

CHAPTER 2

FSM Petroleum Corporation Act of 2007

Editor's note: Section 3 of PL 15-8 enacted a new chapter 2 of title 27 entitled Federated States of Micronesia Petroleum Corporation Act of 2007. While section 3 of PL 15-8 did not create subchapters for this chapter the numbering of the sections indicated an intent to have the chapter subdivided into subchapters. This has been done for easier reference and to comport with standard code format. The "FSM" has replaced the full spelling of the Federated States of Micronesia in the title of chapter 2.

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SUBCHAPTER I

General Provisions

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§ 201. Short title.

This chapter may be cited as the “Federated States of Micronesia Petroleum Corporation Act of 2007”.

Source: PL 15-8 § 4.

Editor's note: The Federated States of Micronesia Petroleum Corporation Act of 2007, contained in PL 15-8, was signed into law on September 11, 2007, by President Emmanuel “Manny” Mori.

§ 202. Definitions.

For the purposes of this chapter and subsequent regulations, the following definitions shall apply unless the context otherwise requires:

- (1) “Board” means the Board of Directors appointed under section 213 of this chapter;

- (2) “CEO” means the Chief Executive Officer appointed under section 231 of this chapter;
- (3) “Chairperson” means the Chairperson of the Board;
- (4) “Congress” means the Congress of the Federated States of Micronesia;
- (5) “Corporation” means the Federated States of Micronesia Petroleum Corporation;
- (6) “Executive Council” means the President of the Federated States of Micronesia and the Governor of each State. As used herein, consent, approval or instruction of the Executive Council shall mean such consent, approval or instruction taken with the unanimous consent of the President and each Governor. For the avoidance of doubt, a written resolution of the Federated States of Micronesia Economic Policy Implementation Council, duly signed by the President and each Governor, shall constitute such an instruction notwithstanding the fact that it is also executed by other officials;
- (7) “FSM” means the Federated States of Micronesia;
- (8) “Officer” includes any employee of the Corporation vested with a power or duty in accordance with this chapter;
- (9) “Premises” means any piece of land and if there are buildings of any sort erected on that land, includes those buildings, and also includes a ship or other vessel;
- (10) “Product” or “Products” means petroleum products including automotive and industrial diesel fuels, gasoline, unleaded petrol, kerosene, Jet A1, lubricants and any other petroleum or alternative fuel products that may now be available or that may become available in the future;
- (11) “Secretary” means the Secretary of Finance and Administration of the Federated States of Micronesia;
- (12) “State” means a State of the Federated States of Micronesia;
- (13) “Works” or “Works of the Corporation” includes the whole of the petroleum storage and dispensing systems and associated works owned, controlled or managed by the Corporation for any purpose associated with its functions under this chapter.

Source: PL 15-8 § 5.

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

SUBCHAPTER II

Establishment and Board of Directors

Editor’s note: Section 3 of PL 15-8 enacted a new chapter 2 of title 27 entitled Federated States of Micronesia Petroleum Corporation Act of 2007. While section 3 of PL 15-8 did not create subchapters for this chapter the numbering of the sections indicated an intent to have the chapter

subdivided into subchapters. This has been done for easier reference and to comport with standard code format.

§ 211. Establishment of Corporation.

The Federated States of Micronesia Petroleum Corporation is hereby established as a public corporation under the laws of the Federated States of Micronesia. It may hereinafter be referred to as “the Corporation”.

Source: PL 15-8 § 6.

§ 212. Independence.

The Corporation shall not be deemed to be a government department, board or agency and as such is not subject to the laws governing the activities of the government including but not limited to title 52 (the Public Service System Act) and title 55 (The Financial Management Act) of this code; provided, however, that nothing herein shall be deemed to waive the Corporations responsibility to comply with the Financial Management Act if allotted government funds.

Source: PL 15-8 § 7.

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

§ 213. Board of Directors of the Corporation.

The affairs of the Corporation shall be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as “the Board.”

Source: PL 15-8 § 8.

§ 214A. Appointment and Termination of Directors.

