

## Title 17.

### Administrative Law.

#### Chap. 1. Administrative Procedure Act, §§ 1 to 15.

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### CHAPTER 1.

#### ADMINISTRATIVE PROCEDURE ACT.

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§ 1. **Definitions.** — As used in this chapter: (1) “Agency” means each authority of the government of the Trust Territory whether or not it is within or subject to review by another agency, but does not include (a) the Congress of Micronesia, or (b) the courts of the Trust Territory.

(2) “Adjudication” means agency process for the formulation of an order.

(3) “Order” means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule-making but including licensing.

(4) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(5) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(6) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding.

(7) “Person” means an individual, partnership, corporation, association, clan, lineage, governmental subdivision, or public or private organization of any character other than an agency.

(8) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Statements concerning only the internal management of an agency, including, but not limited to, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers and property and not affecting private rights to procedures available to the public; provided, that this exclusion does not authorize withholding information from the public or limiting the availability of such manuals or records to the public; or

(b) Declaratory rulings issued pursuant to section 7 of this chapter; or  
 (c) Intra-agency memoranda; or  
 (d) Opinions of the Attorney General; or  
 (e) Rules issued by the High Commissioner where directly necessary for the implementation of the powers of the United States under the trusteeship agreement, or directly necessary for the implementation of the powers reserved to the High Commissioner by orders of the Secretary of the Interior.

(9) "*Rule-making*" means agency process for formulating, amending or repealing a rule.

(10) "*Sanction*" includes the whole or a part of an agency:

(a) Prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(b) Withholding of relief where adjudication is required by law;

(c) Imposition of penalty or fine;

(d) Destruction, taking, seizure, or withholding of property;

(e) Assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(f) Requirements, revocation, or suspension of a license; or

(g) Taking other compulsory or restrictive action.

(11) "*Relief*" includes the whole or a part of an agency:

(a) Grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(b) Recognition of a claim, right, immunity, privilege, exemption, or exception; or

(c) Taking of other action on the application or petition of, and beneficial to, a person.

(12) "*Agency proceeding*" means an agency process as defined by subsections (2), (5), and (9) of this section.

(13) "*Agency action*" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

(14) "*Regulation*" means a rule which prescribes or has the force of law.

(15) "*Decision*" means the whole or part of a final disposition of an agency in a hearing on a proposed regulation. (P.L. No. 5-86, § 1.)

**§ 2. Publication of rules and orders.** — (1) The registrar of corporations shall publish monthly a territorial register which shall separately state and currently publish for the guidance of the public all:

(a) Proposed and newly adopted regulations;

(b) Newly adopted rules other than regulations;

(c) Newly adopted orders;

(d) Other notices;

(e) Orders issued by the President of the United States or the Secretary of the Interior pertaining to the Trust Territory;

(f) Rules issued by the High Commissioner in implementation of the powers of the United States under the trusteeship agreement or reserved to the High Commissioner by orders of the Secretary of the Interior; and

(g) Emergency orders issued by a district administrator.

(2) Not more than one hundred eighty copies of each issue of the territorial register shall be made available to agencies and officials of the Trust Territory free of charge. Upon request, copies shall be made available to other persons at reasonable prices fixed by the registrar of corporations to cover mailing and publication costs. All proceeds from the sale of the territorial register shall be deposited by the treasurer of the Trust Territory to the credit of the general fund of the Congress of Micronesia.

(3) No agency rule, order, or decision is valid or effective against any person or party nor may it be invoked by the agency until such rule, order, or decision has been published in accordance with subsection (1) of this section, and has

been filed with the registrar of corporations and the district administrator of each district in the Trust Territory. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(4) No regulation or other rule adopted by any agency before the date this chapter comes into effect shall remain in effect unless such regulation or other rule is filed with the registrar of corporations and with the district administrator of each district in the Trust Territory within ten days of the date this chapter comes into effect as to regulations, and within ninety days thereafter as to other rules, and is published in the territorial register in accordance with the provisions of this section. Regulations and other rules not filed within such period shall become void and subject to reinstatement only in accordance with the provisions of sections 4 and 5 of this chapter. (P.L. No. 5-86, § 2.)

**§ 3. Compilation of rules; public inspection and reproduction of rules and orders.** — (1) The Attorney General shall compile, index, and publish all effective rules adopted by each agency. Compilations shall be supplemented or revised as often as necessary, and at least once every two years. Compilation shall be made available upon request to agencies and officials of the Trust Territory government free of charge and to other persons at reasonable prices fixed by the Attorney General to cover mailing and printing costs.

(2) Each agency shall make available for public inspection and copying:

- (a) All rules adopted or used by the agency in the discharge of its functions; and
- (b) All orders made by the agency. (P.L. No. 5-86, § 3.)

