
A BILL FOR AN ACT

To amend title 19 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 10-76, by creating a new chapter 4 to establish the Micronesian Shipping Commission and to prescribe its power and authority to regulate commercial shipping in the oceanborne foreign commerce, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 19 of the Code of the Federated States of
2 Micronesia, as amended by Public Law No. 10-76, is hereby amended
3 by creating a new chapter 14 entitled "Chapter 14. Micronesian
4 Shipping Commission."

5 Section 2. Title 19 of the Code of the Federated States of
6 "Micronesia, as enacted by Public Law No. 10-76, is hereby amended
7 by adding a new section 1401 under chapter 14 to read as follows:

8 "Section 1401. Legislative Findings and Intent.

9 (1) The Congress of the Federated States of Micronesia
10 finds that the Micronesian Shipping Commission ("MSC" or
11 "Commission") was established as an intergovernmental
12 organization pursuant to an international agreement
13 entitled "Agreement on Regional Cooperation In Matters
14 Affecting International Commercial Shipping in
15 Micronesia," which was executed on November 21, 1997, by
16 the participating governments of the Federated States of
17 Micronesia, the Republic of the Marshall Islands, and
18 the Republic of Palau (hereinafter referred to
19 collectively as the "participating governments" or "MSC

1 jurisdictions"). The Congress of the Federated States of
2 Micronesia declares that the purpose of the
3 international agreement was to endow the Commission with
4 all necessary power and authority to carry out its
5 mandate to regulate commercial shipping in the
6 oceanborne foreign commerce of the MSC jurisdictions.

7 (2) It is the intention of the Congress of the
8 Federated States of Micronesia that the Commission be
9 endowed, at the domestic level, with all power and
10 authority necessary to carry out said mandate, and that
11 this chapter act as the implementing statute to give
12 full domestic legal effect to said international
13 agreement in the Federated States of Micronesia, and
14 that this chapter also supplement certain provisions of
15 said agreement with more specific provisions, which
16 shall be consistent with the companion implementing
17 statutes in the other two MSC jurisdictions. In
18 connection therewith, it is further intended by the OEK
19 that, to the extent that any provision in any other
20 chapter of this title is inconsistent with any provision
21 of the instant chapter, the latter shall supersede the
22 former."

23 Section 3. Title 19 of the Code of the Federated States of
24 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
25 by adding a new section 1402 under chapter 14 to read as follows:

1 "Section 1402. Definitions. As used in this Chapter,
2 unless otherwise indicated:

3 (a) "Agreement" means the international agreement
4 entitled "Agreement on Regional Cooperation In Matters
5 Affecting International Commercial Shipping in
6 Micronesia," which was ratified by all three MSC
7 jurisdictions and, more specifically, by the Federated
8 States of Micronesia, on November 25, 1998.

9 (b) "Commission" means the Micronesian Shipping
10 Commission.

11 (c) "Common carrier" refers to any person holding
12 itself out to the general public to provide
13 transportation by water of cargo between any one of the
14 three MSC jurisdictions—i.e., the Federated States of
15 Micronesia, the Republic of the Marshall Islands, or the
16 Republic of Palau—and a foreign country, for
17 compensation. The two classes of common carriers
18 regulated by the Commission for purposes of this chapter
19 are:

20 (1) Vessel-operating common carrier means any person
21 holding itself out to the general public to provide
22 transportation by water of cargo between any one of the
23 three MSC jurisdictions on the one hand, and a foreign
24 country on the other hand, for compensation, that:

25 (a) Assumes responsibility for the transportation

1 from the port or point of receipt to the port or point
2 of destination; and

3 (b) Utilizes, for all or part of that
4 transportation, a vessel operating on the high seas
5 between a port in any one of the three MSC jurisdictions
6 and a port in a foreign country, except that the term
7 does not include a common carrier engaged in ocean
8 transportation by ferry boat, ocean tramp, chemical
9 parcel tanker, or by a vessel when primarily engaged in
10 the carriage of perishable agricultural commodities

