

TITLE - 6

PUBLIC PROCEEDINGS AND RECORDS

CHAPTER 1.

ADMINISTRATIVE PROCEDURE ACT

ARRANGEMENT OF SECTIONS

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An Act to regulate the rule-making procedures of administrative agencies of the Government of the Marshall Islands. [Section numbering style modified to conform to new Code Format (Rev.2003)]

Commencement: December 19, 1979
Source: M.I. Code (1975)
P.L. 1979-23
P.L. 1980-15

§101. Short Title.

This Act may be cited as the “Marshall Islands Administrative Procedure Act 1979”. [P.L. 1979-23, §1.]

§102. Interpretation.

As used in this Act:

(a) “agency” means each board, commission, department, or officer of the Government of the Marshall Islands authorized by law to make rules or to determine contested cases, except the Nitijela, the judiciary and local government council;

(b) “contested case” means an adjudicatory proceeding, including rate-making and licensing, in which the legal rights of a party are asserted by the party to have been directly and adversely

affected by an agency rule or action;

(c) “license” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, except that it does not include a license required solely for revenue accountability;

(d) “licensing” includes the agency process of grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(e) “party” means each person or agency named or admitted as a party, or properly seeking and entitled, as a matter of right, to be admitted as a party;

(f) “person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

(g) “rule” means each agency statement of general applicability that implements, interprets, or regulates conduct or action, prescribes 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 statement exclusively concerned with the internal management of any agency not affecting private rights or procedures available to the public, nor declaratory rulings issued pursuant to Section 109 of this Act, nor intra-agency memoranda. [M.I. Code (1975), §2.401; P.L. 1979-23, §2.]

§103. Public information; adoption of rules; availability of rules and orders.

(1) In addition to other rule-making requirements imposed by law, each agency will:

(a) adopt a rule describing its organization, stating the general course and method of its operations, and setting out the procedures whereby the public may obtain information from the agency or make submissions or requests to the agency;

(b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions of general application used by the agency;

(c) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(d) make available for public inspection all final orders, decisions, and opinions of general applicability or effect upon the public.

(2) Any agency rule, order, or decision which fails to comply with Section 104, 105, or 107 of this Act shall remain in full force and effect notwithstanding that failure, and if a court determines that any of those Sections have not been complied with, relief shall be limited to an order compelling compliance. [M.I. Code (1975), §2.402; P.L. 1979-23, §2; amended by P.L. 1980-15, §2.]

§104. Notice procedure for adoption of rules.

Prior to adoption, amendment or repeal of any rule:

(a) an agency shall give at least thirty (30) days notice of a proposed rule by posting notice of the rule in the office of the Chief Secretary, in the office of each department head of the Public Service, at the Public Administration Office, at the office of the Chief Secretary’s Representative on Ebeye, at the Courthouse on Majuro Atoll and at the Council Buildings on Majuro Atoll and Ebeye Island, Kwajalein. The notice shall also be read over the radio broadcasting station at Majuro Atoll on five (5) consecutive calendar days within fifteen (15) days after it is posted. Such notice shall be in English and Marshallese and shall include:

- (i) a statement of either the terms of substance of the proposed rule or a description of the subject and issues involved;
 - (ii) reference to the authority under which that rule is proposed;
 - (iii) the time when, the place where, and the manner in which interested persons may present their views thereon; and
 - (iv) the location where copies of the proposed rule will be available for reading or distribution to the public.
- (b) an agency shall make copies of each proposed rule available for reading at the Office of the Chief Secretary, the Office of the Chief Secretary's Representative on Ebeye, and at the Public Service Administration Office;
- (c) an agency shall afford all interested persons reasonable opportunity to submit data, views, or arguments, in writing;
- (d) the agency shall conduct a public hearing on a proposed rule if requested by the Nitijela, a Committee of the Nitijela, or another government agency. An agency shall consider fully all written and oral submissions concerning the proposed rule;
- (e) if requested to do so by an interested person prior to adoption or within thirty (30) days after adoption, the agency shall issue a concise statement of the basis upon which it has adopted or rejected a proposed rule. [M.I. Code (1975), §2.403; P.L. 1979-23, §2.]