- (1) The Board shall be composed of seven voting members as follows:
 - (a) one director appointed by the President of the FSM with the advice and consent of Congress;
 - (b) one director appointed by the Governor of the State of Chuuk with the advice and consent of the Chuuk State Senate;
 - (c) one director appointed by the Governor of the State of Kosrae with the advice and consent of the Kosrae State Legislature;
 - (d) one director appointed by the Governor of the State of Pohnpei with the advice and consent of the

Pohnpei State Legislature;

(e) one director appointed by the Governor of the State of Yap with the advice and consent of the Yap State Legislature; and

(f) two directors appointed by the President of the FSM with the advice and consent of Congress from a list of private sector candidates nominated by the four State governors.

(2) The persons appointed under subsection (1) of this section must have experience in public administration, environmental matters, finance, or oil and gas distribution. At least one person appointed under subsection (1)(f) of this section must have special knowledge and capacity in the field of oil and gas distribution.

(3) No person appointed under subsection (1) of this section nor any member of his or her immediate family may possess any pecuniary interest in any business or entity which derives any part of its revenue from the distribution of oil or gas in the Federated States of Micronesia.

(4) The persons appointed under subsection (1) of this section hold office for a term of three years, provided, however, that the initial terms of office shall be determined by lot at the first meeting held by the Board with three members serving an initial term of one year, two serving an initial term of two years and two serving an initial term of three years. Provided further, that if no replacement has been appointed prior to the expiration of a director's term, he or she shall continue to serve for an additional period of 90 days or until a replacement is appointed, whichever is less. All members are eligible for reappointment.

(5) Vacancies on the Board shall be filled for the unexpired portion of the term in the same manner as originally filled.

(6) The Board may, at any time by majority vote, remove any director for failure to attend three consecutive meetings of the Board, or for neglect of duty or malfeasance in office.

Source: PL 15-8 § 9.

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 Congress are found in title 3 of this code.

§ 214(B). Transitional Board of Directors.

Notwithstanding section 214A of this chapter, the President and the Governors of the States of Chuuk, Kosrae, Pohnpei and Yap shall have the authority to appoint a transitional Board of Directors, whose tenure shall not exceed six months. The transitional Board shall consist of five members whose appointments are not subject to advice and consent by Congress or any branch of a State Legislature. One of the members shall be chosen by the President of the FSM and one shall be chosen by each of the Governors of the four FSM States. Appointment to the transitional Board shall not preclude a permanent appointment under section 214A of this chapter and a permanent appointment pursuant to subsection 214A(1)(a), (b), (c), (d), or (e) of this chapter shall immediately replace a person appointed to the transitional Board pursuant to this section. All other requirements of section 214A of this chapter shall apply to the transitional Board. The initial meeting of the transitional Board may be called at any time after four of the five members have been appointed.

Source: PL 15-8 § 10.

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

§ 215. Chairperson of the Board.

The Chairperson of the Board shall be chosen by the Board members by majority vote and shall serve for a term of one year from the date of selection. The Chairperson may authorize, in writing, any director to exercise any power or perform any function conferred on the Chairperson by or under this chapter.

Source: PL 15-8 § 11.

§ 216. Meetings of the Board.

(1) The Board must meet as often as may be necessary for the performance of its functions, provided that it shall meet no less than once per quarter each calendar year and provided, further, that at least two such meetings shall require the physical presence of the directors at a single location.

(2) At any meeting, the quorum of the Board is a majority of the total directors appointed at the time of the meeting.

(3) Notice of a meeting of the Board must be given to each director and shall be delivered by hand or sent by post, facsimile, electronic mail or other written message to an address supplied by the director to the Board for this purpose.

(4) Decisions at meetings of the Board are taken by a simple majority of the directors present and voting.

(5) Subject to this section, the Board may regulate its own procedure.

(6) The validity of a proceeding of the Board is not affected by a vacancy in the membership or by any defect in the appointment of a director.

Source: PL 15-8 § 12.

§ 217. Transaction of Business Without Meeting.

