

**Cherokee Nation Code Annotated**

**Title 1: Administrative Procedure**

**Chapter 5: Judicial Review**

**§ 509. Scope of review—Grounds for invalidity**

Cite as: 1 CNCA § 509

A. Except to the extent that this act or another statute provides otherwise, the validity of agency action must be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

B. The burden of demonstrating the invalidity of agency action is on the party asserting invalidity.

C. The Court shall make a separate and distinct ruling on each material issue on which the Court's decision is based.

D. The Court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by any one or more of the following:

1. The agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
2. The agency has acted beyond the jurisdiction conferred by any provision of law;
3. The agency has not decided all issues requiring resolution;
4. The agency has erroneously interpreted or applied the law;
5. The agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
6. The persons taking the agency action were improperly constituted as a decision-making body, motivated by an improper purpose, or subject to disqualification;
7. The agency action is based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the whole record before the Court, which includes the agency record for judicial review, supplemented by any additional evidence received by the Court under this act;
8. The agency action is subject to agency discretion which has been abused by one or more of the following:
  - a. agency reliance on factors that may not be taken into account under, or ignored factors that must be taken into account under law;

- b. agency action does not bear a reasonable relationship to statutory purposes or requirements;
- c. necessary factual premises of the action do not withstand scrutiny under the relevant standard of review;
- d. agency action is unsupported by any explanation or rests upon reasoning that is seriously flawed;
- e. the agency failed, without adequate justification, to give reasonable consideration to an important aspect of the problems presented by the action;
- f. the agency action is, without legitimate reason and adequate explanation, inconsistent with prior agency policies or precedents;
- g. without an adequate justification, to consider or adopt an important alternative solution to the problem addressed in the action;
- h. the agency failed to consider substantial arguments, or respond to relevant and significant comments, made by the participants in the proceeding that gave rise to the agency action;
- i. the agency has imposed a sanction that is greatly out of proportion to the magnitude of the violation;
- j. or the action fails in other respects to rest upon reasoned decision making.

E. The Court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the Court considers necessary and that the agency take such further action on the basis thereof as the Court directs, if:

1. the agency was required by this act or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;
2. the Court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

3. the agency improperly excluded or omitted evidence from the record; or
4. a relevant provision of law changed after the agency action and the Court determines that the new provision may control the outcome.

#### Historical Data

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