

CHAPTER 1

GENERAL PROVISIONS

Section

101. Short title

102. Definitions

§ 101. Short title

This act shall be known and may be cited as the Cherokee Nation Administrative Procedure Act.

LA 13-07, eff. March 19, 2007.

§ 102. Definitions

As used in this act:

1. **"Agency"** means the Environmental Protection Commission, Gaming Commission, and Tax Commission, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head. The term does not include the Tribal Council or the Courts, or the Principal Chief in the exercise of powers derived directly and exclusively from the Constitution. The term does not include Cherokee Nation Election Commission in the exercise of powers derived directly and exclusively from the Constitution. The term does not include tribal-owned commercial businesses.

2. **"Agency action"** means:

a. the whole or a part of a rule or an order;

b. the failure to issue a rule or an order; or

c. an agency's performance of, or failure to perform, any other duty, function, or activity, discretionary or otherwise.

3. **"Agency head"** means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

4. **"Electronic"** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

5. **"Emergency adjudication"** means an agency adjudication taken in a situation in which there is an immediate danger to the public health, safety, or welfare that requires immediate action.

6. **"Filing"** means delivery of a record or electronic transmission of a record to a place and in a manner designated by the agency by rule for receipt of official records, or in the absence of such designation, at the office of the agency head.

7. "**Index**" means an alphabetical list of items by subject and title in a record with a page number, hyperlink, or any other connector that links the alphabetical list with the record to which it refers.

8. "**Law**" means the whole or a part of the Constitution, or of any statute, case law, common law, rule of court, executive order, or rule or order of an agency.

9. "**License**" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

10. "**Licensing**" means an agency process relating to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

11. "**Mail**" for purposes of any notice means 1st class mail of the United States Postal Service, a reputable carrier other than the United States Postal Service, or electronic distribution, where electronic distribution has been designated by agency rule as an acceptable means for transmission or receipt of records.

12. "**Notice**" means to take such steps as may be reasonably required to inform another person in the ordinary course, whether or not the other person actually comes to know of it.

13. "**Order**" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

14. "**Party to agency proceedings,**" or "**party**" in context so indicating, means:

a. a person to whom the agency action is specifically directed;

b. a person named as a party to an agency proceeding or allowed to intervene or participate as a party in the proceeding; or

c. properly seeking and entitled by law to participate, in an individual proceeding.

15. "**Party to judicial review or civil enforcement proceedings**" or "**party**" in context so indicating, means:

a. a person who files a petition for judicial review or civil enforcement; or

b. a person named as a party in a proceeding for judicial review or civil enforcement or allowed to participate as a party in the proceeding.

16. "**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

17. "**Public notice**" means conspicuously posting on the official Cherokee Nation website, delivering to persons who have requested routine notification, and any other method.

18. "**Record**" means information that is inscribed on a tangible medium or that is

stored in an electronic or other medium and is retrievable in perceivable form.

19. **"Rule"** means the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes (i) law or policy, or (ii) the organization, procedure, or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule. The term **"rule"** does not include:

a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license;

b. the approval, disapproval or prescription of rates;

c. statements and memoranda concerning internal management not affecting private rights or procedures available to the public;

d. declaratory rulings issued pursuant this title;

e. orders by the Principal Chief or his designee; or

f. press releases.

20. **"Rule-making"** means the process for formulation and adoption of a rule.

21. **"Website"** means the official internet website of Cherokee Nation, [www.cherokee.org](http://www.cherokee.org), or reasonably accessible via hyperlinks from the website.

22. **"Written"** means inscribed on a tangible medium.

LA 13-07, eff. March 19, 2007. Amended LA 33-12, eff. Oct. 19, 2012.