



**ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
RECOMMENDATIONS RELATING TO JUDICIAL REVIEW**

- **Administrative Record for Judicial Review**

- Recommendation 2013-4, Administrative Record in Informal Rulemaking *at* acus.gov/2013-4 (defining the administrative record for judicial review, urging courts to afford this record a presumption of regularity, and addressing record supplementation or completion)
- Recommendation 93-4, Improving the Environment for Agency Rulemaking *at* acus.gov/93-4 (urging agencies to manage rulemaking records so that a usable and reliable file is available for purposes of judicial review)
- Recommendation 74-4, Preenforcement of Judicial Review of Rules of General Applicability *at* acus.gov/74-4 (identifying administrative materials that should be available to a court evaluating, on preenforcement review, the factual basis for agency rules of general applicability)

- **Review Structure and Standards**

- Recommendation 91-9, Specialized Review of Administrative Action *at* acus.gov/91-9 (opposing the creation of a single specialized court to handle review of all administrative cases; specifying characteristics for particular administrative programs that make specialized review appropriate; urging against *de novo* review of issues already formally adjudicated by agencies)
- Recommendation 89-5, Achieving Judicial Acceptance of Agency Statutory Interpretations *at* acus.gov/89-5 (urging agencies to follow authorized or appropriate processes for developing definitive agency statutory interpretations)
- Recommendation 81-2, Current Versions of the Bumpers Amendment *at* acus.gov/81-2 (opposing or alternately offering amendments to proposed A.P.A. changes, *see also* Recommendation 79-6)



- Recommendation 79-6, Elimination of the Presumption of Validity of Agency Rules and Regulations in Judicial Review, as Exemplified by the Bumpers Amendment *at* [acus.gov/79-6](https://www.acus.gov/79-6) (urging Congress to reject proposed amendments to the A.P.A. that would indiscriminately eliminate the presumption of validity for agency rules and regulations on judicial review)
- Recommendation 74-4, Preenforcement of Judicial Review of Rules of General Applicability *at* [acus.gov/74-4](https://www.acus.gov/74-4) (standard of review of rules of general applicability adopted after informal rulemaking is “arbitrary, capricious [or] an abuse of discretion” under A.P.A., 5 U.S.C. § 706(2); “substantial evidence” in specific statutory review provisions should be construed similarly)
- **Remedies**
 - Recommendation 2013-6, Remand Without Vacatur (Rec. 2013-6) *at* [acus.gov/2013-6](https://www.acus.gov/2013-6) (endorsing in specified circumstances the remedy of remand without vacatur under the A.P.A., as well as where not precluded by special statutory review provisions)
- **Suits Against the United States**
 - Recommendation 2012-6, Reform of 28 U.S.C. § 1500 *at* [acus.gov/2012-6](https://www.acus.gov/2012-6) (urging Congress to repeal Section 1500, which divests the U.S. Court of Federal Claims of jurisdiction in certain suits, and replace it with a stay provision)
 - Proposed legislation: S. 2769 (113th Cong.)
 - Recommendation 70-1, Parties Defendant *at* [acus.gov/70-1](https://www.acus.gov/70-1) (urging Congress to amend several code provisions to prevent dismissal of suits based on certain technical errors regarding the U.S. or its officers as party-defendant)
 - Implemented by Pub. L. 94-574



- Recommendation 69-1, Statutory Reform of the Sovereign Immunity Doctrine *at* [acus.gov/69-1](https://www.acus.gov/69-1) (recommending amendment of the A.P.A. to limit the technical legal defense of sovereign immunity where it blocks the right of citizens to challenge in courts the legality of acts of governmental administrators)
 - Implemented by Pub. L. 94-574
- Recommendation 68-7, Elimination of Jurisdictional Amount Requirement in Judicial Review *at* [acus.gov/68-7](https://www.acus.gov/68-7) (recommending elimination of the jurisdictional amount-in-controversy requirement where a plaintiff alleges injury or threat of injury by an officer or employee of the United States)
- **Venue and Timing**
 - Recommendation 88-6, Judicial Review of Preliminary Challenges to Agency Action *at* [acus.gov/88-6](https://www.acus.gov/88-6) (reiterating and supplementing Recommendation 75-3, *infra*)
 - Recommendation 82-7, Judicial Review of Rules in Enforcement Proceedings *at* [acus.gov/82-7](https://www.acus.gov/82-7) (addressing the circumstances under which Congress should limit judicial review of rules in enforcement proceedings)
 - Recommendation 80-5, Eliminating or Simplifying the “Race to the Courthouse” in Appeals from Agency Action *at* [acus.gov/80-5](https://www.acus.gov/80-5) (recommending procedures to eliminate or simplify the “race to the courthouse” where venue may lie in more than one court)
 - Recommendation 75-3, The Choice of Forum for Judicial Review of Administrative Action *at* [acus.gov/75-3](https://www.acus.gov/75-3) (setting forth principles to guide the choice of forum for judicial review of administrative action)