

## FSMC, TITLE 19. ADMIRALTY & MARITIME

### Chapter 4: Requirements for Vessels Within the Federated States of Micronesia

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#### **§ 401. Application of chapter.**

(1) Unless otherwise specified herein, this chapter applies to:

(a) Registered Vessels (including Government Vessels) wherever located;

(b) non-registered small craft which navigate outside lagoons, or navigate within lagoons in such a way as to affect interstate or international commerce;

(c) foreign vessels at a port or within the waters of the Federated States of Micronesia.

(2) This chapter does not apply to vessels which are compelled by stress of weather or force majeure to enter any of the ports or waters of the Federated States of Micronesia to take refuge.

**Source:** PL 10-76 § 56.

**Cross-reference:** FSM Const., art. IX, § 2(h).

**Editor's note:** PL 10-76 took effect April 1, 1998.

The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.

#### **§ 402. Regulations relating to international maritime safety conventions.**

The Secretary may promulgate regulations for maritime safety taking into account international maritime safety conventions, including without limitation, the Collisions Convention, the Load Line Convention, the Safety Convention, the Tonnage Measurement Convention, and the IMDG Code which regulations shall have the force and effect of law.

**Source:** PL 10-76 § 57.

#### **§ 403. Regulations for small craft.**

The Secretary may promulgate regulations necessary to provide for the safety and control of foreign and domestic small craft including those used for fishing.

**Source:** PL 10-76 § 58.

#### **§ 404. Principal Surveyor and Surveyors.**

(1) The Secretary may appoint the Principal Surveyor who shall oversee the implementation and enforcement of this chapter.

(2) The Principal Surveyor shall be responsible for the issuing of Safety Certificates.

(3) The Secretary may also appoint any qualified surveyor or classification society to be a Surveyor of vessels.

(4) The Secretary shall determine by regulation the credentials and experience necessary to qualify for the position of Principal Surveyor or Surveyor.

**Source:** PL 10-76 § 59.

#### **§ 405. Powers of Surveyors.**

(1) A Surveyor may at any reasonable time:

(a) go on board and inspect any vessel or small craft, its equipment, cargo or articles on board and any document required to be carried;

(b) upon reasonable notice to the owner or master, require the production of books, papers and documents relating to the vessel;

(c) conduct other surveys and inspections of the vessel; and

(d) require repairs be made to the vessel.

(2) The Principal Surveyor may direct any owner or master to move or otherwise prepare a vessel for survey or inspection.

(3) The Principal Surveyor may order that a vessel be detained pursuant to section 422 of this

chapter.

(4) A Surveyor shall not unreasonably detain or delay a vessel.

**Source:** PL 10-76 § 60.

**§ 406. Survey prior to registration.**

It shall be a condition precedent to registration that all vessels be surveyed and issued all required Safety Certificates prescribed by regulations.

**Source:** PL 10-76 § 61.

**Cross-reference:** FSM Const., art. IX, § 2(h).

**§ 407. Safety Certificates.**

(1) Every Registered Vessel shall display in a prominent and accessible place all current Safety Certificates required to be carried under this title or regulations or a certified copy thereof.

(2) No Registered Vessel may go to sea without the required Safety Certificates displayed in accordance with subsection (1) of this section.

(3) Every vessel in the waters of the Federated States of Micronesia which is required to carry a certificate issued under any international maritime convention or law of the Federates States of Micronesia shall produce those certificates on the request of any duly authorized Surveyor.

(4) No foreign vessel may go to sea in the waters of the Federated States of Micronesia without producing the certificates in accordance with subsection (3) of this section.

(5) Any master, owner or person in charge of a vessel who violates subsections (2) or (4) of this section commits a civil offense, and shall be liable to a fine not exceeding \$50,000.

**Source:** PL 10-76 § 62.

**§ 408. Certificates to be produced before vessel goes to sea.**

Before a vessel goes to sea, the master must produce for inspection all required certificates or the statement referred to in section 409(2).