**§ 4. Procedure for adoption of regulations.** — (1) Prior to adoption, amendment or repeal of any regulation, the agency shall:

(a) Give at least thirty days' notice of its intended action by publication in the territorial register and by posting in convenient places in the district centers and in local government offices in each district, both in English and in the principal vernacular. The notice shall include:

- (i) A statement of either the terms or substance of the proposed regulation or a description of the subjects and issues involved,
- (ii) Reference to the authorities under which that action is proposed, and
- (iii) The time when, the place where, and the manner in which interested persons may present their views thereon.

(b) Afford all interested persons reasonable opportunity to submit data, views, or arguments, in writing. In all proceedings under this section, opportunity for oral hearing must be granted if requested by the Congress of Micronesia or a committee thereof, or a government subdivision or agency. Hearings afforded pursuant to this provision shall be conducted in accordance with section 9 of this chapter. The agency shall consider fully all written and oral submissions respecting the proposed regulation. Upon adoption of a regulation, the agency, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than thirty days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the High Commissioner, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than one hundred twenty days, but the adoption of an identical regulation under subsections (1)(a) and (1)(b) of this section is not precluded.

(3) No regulation adopted is valid unless adopted in substantial compliance with this section. A judicial proceeding for a declaratory judgment to contest any regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation. (P.L. No. 5-86, § 4.)

**§ 5. Filing and effective date of rules and regulations.** — (1) Each agency shall file in the office of the registrar of corporations and of each district administrator in the Trust Territory a certified copy of each rule adopted by it, including all rules existing on the effective date of this chapter. The registrar of corporations and the district administrator in each district in the Trust Territory shall keep a permanent register of the rules open to public inspection.

(2) Each regulation hereafter adopted is effective ten days after compliance with sections 2 and 4(1) or 4(2) of this chapter, and each rule other than a regulation hereafter adopted is effective ten days after compliance with section 2 of this chapter, except that:

(a) If a later date is required by a statute or specified in the rule, the later date is the effective date;

(b) Subject to applicable statutory provisions an emergency regulation becomes effective immediately upon filing with the registrar of corporations and the mailing under registered cover copies thereof each of the district administrators in the Trust Territory, or at a stated date less than twenty days thereafter, if the agency finds that this effective date is required by the public interest or is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefor shall be filed with the regulation. The agency shall take appropriate measures to make emergency regulations known to the persons who may be affected by them. (P.L. No. 5-86, § 5.)

**§ 6. Petition for adoption, amendment, or repeal of rules.** — An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Within thirty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with this chapter. (P.L. No. 5-86, § 6.)

**§ 7. Declaratory rulings by agencies.** — Any person may petition an agency for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. Rulings disposing of petitions shall be issued promptly and shall have the same status as final agency decisions or orders in contested cases. (P.L. No. 5-86, § 7.)

**§ 8. Adjudications.** — (1) This section applies, in accordance with the provisions hereof, in every adjudication in which a sanction may be imposed, except in an agency proceeding respecting the grant or renewal of a license, unless an agency proceeding therefor is required by law to be preceded by notice and opportunity to be heard. In an adjudication hereunder, all parties shall be afforded an opportunity for a hearing after reasonable notice.

(2) Hearings shall be conducted and orders shall be made in accordance with sections 9 and 10 of this chapter; provided, however, that in the event and to the extent that any other law provides for adjudication, then the provisions of such other law shall be controlling. (P.L. No. 5-86, § 8.)

**§ 9. Conduct of hearings.** — (1) Persons entitled to notice of an agency hearing shall be timely informed of:

(a) The time, place, and nature of the hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) The particular sections of the statutes and regulations involved;

(d) The matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(2) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent, order, or default.

(3) A party or any other person is entitled to be present and represented by counsel of his own choosing in an agency hearing.

(4) Upon request of any party and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the subject sought, an agency authorized by law to issue subpoenas shall issue subpoenas to compel the attendance of persons at a hearing or in taking depositions. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of failure to comply.

(5) There shall preside at the taking of evidence:

(a) The agency; or

(b) A hearing officer appointed by the agency.

The function of persons presiding at hearings and of persons participating in orders or decisions in accordance with this chapter shall be conducted in an impartial manner. A presiding or participating person may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias and prejudice or other disqualification of a presiding or participating person, the agency shall determine the matter as a part of the record and order or decision in the case.

(6) Subject to published rules of the agency and within its powers, persons presiding at hearings may:

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law;

(c) Rule on offers of proof and receive relevant evidence;

(d) Take depositions or have depositions taken when the ends of justice would be served;

(e) Regulate the course of the hearing;

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(g) Dispose of procedural requests or similar matters;

(h) Make or recommend orders or decisions in accordance with this chapter; and

(i) Take such other action authorized by agency rule consistent with this chapter.

