 706**

... because it does not involve agency action taken pursuant to Administrative Procedure Act's provisions regarding rule making or public adjudicatory hearings, and thus are not subject to 5 USCS §§ 556 , 557 , or actions in which agency hearing is mandated by statute (**5 USCS §§ 553(a)(2)** , 554(a)(2)). Miller v. United States, 438 F. Supp. 514 , 1977 U.S. Dist. LEXIS 13555 (E.D. Pa. 1977) . Judicial review of administrative actions in civilian pay areas is limited, but in all cases where judicial ...

Content: Statutes

18. **7 U.S.C. sec. 927**

... deny a loan or advance to, or take any other adverse action against, an applicant for, or a borrower of, a telephone loan under this Act for any reason that is not based on a rule, regulation, bulletin, or other written policy standard that has not been published pursuant to **section 553 of title 5, United States Code** . HISTORY; ANCILLARY LAWS AND DIRECTIVES References in text: Effective date of section: Amendment Notes 1994. 2018. References in text: "This Act", referred to in this section, is ...

Content: Statutes

19. **7 U.S.C. sec. 944a**

Content: Statutes

20. **7 U.S.C. sec. 1508**

... et seq.). Rainbow Valley Citrus Corp. v. Federal Crop Ins. Corp., 506 F.2d 467 (9th Cir. 1974) . — Hearing on reclassification 10. Decision to reclassify farm area as uninsurable crop-wise, because of its poor risk under 7 USCS § 1508 , is exempt under **5 USCS § 553(a)(2)** from hearing requirement. Rainbow Valley Citrus Corp. v. Federal Crop Ins. Corp., 506 F.2d 467 (9th Cir. 1974) . Definitions 11. A farmer is a "producer" of agricultural commodities under 7 USCS § 1508 if he plants and ...

Content: Statutes

21. **20 U.S.C. sec. 9581**

Content: Statutes

22. **28 U.S.C. sec. 2112**

...), so as to excuse failure to urge objection before NLRB. 37 ALR Fed 742 . Jurisdiction of United States Courts of Appeals to review agency action under § 9 of Bank Holding Company Act (12 USCS § 1848). 40 ALR Fed 593 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . Recall of appellate ...

Content: Statutes

23. **42 U.S.C. sec. 2210a**

... adequate justification exists to proceed without mitigation of the conflict of interest. Promulgation and publication of rules. (c) The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code [5 USCS § 553] (without regard to subsection (a)(2) thereof [**5 USCS § 553(a)(2)**]) as soon as practicable after the date of the enactment of this section [enacted Nov. 6, 1978], but in no event later than 120 days after such ...

Content: Statutes

24. **42 U.S.C. sec. 7191**

... Construction and application of § 23(b) of Federal Power Act (16 USCS § 817), requiring any person intending to construct dam or project on nonnavigable stream to file declaration of such intention. 40 ALR Fed 891 . Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . What constitutes abandonment ...

Content: Statutes

25. **N.Y. Pub. Lands Law sec. 3**

... 16B Am Jur Legal Forms 2d, States, Territories, and Dependencies, Forms 239:2–239:21. 20B Am Jur PI & Pr Forms (Rev ed), Public Lands, Forms 24–31. 23 Am Jur PI & Pr Forms (Rev ed), Taxpayers' Actions, Forms 19, 20. Annotations: Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . "Compliance with ...

Content: Statutes

26. **N.Y. Pub. Lands Law sec. 35**

... Cross References: This section referred to in § 24. Jurisprudences: 1 NY Jur 2d Abandoned, Lost, and Escheated Property § 15. 87 NY Jur 2d Public Lands §§ 38, 52 . 63C Am Jur 2d, Public Lands §§ 118 et seq. Annotations: Construction and application of **5 USCS § 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ALR Fed 926 . Hierarchy Notes: NY CLS ...

Content: Statutes

27. **N.Y. Pub. Lands Law sec. 85**

... Promulgation and enforcement of rules and regulations. 6 NYCRR §§ 550.1 et seq. Jurisprudences: 87 NY Jur 2d Public Lands §§ 73, 76 . Annotations: Statutory or contractual obligation to restore surface after strip or other surface mining. 1 ALR2d 575 . Construction and application of **5 USCS sec. 553(a)(2)** , exempting from Administrative Procedure Act's rulemaking requirements matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. 41 ...

Content: Statutes

Regulations28. **42 C.F.R. sec. 411.15**

... , which was not reimbursable under the Medicare Act, 42 U.S.C.S. § 1395y(a)(6) , was held to be valid in a challenge by affected hospitals. • Rulemaking relating to benefits is exempt from Administrative Procedure Act rulemaking requirements. **5 U.S.C.S. § 553(a)(2)** . That exemption was applicable in 1966 when the Medicare patient telephone regulation, 42 C.F.R. § 405.310(j) , was promulgated. Go To Headnote • The Medicare patient telephone regulation, 42 C.F.R. § 405.310(j) , is valid. Go ...

Content: Regulations

29. **36 C.F.R. sec. 1.5**

... Since the evidence was indisputable that defendant took horseshoe crabs—classified as “wildlife”—from the Jamaica Bay Unit despite the specific restrictions in the superintendent's compendium and the general prohibition on the taking of wildlife in 36 C.F.R. § 2.1(a)(1)(i) , defendant was guilty of violating 36 C.F.R. § 2.1(a)(1)(i) . • As a general matter, the Administrative Procedure Act exempts matters relating to “public property” from its notice and comment provisions. **5 U.S.C.S. § 553(a)(2)** ...

Content: Regulations

30. **24 C.F.R. sec. 10.1**

... Housing department and secretary's substantive rule that Washington's state eviction procedures satisfied the basic elements of due process was invalid because it provided no notice or opportunity for community counsel, tenant, or others to comment. • The rulemaking requirements of the Administrative Procedure Act (APA), 5 U.S.C.S. § 551 et seq., do not apply to agency rules relating to public property, loans, grants, benefits, or contracts. **5 U.S.C.S. § 553(a)(2)** . The Department of Housing ...

Content: Regulations

31. **24 C.F.R. sec. 10.2**

... Homeless individuals and related organizations had standing to bring an action against HUD under the National Housing Act because they were within the zone of interests of the whole statute. • The Administrative Procedure Act (APA) expressly excludes from the rulemaking requirements actions pertaining to public property. **5 U.S.C.S. § 553(a)(2)** . However, the Department of Housing and Urban Development (HUD) has voluntarily subjected itself to rulemaking requirements that are substantially the ...

Content: Regulations

Law Reviews and Periodicals32. **[COMMENT: FINANCIAL MEANS AS A REQUISITE TO OBTAINING BENEFITS: ROUTINE SERVICE DOG EXPENSES AS A DISABILITY BENEFIT FOR VETERANS WITH SERVICE-CONNECTED](#)**

[DISABILITIES](#), 71 Ad. L. Rev. 907

... 43 § 501(b) (emphasis added). The Administrative Procedure Act (APA) generally provides that notice-and-comment rulemaking is required, but specifically exempts matters relating to "public property, loans, grants, benefits, or contracts." 44 **5 U.S.C. § 553(a)(2)** (2012). Although Section 553(a)(2) of the APA exempts matters relating to benefits, 45 See id. (asserting that the section does not apply to agency matters involving benefits). Congress provides a specific exception to this provision. ...

Content: Law Reviews | **Date:** 2019

33. [ARTICLE: PRIVATE GOVERNMENT AND THE TRANSPARENCY DEFICIT](#), 71 Ad. L. Rev. 437

... , to expressly define and justify exceptions and exclusions where other legitimate interests outweigh those of public disclosure. It may be the duties are not significant from a public point of view--a contract to mow lawns for example. 101 It is important to note that the existing law exempts "matter[s] relating to public . . . contracts" from the APA's procedural requirements. **5 U.S.C. § 553(a)(2)** (2012). There is no differentiation made between types or the importance of contracts--a contract ...

Content: Law Reviews | **Date:** 2019

34. [ARTICLE: Procurement as Policy: Administrative Process for Machine Learning](#), 34 Berkeley Tech. L.J. 773

... decisions on these elements. This body of regulation generally limits standing to challenge contracting decisions to jilted commercial competitors. Both public contracting and decision making about agency management are largely exempted from administrative procedures that govern decisions of policy
17 See, e.g. , **5**

U.S.C. §§553(a)(2) ...

Content: Law Reviews | **Date:** 2019

35. [ARTICLE: CONSTITUTIONAL STRUCTURE AND JUDICIAL DEFERENCE TO AGENCY INTERPRETATIONS OF AGENCY RULES](#), 96 Colum. L. Rev. 612

... - the governing regulation means what the agency says it means unless the reviewing court can conclude that the agency is "plainly" wrong. Because agency rules that comply with specified procedural formalities bind with the force of statutes, 18 See **5 U.S.C. 553**, 556, 557 (1994) (informal and formal rulemaking provisions of the Administrative Procedure Act (APA)); *Batterton v. Francis*, 432 U.S. 416, 425 n.9 (1977); see also Attorney General's Final Report, supra note 14, at 27 (noting that ...

