

## **MARINE INQUIRY REGULATIONS**

(Sections 428, 430 and 431 of Chapter 4 of the National Maritime Act, 1997)

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## **MARINE INQUIRY REGULATIONS**

(Sections 428, 430 and 431 of Chapter 4 of the National Maritime Act, 1997)

### **PART 1      GENERAL PROVISIONS**

**1.1 Authority** - These Regulations are promulgated by the Secretary of Transportation, Communications and Infrastructure pursuant to section 402 of the Act, and provide for the conduct of a Marine Inquiry under sections 428, 430 and 431 of the Act, and for the appointment of a Board of Marine Inquiry as required by Chapter 4.

**1.2 Short Title** - These Regulations shall be cited as Marine Inquiry Regulations.

**1.3 Purpose** - The fundamental purpose of a Marine Inquiry under these Regulations is to conduct a detailed investigation of a marine incident or casualty in a public forum by means of reviewing of all relevant documentation and interviews of witnesses and taking oral testimony of witnesses under oath, with a view to ascertaining the underlying causes of the incident or casualty and preventing future occurrences. Whilst the purpose of a Marine Inquiry is not to determine fault, it is to determine in a legal sense whether the law has been followed, and is to be distinguished from a prosecution or an inquiry into suspension or cancellation of a Certificate of Competency, although the Board may recommend the suspension or revocation of any certificate issued by the Department under the circumstances provided in section 432 of the Act.

**1.4 Application** - These Regulations shall apply to any Marine Inquiry and to any rehearing of such a Marine Inquiry conducted in accordance with section 430 of the Act, with respect to casualties or accidents involving or occurring on board:

- (a) any vessel registered in the Federated States of Micronesia; or
- (b) any other vessel within the Federated States of Micronesia, or the Territorial Sea, or Exclusive Economic Zone thereof.

**1.5 Definitions** - In these Regulations, unless the contrary intention appears:

“accident” or “casualty” has the same meaning as described in section 427 of the Act;

“Act” means the National Maritime Act of 1997, 19 F.S.M.C. § 101 *et seq.*;

“Chairman” means the Chairman of the Board of Marine Inquiry appointed by the under section 430 of the Act which conducts a Marine Inquiry;

“Marine Inquiry” means an inquiry into a marine incident or casualty ordered by the Secretary under section 430 of the Act, the purpose of which 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 occurrences, and not for the purpose of assigning fault or liability, although the Board may make recommendations in respect of the suspension or revocation of Certificates of Competency.

## **PART 2 THE BOARD OF MARINE INQUIRY AND THE CONDUCT OF INVESTIGATION**

### **2.1 The Chairman and the Board of Marine Inquiry**

(a) Where it appears to the Secretary that a Marine Inquiry should be held, he may direct that a Marine Inquiry be held and conducted in accordance with section 109 of Title 17 of the Code of the Federated States of Micronesia.

(b) The Secretary shall appoint a Board of Marine Inquiry consisting of three members and nominate a Chairman.

(c) A least one of the members shall have a legal background and experience in the proceedings of a court and shall have an appreciable understanding of the maritime sector.

(d) The other members shall be persons who have had considerable shipboard experience and are knowledgeable on the operation of vessels, national and international Rules and Regulations governing vessel safety, prevention of marine pollution and minimum standards of seamen's employment and welfare.

(e) The members shall decide among themselves the manner in which the proceedings shall be conducted when not otherwise specified in these Regulations.

(f) The Secretary shall maintain a list of eligible board members who have the qualifications set out in the Schedule hereto and may, at any time, add to or withdraw from the name of any person.

(g) If any question as to the cancellation or suspension of an officer's

certificate is likely to arise, two members of the Board shall be:

- (i) in the case of a master or deck officer, master mariners;
  - (ii) in the case of a marine engineer officer, a marine engineer officer and a master mariner; or
  - (iii) in the case of fishing vessel officer, a master mariner and a fishing vessel skipper.
- (e) Wherever possible, at least one of the members selected should have had experience in the same capacity and in the same type of vessel as the officer concerned.