A resolution of the Board is valid, even though it was not passed at a meeting of the Board, if—

(1) it is signed or assented to by no less than five directors of the Board; and

(2) a notice in writing of the proposed resolution was given to each director no less than seven days before the resolution is assented to by any director.

Source: PL 15-8 § 13.

§ 218. Remuneration of Directors.

Directors who are employees of the national government of the FSM or a State government shall receive no additional compensation for their service as members of the Board. The compensation of members who are not Government employees shall be as determined by the Board and published in the minutes and annual report of the Board.

Source: PL 15-8 § 14.

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

§ 219. Disclosure of Interest.

(1) A director of the Board who has a direct or indirect personal interest in the outcome of any matter before the Board must disclose the interest to the Board.

(2) The disclosure of an interest under subsection (1) of this section must be recorded in the minutes of the Board.

(3) After making a disclosure under subsection (1) of this section, the director—

(a) in the case of a meeting, must withdraw from the meeting before the commencement of deliberations of the Board in respect of the matter referred to in subsection (1) of this section, although the director may be counted for the purposes of forming a quorum of the Board at the meeting; and

(b) in any case, must not vote on the matter.

Source: PL 15-8 § 15.

§ 220. Minutes of Meetings and Business Transacted.

The Board must keep minutes of all its meetings and business transacted under sections 216 and 217 of this chapter in a proper form. All minutes of the meetings shall be made available to the public upon request.

Source: PL 15-8 § 16.

§ 221. Delegation of Board's Powers.

(1) The Board may, from time to time, by notice in writing under the hand of the Chairperson, delegate to any person or committee any of the Board's powers under this chapter.

(2) A delegation under this section may be made to a specified person or committee, or holder for the time being of a specified office or to the holders of offices of a specified class.

(3) A delegation may be made subject to such restrictions and conditions as the Board thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(4) A person or committee purporting to exercise a power of the Board by virtue of a delegation under this section must, when required to do so, produce evidence of authority of the person or committee to exercise the power.

Source: PL 15-8 § 17.

SUBCHAPTER III

Officers and Staff

Editor's note: Section 3 of PL 15-8 enacted a new chapter 2 of title 27 entitled Federated States of Micronesia Petroleum Corporation Act of 2007. While section 3 of PL 15-8 did not create subchapters for this chapter the numbering of the sections indicated an intent to have the chapter subdivided into subchapters. This has been done for easier reference and to comport with standard code format.

§ 231. Appointment of Chief Executive Officer.

(1) The Board must appoint a Chief Executive Officer on such terms and conditions as the Board may determine.

(2) The CEO—

(a) shall serve at the pleasure of the Board;

(b) shall have had not less than five years experience in the oil industry, or the equivalent experience in a related profession;

(c) shall not engage in any other business without the prior consent of the Board;

(d) shall be responsible for the day to day operation of the Corporation;

(e) shall be responsible for the proper administration and management of the functions and affairs of the Corporation;

(f) shall be responsible for developing a five-year plan and an annual plan describing the medium and short term goals of the Corporation; and

(g) must perform such other functions and duties as the Board may determine.

(3) The Board shall review the performance of the Chief Executive Officer at least annually in light of the Corporation's goals and objectives, and may terminate the CEO at any time, for any reason.

(4) If the CEO is temporarily absent from FSM, or temporarily unable to perform the duties of office, the Board may, appoint a person to act in the place of the CEO during that period.

Source: PL 15-8 § 18.

§ 232. Appointment of Chief Financial Officer.

The CEO shall appoint, with the concurrence of the Board, a Chief Financial Officer, for such term as shall be directed by the Board. He shall receive and disburse all funds of the Corporation. The Chief Financial Officer shall serve at all times under the direct supervision of the CEO.

Source: PL 15-8 § 19.

§ 233. Appointment of Health and Safety Officer.

The CEO shall appoint, with the concurrence of the Board, a Health and Safety Officer. The Health and Safety Officer, whose duties may be combined with those of another position, shall be responsible for ensuring compliance with all health, safety and environmental laws and for developing, with input from the Board and the Executive Council, health, safety and environmental policies for the day-to-day operation of the Corporation.