Content: Law Reviews | **Date:** April 1, 1996

36. 78 Colum. L. Rev. 258

Content: Law Reviews

37. 74 Colum. L. Rev. 1231

Content: Law Reviews

38. [ARTICLE: REGULATING IMPARTIALITY IN AGENCY ADJUDICATION](#), 69 Duke L.J. 1695
 ... (defining "rule making" to include the formulation, amendment, or repeal of a "rule"). - concerning impartiality regulations. It is true that agency management and personnel matters are excluded from notice-and-comment rulemaking requirements under § 553. 224 **5 U.S.C. § 553(a)(2)**. The SCRs were not promulgated with notice and comment. Brown & Cole, supra note 209, at 20 (citing Office of Special Counsel, 64 Fed. Reg. 37,038, 37,041 (July 9, 1999)). Generally, the ...
Content: Law Reviews | **Date:** May 1, 2020
-
39. [SYMPOSIUM ON FEDERAL FOREST LAW AND POLICY: PRINCIPLES OF DECISION MAKING: THE ADMINISTRATIVE RECORD AND THE RANGE OF ALTERNATIVES IN NATIONAL FOREST PLANNING: APPLICABLE STANDARDS AND INCONSISTENT APPROACHES](#), 17 Env'tl. L. 371
 ... Responsive Statement to the appeal of the San Juan National Forest Land and Resource Management Plan (Appeal No. 943) VI-21 (Jan. 23, 1984). It bases this argument on APA language exempting the administration of public property from APA requirements. 7 **5 U.S.C. § 553 (a)(2)** (1982). However, prior to the passage of the NFMA and the current round of forest planning, the USDA adopted a general department-wide waiver of the APA exemption. 8 36 Fed. Reg. 13,804 (July 24, 1971). See ...
Content: Law Reviews | **Date:** 1987
-
40. [ARTICLE: Identifying Questions of Law in Administrative Law.](#) *, 74 Geo. L.J. 1
 ... But Professor Davis defines an interpretative rules as any rule that is not "legislative"; thus, he favors independent judicial scrutiny of any rule that is not the product of an exercise of delegated lawmaking power. Here his theory begins to break down. For example, it would apparently extend to those rules that the APA calls "general statements of policy." 207 See **5 U.S.C. § 553 (b)(A)** (1976) (obligation to publish notice of proposed rulemaking does not extend to, inter alia, "interpretative ...
Content: Law Reviews | **Date:** October 1, 1985
-
41. 64 Geo. L.J. 1047
Content: Law Reviews
-
42. 90 Harv. L. Rev. 1369
Content: Law Reviews
-
43. [ARTICLE: ACCOUNT ME IN: AGENCIES IN QUEST OF ACCOUNTABILITY](#), 19 J.L. & Pol'y 611
 ... that agencies are willing to add accountability mechanisms is not hard. Examples are legion. To use a major one, the APA exempts matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" from rulemaking procedures. 125 Administrative Procedure Act, **5 U.S.C.A. § 553(a)(2)** (West 2010). On its face, this would mean agencies providing government benefits are not required to go through notice and comment. However, again and again, government ...
Content: Law Reviews | **Date:** 2011

44. 75 Mich. L. Rev. 521

Content: Law Reviews

45. 71 Mich. L. Rev. 221

Content: Law Reviews46. [ARTICLE: OPEN-ENDED PHARMACEUTICAL ALIBI: THE ARMY'S QUEST TO LIMIT THE DURATION OF CONTROLLED SUBSTANCES FOR SOLDIERS](#), 223 Mil. L. Rev. 343

... policy is also exempt under the agency management and personnel provision of the APA. Federal agencies do not have to follow APA rulemaking procedures for rules aimed at internal management and personnel matters provided the regulations do not regulate persons outside of the agency. 178 **5 U.S.C. § 553(a)(2)** (2012); Joseph v. United States Civil Serv. Comm'n, 554 F.2d 1140, 1153 n.23 (D.C. Cir. 1977). The MEDCOM policy is only aimed at a Soldier's use of controlled substances, which is ...

Content: Law Reviews | **Date:** 201547. [ARTICLE: Restoring ALJ Independence](#), 105 Minn. L. Rev. 39

... Thus, Professor Lubbers concluded that although OPM's regulations implementing President Trump's executive order must follow notice and comment procedures, the President is not required to do so. 127 Lubbers, *supra* note 94, at 751-52. Specifically, Professor Lubbers reasoned that the APA's general exemption from notice and comment procedures for rules relating to agency personnel, **5 U.S.C. § 553(a)(2)**, would not apply to OPM regulations because the Civil Service Act explicitly ...

Content: Law Reviews | **Date:** November 1, 202048. [ARTICLE: THE REVOLUTION IN WELFARE ADMINISTRATION: RULES, DISCRETION, AND ENTREPRENEURIAL GOVERNMENT](#), 75 N.Y.U. L. Rev. 1121

... By focusing primarily on process, rather than substance, the APA seeks to address accountability concerns while leaving agencies free to set policy and make decisions. The mechanisms of notice and comment rulemaking and judicial review provide that generally applicable rules are given a public airing and can be tested through judicial review for compliance with legal standards and rationality. 351 See **5 U.S.C. 553**, 702-706 (1994); Seidenfeld, *supra* note 73, at 435 ("Rulemaking also creates ...

Content: Law Reviews | **Date:** 200049. [ARTICLE: Administrative Rulemaking and Public Lands Conflict: The Forest Service's Roadless Rule](#), 44 Nat. Resources J. 687

... For a discussion of these core elements of rulemaking, how they have changed since 1946, and how they differ in informal and formal rulemaking, see *id.* ch. 2. First, information must be provided to the public in the form of a notice that is published in the Federal Register. 171 **5 U.S.C. § 553** (b) (2000). Generally, the agency tells the public what it is proposing to do, under what authority and statute it is acting, and the duration of the rulemaking period. Second, the participation ...

Content: Law Reviews | **Date:** 2004

50. [ARTICLE: Regulatory Estoppel: When Agencies Break Their Own "Laws."](#), 64 Tex. L. Rev. 1
 ... the USDA had violated requirements for giving public notice that had apparently been published in a legislative regulation, see 39 Fed. Reg. 7569-70 (1974) (citing agency's delegated rule-making authority, stating that regulation implements statute, and invoking the APA good cause exception to informal rule-making requirements, **5 U.S.C. § 553 (b)(B)** (1970)), but after the district court imposed regulatory estoppel against the agency, the government inexplicably argued on rehearing that the ...
Content: Law Reviews | **Date:** August 1, 1985

51. [COMMENT: Necessary "Procedures": Making Sense of the Medicare Act's Notice-and-Comment Requirement](#), 87 U. Chi. L. Rev. 2175
 ... See Allina II, 139 S Ct at 1808. This is because § 553, which governs the notice-and-comment process, does not apply to any "matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." **5 USC § 553(a)(2)**. Unless the organic statute (that is, the statute authorizing the agency to act) specifies otherwise, the agency is free to issue any rule concerning this subject matter without notice and comment regardless of whether it falls ...
Content: Law Reviews | **Date:** November 1, 2020

52. [ARTICLE: PROCEDURAL ASPECTS OF THE CONSUMER PRODUCT SAFETY ACT](#), 20 UCLA L. Rev. 899
 ... Section 7(d)(2) requires the Commission to adopt regulations setting forth "the items of cost in which it may participate." While rulemaking of this type would fall within the so-called "proprietary" exemption to normal rulemaking requirements of the Administrative Procedure Act (**5 U.S.C. § 553(a)(2)** (1970)), it is undesirable for the agency to rely upon that exemption when compliance with the requirements would not otherwise be "impracticable, unnecessary, or contrary to the public interest" ...
Content: Law Reviews | **Date:** 1973

53. 62 Va. L. Rev. 1017

Content: Law Reviews

54. [SYMPOSIUM: PROFESSOR CHARLES H. KOCH, JR. MEMORIAL SYMPOSIUM ON ADMINISTRATIVE LAW: ADMINISTRATIVE JUDGES AND AGENCY POLICY DEVELOPMENT: THE KOCH WAY](#), 22 Wm. & Mary Bill of Rts. J. 407
 ... (2013) (emphasis added). The critical question, therefore, was whether various directives, nominally addressed to hearings examiners, were nevertheless "binding on persons outside the agency." See Asmussen, 766 A.2d at 693. This analysis resembled the reasoning that a federal court might use in applying the federal APA exemption that allows rules "relating to agency management or personnel" to be issued without notice and comment. **5 U.S.C. § 553(a)(2)** (2006); see, e.g., Tunik v. MSPB, 407 ...
Content: Law Reviews | **Date:** December 1, 2013

55. [ARTICLE: Federalism by Contract](#), 129 Yale L.J. 2326

... 72 GEO. WASH. L. REV. 893 , 904 (2004) (describing the "familiar" claim that notice-and-comment procedures legitimate agency action). But the APA exempts any "matter relating to . . . grants . . . or contracts" from its notice-and-comment rules. 323 **5 U.S.C. § 553(a)(2)** (2018). Absent a change in the governing law, this exemption appears to countenance the complete and total exclusion of policies made through intergovernmental "contract" from procedural rules that would otherwise ...

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Treatise Citations

56. **3 Administrative Law @ 15.01**

5 U.S.C. § 553(a)(2) . See: § 15.02[3] infra. affairs; (2) internal management 10 **5 U.S.C. § 553(a)(2)** . See: § 15.02[4][a] , [b] infra. or proprietary 11 **5 U.S.C. § 553(a)(2)** . See: § 15.02[4][a] , [d] –[g] infra. affairs; (3) interpretative rules, 12 **5 U.S.C. § 553(b)(A)** . See: § 15.07[3] infra. See also: Tenth Circuit: ...

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57. **3 Administrative Law @ 15.02**

... 410 U.S. 927 (1973) (because HUD's circulars in question directly supplemented Annual Contributions Contract by imposing additional obligations on parties, district court erred in not holding as a matter of law that "public benefits" exemption under **5 U.S.C. § 553(a)(2)** was applicable). Tenth Circuit: *Vigil v. Andrus*, 667 F.2d 931 (10th Cir. 1982) (enjoining BIA from transferring responsibility for free school lunches for Indian children to USDA before complying with rulemaking provisions ...

Content: Treatises

58. **25 Dorsaneo, Texas Litigation Guide @ 420.203**

... Notice Requirements of Administrative Procedure Act Rule Making Provisions, 45 A.L.R. Fed. 12 (1979) Annot., Judicial Review of Administrative Determination Involving Medicare as Precluded by 42 U.S.C. § 405(h) , 43 A.L.R. Fed. 484 (1979) Annot., Construction and Application of **5 U.S.C. § 553(a)(2)** , Exempting From Administrative Procedure Act's Rulemaking Requirements Matters Relating to Agency Management or Personnel or to Public Property, Loans, Grants, Benefits, or Contracts, 41 A.L.R. ...