11 (i) if the carrier and the owner of those
12 commodities are wholly-owned, directly or indirectly, by
13 a person primarily engaged in the marketing and
14 distribution of those commodities; and

15 (ii) only with respect to the carriage of those
16 commodities. As used in this paragraph, 'chemical
17 parcel-tanker' means a vessel whose cargo-carrying
18 capability consists of individual cargo tanks for bulk
19 chemicals that are a permanent part of the vessel, that
20 have segregation capability with piping systems to
21 permit simultaneous carriage of several bulk chemical
22 cargoes with minimum risk of cross-contamination, and
23 that has a valid certificate of fitness under the
24 International Maritime Organization for the Construction
25 and Equipment of Ships Carrying Dangerous Chemicals in

1 Bulk.

2 (2) "Non-vessel-operating common carrier" means a
3 common carrier that does not operate the vessels by
4 which the ocean transportation is provided, and is a
5 shipper in its relationship with a Vessel Operating
6 Common Carrier.

7 (d) "Common routes" means routes that have port
8 calls in at least two of the three MSC jurisdictions.

9 (e) "Entry Assurance Certificate" means the
10 license issued by the Commission to duly approved common
11 carriers.

12 (f) "Freight forwarding fee" means charges billed
13 by a freight forwarder to a shipper, consignee, seller,
14 purchaser, or any agent thereof, for the performance of
15 freight forwarding services.

16 (g) "Freight forwarding services" refers to the
17 dispatching of shipments on behalf of others, in order
18 to facilitate shipment by a common carrier, which may
19 include, but are not limited to, the following:

20 (1) Ordering cargo to port;

21 (2) Preparing and/or processing export declarations;

22 (3) Booking, arranging for or confirming cargo space;

23 (4) Preparing or processing delivery orders or dock
24 receipts;

25 (5) Preparing and/or processing ocean bills of lading;

1 (6) Preparing or processing consular documents or
2 arranging for their certification;

3 (7) Arranging for warehouse storage;

4 (8) Arranging for cargo insurance;

5 (9) Clearing shipments in accordance
6 with relevant export regulations;

7 (10) Preparing and/or sending advance notifications of
8 shipments or other documents to banks, shippers, or con-
9 signees, as required;

10 (11) Handling freight or other monies advanced by
11 shippers, or remitting or advancing freight or other
12 monies or credit in connection with the dispatching of
13 shipments;

14 (12) Coordinating the movement of shipments from origin
15 to vessel; and

16 (13) Giving expert advice to exporters concerning
17 letters of credit, other documents, licenses or
18 inspections, or on problems germane to the cargoes'
19 dispatch.

20 (h) "Freight Forwarder" means a person that: (1)
21 Dispatches shipments via a common carrier and books or
22 otherwise arranges space for those shipments on behalf
23 of shippers, and (2) Processes the documentation and
24 performs related activities incident to those shipments.

25 (i) "Inter-island domestic and coast-wide trade"

1 shall mean trade within the boundaries of each of the
2 three MSC jurisdictions and/or between the participating
3 MSC governments themselves as may from time to time be
4 authorized by said governments.

5 (j) "License" refers to the Entry Assurance
6 Certificate issued by the Commission to an approved
7 common carrier.

8 (k) "Licensee" is any person that has been
9 licensed by the Micronesian Shipping Commission as a
10 common carrier to engage in the oceanborne foreign
11 commerce of the Federated States of Micronesia, the
12 Republic of the Marshall Islands and the Republic of
13 Palau, and possesses a valid Entry Assurance
14 Certificate.