Source: PL 15-8 § 20.

§ 234. Appointment of Other Officers and Staff.

To the extent consistent with this chapter, the CEO may appoint, retain and terminate, on such terms and conditions as the Board may determine, such officers, employees, agents, or consultants as may be necessary or expedient for carrying out the functions and duties of the Corporation.

Source: PL 15-8 § 21.

SUBCHAPTER IV

Powers and Functions of Corporation

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Editor's note: Section 3 of PL 15-8 enacted a new chapter 2 of title 27 entitled Federated States of Micronesia Petroleum Corporation Act of 2007. While section 3 of PL 15-8 did not create subchapters for this chapter the numbering of the sections indicated an intent to have the chapter subdivided into subchapters. This has been done for easier reference and to comport with standard code format.

§ 241. Functions of the Corporation.

The functions of the Corporation are—

- (1) to operate and manage the Works, either directly or through contracting out such management to third parties;
- (2) to secure contracts with Product suppliers who will provide the required fuel Products at the lowest cost through competitive bidding to the extent practicable;
- (3) to provide oil and gas distribution services on the basis of commercially accepted practices, treating all purchasers of Products on equitable terms in accordance with its published prices and requiring all users to pay for fuel purchased; provided that nothing in this subsection shall prevent the Corporation from using subsidies received from governmental, international or private sources to reduce the overall costs charged to users of public utilities services;
- (4) to plan for the continued security of Product supply in the FSM;
- (5) to maintain and operate the Works so as to minimize the likelihood of interruption of supply, and to handle the Product in a manner that protects the environment, the safety, and the health of employees and the public;
- (6) to make safety, health and environmental considerations a priority in planning, and in the development of new Products and processes; to advise promptly, appropriate officials, employees, customers and the public of information on significant industry-related safety, health and environmental hazards, and to recommend protective measures;
- (7) to invest surplus revenues of the Corporation in the maintenance, expansion and improvement of Product facilities and services;
- (8) to represent the Federated States of Micronesia with regard to regional fuel supply initiatives as requested by the Government of the Federated States of Micronesia; and
- (9) to do all those things which shall be necessary or incidental to the performance of its functions under this chapter.

Source: PL 15-8 § 22.

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

§ 242. Powers of the Corporation.

- (1) In performing the functions authorized under this chapter or under any other law of the Federated States of Micronesia, the Corporation shall have the capacity to exercise all powers normally exercised by a corporation, including, but not limited to, the following:

- (a) to adopt, alter, and use a corporate seal;
- (b) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers;
- (c) to sue and be sued in its corporate name;
- (d) to acquire, in any lawful manner, real, personal, or mixed property, either tangible or intangible; to hold, maintain, use, and operate such property; and to sell, lease, or otherwise dispose of such property;
- (e) to, subject to section 251 of this chapter and the laws of the Federated States of Micronesia, borrow or raise any sum or sums of money and to issue corporate bonds on such security and upon such terms as may from time to time be deemed necessary for the expansion and improvement of the Works;
- (f) to retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it may deem appropriate; and
- (g) to do all such other things as may be deemed incidental to or conducive to the attainment of the responsibilities of the Corporation.

(2) Without limiting the generality of the powers given to it by subsection (1) of this section, and in addition to any other powers provided for by this chapter, the Corporation shall have the following specific powers—