Content: Treatises

59. **6 Federal Taxation of Municipal Bonds Scope**

... This final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, an assessment of anticipated benefits, costs and regulatory alternatives is not required. This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to **5 U.S.C. 553(a)(2)** . Since no notice of proposed Rulemaking was required, the provisions of the ...

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60. **6 Federal Taxation of Municipal Bonds Scope**

... This final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, an assessment of anticipated benefits, costs and regulatory alternatives is not required. This final rule relates to matters of public contract. The notice and public procedures requirements of the Administrative

Procedure Act are inapplicable, pursuant to **5 U.S.C. 553(a)(2)** . Since no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et. ...

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61. **6 Federal Taxation of Municipal Bonds Scope**

... . Therefore, an assessment of anticipated benefits, costs, and regulatory alternatives is not required. B. Regulatory Flexibility Act This interim rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act, **5 U.S.C. 553(a)(2)** , are inapplicable. Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. , do not apply. ...

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62. **6 Federal Taxation of Municipal Bonds Scope**

... This final rule is not a significant regulatory action for purposes of Executive Order 12866, dated September 30, 1993. B. Regulatory Flexibility Act This final rule relates to matters of public contract and procedures for United States securities. Therefore, under **5 U.S.C. 553(a)(2)** , the notice and public procedure requirements of the Administrative Procedure Act are inapplicable. Because a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. ...

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63. **6 Federal Taxation of Municipal Bonds Scope**

... securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, **5 U.S.C. 553(a)(2)** . As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule. Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. , do not apply to this rule because, pursuant to **5 U.S.C. 553(a)(2)** , it is not required to be issued with notice ...

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64. **12 Federal Taxation of Municipal Bonds Scope**

... This rule is not considered a “major rule” for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required. Although public comments were solicited in conjunction with the interim regulations, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to **5 U.S.C. 553(a)(2)** . As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) do not apply. The ...

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65. **12 Federal Taxation of Municipal Bonds Scope**

... Although this final rule was issued in proposed form to secure the benefit of public comment, the rule relates to matters of public contract and procedures for U.S. securities, as well as the borrowing power and fiscal authority of the United States. Accordingly, pursuant to **5 U.S.C. 553(a)(2)** , the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable. As no notice of proposed rulemaking was required, the provisions of the Regulatory ...

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66. 12 Federal Taxation of Municipal Bonds Scope

... Although this notice of proposed rulemaking is being issued in proposed form to secure the benefit of public comment, it relates to matters of public contract and procedures for United States securities. Therefore, the notice and public procedure requirements of the Administrative Procedure Act, **5 U.S.C. 553(a)(2)**, are inapplicable. Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., do not apply. C. Paperwork Reduction ...

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67. 11 Immigration Law & Procedure Scope

... , as a transit without visa port-of-entry will allow carriers to accept passengers transiting between the Far East and Latin America. By allowing these airports to accept applications for direct transit without visa, they will be able to accommodate these transit air passengers. Administrative Procedures Act Compliance with **5 U.S.C. 553(a)(2)** as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management, and accordingly, is not a "rule" ...

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68. 11 Immigration Law & Procedure Scope

... affidavit. A new AOS fee will be assessed if a new I-864 form is required in support of any application for immigration (for example, when a joint sponsor is needed for an application that has been rejected due to section 212(a)(4), inability to qualify under the public charge provision of the Immigration Act). The AOS fee is non-refundable as it is a processing fee. Regulatory Findings Administrative Procedure Act The Department is publishing this rule as a final rule pursuant to **5 U.S.C. 553(a)(2)** ...

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69. 11 Immigration Law and Procedure 65 FR 7715

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70. 11 Immigration Law and Procedure 65 FR 54148

Content: Treatises

71. 11 Immigration Law & Procedure 72 FR 53673

... the appointment of an anti-fraud officer, and new general provisions relating to training, support, and review of the quality of the adjudicatory process, reflecting several of the directives contained in the Attorney General's memorandum of August 9, 2006. All of these changes are a matter of agency organization, management, or personnel and do not require prior [[Page 53676]] notice and comment, and accordingly they are being included in this final rule relating to EOIR. See **5 U.S.C. 553(a)(2)** ...

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72. 11 Immigration Law & Procedure 73 FR 41256

... its discretionary reconsideration by the Bureau of Consular Affairs of a finding of loss, and as such this review is not intended to serve as a formal “appeal procedure” that may affect the running of the statutory statute of limitations contained in 8 U.S.C. 1503 . Regulatory Findings Administrative Procedure Act The Department is publishing this rule as an interim final rule, with 60 days for post-promulgation public comments, in accordance with the exemption contained in **5 U.S.C. 553(a)(2)** ...

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73. 11 Immigration Law & Procedure 73 FR 62196

... rule was discussed in detail in Public Notice 6298, as were the Department’s reasons for making the changes to the regulations. There were no comments to the interim final rule published July 18, 2008. The Department is now promulgating a final rule with no changes. Regulatory Findings Administrative Procedure Act The Department published this rule as an interim final rule on July 18, 2008, with 60 days for post-promulgation comment, in accordance with the exemption contained in **5 U.S.C. 553(a)(2)** ...

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74. 11 Immigration Law & Procedure 80 FR 75631

... A. Inapplicability of Public Notice and Delayed Effective Date Requirements Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), rulemaking generally requires prior notice and comment, and a 30-day delayed effective date, subject to specified exceptions. Pursuant to **5 U.S.C. 553(a)(2)** , matters relating to agency management or personnel are excepted from the requirements of section 553. This rule expands the San Ysidro Class A port of entry to include the CBX facility. ...

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75. 11 Immigration Law & Procedure 83 FR 8321

... As this rule is the finalization of an interim final rule, further request for comment is not required. Alternately, comment is unnecessary because this final rule is a rule of management or personnel as well as a rule of agency organization, procedure, or practice. See **5 U.S.C. 553(a)(2)** , (b)(A) . For the same reasons, this rule is not subject to a 30-day delay in effective date. See **5 U.S.C. 553(a)(2)** , (d) . B. Regulatory Flexibility Act Under the Regulatory Flexibility Act (RFA), “[w]henver ...

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76. 11 Immigration Law & Procedure 84 FR 44537

... The interim rule is an internal delegation of authority and assignment of responsibility, along with a change in nomenclature, and is thus a rule of management or personnel; it further relates to a matter of agency organization, procedure, or practice. See **5 U.S.C. 553(a)(2)** , (b)(A) . Accordingly, the interim rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. An internal delegation of administrative authority does not adversely affect ...

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77. 11 Immigration Law & Procedure 85 FR 13024

... regulations to align with this new system of discretionary review as well as the similar system of

discretionary review established in Secretary's Order 01-2020 over decisions of the ARB. These are rules of agency management and personnel and are entirely procedural changes to how officers within the Department of Labor exercise delegated authority on behalf of the Secretary; therefore, the Department is not required to engage in a notice and comment process to issue them. See **5 U.S.C. 553(a)(2)** ...

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78. **5 Treatise on Environmental Law @ 12.02**

... Most frequently, the regulations issued under the broad guidelines of the applicable statutes have themselves been very broad so as not to limit the administrator's discretion to any extent. The Administrative Procedure Act may also have no application to agency rule-making affecting public lands, because it does not apply to matters "relating to agency management ... or to public property ..." **13 5 U.S.C. § 553(a)(2)** . However, this rule has been modified somewhat by the Federal Land Policy and ...

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Briefs

79. **[KISOR v. WILKIE](#)**, 2019 U.S. S. Ct. Briefs LEXIS 802

... United States v. Williams, 553 U.S. 285 (2008) Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978) Walling v. Cohen, 140 F.2d 453 (3d Cir. 1944) Withrow v. Larkin, 421 U.S. 35 (1975) FEDERAL STATUTES 5 U.S.C. § 553(a)(1) **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 553(b)(B) 5 U.S.C. § 706 38 U.S.C. § 7104(c) 38 U.S.C. § 7251 38 U.S.C. § 7252 38 U.S.C. § 7281(h) LEGISLATIVE MATERIALS Administrative Procedure Act: Legislative History, S. Doc. No. 79-248 (1946) ...

Content: Court Documents | **Date:** March 4, 2019

80. **[AZAR v. ALLINA HEALTH SERVS.](#)**, 2019 U.S. S. Ct. Briefs LEXIS 42

... NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974) Perez v. Mortgage Bankers Ass'n, 135 S. Ct. 1199 (2015) SEC v. Chenery Corp., 332 U.S. 194 (1947) Shalala v. Guernsey Mem'l Hosp., 514 U.S. 87 (1997) Administrative Procedure Act, 5 U.S.C. 551 et seq. **5 U.S.C. 553(a)(2)** 5 U.S.C. 553(b)(3)(A) Balanced Budget Act of 1997, Pub. L. No. 105-33, § 4001, 111 Stat. 275 -276 Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9341(a), 100 Stat. 2037 Social Security Act, 42 U.S.C. ...

Content: Court Documents | **Date:** January 8, 2019

81. **[AZAR v. ALLINA HEALTH SERVS.](#)**, 2018 U.S. S. Ct. Briefs LEXIS 4768

... did not specify at that time whether those regulations required notice-and-comment rulemaking, or when Medicare policies required promulgation by regulation. In 1971, the agency announced a policy of following the APA's notice-and-comment procedures for rules relating to Medicare benefits. Although the APA exempts rules related to "benefits" from its notice-and-comment requirements, **5 U.S.C. § 553(a)(2)** , the agency stated that it would engage in notice-and-comment rulemaking even "where not ...

Content: Court Documents | **Date:** December 13, 2018

82. **[AZAR v. ALLINA HEALTH SERVS.](#)**, 2018 U.S. S. Ct. Briefs LEXIS 4123

... According to these concerned parties, "the time ha[d] come to make it clear, by statute , that Medicare regulations * * * should be subject to the [APA]." Id. at 62 . b. In 1986 and 1987, rather than amend the APA to eliminate the exemption for "matter[s] relating to * * * benefits," **5 U.S.C. 553(a)(2)** , which would

have extended to benefit programs generally, Congress prescribed notice-and-comment rulemaking only for the Medicare program, and did so in the Medicare Act itself. It did so ...

