

Comment from Senior Fellow Jonathan R. Siegel on *Clarifying Statutory Access to Judicial Review of Agency Action*  
July 22, 2021

1. Ron Levin suggests that no special provision needs to be made for Interim Final Rules. I think that is probably right for the reasons Ron states, and I would just observe that the proposed amendment may indeed do nothing with regard to Interim Final Rules. The proposed amendment (with Ron's edit accepted) says that in the case of a Direct or Interim Final Rule, “the time for seeking review will be extended by the length of the period running from its publication date up to and including the effective date of the rule.” In the case of an Interim Final Rule that is made effective on its publication date (with the possibility that the rule will later be changed in response to comments subsequently received), the “length of the period running from its publication date up to and including the effective date of the rule” would be zero, would it not? If that is right, then this proposed amendment would add zero to the review period in such a case.

2. My understanding of the proposed amendment is that it *extends* the review period by an amount equal to the period from the publication date to the effective date. So, for example, if the relevant specific judicial review statute requires judicial review to be sought within 60 days of agency action, and on March 1 the agency publishes a Direct Final Rule and states that the rule will take effect on July 1 unless adverse comment is received, then if our proposed amended recommendation were in effect, review could be sought any time from March 1 until 60 days *after* July 1. Is that what everyone else envisions? I don't think the review opportunity should end right on July 1. If that date is also the end date of the comment period, potential petitioners should have some time after that date to digest what if anything has happened and seek review. To clarify this, I would suggest inserting the words “an amount of time equal to” after “extended by.”

3. Finally, thinking about all this caused me to realize that perhaps we should insert the word “final” before “rule” in the phrase “publication of the rule in the *Federal Register*.”