§105. Emergency rules.

If there is clear, present, substantial and imminent danger to the public health, safety, or welfare, requiring adoption of a rule upon fewer than thirty (30) days notice, the agency upon stating, in writing, the nature of the danger, may, unless disapproved by the Cabinet, proceed without prior notice or hearing, or upon abbreviated notice and hearing, to adopt an emergency rule. The emergency rule shall be void one hundred twenty (120) days after adoption or upon notice of the termination of the emergency by the agency of the Cabinet, whichever occurs earlier, filed with the Registrar of Corporations and the Chief Secretary. An emergency rule shall be delivered to the Cabinet as soon as possible, or in any event, within twenty-four (24) hours after adoption. [M.I. Code (1975), §2.404; P.L. 1979-23, §2.]

§106. Effective date and filing of rules.

The agency shall file a certified copy of each rule adopted by it with the Cabinet, by delivery to the Clerk of the Cabinet. The Cabinet shall act to approve or disapprove the rule within twenty (20) consecutive calendar days after receipt by the Clerk of the Cabinet. If the Cabinet does not act to approve or disapprove the rule within the twenty (20) day period, the rule shall be approved as if the Cabinet had acted affirmatively. Within one day after the Cabinet's action or on the twenty-first day after receipt of the rule in the event the Cabinet did not act, the Clerk of the Cabinet shall file with the Chief Secretary, the Registrar of Corporations and the agency, copies of the action on the rule, or a notice that the Cabinet did not act affirmatively on the rule.

A rule adopted by an agency shall be effective only after it has been approved by the Cabinet and notice of the Cabinet's approval has been filed pursuant to this Section, except that:

- (a) if a later date is required by statute or specified in the rule, the later date shall be the effective date; and
- (b) an emergency rule shall be effective immediately upon filing the rule with the

Registrar of Corporations, and the Chief Secretary, unless the Cabinet disapproves the rule within twenty (20) days thereafter, or unless provided by other law to the contrary. The agency's statement of basis for the emergency rule shall be filed with each such rule. The agency shall take every reasonable measure to make such emergency rule known to those persons who will be affected by it. [M.I. Code (1975), §2.405; P.L. 1979-23, §2.]

§107. Publication of rules.

(1) The Registrar of Corporations and the Chief Secretary shall each compile, index, and maintain all effective rules adopted by each agency. Compilations shall be supplemented or revised promptly as new rules become effective.

(2) The Chief Secretary shall publish for public distribution, a monthly bulletin setting forth a summary of each rule filed during the preceding month.

(3) The Registrar of Corporations shall promptly provide a copy of the full text of each rule to the Secretary of Internal Affairs, who shall further distribute a copy of the full text of each rule to each local government area where it shall be kept on file and be available for public inspection. [M.I. Code (1975), §2.406; P.L. 1979-23, §2.]

§108. Petition for adoption of rules.

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe, by rule, the form for petitions and the procedure for their submission, consideration, and disposition. Within thirty (30) days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial or shall convene a public hearing on the petition, and within fifteen (15) days thereafter, notify the petitioner of the agency action, in writing. A denial shall include the reasons therefor. [M.I. Code (1975), §2.407; P.L. 1979-23, §2.]

§109. Declaratory judgment on validity or applicability of rules.

The validity or applicability of any rule may be determined in an action for declaratory judgment in the High Court, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of any statutory provision or any rule or order of the agency. Proceedings on petitions for declaratory ruling shall be conducted as in contested cases. [M.I. Code (1975), §2.408; P.L. 1979-23, §2.]

§110. Declaratory rulings by agencies.

Each agency shall provide, by rule, for the filing and prompt disposition of petitions for declaratory rulings by the agency, as to the applicability of any statutory provision or any rule or order of the agency. Proceedings on petitions for declaratory ruling shall be conducted as in contested cases. [M.I. Code (1975), §2.409; P.L. 1979-23, §2.]

§111. Contested cases; notice; hearing; records.