Content: Court Documents | **Date:** November 13, 2018

83. [AZAR v. ALLINA HEALTH SERVS.](#), 2018 U.S. S. Ct. Briefs LEXIS 2463

... Humana of S.C., Inc. v. Califano, 590 F.2d 1070 (D.C. Cir. 1978) Northeast Hosp. Corp. v. Sebelius, 657 F.3d 1 (D.C. Cir. 2011) Statutes, regulations, and rule: Administrative Procedure Act, 5 U.S.C. 551 et seq. : 5 U.S.C. 552(b)(A) 5 U.S.C. 552(b)(B) **5 U.S.C. 553(a)(2)** 5 U.S.C. 553(b)(A) 42 U.S.C. 1395w-21(a)(3)(A) 42 U.S.C. 1395hh 42 U.S.C. 1395hh(a)(2) 42 U.S.C. 1395hh(a)(4) 42 U.S.C. 1395hh(b) 42 U.S.C. 1395hh(b)(2) 42 C.F.R.: Section 412.106(b)(2) Section 412.106(b)(2)(i) (2003) Section ...

Content: Court Documents | **Date:** July 5, 2018

84. [GARCO CONSTR., INC. v. SPEER](#), 2017 U.S. S. Ct. Briefs LEXIS 4702

... Swecker v. Midland Power Coop., 136 S. Ct. 990 (2016) Talk Am., Inc. v. Michigan Bell Tel. Co., 564 U.S. 50 (2011) United Student Aid Funds, Inc. v. Bible, 136 S. Ct. 1607 (2016) Statutes and regulation: Administrative Procedure Act, 5 U.S.C. 551 et seq. 5 U.S.C. 553(a)(1) **5 U.S.C. 553(a)(2)** 48 C.F.R. 52.222-3(b) Miscellaneous: Armed Services Board of Contract Appeals Rule 4 Department of the Air Force, Air Force Instruction 10-245, Air Force Space Command Supp. 1 (June 2, 2003) QUESTION ...

Content: Court Documents | **Date:** December 4, 2017

85. [UNITED STATES v. TEXAS](#), 2016 U.S. S. Ct. Briefs LEXIS 1555

... Victoria v. Napolitano, No. 12cv1827, 2013 WL 3746133 (S.D. Cal., July 15, 2013) Wong Yang Sung U. McGrath, 339 U.S. 3 (1950) Constitutional Provisions U.S. Const. Art. I, § 1 Statutes 5 U.S.C. § 551(4) 5 U.S.C. § 551(5) 5 U.S.C. § 551(8) 5 U.S.C. § 551(9) 5 U.S.C. § 551(10) **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 553(b) 5 U.S.C. § 553(b)(3) 5 U.S.C. § 553(c) 5 U.S.C. § 553(d) 5 U.S.C. § 553(d)(1) 6.U.S.C. § 202(5) 8 U.S.C. § 1103(a) 8 U.S.C. § 1182 8 U.S.C. § 1182(a)(9) 8 U.S.C. § 1252 (a)(2) Other ...

Content: Court Documents | **Date:** April 4, 2016

86. [United States v Tex.](#), 2016 U.S. S. Ct. Briefs LEXIS 1422

... 502 U.S. 437 (1992) Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) Constitutional provisions, statutes, and rules: U.S. Const: art. 1, § 8, cl. 4 art. II, § 3 Administrative Procedure Act: 5 U.S.C. § 551(4) 5 U.S.C. § 553 5 U.S.C. § 553(a)(1) **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 553 (b) 5 U.S.C. § 553(b)(A) 5 U.S.C. § 553(b)(B) 5 U.S.C. § 701(a) 5 U.S.C. § 701(a)(2) 5 U.S.C. § 702 5 U.S.C. § 706 5 U.S.C. § 706(2)(A) -(C) Farm Labor Contractor Registration Act Amendments of 1974, Pub. ...

Content: Court Documents | **Date:** March 28, 2016

87. [UNITED STATES v. TEXAS](#), 2016 U.S. S. Ct. Briefs LEXIS 1177

... 435 U.S. 519 (1978) CONSTITUTION, STATUTES, REGULATIONS, AND RULES U.S. Const.: Art. II § 2, cl. 2 (Appointments Clause) § 3 (Take Care Clause) Administrative Procedure Act, 5 U.S.C. § 551 et seq. 5 U.S.C. § 552(a) (§ 3(a)) 5 U.S.C. § 552(a)(2) 5 U.S.C. § 553 **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 553(b)(A) Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. : 8 U.S.C. § 1103(a)(2) 8 U.S.C. § 1103(a)(3) 8 U.S.C. § 1324a(a)(1)(a) ...

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88. [UNITED STATES v. TEXAS](#), 2015 U.S. S. Ct. Briefs LEXIS 4929
 ... 502 U.S. 437 (1992) Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) Constitutional provisions, statutes, and rules: U.S. Const.: art. I, § 1 art. I, § 8, cl. 4 art. II, § 3, cl. 5 Administrative Procedure Act: 5 U.S.C. § 551(4) 5 U.S.C. § 553 **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 553(b)(3)(A) 5 U.S.C. § 553(b)(A) 5 U.S.C. § 701(a)(1) 5 U.S.C. § 701(a)(2) 5 U.S.C. § 702 5 U.S.C. § 706 5 U.S.C. § 706(2)(A) Department of Homeland Security Appropriations Act, 2015, Pub. L. No. 114-4 , tit. ...
Content: Court Documents | **Date:** December 29, 2015
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89. [UNITED STATES v. TEXAS](#), 2015 U.S. S. Ct. Briefs LEXIS 4243
 ... Whitman v. American Trucking Ass'ns, Inc., 531 U.S. 457 (2001) Wyoming v. Oklahoma, 502 U.S. 437 (1992) Constitution, statutes and regulations: U.S. Const.: Art. II, § 3, Cl. 5 Art. III Administrative Procedure Act, 5 U.S.C. 500 et seq. 5 U.S.C. 553 **5 U.S.C. 553(a)(2)** 5 U.S.C. 553(b)(A) 5 U.S.C. 701(a)(1) 5 U.S.C. 701(a)(2) 5 U.S.C. 702 5 U.S.C. 706 Consolidated Appropriations Act, 2014, Pub. L. No. 113-76 , Div. F, Tit. 128 Stat. 250 Department of Homeland Security Appropriations Act, 2015, ...
Content: Court Documents | **Date:** November 20, 2015
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90. [DIRECTOR OF THE DEP'T OF REVENUE OF MONTANA v. UNITED STATES DEP'T OF THE TREASURY](#), 2013 U.S. S. Ct. Briefs LEXIS 503
 ... laws to the savings bonds was preempted by federal law. Pet. App. 86a. Finally, the court rejected petitioners' APA claim on the view that the Escheat Decision was exempt from the notice and comment rulemaking procedures both because it "concerns government contracts" and is a "general policy statement." Id. at 88 a; see **5 U.S.C. § 553(a)(2)** , (b)(3)(A). Although the court did not specify that the dismissal was based on lack of jurisdiction, it also concluded that the United States had not waived ...
Content: Court Documents | **Date:** January 23, 2013
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91. [ATP OIL & GAS CORP. v. DOI](#), 2011 U.S. S. Ct. Briefs LEXIS 3072
 ... United States v. Mead Corp., 533 U.S. 218 (2001) (J. Scalia , dissenting) United States v. Winstar Corp., 518 U.S. 839 (1996) Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 (1951) Woods Petroleum Co., 86 I.B.L.A. 46 (1985) STATUTES 5 U.S.C. § 500 et seq 5 U.S.C. § 551(8) **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 558 5 U.S.C. § 706 5 U.S.C. § 706(2)(A) 28 U.S.C. § 1254(1) 28 U.S.C. § 1331 28 U.S.C. § 1651 43 U.S.C. § 1331 et seq 43 U.S.C. § 1334 (a)(1) OTHER AUTHORITIES 30 C.F.R. § 250.103 Notice ...
Content: Court Documents | **Date:** February 28, 2011
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92. [WYETH v. LEVINE](#), 2008 U.S. S. Ct. Briefs LEXIS 688
 ... force of law has other positive consequences. Under the Administrative Procedure Act (APA), the issuance of legislative regulations generally requires that the agency comply with notice and comment procedures. 17 5 U.S.C. §§ 553(b) , (c) (2000); cf. **5 U.S.C. § 553(a)(2)** (2000); Mead, 533 U.S. at 244 (Scalia , J., dissenting). This creates an opportunity for States and other interested parties to express their views before potentially preemptive regulations are adopted. Similarly, agency ...
Content: Court Documents | **Date:** August 14, 2008
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93. [BRODOWY v. UNITED STATES](#), 2007 U.S. S. Ct. Briefs LEXIS 2995
 ... pay system in the 1996 Personnel Management System clearly qualifies as a regulation under that test. It was specifically authorized by statute and is not in conflict with the GS system compensation provisions or any other law; it was promulgated by the Administrator as directed by Congress ; as a regulation dealing with "a matter relating to agency management or personnel," formal rulemaking was not required, **5 U.S.C. § 553(a)(2)** ; and the agency's statement, in mandatory language, of its ...
Content: Court Documents | **Date:** September 20, 2007
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94. [NORTON v. SOUTHERN UTAH WILDERNESS ALLIANCE](#), 2004 U.S. S. Ct. Briefs LEXIS 140
 ... Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978) West Coast Hotel v. Parrish, 300 U.S. 379 (1937) Whitman v. American Trucking Associations, Inc., 531 U.S. 457 (2001) STATUTES Administrative Procedure Act, 5 U.S.C. §§ 551 et seq. 5 U.S.C. § 551(13) **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 701(a) 5 U.S.C. § 702 5 U.S.C. § 704 5 U.S.C. § 706 5 U.S.C. § 706(1) 5 U.S.C. § 706(2) Federal Land Policy and Management Act, 43 U.S.C. § 1782(c) LEGISLATIVE HISTORY ...
Content: Court Documents | **Date:** February 17, 2004
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95. [Brown v. Gardner](#), 1994 U.S. S. Ct. Briefs LEXIS 557
 ... 33 U.S.C. § 904(b) (1986) Veterans' Judicial Review Act, Pub. L. No. 100-687 , 102 Stat. 4105 (1988) (codified at 38 U.S.C. § 7251 et seq.) World War Veterans' Act, Pub. L. No. 68-242 , 43 Stat. 607 (1924) 5 U.S.C. § 552(a)(1) (1982) 5 U.S.C. § 552(a)(2) (1982) **5 U.S.C. § 553(a)(2)** (1982) 28 U.S.C. § 1346(b) , 2671 et seq. (1982) 28 U.S.C. § 2401(b) (1982) 38 U.S.C. § 101(24) 38 U.S.C. § 105 (1988 & Supp. IV 1992) 38 U.S.C. § 211(a) (1988) 38 U.S.C. § 301 (Supp. IV 1992) 38 U.S.C. ...
Content: Court Documents | **Date:** July 8, 1994
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96. [SHALALA v. GUERNSEY MEM. HOSP.](#), 1994 U.S. S. Ct. Briefs LEXIS 768
 ... Ass'n, et al., PRRB Dec. No .91-D30 (1991), Medicare & Medicaid Guide (CCH) P 41,332 Woodruff Community Hospital v. The Travelers Ins. Co., PRRB Dec. No. 91-D40 (1991), Medicare & Medicaid Guide (CCH) P 39,208 Statutes Administrative Procedure Act, 5 U.S.C. § 551(4) 5 U.S.C. § 551 et seq. **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 553(b) Social Security Act, 42 U.S.C. § 607(a) 42 U.S.C. §§ 1395 - 1395ccc 42 U.S.C. § 1395x(v)(1)(A) 42 U.S.C. § 1395hh 42 U.S.C. § 1395hh(a)(2) 42 U.S.C. § 1395ww(g)(1)(A) 42 ...
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97. [AIR COURIER CONF. OF AMERICA v. AMERICAN POSTAL WORKERS UNION](#), 1990 U.S. S. Ct. Briefs LEXIS 668
 ... United States v. Fausto, 484 U.S. 439 (1988) Universities Research Ass'n v. Coutu, 450 U.S. 754 (1981) Vermont Yankee Nuclear Power Corp. v. NRDC, Inc., 435 U.S. 519 (1978) U.S. Const.: Art. III Amend. IV Amend. V Administrative Procedure Act: Ch. 5 **5 U.S.C. 553(a) (2)** 5 U.S.C. 556 5 U.S.C. 557 Ch. 7 5 U.S.C. 701 5 U.S.C. 701(a) (1) 5 U.S.C. 702 Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 Civil Rights Act of 1964, Tit. VII, 42 U.S.C. 2000e et seq. § 717, 42 U.S.C. 2000e-16 ...
Content: Court Documents | **Date:** October 9, 1990