**Source:** PL 10-76 § 63.

**§ 409. Vessel may go to sea without Safety Certificate in certain circumstances.**

(1) The Principal Surveyor may allow a vessel to go to sea without a required Safety Certificate if the Principal Surveyor is satisfied that it may proceed without danger to the vessel, crew, or its passengers.

(2) If a vessel is allowed to proceed under subsection (1) of this section, the Principal Surveyor shall give to the master a written statement of the circumstances and conditions under which the vessel is allowed to go to sea, and the master shall comply with the circumstances and conditions so specified.

(3) This section does not apply to vessels which are not required to have Safety Certificates.

**Source:** PL 10-76 § 64.

**§ 410. Suspension or revocation of Safety Certificate.**

(1) The Principal Surveyor shall suspend or revoke any Safety Certificate issued upon false or erroneous information, or issued to a vessel which has become unseaworthy, and shall notify the owner or master of the revocation or period of suspension.

(2) An owner or master notified of the suspension or revocation of a Safety Certificate shall immediately surrender it to the Principal Surveyor.

(3) The Principal Surveyor may resurvey a vessel before issuing a new certificate or removing a suspension.

**Source:** PL 10-76 § 65.

#### **§ 411. Change in the condition of the vessel.**

Where a Registered Vessel has undergone a significant modification to its hull or superstructure or where the operation or safety of a Registered Vessel is impaired because of a change in its condition, the owner or master shall notify the Principal Surveyor within seven days.

**Source:** PL 10-76 § 66.

#### **§ 412. Requirement to carry certain safety equipment.**

(1) All vessels and small craft shall be equipped with and carry all safety equipment required by applicable regulations, in good order and ready for use.

(2) Any person who takes a vessel to sea without all of the safety equipment required by regulations, in good order and ready for use, commits a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(3) Any person who takes a small craft to sea without all of the safety equipment required by regulations, in good order and ready for use, commits a national offense, punishable by a fine not exceeding \$10,000 or imprisonment for not more than one year, or both.

**Source:** PL 10-76 § 67.

#### **§ 413. Equivalentents.**

The Principal Surveyor may allow any fitting, material, appliance or apparatus to be fitted or carried or any other provision to be made, if the Principal Surveyor is satisfied that it is at least as effective as that required by the applicable regulations.

**Source:** PL 10-76 § 68.

#### **§ 414. Manning of vessels.**

(1) A vessel at sea shall carry at least the number of qualified seamen required by regulations for a vessel of that size and type.

(2) A vessel at sea which does not carry the number of qualified seamen prescribed by regulations shall be deemed to be an unsafe vessel.

(3) No vessel shall proceed to sea without the minimum number of qualified seamen prescribed by regulations.

(4) An owner and master of a vessel which proceeds to sea without the minimum number of qualified seamen prescribed by regulations commits a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

**Source:** PL 10-76 § 69.

#### **§ 415. Vessels to carry qualified radio personnel.**

(1) All vessels at sea shall be required to carry qualified radio personnel.

(2) The Secretary shall prescribe by regulations the specific requirements for radio personnel according to type of vessel, and shall prescribe the delimitation of mandatory radio reporting areas in which each vessel shall be required to report its movements.

**Source:** PL 10-76 § 70.

#### **§ 416. Carriage of dangerous goods.**

(1) Dangerous goods shall be loaded, unloaded, stowed, carried or used in a vessel in a safe manner, as determined by regulations.

(2) Where the Principal Surveyor believes that dangerous goods would endanger a vessel or constitute a danger to human life, property, or the environment, the Principal Surveyor may:

- (a) detain the vessel;
- (b) prohibit the loading, unloading, stowage, carriage or use of any dangerous goods;
- (c) order the removal from the vessel of any dangerous goods; and
- (d) direct the manner of stowage of any dangerous goods.