- (a) to acquire, lease, construct, maintain and operate facilities, plant, equipment and infrastructure associated with the supply of Product and the related activities of the Corporation; to erect Works, and install any necessary equipment, machinery and plant for any purpose related to the functions of the Corporation;
- (b) to acquire, lease and take over in any lawful manner the business, property, assets, and liabilities of any preexisting entity relating to fuel storage and distribution;
- (c) to purchase, lease or otherwise acquire and maintain such personal and real property as the Corporation may from time to time deem necessary for the furtherance of its functions;
- (d) to do all such things as it deems expedient to enter into any contract for the sale, lease or purchase of property related to the performance of its functions;
- (e) to hire out plant or equipment of the Corporation and to enter into contracts for its operation and management;
- (f) to fix, charge and recover rates and fees for the supply of Product and for any other service provided by the Corporation;
- (g) to fix, charge and recover any surcharge on rates and fees for the supply of Product during any period when it may be reasonably anticipated that the supply of Product may be affected by a shortage of supply;
- (h) to ration or differentially allocate the supply of Product consistent with reasonable business practices and the needs of customers;
- (i) to recover the capital cost of supplying Product or providing other services to particular premises on such terms and conditions as the Corporation determines;
- (j) to investigate any failure to comply with this chapter, or any act that effects the ability of the Corporation to provide services under this chapter, and to take such steps as it considers necessary to secure compliance with this chapter or to prevent interference with the activities of the Corporation; and
- (k) to set and to enforce standards for work done by contractors and tradesmen relating to the supply of Product and any other service provided by the Corporation.

Source: PL 15-8 § 23.

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

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§ 243. Executive Council May Give Direction and Require Information.

The powers, functions and discretion of the Corporation, its Board of Directors and its officers shall be subject to the right and power of the Executive Council to—

(1) request, and obtain from the Corporation, such returns, accounts, and other information as the Executive Council may, from time to time, require, and to institute any investigation, hearing, audit or other informational process as the Executive Council shall deem appropriate; and

(2) set the terms and timing of any subsequent divestment of the assets and operations of the Corporation or for the issuance of common shares of the Corporation; provided any such divestment must provide for the payment or satisfaction of all indebtedness incurred in the formation and operation of the Corporation for which the Government of the Federated States of Micronesia may be obligated or a full and complete release of the Government of the Federated States of Micronesia from liability for the repayment of such loans or indebtedness.

Source: PL 15-8 § 24.

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

SUBCHAPTER V

Corporate Finances and Reporting

Editor's note: Section 3 of PL 15-8 enacted a new chapter 2 of title 27 entitled Federated States of Micronesia Petroleum Corporation Act of 2007. While section 3 of PL 15-8 did not create subchapters for this chapter the numbering of the sections indicated an intent to have the chapter subdivided into subchapters. This has been done for easier reference and to comport with standard code format.

§ 251. Debts and obligations of the Corporation.

(1) Unless otherwise expressly provided by law, the debts and obligations of the Corporation shall not be debts or obligations of the Government of the Federated States of Micronesia or of a Government of a State, nor shall the Government of the Federated States of Micronesia or that of a State be responsible for any such debts or obligations.

(2) Unless an express assumption of liability shall be executed by the Corporation and approved by Resolution of Congress, the Corporation shall not assume, or be deemed to have assumed, the liability of any third party whose assets or operations are acquired by the Corporation, including, without limitation, liabilities arising from any breach of legal or contractual obligation or arising from violation of any law, rule, ordinance, regulation or decree.

(3) During such periods of time there remains outstanding any loans or obligations payable to the Government of the Federated States of Micronesia or any loans or obligations payable by the Corporation to any other party for which the Government of the Federated States of Micronesia may be a guarantor, borrower or otherwise obligated, no new loans or indebtedness (except credit extended pursuant to energy/fuel supply agreements) in excess of an aggregate amount of \$1,000,000 shall be incurred unless approved by Resolution of Congress.

Source: PL 15-8 § 25.

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 Congress are found in title 3 of this code.

§ 252. Funds of the Corporation.

(1) The funds of the Corporation consist of—

(a) money appropriated from time to time by the FSM Congress and the State legislatures and paid to the Corporation;

(b) money derived from the disposal, lease, or hire of, or any other dealing with, any property vested in or acquired by the Corporation;

(c) money borrowed by the Corporation in accordance with subsection (2) of this section;

(d) income from interest referred to in subsection (3) of this section; and

(e) except as provided herein, any other moneys that may become payable to the Corporation in respect of the sale of Product or any matter incidental to its functions and powers.