98. [BOWEN v. GEORGETOWN UNIV. HOSP.](#), 1988 U.S. S. Ct. Briefs LEXIS 1096
 ... 435 U.S. 519 (1978) Wong Yang Sung v. McGrath, 339 U.S. 33 (1950) Young v. Community Nutrition Inst., 476 U.S. 974 (1986) Statutes and regulations: Administrative Procedure Act, 5 U.S.C. (& Supp. IV) 551 et seq. 5 U.S.C. 551 5 U.S.C. 551(4) 5 U.S.C. 553 **5 U.S.C. 553(a)(2)** 5 U.S.C. 553(b)(B) 5 U.S.C. 553(d) 5 U.S.C. 706(2)(A) Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272 , § 9102, 100 Stat. 155 Federal Register Act, ch. 417, § 5, 49 Stat. 501 Medicare Act, Tit. ...
Content: Court Documents | **Date:** April 30, 1988
-
99. [BOWEN v. KIZER](#), 1987 U.S. S. Ct. Briefs LEXIS 469
 ... 4. There is nothing persuasive about the verbal and logical gymnastics in which the court of appeals engaged in an effort to fit the manual provision into the mold of a regulation. The court suggested, for example, that notice-and-comment procedures were not applicable here because the manual provision concerns matters relating to "public benefits" (see **5 U.S.C. 553(a)(2)**). But in 1971 the Secretary had voluntarily waived the "public benefits" exception by formally stating that HHS regulations ...
Content: Court Documents | **Date:** May 19, 1987
-
100. [BOWEN v. CUBANSKI](#), 1986 U.S. S. Ct. Briefs LEXIS 1279
 ... A further reason why the manual provision cannot be regarded as a regulation is that the provision was never the subject of notice-and-comment rulemaking. The court below suggested that notice-and-comment procedures were not applicable here because the manual provision concerns matters relating to public benefits (see **5 U.S.C. 553(a)(2)**). But in 1971 the Secretary had voluntarily waived the "public benefits" exception by formally stating that departmental regulations would comply with the statutory ...
Content: Court Documents | **Date:** November 26, 1986
-
101. [CHULA VISTA CITY SCH. DIST. v. BENNETT](#), 1985 U.S. S. Ct. Briefs LEXIS 1624
 ... CHARLES FRIED , Solicitor General, Department of Justice, Washington, D.C. MEMORANDUM FOR THE RESPONDENT IN OPPOSITION TABLE OF AUTHORITIES Cases: Andrus v. Shell Oil Co., 446 U.S. 657 Blum v. Bacon, 457 U.S. 132 Statutes: Administrative Procedure Act, **5 U.S.C. 553(a)(2)** General Education Provisions Act, 20 U.S.C. (& Supp. I) 1221 et seq.: 20 U.S.C. (& Supp. I) 1221-1234e 20 U.S.C. 1232(c) 20 U.S.C. (& Supp. I) 236 et seq. 20 U.S.C. 238 note Miscellaneous: 49 Fed. Reg. 31628 (1984) Petitioners ...
Content: Court Documents | **Date:** December 31, 1985
-
102. [HECKLER v. RINGER](#), 1983 U.S. S. Ct. Briefs LEXIS 774
 ... (1959) Weinberger v. Salfi, 422 U.S. 749 (1975) Wilson v. Edelman, 542 F.2d 1260 (7th Cir. 1976) revd. on other grounds sub nom. Schweiker v. Wilson, 450 U.S. 221 (1981) Constitution and Statutes U.S. Constitution, Amendment V 5 U.S.C. § 553 et seq. **5 U.S.C. § 553(a) (2)** 28 U.S.C. § 1331 28 U.S.C. § 1361 and mandamus jurisdiction Title 28, section 41 42 U.S.C. § 405 (g) 42 U.S.C. § 405(h) The Mandamus and Venue Act of 1962, Pub. L. 87-748 P.L. 94-574, 90 Stat. 2721 (1976) "Codification" ...
Content: Court Documents | **Date:** October 20, 1983
-
103. [HECKLER v. RINGER](#), 1983 U.S. S. Ct. Briefs LEXIS 771

... Inters, In re (SSA Off. Hear. App. Feb. 27, 1982)) Constitution, statutes and regulations: U.S. Const.: Art. II, § 3 Amend. V (Due Process Clause) Act of June 11, 1946, ch. 324, 60 Stat. 237 et seq. Section 4, 60 Stat. 238 Administrative Procedure Act, 5 U.S.C. 551 et seq. : 5 U.S.C. 553 **5 U.S.C. 553(a)(2)** 5 U.S.C. 553(b) 5 U.S.C. 555(b) 5 U.S.C. 703 5 U.S.C. 706(2) 5 U.S.C. 706(2)(a) Health Insurance for the Aged Act (Medicare Act), Title XVIII, 42 U.S.C. (& Supp. V) 1395 et seq. 42 U.S.C. ...

Content: Court Documents | **Date:** September 16, 1983

104. [BELL v. NEW JERSEY](#), 1983 U.S. S. Ct. Briefs LEXIS 1372

... The Administrative Procedures Act provides further authority for the requirement that agency action of such import as the imposition of sanctions requires not only formal rulemaking processes but clear legal authorization. 5 U.S.C.A. §§ 551 , 553 , 558 . The rulemaking exception relating to grants, **5 U.S.C.A. § 553(a)(2)** , was voluntarily waived by HEW in recognition of the importance of public participation in rulemaking. 36 Fed. Reg. 2532 (1971). In the absence of statutory authority, ...

Content: Court Documents | **Date:** February 17, 1983

105. [Dean v. NORFOLK SOUTHERN RY. CO.](#), 2016 U.S. S. Ct. Briefs LEXIS 4884

... Lane v. R. A. Sims, Jr., 241 F.3d 439 , 442 (5th Cir. 2001) Van Gorder, 509 F.3d at 269 FEDERAL STATUTES 28 U.S.C. § 1254(1) 29 U.S.C. § 185 44 U.S.C. CHAPTER 15 Sec. 1505(a)(1) 45 U.S.C. § 51 et seq. FELA 5 U.S.C. Sec. 553(a)(1) 5 U.S.C. § 553 (a) (1) **5 U.S.C. § 553 (a) (2)** LMRA, 29 U.S.C. § 185 Railway Labor Act ("RLA"), 45 U.S.C. § 151et seq Title 44 U.S.C. CHAPTER 15 § 1505(a) Title 45 U.S.C. Sec. 51 et seq. Federal Employer's Liability Act (FELA) MAGNA-CARTA Magna Carta, Chapter ...

Content: Court Documents | **Date:** December 29, 2016

106. [RHOADES v. VIGIL](#), 1992 U.S. S. Ct. Briefs LEXIS 879

... (8th Cir. 1978) Wilson v. Watt, 703 F.2d 395 (9th Cir. 1983) CONSTITUTION, STATUTES AND REGULATIONS: U.S. Const.: Amend. V (Due Process Clause) Administrative Procedure Act, 5 U.S.C. 551 et seq 5 U.S.C. 551(4) 5 U.S.C. 552 5 U.S.C. 552(a)(1) 5 U.S.C. 553 **5 U.S.C. 553(a)(2)** 5 U.S.C. 553(b)(3)(A) 5 U.S.C. 553(b)(3)(B) 5 U.S.C. 553(d)(3) 5 U.S.C. 701(a) 5 U.S.C. 701(a)(1) 5 U.S.C. 701(a)(2) 5 U.S.C. 702 5 U.S.C. 706 5 U.S.C. 706(2)(A) 5 U.S.C. 706(2)(D) Education for All Handicapped Children Act, ...