15 (l) "Non-vessel-operating common carrier
16 services" refers to the provision of transportation by
17 water of cargo between the Federated States of
18 Micronesia, the Republic of the Marshall Islands and the
19 Republic of Palau, and a foreign country for
20 compensation without operating the vessels by which the
21 transportation is provided, and may include, but are not
22 limited to, the following:

23 (1) Purchasing transportation services from a VOCC and
24 offering such services for resale to other persons;

25 (2) Payment of port-to-port or multimodal

1 transportation charges;

2 (3) Entering into affreightment agreements with
3 underlying shippers;

4 (4) Issuing bills of lading or equivalent documents;

5 (5) Arranging for inland transportation and paying for
6 inland freight charges on through transportation
7 movements;

8 (6) Paying lawful compensation to ocean freight
9 forwarders;

10 (7) Leasing containers; or

11 (8) Entering into arrangements with origin or
12 destination agents.

13 (m) "Oceanborne foreign commerce" refers to ocean
14 shipping between any port in the Federated States of
15 Micronesia, the Republic of the Marshall Islands, or the
16 Republic of Palau, on the one hand, and a foreign
17 country on the other hand.

18 (n) "Person" includes individuals, corporations,
19 partnerships and associations existing under or
20 authorized by the laws of the Federated States of
21 Micronesia, the Republic of the Marshall Islands, the
22 Republic of Palau, or a foreign country.

23 (o) "Secretary" refers to the Secretary of
24 Transportation, Communications & Infrastructure, who
25 serves as the senior governmental representative of the

1 Federated States of Micronesia to the Commission.

2 (p) "Shipment" means all of the cargo carried
3 under the terms of a single bill of lading.

4 (q) "Shipping agent" means any person engaged on
5 behalf of the owner, charterer or operator of a ship, or
6 of the owner of cargo, in providing shipping services
7 including:

8 (1) Negotiating and accomplishing the sale or purchase
9 of a ship;

10 (2) Negotiating and supervising the charter of a ship;

11 (3) Collection of freight and/or charter hire where
12 appropriate and all related financial matters;

13 (4) Arrangements for Customs and cargo documentation
14 and forwarding of cargo;

15 (5) Arrangements for procuring, processing the
16 documentation and performing all activities required
17 related to dispatch of cargo; and

18 (6) Organizing arrival or departure arrangements for
19 the ship;

20 (7) Arranging for the supply of services to a ship
21 while in port.

22 (r) "Shipper" means:

23 (1) A cargo owner;

24 (2) The person for whose account the ocean
25 transportation is provided;

-
-
- 1 (3) The person to whom delivery is to be made;
2 (4) A shippers' association; or
3 (5) A non-vessel-operating common carrier that accepts
4 responsibility for payment of all charges applicable
5 under the tariff or service contract."

6 Section 4. Title 19 of the Code of the Federated States of
7 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
8 by adding a new section 1403 under charter 14 to read as follows:

9 "Section 1403. Composition of Commission.

10 (a) At any given time, the sitting Secretary of
11 Transportation, Communications & Infrastructure shall
12 serve as the designated senior governmental
13 representative, of the Federated States of Micronesia,
14 to the Commission. The Secretary shall also serve as
15 the FSM's designated representative and voting member of
16 the Executive Committee of the Commission. The
17 Secretary may also serve as Chairman of the Commission
18 based on annual rotation or as agreed upon by consensus
19 at any annual meeting of the Commission. If unable to
20 attend the meetings of the Commission or the Executive
21 Committee, the Secretary shall grant specific proxy and
22 voting instructions to a senior member of his staff to
23 act on his behalf."

24 Section 5. Title 19 of the Code of the Federated States of
25 Micronesia, as enacted by Public Law No. 10-76, is hereby further

1 amended by adding a new section 1404 under chapter 14 to read as
2 follows:

3 "Section 1404. General.

4 (1) Authority over commercial shipping in the MSC
5 region, granted. The Commission is responsible for
6 administrating and regulating common carriers and any
7 and all other persons involved in the oceanborne foreign
8 commerce of the Federated States of Micronesia, pursuant
9 to this chapter and the Agreement on Regional
10 Cooperation In Matters Affecting International
11 Commercial Shipping in Micronesia.