(2) Subject to section 251 of this chapter, the Corporation may borrow such sums as shall be required by the Corporation to meet any of its obligations or to perform any of its functions.

(3) The Corporation shall, to the extent practicable, maintain its funds in the form of liquid, interest bearing bank deposits or such other investments as shall be approved in writing by the Board.

(4) The Corporation shall conserve its funds by performing its functions and exercising its powers under this chapter so as to ensure that the total revenues of the Corporation are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

Source: PL 15-8 § 26.

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 Congress are found in title 3 of this code.

§ 253. Annual Budget and Costs of Administration.

(1) At such time and in such manner as the Board may prescribe, the Chief Financial Officer shall submit to the Board and to the Executive Council a detailed budget for the next ensuing fiscal year which shall include:

(a) for the last completed fiscal year, audited accounts indicating the prevailing rates and charges applicable to the Product, the amount of gross income generated by the Corporation, and the amount of all capital and operational expenditures made by the Corporation, together with the closing balance of all bank accounts maintained by the Corporation;

(b) for the fiscal year in progress, a statement showing the estimated amount of gross income and the estimated amount of all capital and operational expenditures made by the Corporation, together with such summaries, schedules, and supporting data as the Board may deem necessary; and

(c) for the next ensuing fiscal year, a budget showing anticipated rates and charges for the Product, the estimated amounts of gross income of the Corporation and a statement of all estimated capital and operational expenditures anticipated by the Corporation.

(2) In the event the expenditures identified in subsection (1)(c) of this section are anticipated to exceed the estimated amount of gross income to be generated by the Corporation in the next ensuing fiscal year, plus appropriations, grants, loans or subsidies fully approved by the Congress of the Federated States of Micronesia and the amount of any funds, including the balance of any applicable capital expenditure sinking funds earmarked for the current year's expenditures, carried over from previous fiscal years, the proposed budget shall include a plan for financing the deficit.

(3) For any fiscal year during which the Corporation is expected to have outstanding loan balances owing to the Federated States of Micronesia or in which the Federated States of Micronesia continues to be obligated or liable for repayment of any portion of a loan or debt of the Corporation, or if the proposed plan to finance a budget deficit pursuant to subsection (2) of this section includes a grant, loan, guarantee or subsidy from the Federated States of Micronesia, the budget of the Corporation shall be submitted to Congress for approval and no further loans or indebtedness shall be incurred by the Corporation until the budget has been approved by Resolution of Congress.

Source: PL 15-8 § 27.

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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 Congress are found in title 3 of this code.

§ 254. Accounts, Annual Report, and Audit.

(1) The Board, the CEO and the Chief Financial Officer of the Corporation are jointly responsible for ensuring that the Corporation at all times keeps adequate accounts of its transactions and financial affairs, and must, without limitation, ensure that—

(a) all moneys received by the Corporation are properly brought to account;

(b) all payments by the Corporation are properly authorized;

- (c) adequate control is maintained over the Corporation's property and the incurring of liabilities; and
- (d) the accounts are kept in accordance with generally accepted accounting principles.

(2) Within three months after the end of each financial year, the Chief Financial Officer must prepare a report of the Corporation's activities during the financial year (referred to as the "Annual Report") and shall submit a copy of the Report to the Secretary, the Board and to the Executive Council.

(3) The Annual Report must contain, among other things—

(a) a statement of financial performance, which shall include a balance sheet, operating statements, a statement of changes in financial position, and an analysis of changes in retained earnings;

(b) a statement summarizing the rates and charges prevailing throughout the prior year with respect to the Product and the outlook for such rates in the coming year;

(c) a statement concerning the condition of the Works and the capital expenditure plan of the Corporation;

(d) the CEO's one and five-year plans required pursuant to section 231 of this chapter; and

(e) such other information as is required to give a true and fair view of the Corporation's financial and operational affairs.