Content: Court Documents | **Date:** December 28, 1992

107. [RHOADES v. VIGIL](#), 1992 U.S. S. Ct. Briefs LEXIS 878

... Nothing in the APA provides the slightest support for the court's holding that all agency decisions that may adversely affect Indians are automatically subject to notice-and-comment procedures. 20 The legislative history of the APA in fact cuts against such a requirement. The House Report explains that the exception from notice-and-comment requirements for matters involving "public property," **5 U.S.C. 553(a)(2)** , "include[s] property held by the United States in trust or as guardian, as Indian ...

Content: Court Documents | **Date:** November 19, 1992

108. [UNITED STATES v. CITY OF FULTON](#), 1985 U.S. S. Ct. Briefs LEXIS 84

... Because ratemaking is rulemaking, see APA § 5(c), 5 U.S.C. § 554(d) (1976), a full adjudicative hearing is not required. The provision in the APA that had exempted ratemaking for the sale of federally

owned power from all provisions of the APA, APA § 4, **5 U.S.C. § 553(a)(2)**, was expressly overridden in section 501(b)(3) of the DOE Act, 42 U.S.C. § 7191(b)(3). The question of who has to give what kind of "process" when is treated in more detail in Part III, *infra*. The DOE Act thus carries ...

Content: Court Documents | **Date:** May 2, 1985

109. [MINARD RUN OIL CO. v. UNITED STATES FOREST SERV.](#), 2010 U.S. 3rd Cir. Briefs LEXIS 1293

... (reviewing settlement agreement in government contract case). In such cases, "the bounds of discretion give way to the stricter boundaries of law" and "administrative discretion gives way to judicial review." *Id.* at 762-63 (quoting *Garcia v. Neagle*, 660 F.2d 983, 988 (4th Cir. 1981)). As to contracts, the APA, **5 U.S.C. § 553(a)(2)**, does not state, as USFS represents, that a "contract" is "not a final agency action reviewable under the APA." *Br.* at 27. Rather, the cited provision says ...

Content: Court Documents | **Date:** September 9, 2010

110. [SHERWOOD v. TVA](#), 2014 U.S. 6th Cir. Briefs LEXIS 147

... In any case, Count III was correctly dismissed because, assuming there was a new policy, it concerned governmental property interests and government contracts, which are exempt from the APA's notice-and-comment requirements. See *Sherwood I*, 925 F. Supp. 2d. at 919-20 (citing **5 U.S.C. § 553(a)(2)**). Similarly, Count IV was correctly dismissed because an action committed to agency discretion, such as the maintenance of easements, is unreviewable under the APA, 5 U.S.C. § 701(a). *Id.* at 921 ...

Content: Court Documents | **Date:** January 21, 2014

111. [ISSA v. COMMISSIONER OF INTERNAL REVENUE](#), 2010 U.S. 8th Cir. Briefs LEXIS 706

... There are three exceptions to the requirement of publication in the Federal Register of all implementing regulations which are: 1) Military or Foreign affairs of the United States. 5 U.S.C. § 553(a)(1) 2) A matter relating to agency management or personal or to public property, Loans, grants, benefits or contracts **5 U.S.C. § 553(a)(2)** 3) Federal agencies or persons in their capacity as officers, agents or employees thereof. 44 U.S.C. § 1505(a)(1). The Internal Revenue Code is not self executing. ...

Content: Court Documents | **Date:** April 29, 2010

112. [CITY OF LOS ANGELES v. SESSIONS](#), 2018 U.S. 9th Cir. Briefs LEXIS 1239

... Illegal Immigration focus area. But Los Angeles cannot use the APA as a vehicle for imposing its policy judgments about the relationship between immigration enforcement and community-oriented policing on other localities that have different views based on the needs of their communities. And determinations about whether grant funds are best spent in this area or some other are highly discretionary and based on normative assessments rather than empirical predictions. Cf. **5 U.S.C. § 553(a)(2)** ...

Content: Court Documents | **Date:** July 17, 2018

113. [PACIFIC NORTHWEST GENERATING COOP. v. BONNEVILLE POWER ADMIN.](#), 2009 U.S. 9th Cir. Briefs LEXIS 92

... ICNU *Br.* at 5-6. This argument suffers from a fundamental misconception about the APA. Section 553(a)(2) of the APA provides an exception from notice and comment procedures for matters relating to "public property, loans, grants, benefits, or contracts." **5 U.S.C. § 553(a)(2)** (emphasis added). As this Court explained long ago, "the 'contracts' exemption clearly has a very wide scope" and is based on

"practical necessity" because: [i]t would be altogether unreasonable to require the various ...

Content: Court Documents | **Date:** May 21, 2009

114. [AMERICAN PHYSICIANS & SURGEONS, INC. v. SEBELIUS](#), 2013 U.S. D.C. Cir. Briefs LEXIS 108
 ... To the extent that the Administration argues any specific SMHOTA section "raised revenue," Physicians reserve the right to demonstrate that PPACA's broad regulation of one sixth of the national economy was not germane to that narrow SMHOTA section. III. THE PECOS CHANGES ARE UNLAWFUL Although the APA exempts matters "relating to ... grants, benefits, or contracts," **5 U.S.C. § 553(a)(2)**, HHS committed itself to following notice-and-comment rulemaking for such matters. Nat'l Welfare Rights Org'n ...

Content: Court Documents | **Date:** August 30, 2013

115. [AMERICAN PHYSICIANS & SURGS., INC. v. SEBELIUS](#), 2013 U.S. D.C. Cir. Briefs LEXIS 412
 ... To the extent that the Administration argues any specific SMHOTA section "raised revenue," Plaintiffs reserve the right to demonstrate that PPACA's broad regulation of one sixth of the national economy was not germane to that narrow SMHOTA section. III. THE PECOS CHANGES ARE UNLAWFUL Although the APA exempts matters "relating to ... grants, benefits, or contracts," **5 U.S.C. § 553(a)(2)**, HHS committed itself to following notice-and-comment rulemaking for such matters. Nat'l Welfare Rights Org'n ...

Content: Court Documents | **Date:** June 21, 2013

116. [LIGHTFOOT v. DISTRICT OF COLUMBIA](#), 2005 U.S. D.C. Cir. Briefs LEXIS 104
 It argues that the regulation is general and vague, and that the District cannot be expected to do any better. Br.43. As the Government cites no cases in which DOL has prevailed in the sort of Due Process challenge made here, and Plaintiffs are aware of none, the comparison is inappropriate. Moreover, the Government's exclusive focus on the DOL regulation fails to grapple with the due process problem at issue here. 16 **5 U.S.C. § 553(a)(2)** exempts matters relating to agency management or personnel ...

Content: Court Documents | **Date:** October 24, 2005

117. [GUERRA v. SHINSEKI](#), 2010 U.S. Fed. Cir. Briefs LEXIS 707
 ... To that end, the Administrative Procedure Act ("APA"), 5 U.S.C. § 553, requires agencies to publish proposed rules in the Federal Register for notice and comment. Although that requirement does not apply by its terms to matters "relating to . . . benefits," **5 U.S.C. § 553(a)(2)**, the "benefits" exception does not apply to rules and regulations promulgated by VA, 38 U.S.C. § 501(d). The VA's rules relating to benefits are therefore subject to the notice and comment requirements of the APA. ...

Content: Court Documents | **Date:** October 7, 2010

118. [GRAMLING v. UNITED STATES](#), 2010 U.S. Fed. Cir. Briefs LEXIS 92
 ... Small v. United States, 158 F.3d 576, 580-81 (Fed. Cir. 1998) (Chevron deference appropriate for Department of the Air Force's construction of statute which it administers); see also Golding v. United States, 48 Fed. Cl. 697, 738 (2001) (citing **5 U.S.C. § 553(a)(2)**) (excepting matters relating to military agency management or personnel from Administrative Procedure Act notice-and-comment requirements). 1 Even if a military agency's policy interpretation were not at issue, some ...

Content: Court Documents | **Date:** May 27, 2010

119. [TRIANTAFYLLOS v. DUDAS](#), 2008 U.S. Fed. Cir. Briefs LEXIS 93

... , because that would require the PTO to issue all rules pursuant to notice and comment. PTO Br. 40. But the PTO need not issue all rules by notice and comment. Under APA Section 553(a), there are limited exceptions where notice and comment obligations do not apply. 25 Section 553(a) specifically exempts from an agency's notice and comment obligations matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." **5 U.S.C. § 553(a)(2)** . Consequently, ...

Content: Court Documents | **Date:** September 24, 2008

120. [CONVERDYN v. MONIZ](#), 2014 U.S. Dist. Ct. Briefs LEXIS 254

... Court noted, "[w]hen the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued." 506 F.2d at 38 . Even if the 2013 Plan were found to be a legislative rule, it would still be lawful because rules relating to government property and contracts, are exempt from notice and comment requirements pursuant to **5 U.S.C. § 553(A)(2)** . See, e.g., *Clipper Cruise Line, Inc. v. United States*, 855 F. Supp. 1 , ...

Content: Court Documents | **Date:** July 7, 2014

121. [DELTA AIR LINES, INC. v. EXPORT-IMPORT BANK OF THE UNITED STATES](#), 2014 U.S. Dist. Ct. Briefs LEXIS 280

... , and which apply only when an "excepted subject[] ... [is] 'clearly and directly involved,'" *id.* at 232 & n.19 (quoting H.R. Rep. No. 79-1980, at 257 (1946)). That appropriately cabined reading is fatal to the Bank's argument, because the Bank's loan guarantees for foreign airlines do not "relat[e] ... to public ... loans." **5 U.S.C. § 553(a)(2)** . Instead, when the Bank issues a loan guarantee to a foreign airline, it is guaranteeing a private loan; and the Bank's longstanding practice is to ...