(7) Except to the extent required for the disposition of ex parte matters as authorized by law, persons presiding at hearings or persons participating in orders or decisions may not:

(a) Consult a person or party or representative of a person or party on a fact in issue or on applicable law, unless on notice and opportunity for all parties to participate; or

(b) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecutory functions for an agency.

(8) Persons presiding at hearings or participating in orders or decisions may:

(a) Communicate with other members of the agency, except as limited by subsection (7) of this section; and

(b) Have the aid and advice of one or more personal assistants, and of the Attorney General and his staff if such assistance would not be in violation of subsection (7) of this section.

(9) Except as otherwise provided by statute, the proponent of an order or decision has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Except as otherwise provided by law, privileges relating to evidence in the courts of the Trust Territory shall apply in the conduct of hearings. A sanction may not be imposed on an order or decision issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(10) The record in a hearing under this chapter shall include:

(a) The notice and any pleadings, motions, and intermediate rulings;

(b) Evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof, objections, and rulings thereon;

(f) Any order or decision, recommended order or decision, opinion, or report by the person presiding at the hearing;

(g) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case;

(h) Transcript or summary of testimony and exhibits; and

(i) All papers and requests filed in the proceeding which are not specifically mentioned above.

(11) On payment of lawfully prescribed costs, the record shall be made available to the parties within a reasonable time.

(12) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (P.L. No. 5-86, § 9.)

**§ 10. Issuance of orders and decisions upon hearing.** — (1) When the agency does not preside at the reception of the evidence, the person presiding shall initially decide the case unless applicable law or agency rule requires, either in specific cases or by general rule, the entire record to be certified to it for the making of an order or a decision concerning a regulation. When the person presiding makes an initial order or decision, that order or decision then becomes the order or decision of the agency without future proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the initial order or decision, the agency has all the powers which it would have in making the initial order or decision, except as it may limit the issues on notice or by rule. When the agency makes the order or decision without having presided at the reception of the evidence, the person presiding shall first recommend an order or decision to the agency.

(2) Before a recommended or initial order or decision, or an order or decision on agency review of an order or decision, the parties are entitled to a reasonable opportunity to submit for the consideration of the persons participating in the decision:

(a) Proposed findings and conclusions;

(b) Exceptions to the order or decision or recommended order or decision; and

(c) Supporting reasons for the exceptions or proposed findings and conclusions.

(3) The record shall show the ruling or decision on each finding, conclusion, or exception presented. All orders or decisions, including initial or recommended orders or decisions, or those on agency review, are a part of the record and shall include a statement of:

(a) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(b) The appropriate decision, order, sanction, relief, or denial thereof. (P.L. No. 5-86, § 10.)

**§ 11. Special provisions with regard to licensing.** — (1) When a licensee has made timely and sufficient application to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(2) Except in cases of wilfulness, or except as otherwise provided by law, no revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave written notice to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires, emergency summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. (P.L. No. 5-86, § 11.)

**§ 12. Judicial review of contested cases.** — (1) This section applies, according to the provisions hereof, except to the extent that statutes enacted by the Congress of Micronesia explicitly preclude judicial review.

(2) A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review thereof in the trial division of the high court.

(3) The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(4) Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(5) When an agency finds that justice so requires, it may postpone the effective date of action taken by it pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(6) To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

- (a) Compel agency action unlawfully withheld or unreasonably delayed; and
- (b) Hold unlawful and set aside agency action, findings, and conclusions found to be:
  - (i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (ii) Contrary to constitutional right, power, privilege, or immunity;
  - (iii) In excess of statutory jurisdiction, authority, or limitations, or short of statutory rights;
  - (iv) Without observance of procedure required by law;
  - (v) Unsupported by substantial evidence in a case subject to sections 8 and 9 of this chapter or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (vi) Unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determination, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (P.L. No. 5-86, § 12.)

**§ 13. Appeals.** — An aggrieved party may obtain a review of any final judgment of the trial division of the high court under this act by appeal to the appellate division of the high court. The appeal shall be taken as in other civil cases. (P.L. No. 5-86, § 13.)

**§ 14. Other authorized authority subject to this act.** — All administrative procedures, including the issuance of rules, authorized by other sections of the Trust Territory Code, shall be made in accordance with the provisions of this act, unless congress shall by law hereafter provide otherwise. (P.L. No. 5-86, § 14.)

**§ 15. Implementation.** — Each agency is granted the authority to comply with the requirements of this chapter through the issuance of rules. (P.L. No. 5-86, § 15.)