

TITLE 1: GOVERNMENT
DIVISION 9: MISCELLANEOUS PROVISIONS

§ 9112. Administrative Procedure: Judicial Review of Contested Cases.

(a) This section applies, according to its provisions, except to the extent that statutes enacted by the Commonwealth Legislature explicitly preclude judicial review.

(b) A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth Superior Court.

(c) The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in the Commonwealth Superior Court 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 that court. 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.

(d) 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.

(e) 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.

(f) 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:

(1) Compel agency action unlawfully withheld or unreasonably delayed;
and

(2) 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;

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(v) Unsupported by substantial evidence in a case subject to 1 CMC §§ 9108 and 9109 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 forgoing 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 or prejudicial error.

Source: 17 TTC § 12, modified.

Commission Comment: The Trust Territory Code contained no time limitation within which an aggrieved party could seek judicial review of an administrative decision. The Commission inserted a 30-day time limit in subsection (b).

Executive Order 97-03, which was signed on November 13, 1997, transferred the subject duty of the Attorney General set forth in 1 CMC § 2153(b) and related duties and responsibilities of the Registrar of Corporations (set forth in 4 CMC §§ 4201-4204) to the Department of Commerce. EO 97-03 also called for the substitution of “Registrar of Corporations” or “Registrar” with “Attorney General” in 1 CMC §§ 9101-9115.

Regarding the insertion of the 30-day time limit in subsection (b) above, in January 1982, the Commonwealth Law Revision Commission was formed to compile, classify, and codify all laws having force and effect in the Commonwealth into a product called the “Commonwealth Code;” prior to the creation of the Commonwealth Code, the CNMI had been dependent upon the Trust Territory Code of the Pacific Islands as the primary basis of its written laws. Once this major task was completed the Commonwealth Code project was submitted to the Legislature for enactment. On December 23, 1983, Public Law 3-90 (H.B. No. 351) officially created and sanctioned the Commonwealth Code. Public Law 3-90 provided that the Commonwealth Code shall take force on or after January 1, 1984; the Commonwealth Code took effect on January 1, 1984.

As part of the original Commonwealth Code project, 17 TTC § 12 was codified as 1 CMC § 9112. The subject codification insertion of the 30-day time limit found in 1 CMC § 9112(b) was done when the subject section was codified by the first Commonwealth Law Revision Commission prior to January 1, 1984. More importantly, the subject codification, as it still exists today, was submitted to the legislature for enactment as part of the Commonwealth Code project and was subsequently approved by the legislature in PL 3-90 when it officially created the Commonwealth Code and adopted the contents therein as *prima facie* evidence of CNMI law come January 1, 1984.

It should be noted that in compiling later versions of the Code, in particular the most recent 2004 Code and subsequent update supplements and revisions, the current Commonwealth Law Revision Commission is ever mindful of the scope of its codification authority (1 CMC § 3806) and of the fact that the abovementioned change would not be valid today absent legislative enactment of the Code. Because it is no longer contemplated that for the Legislature to positively enact future Code revisions, any changes of the above nature would now be recommended to the Legislature for its action.