Content: Court Documents | **Date:** June 9, 2014

122. [DELTA AIR LINES, INC. v. EXPORT-IMPORT BANK OF THE UNITED STATES](#), 2014 U.S. Dist. Ct. Briefs LEXIS 203

... proposed loan or loan guarantee before approving such financing. The 2013 EIPs and Guidelines are designed to help the Board take account of precisely such economic impact. Accordingly, the Bank need not comply with the APA's notice-and-comment requirement when adopting EIPs, such as the 2013 EIPs and Guidelines. **5 U.S.C. § 553(a)(2)** . 2. "The notice-and-comment requirements apply, moreover, only to so-called 'legislative' or 'substantive' rules; they do not apply to 'interpretative rules, general ...

Content: Court Documents | **Date:** May 9, 2014

123. [MIDDLETON v. CRAWFORD](#), 2008 MO S. Ct. Briefs LEXIS 213

... at 400, 402. But the exception only goes so far, lest agencies privately enact public policy. "Agencies could too easily subvert usual rulemaking requirements if they could avoid those procedures for anything they called an internal directive to staff." *Id.* at 400. State courts have, accordingly, adopted a narrow view of agencies' "internal management," as have federal courts in construing the federal APA's "agency management" exception in **5 U.S.C. § 553(a)(2)** . See, e.g., *Evans v. State*, ...

Content: Court Documents | **Date:** September 18, 2008

Motions

124. [NEW LIFE EVANGELISTIC CTR., INC. v. SEBELIUS](#), 2009 U.S. Dist. Ct. Motions 48946, 2010 U.S. Dist. Ct. Motions LEXIS 69679
 ... pointed this out in its opening brief, at 11 n.8, though HHS was silent in response. 4 It should be noted that although executive agencies are exempt from the notice-and-comment requirements of the APA in the context of federal grant programs like Title V, **5 U.S.C. § 553(a)(2)**, HHS itself has waived this exemption, and is thus bound by the APA in promulgating all rules with the force of law under the Title V program. See 36 Fed. Reg. 2532 (Feb. 5, 1971); *Ariz. v. Shalala*, 121 F. Supp. ...
Content: Court Documents | **Date:** August 26, 2010
-
125. [REED v. SALAZAR](#), 2008 U.S. Dist. Ct. Motions 761775, 2009 U.S. Dist. Ct. Motions LEXIS 93701
 ... the APA divides types of agency actions into two broad categories, adjudications and rulemakings, it completely exempts from public notice and comment procedures all proceedings relating to "a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts." **5 U.S.C. § 553(a)(2)**. Courts do not generally impose any obligation to conduct either formal or informal rule making procedures unless some statute requires it, and here plaintiffs have failed ...
Content: Court Documents | **Date:** December 24, 2009
-
126. [UHOUSE v. UNITED STATES DOI](#), 2008 U.S. Dist. Ct. Motions 62078, 2008 U.S. Dist. Ct. Motions LEXIS 83011
 ... obligations and contractual prerogatives. Moreover, even if the letters are "rules" (which they are not), they are rules which are exempt from the general "rulemaking" requirements of public "notice and comment" because they concern administration of the Reclamation-TCID contract and because they concern management of public property. The APA explicitly excludes such matters (contract administration and public property management) from the general "rulemaking" requirements. See **5 USC § 553(a)(2)** ...
Content: Court Documents | **Date:** June 30, 2008
-
127. [United States v. Hansen](#), 2005 U.S. Dist. Ct. Motions 532756, 2007 U.S. Dist. Ct. Motions LEXIS 11728
 ... 18. There are only THREE defined exceptions to the requirement for publication in the Federal Register of all laws that will have "general applicability and legal effect" and therefore which may lawfully prescribe a penalty: A. A military or foreign affairs function of the United States. **5 U.S.C. § 553(a)(1)** B. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. **5 U.S.C. § 553(a)(2)**. C. Federal agencies or persons in their capacity ...
Content: Court Documents | **Date:** April 9, 2007
-
128. [GROCERY v. USDA](#), 2006 U.S. Dist. Ct. Motions 62354, 2006 U.S. Dist. Ct. Motions LEXIS 97194
 ... Under section 553 of the APA, an agency is required to provide notice of a proposed rulemaking in the Federal Register and an opportunity to comment on the proposed rule. *Lincoln v. Vigil*, 508 U.S. 182, 195 (1993). However, the requirements of section 553 expressly do not apply to rulemakings "relating to . . . public property, loans, grants benefits, or contracts." **5 U.S.C. § 553(a)(2)**; *Lincoln*, 508 U.S. at 196. As the interim rule involves the special Supplemental Nutrition Program, ...
Content: Court Documents | **Date:** September 25, 2006

129. [BOCA RATON COMMUNITY HOSP., INC. v. TENET HEALTHCARE CORP.](#), 2005 U.S. Dist. Ct. Motions 477092, 2006 U.S. Dist. Ct. Motions LEXIS 91176
- ... In the Government's opening brief, we explained that the Administrative Procedure Act (APA) does not require notice and comment for Touhy regulations because they fit within the APA exception for "rules of agency organization, procedure, or practice" set forth in 5 U.S.C. § 553(b)(A). In response, the plaintiffs have asserted that Touhy regulations do not fit within the "agency management or personnel" exception set forth in **5 U.S.C. § 553(a)(2)** and in the pre-1966 version of the APA. The plaintiffs' ...
- Content:** Court Documents | **Date:** April 3, 2006
-
130. [BOCA RATON COMMUNITY HOSP., INC. v. TENET HEALTHCARE CORP.](#), 2005 U.S. Dist. Ct. Motions 477092, 2006 U.S. Dist. Ct. Motions LEXIS 91175
- ... rule was "a matter relating to agency management or personnel." The Court disagreed, finding "the policy involved here, although it is directed to the Post Office personnel, substantially affects outside parties and is therefore NOT subject to the exception." Id. at 46. The government attempts to distinguish this case with the assertion that the "agency management or personnel" exception applied by the Court in *Gronouski* is "materially different" from the current text of **5 U.S.C. § 553(a)(2)** ...
- Content:** Court Documents | **Date:** March 28, 2006
-
131. [BOCA RATON COMMUNITY HOSP., INC. v. TENET HEALTHCARE CORP.](#), 2005 U.S. Dist. Ct. Motions 477092, 2006 U.S. Dist. Ct. Motions LEXIS 91174
- In particular, they argue that the HHS Touhy regulations cannot be considered a "management and personnel rule" because it impacts parties outside the agency. In fact, the "agency management or personnel" exception to the notice and comment requirement comes from **5 U.S.C. § 553(a)(2)**, which was not invoked by HHS when it published its Touhy regulations and is not at issue here. By contrast, the exception that was invoked by the agency, namely the exception in 5 U.S.C. § 553(b)(A) for "rules ...
- Content:** Court Documents | **Date:** March 22, 2006
-
132. [BOCA RATON COMMUNITY HOSP., INC. v. TENET HEALTHCARE CORP.](#), 2005 U.S. Dist. Ct. Motions 477092, 2006 U.S. Dist. Ct. Motions LEXIS 91182, 1 Exp. Wit. 21224
- ... as other potential litigants), they are either (i) agency management and personnel rules, or (ii) interpretive rules. DHHS did not publish its extension of the Touhy regulations to former employees in accordance with the notice and comment procedures of the APA. Instead, the regulations were published without an opportunity for public comment, in reliance on the APA exception for agency management and personnel rules. See 68 Fed. Reg. 25838, Final Rule (May 14, 2003); **5 U.S.C. §§ 553(a)(2)** ...
- Content:** Court Documents | **Date:** March 14, 2006
-
133. [UNITED STEEL, PAPER & FORESTRY v. UNITED STATES DOE](#), 2004 U.S. Dist. Ct. Motions 655036, 2006 U.S. Dist. Ct. Motions LEXIS 80377
- ... The Department of Agriculture had not been required to publish for public notice and comment its regulations requiring the use of Social Security Numbers to verify income eligibility for school lunch and nutrition programs because the APA, **5 U.S.C. § 553(a)(2)**, exempts matters "relating to . . . grants, benefits, or contracts." However, the Department had adopted a statement of policy which voluntarily agreed to follow APA public participation requirements in 5 U.S.C. §§ 553(b) and (c), except ...
- Content:** Court Documents | **Date:** February 15, 2006

134. [OPALA v. \(1\) JOSEPH M. WATT](#), 2004 U.S. Dist. Ct. Motions 1771A, 2005 U.S. Dist. Ct. Motions LEXIS 30399

... of its human and material resources. It is universally held that in making rules for "internal management," agencies do not legislate by rulemaking but administer themselves. 8 See 75 O.S. 2001 § 250.3(15)(c) for the exclusion of "internal management" matters from the definition of agency rule. Clearly not all rulemaking is legislation; only that which affects the public. 9 See the provisions of **5 U.S.C. § 553(A)(2)** for an exclusion of "matters relating to agency management or personnel ...

Content: Court Documents | **Date:** March 28, 2005

135. [OPALA v. \(1\) JOSEPH M. WATT](#), 2004 U.S. Dist. Ct. Motions 1771A, 2005 U.S. Dist. Ct. Motions LEXIS 30400

... of its human and material resources. It is universally held that in making rules for "internal management," agencies do not legislate by rulemaking but administer themselves. 8 See 75 O.S. 2001 § 250.3(15)(c) for the exclusion of "internal management" matters from the definition of agency rule. Clearly not all rulemaking is legislation; only that which affects the public. 9 See the provisions of **5 U.S.C. § 553(A)(2)** for an exclusion of "matters relating to agency management or personnel ...