**Source:** PL 10-76 § 71.

#### **§ 417. Powers of the master in relation to dangerous goods.**

Without liability, a master may refuse to take on board or open and inspect any package which the master reasonably suspects may contain dangerous goods, and may destroy or otherwise dispose of goods which appear to be dangerous goods, and which have been shipped on board the vessel without the master's consent.

**Source:** PL 10-76 § 72.

#### **§ 418. Offenses regarding carriage of goods in a dangerous manner.**

(1) Anyone who loads, unloads, stows, carries or uses any cargo, goods or substances in an unsafe manner so as to endanger a vessel or constitute a danger to human life, property or the environment commits a civil offense and shall be liable on conviction to a fine not exceeding \$500,000.

(2) Anyone who falsely describes any dangerous goods, with the intent to conceal their character commits a national offense, punishable by a fine not exceeding \$500,000 or imprisonment for a term not exceeding two years, or both.

**Source:** PL 10-76 § 73.

#### **§ 419. Forfeiture of dangerous goods.**

Any dangerous goods consigned to a vessel for interstate or foreign commerce, or shipped, carried, or used in a vessel in violation of this title or the regulations shall be subject to forfeiture to the National Government.

**Source:** PL 10-76 § 74.

#### **§ 420. Carriage and safety of passengers.**

(1) This section applies to passenger vessels, and the Secretary may promulgate regulations to implement this section. This section shall not apply to fishing vessels.

(2) No vessel may carry more persons than the maximum number stated in its Safety Certificate. Anyone who violates this subsection commits a civil offense and shall be liable to a fine not exceeding \$100,000.

(3) No small craft may carry more persons than the maximum number stated in the regulations. Anyone who violates this subsection commits a civil offense and shall be liable to a fine not exceeding \$50,000.

(4) The Principal Surveyor shall notify the master in writing if he finds any danger or potential danger to the safety, comfort, health or well-being of passengers on the vessel.

(5) After such notice, passengers may not be carried on the vessel until the Principal Surveyor determines and notifies the master in writing that passengers may be carried without danger to their safety, comfort, health or well-being. Anyone who violates this subsection commits a civil offense and shall be liable to a fine not exceeding \$100,000.

**Source:** PL 10-76 § 75.

**Case annotations:** When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. [Weilbacher v. Kosrae, 3 FSM Intrm. 320, 323 \(Kos. S. Ct. Tr. 1988\)](#).

#### **§ 421. Submerged load line.**

(1) Vessels shall not be so loaded that when they are in salt water the subdivision load line mark appropriate to the particular voyage and condition of service is submerged.

(2) A vessel so loaded is an unsafe vessel subject to the provisions of section 422 of this chapter.

**Source:** PL 10-76 § 76, modified.

#### **§ 422. Unsafe vessels.**

(1) A vessel that is unfit to go to sea without danger to the vessel, human life, property or the environment is an unsafe vessel.

(2) Unsafe vessels shall not be sent or taken to sea or allowed to operate within the waters of the Federated States of Micronesia.

(3) The Principal Surveyor may detain an unsafe vessel, PROVIDED, however, written notice of the reasons for detention shall be immediately provided to the owner or master.

(4) Unsafe small craft may be detained by Government authorities until such time as the small craft is made safe.

(5) Any person who takes a vessel, which the Principal Surveyor has found to be unsafe, to sea commits a civil offense and shall be liable to a fine not exceeding \$500,000.

**Source:** PL 10-76 § 77.

### **§ 423. Port State control relating to safety certificates.**

(1) While in one of the ports of the Federated States of Micronesia, every foreign vessel shall be subject to control by a Surveyor in so far as this control is directed toward verifying that the Safety Certificates required to be carried by the vessel are valid.

(2) Such certificates, if valid, shall be accepted unless there are clear grounds for believing that the condition of the vessel or of its equipment does not correspond substantially with the particulars of any of the certificates or that the vessel and its equipment are not in compliance with the provisions of the Safety Convention.

