

CHAPTER 10**Procedures****SECTIONS**

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§ 1001. Conduct of proceedings.

(1) *Conducting proceedings.* The Secretary shall, subject to the provisions of this title, conduct his proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice.

(2) *Conflicts of interest.* No employee of the Department shall participate in any hearing or proceeding in which he has a pecuniary interest.

(3) *Appearance.* Any person may appear before the Secretary and be heard in person or by an attorney.

(4) *Recording and public access.* Every official act of the Secretary shall be entered of record, and the proceedings thereof shall be open to the public upon request of any interested party, unless the Secretary determines that withholding from public disclosure is necessary on grounds of national interest.

Source: PL 9-138 § 62.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 1002. Complaints to and investigations by the Secretary.

(1) *Filing of complaints.* Any person may file with the Secretary a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this title, or of any requirement

established pursuant thereto. If the person complained against does not satisfy the complaint and there appears any reasonable ground for investigating the complaint, it shall be the duty of the Secretary to investigate the matters set forth in the complaint. Whenever the Secretary is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing.

(2) *Investigations.* The Secretary is hereby empowered to institute an investigation at any time, on his own initiative, in any case and as to any matter or thing within his jurisdiction by any provision of this title, concerning which a complaint is authorized to be made to or before the Secretary, or concerning which any question may arise under any of the provisions of this title, or relating to the enforcement of any of the provisions of this title. The Secretary shall have the same power to proceed with any investigation instituted on his own motion as though it had been made to him by complaint.

(3) *Orders to compel compliance.* If the Secretary finds, after notice and hearing, in any investigation instituted upon complaint or upon his own initiative, with respect to matters within his jurisdiction, that any person has failed to comply with any provision of this title or any requirement established pursuant thereto, the Secretary shall, consistent with the provisions of this title, issue an appropriate order to compel such person to comply therewith.

Source: PL 9-138 § 63.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 1003. Evidence.

(1) *General.* The Secretary shall hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the Federated States of Micronesia.

(2) *Subpoenas.* For the purposes of this title, the Secretary shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(3) *Compliance with subpoenas.* The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the Federated States of Micronesia, at any designated place of hearing. In case of disobedience to a subpoena, the Secretary or any party to a proceeding before the Secretary, may invoke the aid of the Trial Division of the Supreme Court in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section.

(4) *Depositions.*

(a) The Secretary may order testimony to be taken by deposition in any proceeding or investigation pending before him, at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and be deposed, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Secretary, as hereinbefore provided.

(b) Every person being deposed as herein provided shall be cautioned and shall be required to swear or to affirm, if he so requests, to testify to the whole truth, and shall be carefully examined. The testimony shall

be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Secretary.

(c) If a witness whose testimony may be desired to be taken by deposition is in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a person commissioned by the Secretary or agreed upon by the parties by stipulation in a writing to be filed with the Secretary, or may be taken under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary.

Source: PL 9-138 § 64.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 1004. Designation of agent for service.

(1) *Designating agents.* It shall be the duty of every air carrier and foreign air carrier to designate in writing an agent in the Federated States of Micronesia upon which service of all notices and process and all orders, decisions, and requirements of the Secretary may be made for and on behalf of said air carrier or foreign air carrier, and to file such designation with the Secretary. Such designation may from time to time be changed by like writing similarly filed.

(2) *Serving agents.*

(a) Service of all notices and process and of orders, decisions, and requirements of the Secretary may be made upon any air carrier or foreign air carrier by service upon its designated agent at his office in the Federated States of Micronesia or place of residence in the Federated States of Micronesia with like effect as if made personally upon such air carrier or foreign air carrier.

(b) In default or the absence of an agent, service of any notice or other process in any proceedings before the Secretary, or of any order, decision, or requirement of the Secretary, may be made by posting such notice, process, order, requirement, or decision in the Department.

(3) *Service generally.* Service of notices, processes, orders, rules, and regulations upon any person may be made by personal service or upon an agent designated in writing for this purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered as the date when service is made.

Source: PL 9-138 § 65.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 1005. Venue.

The trial of any offense under this title shall be in the Trial Division of the Supreme Court.

Source: PL 9-138 § 66.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 1006. Judicial review of orders.

(1) *Availability of judicial review.* Any order issued by the Secretary shall be subject to review by the Trial Division of the Supreme Court upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. A petition may be filed beyond 60 days after the entry of an order of the Secretary only with the permission of the Trial Division of the Supreme Court upon a showing of reasonable grounds for failure to file the petition theretofore.

(2) *Judicial procedures.* A copy of the petition shall, upon filing, be forthwith transmitted to the Secretary by the Clerk of Courts and the Secretary shall thereupon file in the court the record, if any, upon which the order complained of was entered.

(3) *Authority of court.* Upon transmittal of the petition to the Secretary, the Trial Division of the Supreme Court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Secretary. Upon good cause shown and after reasonable notice to the Secretary, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate.

(4) *Scope of review.* The findings of facts by the Secretary, if supported by substantial evidence, shall be conclusive. No objection to an order of the Secretary shall be considered by the Trial Division of the Supreme Court unless such objection shall have been urged before the Secretary or if it was not so urged, unless there were reasonable grounds for failure to do so.

Source: PL 9-138 § 67.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fmsupremecourt.org/>.

§ 1007. Judicial enforcement.

(1) *Jurisdiction of court.* The Trial Division of the Supreme Court shall have jurisdiction to enforce obedience to any provision of this title, or any rule, regulation, requirement, or order issued thereunder, or any term, condition, or limitation of any certificate issued under this act.

(2) *Civil actions to enforce this title.*

(a) Where any person violates any provision of this title, or any rule, regulation, requirement, or order issued thereunder, or any term, condition, or limitation of any certificate issued under this title, the Secretary may apply to the Trial Division of the Supreme Court for the enforcement of such provision of this title, or of such rule, regulation, requirement, order, term, condition, or limitation.

(b) Upon the request of the Secretary, the Attorney General may institute in the Trial Division of the Supreme Court and prosecute all necessary proceedings for the enforcement of the provisions of this title or any rule, regulation, requirement, or order issued thereunder, or any term, condition, or limitation of any certificate issued under this title, and for the punishment of all violations hereof.

(3) *Participation of Secretary.* Upon request of the Attorney General, the Secretary shall have the right to participate in any proceeding in court under the provisions of this title.

Source: PL 9-138 § 68.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 1008. Procedure for civil penalties.

(1) *Civil penalty actions.* Any civil penalty imposed or assessed under this Act may be collected by proceedings *in personam* in the Trial Division of the Supreme Court against the person subject to the penalty and, in the case of an aircraft subject to a lien for the penalty, by proceedings *in rem* against the aircraft.

(2) *Seizure of aircraft.* Any aircraft subject to a lien for a civil penalty may be seized by and placed in the custody of the Secretary. A report of the seizure and the basis therefor shall be promptly transmitted to the Attorney General. The Attorney General shall promptly institute judicial proceedings for the enforcement of a lien against an aircraft seized by the Secretary, or notify the Secretary of his failure to so act. The aircraft shall be released from custody of the Secretary upon:

- (a) payment of the penalty or the amount agreed upon in compromise;
- (b) seizure in pursuance of judicial proceedings *in rem* for enforcement of the lien;
- (c) notice by the Attorney General of failure to institute such proceedings; or
- (d) deposit of a bond in such amount as the Secretary may prescribe, conditioned upon payment of the penalty or the amount agreed upon in compromise.

Source: PL 9-138 § 69.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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