

Comment from Special Counsel Jeffrey Lubbers on *Choice of Forum for Judicial Review of Agency Rules*  
June 5, 2024

Page 3, line 36. It seems awkward to begin the sentence “For one, . . .” For one what? Better to say, “In the first place,” or “First,” or “One reason is that . . . .”

A more substantive question I might raise has to do with singling out “rules promulgated using notice-and-comment procedures” for court-of-appeals review. If Congress were to use that dividing line in legislation, what would that mean for legislative rules that have been issued without N & C because they qualified for an exemption in section 553? Would those have to be challenged in district court? Would such a result lead agencies to feel they should gratuitously allow N & C simply to have the review forum be in the court of appeals?