(3) In the circumstances given in subsection (2) of this section or where a certificate has expired or ceased to be valid, the Principal Surveyor shall take steps to ensure that the vessel shall not sail until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the vessel or persons on board.

(4) In the event of this control giving rise to an intervention of any kind, the Secretary shall forthwith inform in writing, through diplomatic channels, the maritime authority of the nation whose flag the vessel is entitled to fly of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the certificates shall also be notified.

(5) The Principal Surveyor shall relay all relevant information about the vessel to the authorities of the next port of call, in addition to the parties mentioned in subsection (4) above, if it is unable to take action as specified in subsections (3) and (4) above or if the vessel has been allowed to proceed to the next port of call.

(6) When exercising control under this section all possible efforts shall be made to avoid unduly detaining or delaying a vessel. If a vessel is unduly detained or delayed it shall be entitled to compensation for any loss or damage suffered.

**Source:** PL 10-76 § 78.

### **§ 424. Duty to report dangers to navigation.**

(1) When any vessel is within the waters of the Federated States of Micronesia and the master has sighted or otherwise becomes aware of a danger to navigation, the master shall immediately communicate information about such danger to navigation by all means at his or her disposal to vessels in the vicinity and also to the competent authorities at the first point on the coast with which he or she can communicate.

(2) Any person who fails to act as required by subsection (1) of this section commits a civil offense and shall be liable to a fine not exceeding \$10,000.

**Source:** PL 10-76 § 79, modified.

### **§ 425. Assistance to persons in danger at sea; false distress signal.**

(1) A master shall render assistance to any person found at sea and in distress or in danger of being lost if this assistance can be rendered without endangering the vessel, crew or passengers.

(2) Failure to render assistance in violation of subsection (1) of this section shall be a national offense punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(3) The use or exhibition of any distress signal except for the purpose of indicating distress and need of assistance, and the use of any other signals which may be easily confused with a distress signal shall be a national offense punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

(4) This section shall not affect the right to salvage.

**Source:** PL 10-76 § 80.

#### **§ 426. Duty of vessel to assist in case of collision.**

(1) Where two or more vessels are involved in a collision, the master or person in charge of each vessel shall, if possible without serious danger to the vessel, crew or passengers:

(a) render such assistance as is necessary;

(b) stay by the other vessel until it has no need of further assistance; and

(c) give to the master or person in charge of the other vessel its own name and home port, and the ports from and to which it is bound.

(2) Violation of this section shall be a national offense punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

**Source:** PL 10-76 § 81, modified.

#### **§ 427. Reporting of marine incidents and casualties.**

The master of a vessel shall immediately report to the Secretary whenever the vessel:

(1) is involved in an accident, marine incident, or casualty resulting in damage of any kind to the vessel, property or the environment, or any personal injury or loss of life;

(2) receives damage which may render it unsafe;

(3) has been in a position of great peril;

(4) fouls or does damage to a pipeline, submarine cable or marine aid to navigation; or

(5) is in difficulty and is required to put back into a port in the Federated States of Micronesia.

**Source:** PL 10-76 § 82.

#### **§ 428. Investigation of marine casualties.**

Upon the occurrence of any event or incident set forth in section 427 of this chapter the Secretary may order a preliminary investigation or a Marine Inquiry, or both.

**Source:** PL 10-76 § 83, modified.

#### **§ 429. Preliminary investigations.**

(1) The Secretary may appoint a person to conduct a Preliminary Investigation who may go on board any vessel involved in the casualty, make any and all inquiries, and require the production of any document or certificate relating to any vessel involved in the casualty.

(2) On receipt of the investigator's report, or pending the outcome of a Marine Inquiry, the

Secretary may order the suspension of any certificate issued by the Department, including a certificate issued to a qualified seaman.