(1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

- (a) a statement of the time, place, and nature of the hearing;
 - (b) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (c) a reference to the particular sections of the statutes and rules involved;
 - (d) a short and plain statement of 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) Opportunity shall be afforded all parties in a contested case to respond and present evidence and argument on all issues involved.
- (3) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (4) The record in a contested case shall include:
- (a) all pleadings, motions, interim rulings;
 - (b) evidence received or considered;
 - (c) a statement of matters officially noticed;
 - (d) questions and offers of proof, objections, and rulings thereon;
 - (e) proposed findings and exceptions;
 - (f) any decision, opinion, or report by the officer presiding at the hearing;
 - (g) all staff memoranda or data submitted to the hearings officer or members of the agency in connection with their consideration of the case.
- (5) Oral proceedings in contested cases shall be recorded, and any part thereof shall be transcribed on request of any party at the party's expense.
- (6) Findings of fact in contested cases shall be based exclusively on the evidence and on matters officially noticed. [M.I. Code (1975), §2.410; P.L. 1979-23, §2.]

§112. Rules of evidence; official notice.

The following procedures concerning evidence shall be observed in contested cases:

- (a) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in cases in the High Court shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
- (b) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;
- (c) a party may conduct cross-examinations required or a full and true disclosure of facts; and
- (d) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in

preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. [M.I. Code (1975), §2.411; P.L. 1979-23, §2.]

§113. Examination of evidence by agency.

When, in a contested case, a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or by a person who has read the record. The parties, by written stipulation, may waive compliance with this Section. [M.I. Code (1975), §2.412; P.L. 1979-23, §2.]

§114. Decisions and orders.

A final decision, or order adverse to a party in a contested case, shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. A copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. [M.I. Code (1975), §2.413; P.L. 1979-23, §2.]

§115. Ex parte consultations.

Unless required for the deposition of *ex parte* matters authorized bylaw, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate directly or indirectly, in connection with any issue of law, with any person or his representative, except upon notice and opportunity for all parties to participate. An agency member:

- (a) may communicate with other members of the agency; and
- (b) may have the aid and advice of one or more personal assistants. [M.I. Code (1975), §2.414; P.L. 1979-23, §2.]

§116. Licenses.

(1) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license for an activity of a continuing nature, the existing license shall 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, the existing license shall not expire until the last day for seeking review of the agency order or a later date fixed by order of the receiving court.

(3) No revocation, suspension, annulment, or withdrawal of any license is lawful unless,

prior to the institution of agency proceedings, the agency gave due 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 the public health, safety, or welfare is clearly, imminently and substantially endangered, requiring emergency action, and incorporates a finding to that effect in its order, with a statement of the nature of the danger, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. [M.I. Code (1975), §2.415; P.L. 1979-23, §2.]

§117. Judicial review of contested cases.

(1) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case, is entitled to judicial review of the decision. This Section does not limit utilization of the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law. A preliminary, procedural or interim agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) Proceedings for review are instituted by filing a petition in the High Court within thirty (30) days after receipt of the final decision of the agency, or, if a rehearing is requested, within thirty (30) days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(3) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(4) Within sixty (60) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were justifiable reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request of either party, shall hear oral argument and receive written brief.

(7) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory property of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record; or
- (f) arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. [M.I. Code (1975), §2.416; P.L. 1979-23, §2.]

§118. Appeals.

An aggrieved party may obtain a review of any final judgment of the court under this Act by appeal to the Supreme Court. The appeal shall be taken as in other civil cases. [M.I. Code (1975), §2.417; P. L. 19 79-23, §2.]

§119. Validity of regulations.

Each rule and regulation, consistent with the Constitution and the laws of the Marshall Islands, adopted pursuant to the Administrative Procedure Act 1970, and in force on June 30, 1980, shall continue to be in full force and effect, unless repealed by law, or is voided by its own terms. [P.L. 1979-23, §5; amended by P.L. 1980-15, §3.]

Note: Sections 102-118 above were formerly Sections 2.401-2.417 of the 1975 Marshall Islands Code, introduced originally by P.L. 1979-23, Section 102, Section 119 was formerly section 5 of PL. 1979-23 as amended by P.L. 1980-15, Section 3.