(4) The annual accounts of the Corporation must be audited by the FSM Public Auditor. For this purpose, the Chief Financial Officer must, within three months after the end of each financial year submit to the Public Auditor

(a) the statement of financial performance and accompanying accounts of the Corporation for the year;

(b) the most recent budget prepared pursuant to section 253 of this chapter; and

(c) the Annual Report for the year prepared in accordance with subsection (2) of this section.

Source: PL 15-8 § 28.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Public Auditor are found in chapter 5 of title 55 of this code.

§ 255. Tax liability.

The Corporation shall be liable for the payment of any tax, assessment or contribution as may be required by law. Nothing herein shall be deemed to exempt employees and independent contractors of the Corporation from any tax liability for services rendered to the Corporation.

Source: PL 15-8 § 29.

SUBCHAPTER VI

Miscellaneous

Editor's note: Section 3 of PL 15-8 enacted a new chapter 2 of title 27 entitled Federated States of Micronesia Petroleum Corporation Act of 2007. While section 3 of PL 15-8 did not create subchapters for this chapter the numbering of the sections indicated an intent to have the chapter subdivided into subchapters. This has been done for easier reference and to comport with standard code format.

§ 261. Operating Standards.

The Board, the CEO and the Health and Safety Officer of the Corporation shall be jointly responsible for developing and implementing written operational policies that shall set forth the manner in which the Corporation is to —

(1) manage its business with the goal of preventing incidents and of controlling emissions and wastes to below harmful levels, and to design, operate, and maintain facilities to this end and to respond quickly and effectively to incidents resulting from its operations;

(2) design and maintain facilities, establish management systems, provide training and conduct operations in a manner that safeguards people and property;

(3) identify and manage risks associated with its products and to ensure that Product is not manufactured or sold when it is not possible through proper design, procedures, and practices to provide an appropriate level of safety for people and the environment;

(4) specify precautions required in handling, transporting, using, and disposing of Product and to take reasonable steps to communicate those precautions to employees, customers, and others who might be affected;

(5) comply with all applicable environmental and industrial and product safety laws and regulations and to apply responsible standards where laws and regulations do not exist;

(6) furnish services that reliably meet responsible standards of performance, efficiency, and courtesy; to furnish accurate and sufficient information about its products and services, including details of guarantees and warranties, so that customers can make informed purchasing decisions; and where the Corporation's products reach the ultimate consumer through independent parties, such as service station dealers and distributors, to actively encourage such parties to achieve standards comparable to those which have been established for the Corporation's own performance; and

(7) undertake appropriate reviews and evaluations of its operations to measure progress and to foster compliance with these policies.

Source: PL 15-8 § 30 (first section 30).

Editor's note: PL 15-8 included two sections numbered 30. The first created section 261 and the second created section 262.

§ 262. Contracts.

(1) The purchase of all supplies and materials and the construction of all works by independent contractors, when the expenditure exceeds \$20,000, shall be, by contract, let to the lowest responsible bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work or materials and supplies called for by the contract; provided that Product quality and reliability of Product supply shall be taken into account when evaluating fuel supply agreements; and provided further that any initial fuel supply agreement and facilities operation agreement executed as part of a transaction by which the Corporation acquires the Works shall be exempt from such requirement. A notice requesting bids shall be published at least ten days before bids are received.

The lowest responsible bidder shall be determined by the CEO using sound judgment and after consultation with the Board. The Board may reject any and all bids and re-advertise at its discretion.

(2) If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

(3) In case of major public calamity, or whenever it is in the interest of public safety or necessary to keep public utilities services operational, the Board may determine that the public interest and necessity demand the immediate expenditure of funds to keep the services operational or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provisions requiring contracts, bids or notices.

(4) Where reasonable, preference in the letting of contracts shall be given to local contractors based on the procedure provided by section 405, title 55 of this code.

(5) No director shall vote on any contract awarded by the Board in which the director has a direct or indirect financial interest.

Source: PL 15-8 § 30 (second section 30).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Government Finance and Contracts are found in title 55 of this code.

Editor's note: PL 15-8 included two sections numbered 30. The first created section 261 and the second created section 262.