**Source:** PL 10-76 § 84.

#### **§ 430. Marine Inquiries.**

(1) The Secretary may appoint a Board of Marine Inquiry, which shall consist of a chairperson and two other members, and which shall conduct an inquiry in accordance with regulations promulgated by the Secretary.

(2) The Board may:

- (a) go on board any vessel;
- (b) subpoena witnesses and documents;
- (c) examine witnesses and producers of documents under oath; and
- (d) call upon the advice of experts.

(3) Decisions and recommendations of the Board shall be made by the majority of the members and shall be in writing, but any member may dissent.

**Source:** PL 10-76 § 85.

#### **§ 431. Conditions for Preliminary Investigations and Marine Inquiries.**

(1) The primary purpose of any Preliminary Investigation or Marine Inquiry is to ascertain the whole truth of the events leading up to and the causes of a marine incident or casualty for the purpose of avoiding future danger, and not for the purpose of assigning fault or determining liability.

(2) For the purposes of the sections in this chapter dealing with Preliminary Investigations and Marine Inquiries, and any regulations made in respect thereto, the word "confidence" shall mean that the recipient of information has a duty to ensure it is not disseminated generally, whereas if information is "privileged" a person who provided it has the right that the information will not be used to his or her disadvantage.

(3) Information gathered or provided during the course of a Preliminary Investigation or Marine Inquiry, other than physical evidence, shall be privileged and shall not be used as evidence in a court or private litigation, but shall be used only for the purpose of advancing maritime safety.

(4) No report or any part of a report of a Preliminary Investigation or Marine Inquiry shall be used in a court or private litigation.

(5) No safety advisory, safety information, hazard notification or other publication issued by the Department on the advice or recommendation of any Preliminary Investigation or Marine Inquiry shall be used in a court or private litigation.

(6) No officer conducting a Preliminary Investigation or a member of a Board of Marine Inquiry shall offer a guarantee of confidentiality to a witness in return for the witness's testifying as to the events leading up to and the cause of the casualty.

(7) An officer conducting a Preliminary Investigation or a member of a Board of Marine Inquiry shall advise a witness of the manner in which the information he or she provides will be treated as privileged under this section.

(8) An officer conducting a Preliminary Investigation or a member of a Board of Marine Inquiry shall not grant any witness immunity from prosecution; PROVIDED HOWEVER, that the Secretary, on the advice of the Attorney General, on being satisfied that the enhancement of safety would be advanced, may grant immunity to a witness from civil, criminal or regulatory proceedings resulting from the occurrence being investigated.

(9) Notwithstanding anything contained in this section, the Chairman of the Board of Marine Inquiry or the Secretary may release any type of information obtained during a Preliminary Investigation or Marine Inquiry at any time under such circumstances where an immediate perceived danger to life or public safety is involved, and the person releasing such information shall be relieved of any liability for any action taken in good faith under this section.

**Source:** PL 10-76 § 86.

#### **§ 432. Powers of the Board as to certificates.**

(1) The Board may recommend the suspension or revocation of any certificate issued by the Department or may censure a seaman, where the Board finds that the seaman:

(a) is unfit because of incompetence or misconduct or for any other reason which caused or contributed to the casualty; or

(b) has been seriously negligent in the discharge of duty thereby causing or contributing to the casualty.

(2) Where the Board has recommended the suspension or revocation of a certificate issued by the Department, the Secretary may suspend or revoke such certificate under procedures set forth in title 17 of the Code of the Federated States of Micronesia and order the master or seaman to deliver such certificate to the Principal Shipping Officer within 15 days.

(3) When a certificate is suspended or revoked by the Secretary, the adversely affected person may appeal that decision pursuant to title 17 of the Code of the Federated States of Micronesia.

**Source:** PL 10-76 § 87.

**Cross-reference:** The statutory provisions on Administrative Procedures are found in title 17 of this code.

**Editor's note:** PL 10-76 took effect April 1, 1998.

The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title.