12 (2) Rules and regulations. The Commission shall adopt
13 such rules and regulations as may be necessary and
14 convenient for the exercise of the powers and
15 performance of the duties set forth in this chapter.
16 Such rules and regulations, upon enactment by the
17 Commission in accordance with Section 1419 of this
18 chapter, and approval by the Secretary, shall have the
19 full force and effect of law in the Federated States of
20 Micronesia."

21 Section 6. Title 19 of the Code of the Federated States of
22 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
23 by adding a new section 1405 under chapter 14 to read as follows:

24 "Section 1405. Organizational components of the
25 Commission.

1 (1) Components. The major components of the
2 Commission shall include the following:

3 (a) Executive Committee.

4 (b) Chairman.

5 (c) Secretariat.

6 (d) Executive Director.

7 (e) Chief Financial Officer.

8 (2) Functions of the organizational components of the
9 Micronesia Shipping Commission; Lines of
10 responsibility.

11 (a) Executive Committee. The Executive Committee
12 is responsible for managing the official business and
13 affairs of the Commission. In order to carry out its
14 statutory mandate to regulate shipping services in the
15 three participating MSC jurisdictions in a safe,
16 economical and orderly manner, and specifically to
17 regulate common carriers by water and other persons
18 involved in the oceanborne foreign commerce of the MSC
19 jurisdictions, the Executive Committee administers the
20 Entry Assurance system and promulgates rules and
21 regulations in connection therewith. Any matter before
22 the Commission, including any decision regarding the
23 licensing of common carriers, shall be disposed of by
24 the affirmative vote of the majority of the members of
25 the Executive Committee. The Executive Committee shall

1 conduct regular meetings, to be held concurrently with
2 the annual meetings of the Commission. The Executive
3 Committee may also convene in a special meeting at the
4 request of the sitting Chairman of the Executive
5 Committee or at least two (2) of its members.

6 (b) Chairman. As the chief administrative
7 officer of the Commission, the Chairman presides at
8 meetings of the Commission, administers the policies of
9 the Commission to its responsible officials, and ensures
10 the efficient discharge of their responsibilities. The
11 Chairman provides management direction to the
12 Secretariat and its administrative head, the Executive
13 Director. The Chairman may call special meetings of the
14 Executive Committee. At each annual meeting of the
15 Commission, the Chairman, with the technical assistance
16 of the Executive Director and Chief Finance Officer,
17 shall present an annual statement or report of the
18 business of the Commission for the preceding year;
19 provided that the Chairman may delegate this
20 responsibility to the Executive Director. The Chairman
21 executes duly approved Entry Assurance Certificates and
22 any other documents requiring the Official Seal of the
23 Commission; provided however that the Chairman may
24 delegate such authority to the Executive Director.

25 (c) Secretariat. The Secretariat is responsible

1 for carrying out the day-to-day administrative business
2 of the Commission, and receives its direction from the
3 Executive Committee in connection therewith. The
4 Secretariat receives all applications for Entry
5 Assurance and otherwise serves as a repository for the
6 records of the Commission.

7 (d) Executive Director. The Executive Director
8 is appointed by the presiding Chairman with the advice
9 and consent of the other two (2) members of the
10 Executive Committee. The Executive Director may hire
11 such staff, consultants, and other persons as are
12 necessary to carry out the business of the Secretariat.
13 The Executive Director serves as the recording secretary
14 of the Commission and in connection therewith attends
15 and keeps minutes of all meetings and other sessions of
16 the Commission and/or the Executive Committee. The
17 Executive Director gives, or causes to be given, notice
18 of all meetings of the Commission and performs such
19 other duties as prescribed by the Chairman. The
20 Executive Director is responsible for keeping in safe
21 custody the Official Seal of the Commission. The
22 Executive Director serves at the pleasure of the
23 Executive Committee and may be removed by action of the
24 Executive Committee. The Executive Director, with
25 concurrence of the Chairman, is also responsible for

1 selecting the Chief Financial Officer.