§ 263. Power to discontinue or ration supplies.

(1) In addition to any other powers of the Corporation under this chapter, the Corporation may, without notice, discontinue, ration or limit any supply of Product or other service provided by it if it considers it necessary or desirable to do so—

- (a) by reason of a disruption of international supplies;
- (b) by reason of any accident or emergency;

- (c) to facilitate any work done or to be done by the Corporation;
- (d) to avoid or limit pollution; or
- (e) for the conservation of strategic product reserves.

(2) As soon as possible after it has taken any action under subsection (1) of this section the Corporation shall give notice of its action and indicate the likely duration of the discontinuance or rationing.

(3) The Corporation shall not be liable to any person for any loss or damage suffered by that person, and no person shall have a claim against the Corporation, where there is an increase, diminution or discontinuance in the supply of Product or any other service provided by the Corporation, or where there is a diminution in the quality of products, provided that such increase, diminution or discontinuance is caused by accident, other natural phenomenon or other unavoidable cause, by the Corporation acting in good faith in the proper exercise of its functions, or by the exercise by the Corporation of a power under this chapter.

(4) Without limiting the foregoing, if any fees or charges in respect of any customer, including governments or governmental units of any type, remain unpaid 30 calendar days after the date due for payment, the CEO may discontinue the supply of Product and services to that customer and may commence legal action to recover any rates, fees or charges that have fallen due for payment.

Source: PL 15-8 § 31.

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

§ 264. Transition; Employees.

The Corporation may, at its discretion, undertake to hire employees in good standing of pre-existing entities involved in the business of oil and gas distribution in the FSM, provided that the Corporation shall be under no obligation to do so with respect to any particular employee, nor shall it be required to hire employees at the same salaries or to fill the same positions as they may have enjoyed previously. In the event employees of a pre-existing entity are employed by the Corporation, all accrued benefits, sick leave, annual leave and other contractual obligations owed by the pre-existing entity to its employees shall remain the obligations of that entity and shall not be assumed by the Corporation, except to the extent directed in writing by the Board.

Source: PL 15-8 § 32.

§ 265. Issuance of Shares; divestment.

(1) Upon the written instruction of the Executive Council, the Corporation shall, through the filing of such documents as may be required of privately-held corporations, including, without limitation, Articles of Incorporation, Bylaws and Share Affidavits, capitalize itself through the issuance of common shares and, in such event, the provisions of this chapter shall be made subject to the terms of the Articles of Incorporation and Bylaws, and nothing in this chapter shall be read as restricting the payment of dividends, the holding of annual shareholder's meetings, the conduct of audits for the benefit of shareholders, the election of Directors and such other corporate governance and shareholder's rights provisions as may be set out in the Articles of Incorporation and Bylaws and approved by the

Executive Council.

(2) Upon the written instruction of the Executive Council, the Corporation shall, subject to the conditions set forth in section 243 of this chapter, take all necessary steps to divest its assets and operations, in whole or in part, to such entity or entities as shall be directed by the Executive Council. The Board and officers of the Corporation shall take all necessary actions to effectuate such divestment, including the execution of documents and instruments, and the turnover of books, records and personal property as shall be necessary to transfer operations and assets of the Corporation to the entity or entities designated by the Executive Council. Upon written instruction of the Executive Council following such divestment, the Corporation shall wind up its affairs and cease operation.

(3) Notwithstanding any other provisions of this section, the assets and operations of the Corporation may be divested to the State in which the assets and operations are located if:

(a) such State provides full payment or reimbursement of all debts and expenses incurred by the Government of the Federated States of Micronesia and the Corporation in the acquisition of those assets, and any product inventory remaining therein at the time of the divestment;

(b) such divestment is approved by the majority decision of the Executive Council; and

(c) the manner of divestment does not breach any agreement to which the Corporation, the Government of the Federated States of Micronesia, or the State is bound in respect of the assets or the supply of products.

Source: PL 15-8 § 33; PL 15-21 § 1.

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 Congress are found in title 3 of this code.

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