



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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## Information Interchange Bulletin No. 024

# Judicial Review of Agency Action

### What is judicial review?

Agencies regularly take actions that affect the public. Federal law usually permits people affected by an agency action to request that a court review the action and provide relief, if warranted.

### What statutes govern judicial review?

The best-known statute governing judicial review of agency action is the Administrative Procedure Act ([5 U.S.C. § 701–706](#)). The APA is a general statute that typically governs judicial review when no other, more specific statute applies. The Hobbs Act ([28 U.S.C. § 2342](#)) is another “general statute” that governs judicial review of actions by certain agencies.

Hundreds of other statutes govern judicial review of specific types of agency actions or actions by specific agencies. An ACUS [database](#) catalogs these “specific statutes.”

### What do judicial review statutes say?

Judicial review statutes set forth when and how courts review agency actions and provide relief. Topics they address may include:

- Who, if anyone, can seek judicial review of an agency action?
- When can a party seek judicial review of an agency action?
- In which court can a party seek judicial review of an agency action?
- How can a party initiate judicial review of an agency action?
- What record does the court use to evaluate an agency action?
- What standard does the court use to review an agency action?
- What relief, if any, can a court provide while review is ongoing?

### How does judicial review work under the APA?

<b>Applicability and Right of Review</b>	Parties adversely affected by an agency action are generally entitled to judicial review if the action is “final” or otherwise made reviewable by statute. Judicial review is ordinarily not available under the APA if a specific statute governs the kind of action in question or if the action is committed to agency discretion by law ( <a href="#">§ 701</a> , <a href="#">§ 702</a> , <a href="#">§ 704</a> ).
<b>Form and Venue</b>	Unless a specific statute sets forth the form and venue of the judicial review proceeding, a party may bring “any applicable form of legal action” against the U.S., agency, or appropriate officer “in a court of competent jurisdiction” ( <a href="#">§ 703</a> ).
<b>Relief Pending Review</b>	A court may postpone the effective date of an action when justice so requires or to prevent irreparable injury ( <a href="#">§ 705</a> ).
<b>Scope of Review</b>	A court decides questions of law, interprets constitutional and statutory provisions, and determines the meaning and application of the terms of rules, orders, and other actions. A court will also sometimes review factual findings, for which it uses the substantial evidence standard of review ( <a href="#">§ 706</a> ).
<b>Standard of Review and Remedy</b>	A court shall “compel” an action that an agency unlawfully withholds or unreasonably delays. It shall “hold unlawful and set aside” an action, finding, or conclusion it finds to be: <ul style="list-style-type: none"><li>• Arbitrary, capricious, an abuse of discretion, or unlawful;</li><li>• Unconstitutional or without statutory authorization;</li><li>• Procedurally inadequate;</li><li>• Unsupported by substantial evidence (in cases in which the APA requires an on-the-record hearing); or</li><li>• Unwarranted by the facts (if facts are subject to trial de novo by the reviewing court) (<a href="#">§ 706</a>).</li></ul>
<b>Record on Review</b>	A court usually reviews the “whole record” that the agency had before it when it took its action ( <a href="#">§ 706</a> ).

### How does judicial review work under specific statutes?

Specific statutes set forth a range of different procedures, which can vary—even considerably—from those in the APA. ACUS undertook a project to identify and review these statutes. It found that some statutes use inconsistent or potentially confusing language, which may create unnecessary obstacles to judicial review.

In [Recommendation 2021-5, Clarifying Statutory Access to Judicial Review of Agency Action](#), ACUS offers recommended drafting principles for Congress to use to avoid these problems in the future. It also recommends that Congress enact a general statute to fix existing laws. A [proposed statute](#), drafted by an ACUS Working Group, would accomplish that goal.

### Where can I learn more about judicial review statutes?

ACUS commissioned the [Sourcebook of Federal Judicial Review Statutes](#), by Prof. Jonathan Siegel. Based on a survey of the *U.S. Code*, the *Sourcebook* analyzes 650+ statutory provisions that govern how courts review agency rules and orders. It also includes a checklist to help Congress draft judicial review statutes.