Content: Court Documents | **Date:** March 24, 2005

136. [INDIAN EDUCATORS FEDN. v. NORTON](#), 2004 U.S. Dist. Ct. Motions 828728, 2005 U.S. Dist. Ct. Motions LEXIS 40314

... and no notice and comment would have been needed if a regulation were required because such a regulation would relate to an internal personnel action or, alternatively, because it would be interpretative. Therefore plaintiff's claim fails as a matter of law. See Def. Mem. at 43-44; see also **5 U.S.C. § 553(a)(2)**, (b)(3)(A) (exempting interpretative rules and rules related to personnel matters from the APA's rulemaking requirements); Norton v. Southern Utah Wilderness Alliance, 124 S. Ct. ...

Content: Court Documents | **Date:** February 4, 2005

137. [INDIAN EDUCATORS FEDN. v. NORTON](#), 2004 U.S. Dist. Ct. Motions 828728, 2004 U.S. Dist. Ct. Motions LEXIS 20825

... Indian preference would do nothing more than to clarify a policy the Secretary has long held. Consequently, if such an interpretation were even considered a rule, it would be an interpretative rule and therefore exempt from the APA's notice-and-comment requirements. Alternatively, the Secretary's interpretation is exempt from those requirements because it involves "a matter relating to agency management or personnel." **5 U.S.C. § 553(a)(2)**. The Secretary invoked this very provision in the past ...

Content: Court Documents | **Date:** December 17, 2004

138. [AFGE TSA LOCAL 1 v. LOY](#), 2003 U.S. Dist. Ct. Motions 1719, 2003 U.S. Dist. Ct. Motions LEXIS 14092

... ATSA § 101, 115 Stat. 597, 597 ATSA § 110(b)(2), 115 Stat. 597, 615 ATSA § 110(c)(1), 115 Stat. 597, 616 ATSA § 111(a), 115 Stat. 597, 617 ATSA § 111(d), 115 Stat. 597, 620 Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002) **5 U.S.C. § 553(a)(2)** 5 U.S.C. § 701(a)(2) 5 U.S.C. § 2108 29 U.S.C. § 623 et seq. 38 U.S.C. § 7401 38 U.S.C. § 7405 42 U.S.C. § 2000e-2(k) 49 U.S.C. § 114(n) 49 U.S.C. § 40122 49 U.S.C. § 44901 49 U.S.C. § 44935 ADMINISTRATIVE REGULATIONS 5

C.F.R. ...

Content: Court Documents | **Date:** October 14, 2003

-
139. [AFGE TSA LOCAL 1 v. LOY](#), 2003 U.S. Dist. Ct. Motions 1719, 2003 U.S. Dist. Ct. Motions LEXIS 14090

... Compl. PP 17-28, 35. Thus, TSA has clearly interpreted its authority under the ATSA to permit establishing its own workforce reduction rules without regard to Title 5 of the FAA RIF rules. Given "the nature of the question at issue," *Barnhart*, 122 S. Ct. at 1272, rulemaking was neither required nor appropriate, **5 U.S.C. 553(a)(2)** (agency need not seek public comment on "a matter relating to agency management or personnel"). "*Chevron* was simply a case recognizing that even without express ...

Content: Court Documents | **Date:** August 25, 2003

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140. [NEW YORK v. UNITED STATES DOJ](#), 2018 U.S. Dist. Ct. Motions LEXIS 4275

... Congress did not intend to encumber agencies with burdensome procedural prerequisites for determining grant conditions; to the contrary, Congress expressly exempted "grants" from the APA's ordinary notice-and-comment rulemaking procedures. **5 U.S.C. § 553(a)(2)**. In any event, the challenged conditions are wholly rational. Independent of the authority conferred in Section 10102(a)(6), the Department has statutory authority to ensure that Byrne JAG grantees "comply with . . . all other applicable ...

Content: Court Documents | **Date:** October 8, 2018

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141. [NEW YORK v. UNITED STATES DOJ](#), 2018 U.S. Dist. Ct. Motions LEXIS 1917

... AR-00001-00109 (Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States ("2007 OIG Audit")). 11 The APA expressly exempts from its "notice and comment" rulemaking requirements any agency matter "relating to ... grants." **5 U.S.C. § 553(a)(2)**. Further, because this case implicates only three straightforward and discrete grant conditions, it is unsurprising that the relevant Administrative Record is not voluminous. Nonetheless, as set forth above, together with the ...

Content: Court Documents | **Date:** September 14, 2018

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142. [CALIFORNIA ex rel. BECERRA](#), 2018 U.S. Dist. Ct. Motions LEXIS 4020

... Congress did not intend to encumber agencies with burdensome procedural prerequisites for determining grant conditions; to the contrary, Congress expressly exempted "grants" from the APA's ordinary notice-and-comment rulemaking procedures. **5 U.S.C. § 553(a)(2)**. 2 Further, because this case implicates only three straightforward and discrete grant conditions, it is unsurprising that the relevant Administrative Record is not voluminous. In any event, the challenged conditions are wholly rational. ...

Content: Court Documents | **Date:** August 22, 2018

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143. [CALIFORNIA ex rel. BECERRA](#), 2018 U.S. Dist. Ct. Motions LEXIS 3057

... AR-00001-00109 (Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States ("2007 OIG Audit")). 16 The APA expressly exempts from its "notice and comment" rulemaking requirements any agency matter "relating to ... grants." **5 U.S.C. § 553(a)(2)**. Further, because this case implicates only three straightforward and discrete grant conditions, it is unsurprising that the relevant Administrative Record is not voluminous. Nonetheless, as set forth above, together with

the ...

Content: Court Documents | **Date:** July 31, 2018

144. [Hughes v Chevron Phillips Chemical Co. LP](#), 2011 U.S. Dist. Ct. Motions LEXIS 4028

... There are three and only three exceptions to the requirement of publication in the Federal Register of all implementing regulations, which are; 1) A military or foreign affairs function of the United States . 5 USC § 553(a)(1) . 2) A matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts. **5 USC § 553(a)(2)** . 3) Federal agencies or persons in their capacity as officers, agents or employees thereof. 44 USC § 1505(a)(1) . Plaintiff would like ...

Content: Court Documents | **Date:** June 24, 2011

145. [GRAMLING v. UNITED STATES](#), 2009 Fed. Cl. Ct. Motions LEXIS 204

... Small v. United States, 158 F.3d 576 , 580-81 (Fed. Cir. 1998) (Chevron deference appropriate for Department of the Air Force's construction of statute which it administers); see also Golding v. United States, 48 Fed. Cl. 697 , 738 (2001) (citing **5 U.S.C. § 553(a)(2)**) (excepting matters relating to military agency management or personnel from Administrative Procedure Act notice-and-comment requirements). 2 Indeed, even if a military agency's policy interpretation were not at issue, ...

Content: Court Documents | **Date:** August 13, 2009

Pleadings

146. [DELTA AIR LINES, INC. v. EXPORT-IMPORT BANK OF THE UNITED STATES](#), 2014 U.S. Dist. Ct. Pleadings LEXIS 5670

... **5 U.S.C. § 553(a)(2)** , and that Ex-Im Bank was created primarily to provide loans and loan guarantees to foreign purchasers of U.S. exports. Congress is also presumed to know that the APA's provision on adjudication is similarly inapplicable because no statute requires the Bank to approve a transaction "on the record after opportunity for an agency hearing," 5 U.S.C. § 554 . Thus, Plaintiffs' argument (at 9)-that "[i]f either exception were independently sufficient to put the Bank wholly beyond ...

Content: Court Documents | **Date:** June 24, 2014

147. [DELTA AIR LINES, INC. v. EXPORT-IMPORT BANK OF THE UNITED STATES](#), 2014 U.S. Dist. Ct. Pleadings LEXIS 4705

... 5 U.S.C. § 553 is inapplicable to "matter[s] relating to . . . loans." **5 U.S.C. § 553(a)(2)** . Thus, the Bank can justify its approvals of the Air India Transactions "first when challenged in litigation." N. Air Cargo, 674 F.3d at 860 n.10 (citing WIFE, 876 F.2d at 998-99). Again, were it otherwise, the Court of Appeals' remand in Delta I would have been pointless. Notably, WIFE involved a similar exemption under **5 U.S.C. § 553(a)(2)** regarding matters relating to "public benefits." ...

Content: Court Documents | **Date:** May 23, 2014

148. [DELTA AIR LINES, INC. v. EXPORT-IMPORT BANK OF THE UNITED STATES](#), 2014 U.S. Dist. Ct. Pleadings LEXIS 4698

... would have to specifically excuse an agency from providing the Chenery -required contemporaneous explanation" before a court could accept " post hoc explanations by counsel." Id . Congress has not given the Bank any such excuse. 3. The Bank attempts (at 7) to rely on **5 U.S.C. § 553(a)(2)** , which exempts from § 553's requirements "matter[s] relating to . . . public . . . loans." Section 553(a)(2) does not help the Bank. 5 The other purported exceptions to § 553 that the Bank invokes (at ...














Content: Court Documents | **Date:** May 23, 2014

149. [LA CUNA DE AZTLAN SACRED SITES PROTECTION CIRCLE ADVISORY COMM. v. UNITED STATES DOI](#), 2012 U.S. Dist. Ct. Pleadings LEXIS 1145

... (9th Cir. 1994) (finding 5 U.S.C. § 553(2)(a) inapplicable where the Department of Housing and Urban Development voluntarily adopted notice and comment rulemaking); *Mission Group Kan. v. Riley*, 146 F.3d 775, 782 n.7 (10th Cir. 1998) (finding **5 U.S.C. § 553(a)(2)** inapplicable where the Department of Education expressly waived any such exemption). 2. Plaintiffs Cannot Show Causation or Redressability In addition to failing to establish an injury-in-fact, Plaintiffs do not rebut Federal ...

Content: Court Documents | **Date:** April 19, 2012

Legend

	Warning - Negative Treatment is Indicated		Red - Warning Level Phrase
	Questioned - Validity questioned by citing references		Orange - Questioned Level Phrase
	Caution - Possible negative treatment		Yellow - Caution Level Phrase
	Positive - Positive treatment is indicated		Green - Positive Level Phrase
	Analysis - Citing Refs. With Analysis Available		Blue - Neutral Level Phrase
	Cited - Citation information available		Light Blue - No Analysis Phrase
	Warning - Negative case treatment is indicated for statute		