## **2.2 Notice of Marine Inquiry**

- (a) The Secretary may serve notice of the Marine Inquiry on any persons, including the Division of Marine Transportation, who in his opinion, can provide evidence pertinent to the Marine Inquiry and require them to attend.
- (b) The Notice shall contain:
  - (i) a statement of the facts giving rise to the Marine Inquiry; and
  - (ii) a statement of the questions which the Secretary intends to raise at the formal hearing.
- (c) At any time before or during the Marine Inquiry, the Secretary may amend, add to or omit any of the questions contained in the Notice.
- (d) The Secretary shall, as far as practicable, serve notice not less than 30 days prior to the date of the Marine Inquiry, stating the date, time and place and requiring that person to attend.
- (e) If at any time during the preparation for the Marine Inquiry it appears likely to the Secretary that the conduct of any person will be in issue, the Secretary shall serve notice on that person.
- (f) Service of any notice or other document issued under this section may be effected either personally or by Registered Mail to the person's last known address.

**2.3 Other Persons Wishing to Appear** - Any person wishing to present evidence before a Marine Inquiry may, with the leave of the Chairman, present that evidence at a Marine Inquiry in the manner prescribed in section 2.4.

## 2.4 Evidence

- (a) All documents, affidavits, statutory declarations and other written material shall be admitted as evidence at the Marine Inquiry, provided it is pertinent to the inquiry, complies with sections 430 and 431 of the Act and is not contrary to the principles of natural justice.
- (b) At any time before the date set for the commencement of the Marine Inquiry, the Chairman may hold a preliminary meeting, at which any direction may be given or any preliminary or interlocutory order as to the procedure may be made.
- (c) At the time and place stipulated in the Notice for the commencement of the Marine Inquiry, the Chairman may proceed with the Marine Inquiry whether or not the parties upon whom the Notice has been served are present, provided that the Board is satisfied that all persons required by Notice to appear have been properly served in accordance with section 2.2.
- (d) The proceedings of the Marine Inquiry shall be open to the public, except where the Board is of the opinion that it is contrary to the public interest to do so.

## 2.5 Procedure

- (a) The Board shall be at liberty to determine its own procedure, subject to the provisions of paragraphs (b) and (c).
- (b) Where it is likely during the course of any inquiry or investigation that the conduct of a person will be called into question or it is likely that a person will be adversely affected by a decision of the inquiry or investigation, the person conducting the inquiry or investigation shall give that person at least 72 hours notice of the place, day and hour of the inquiry; and furnish that person with:
  - (i) a copy of the report of any preliminary investigation in relation thereto; or
  - (ii) in any other case, a statement of the case on which the Marine Inquiry was so ordered.
- (c) Every person whose conduct is likely to be questioned during the course of an inquiry or investigation, or who is likely to be adversely affected by the decision of the inquiry or investigation is entitled to:

- (i) attend the inquiry personally and to be represented by counsel;
- (ii) be sworn and give evidence before the inquiry;
- (iii) subpoena and call witnesses;
- (iv) examine, cross-examine and re-examine all witnesses in accordance with rules of procedure and evidence applicable to the Administrative Procedure Act under Title 17;
- (v) take all proper exceptions to the admissibility of evidence; and
- (vi) address the inquiry, either at the conclusion or at any other proper time.

### **PART 3 PUBLICATION OF FINDINGS AND THE REPORT**

#### **3.1 Result of Marine Inquiry - At the end of the Marine Inquiry the Board shall:**

- (a) In cases where a Certificate of Competency or Certificate of Proficiency is at issue, make its recommendation to the Secretary concerning suspension or cancellation of the certificate and a brief summary of its findings; and
- (b) Whether or not a certificate is in issue, make a report on the case to the Secretary including its findings as to the reasons for the marine casualty or incident or as to any particular matter relating thereto, or as to the conduct or any person involved.

#### **3.2 Temporary Suspension of Certificates**

- (a) Where it appears to the Secretary to be necessary or desirable to do so, he may order the suspension of any certificate issued to any qualified seafarer under the Act or Regulations, pending the outcome of the inquiry or investigation.
- (b) Where as the result of an inquiry or investigation it is determined that a seafarer whose certificate had been suspended was not unfit to discharge his duties because of incompetence, misconduct or for any other reason, or has not been seriously negligent in the discharge of his duties, the Board of Marine Inquiry may recommend to the Secretary that the suspension of the certificate be revoked as soon as practicable and the certificate be returned to the seafarer forthwith.
- (c) The Board of Marine Inquiry shall not recommend the cancellation or suspension of the certificate of any master or qualified seafarer, unless a statement of the reasons for the decision has been furnished to the master

or seafarer holding the certificate, and where practicable, the master or qualified seafarer has had an opportunity to respond.

### **3.3 The Report**

- (a) Each member of the Board of Marine Inquiry shall sign the report, with or without reservations.
- (b) A member of the Board of Marine Inquiry may dissent in writing from any report of the Board and a recommendation shall be made on the majority decision of the members.
- (c) The Secretary shall, unless in the interests of justice or otherwise in the public interest there are good reasons to the contrary, cause each party to the Marine Inquiry or other interested parties to be given a copy of the whole or, where appropriate, the relevant part of the report.

## **PART 4 MISCELLANEOUS PROVISIONS**

**4.1 Costs of the Marine Inquiry** - The Board may make an order in respect of the costs and expenses of the Marine Inquiry, or any part thereof, to be paid by a person, it shall state in its report the reasons for making such an order.

**4.2 Rehearings** - Any rehearing of a Marine Inquiry pursuant to section 430 of the Act that is not held by the Supreme Court of the Federated States of Micronesia shall be conducted in accordance with the provisions of these Regulations.

### **4.3 Penalties**

- (a) Where an inquiry or investigation is held, no person shall in relation to any person carrying out the inquiry or investigation:
  - (i) hinder or obstruct any such person;
  - (ii) fail to answer any question put by any person;
  - (iii) fail to produce any document or certificate in his possession or under his control when requested to do so by any such person;

And any person doing so commits an offence and shall be liable upon conviction to a fine not exceeding \$1,000.

- (b) A person who contravenes or fails to comply with any of these Regulations for which a penalty is not specified, commits an offence and

shall be liable upon conviction to a fine not exceeding \$25,000.

**4.4 Immunities** - The persons conducting the inquiry or investigation shall not be liable for any act, matter or thing done, or ordered to be done, by him in good faith in the execution of his duties.

## **SCHEDULE**

### **QUALIFICATIONS OF MEMBERS OF THE BOARD OF MARINE INQUIRY**

(Section 2.1 of the Marine Inquiry Regulations)

#### **For Master Mariners**

- (a) Must be in possession of at least a Deck Officer's Certificate of Competency for Grade 2 Master, or its equivalent, and have had command of a vessel registered in the Federated States of Micronesia for at least two years.
- (b) Must have a wide knowledge of all modern aids to navigation.
- (c) Must have a good working knowledge of the national Regulations covering maritime safety, seamen's employment and welfare, marine pollution prevention, etc., and good working knowledge of the major international maritime conventions.

#### **For Marine Engineers**

- (a) Must be in possession of at least a Marine Engineer Officer's Certificate of Competency for Grade 2 Chief Engineer, or its equivalent, and have been the Chief Engineer Officer of a vessel registered in the Federated States of Micronesia for at least two years.
- (b) Must have a wide knowledge of matters relating to marine engineering.
- (c) Must have a good working knowledge of the national Regulations covering maritime safety, seamen's employment and welfare, marine pollution prevention, etc., and good knowledge of the major international maritime conventions.

#### **For Fishing Vessels Skippers**

- (a) Must be in possession of at least a Skipper's (Limited) Certificate and have had command of a fishing vessel for at least two years.
- (b) Must have a wide knowledge of fishing vessels and their operations
- (c) Must have a good working knowledge of the national Regulations regarding fishing vessels safety and other applicable Regulations affecting fishing vessels.

#### **Persons of Special Skills or Knowledge**

- (a) Naval architects

(c) Persons with special skills or knowledge, including managerial experience.

## APPROVALS

Pursuant to the authority vested in me as Secretary of Transportation, Communications and Infrastructure by section 402 of Title 19 of the Code of the Federated States of Micronesia, I hereby issue and promulgate these Marine Inquiry Regulations. These Regulations shall become effective upon approval by the President and compliance with Title 17 of the Code of the Federated States of Micronesia.

Date: 16 August 2002

/s/ Akillino H. Susaia  
Akillino H. Susaia, Secretary  
Department of Transportation,  
Communications & Infrastructure

These Marine Inquiry Regulations have been reviewed by the Department of Justice and found to be in proper legal form.

Date: 16 August 2002

/s/ Paul E. McIlrath  
Paul E. McIlrath, Secretary  
Department of Justice

I approve the adoption of these Regulations.

Date: 20 August 2002

for /s/ Redley Killion  
Leo A. Falcam, President  
Federated States of Micronesia

## EFFECTIVE DATE

The President having approved these Regulations, and the requirements of Title 17, section 102 of the Code of the Federated States of Micronesia now having been satisfied, I hereby declare that the foregoing Marine Inquiry Regulations became effective on 25 September, 2002.

/s/ Akillino H. Susaia  
Akillino H. Susaia, Secretary  
Department of Transportation,  
Communications & Infrastructure