2 (e) Chief Financial Officer. The Chief Financial
3 Officer is the custodian of the funds of the Commission
4 and keeps complete and accurate records in connection
5 therewith. The Chief Financial Officer disburses the
6 funds of the Commission as directed or ordered by the
7 Chairman, or the Executive Director if authorized by the
8 Chairman. The Chief Financial Officer renders financial
9 reports at the annual meeting of the Commission and/or
10 whenever directed to do so by the Chairman and/or the
11 Executive Director."

12 Section 7. Title 19 of the Code of the Federated States of
13 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
14 by adding a new section 1406 under chapter 14 to read as follows:

15 "Section 1406. Duties of the Commission. The general
16 duties of the Commission shall be:

17 (a) To determine the general policies for
18 fulfilling the purposes of the Commission;

19 (b) To examine and take appropriate action on the
20 reports of the Secretariat;

21 (c) To determine its own rules of procedure and
22 adopt bylaws, including the establishment of a
23 Secretariat to provide staff support and other related
24 services as it may deem necessary and appropriate;

25 (d) To review expenditures and approve the

1 accounts of the Commission;

2 (e) To approve annual operating budgets and
3 determine the financial arrangements of the Commission;

4 (f) To review the performance of commercial
5 shipping services provided by common carriers holding
6 Entry Assurance Certificates;

7 (g) To recommend levels of annual financial
8 contributions by the three MSC jurisdictions and to
9 establish annual Entry Assurance Certificate fees to be
10 assessed against licensees;

11 (h) To investigate any possible violation(s) of
12 this chapter as well as duly adopted rules and
13 regulations, and, where appropriate, to issue orders
14 and/or assess civil penalties against licensees;

15 (i) To execute those compromise procedures set
16 forth in this chapter for the settlement of claims
17 and/or disputes arising from violation(s) of this
18 chapter and/or duly adopted rules and regulations;

19 (j) To issue, approve, disapprove, modify, or
20 revoke Entry Assurance Certificates from common carriers
21 engaged in the oceanborne foreign commerce of the MSC
22 jurisdictions; and

23 (k) To review and approve or disapprove
24 applicable tariffs filed by licensees involving shipping
25 service in the MSC jurisdictions, or any subsequent

1 change(s) in the tariffs as may be requested by the
2 licensees."

3 Section 8. Title 19 of the Code of the Federated States of
4 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
5 by adding a new section 1407 under chapter 14 to read as follows:
6 "Section 1407. Entry Assurance Certificate; when
7 required. Except as otherwise provided by this chapter,
8 no person may act as a common carrier in the MSC
9 jurisdictions unless that person holds a valid Entry
10 Assurance Certificate issued by the Commission. An
11 Entry Assurance Certificate shall be required of any
12 common carrier servicing a common route for the purpose
13 of receiving or delivering cargo for remuneration,
14 except that any vessel owned and operated by any one of
15 the three MSC jurisdictions does not have to obtain an
16 Entry Assurance Certificate. Except as otherwise
17 provided in this chapter, no person engaged in the
18 oceanborne foreign commerce may act as common carrier
19 unless that person holds a valid Entry Assurance
20 Certificate issued by the Commission. Only persons
21 licensed under this part may furnish or contract to
22 furnish common carrier services in the oceanborne
23 foreign commerce. Failure to comply with this part will
24 result in civil penalties to be determined by the
25 Commission in accordance with Section 1420 of this

1 chapter."

2 Section 9. Title 19 of the Code of the Federated States of
3 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
4 by adding a new section 1408 under chapter 14 to read as follows:

5 "Section 1408. Entry Assurance Certificate; when not
6 required. An Entry Assurance Certificate is not
7 required in the following circumstances:

8 (a) Government owned and operated vessel. Any
9 vessel owned and operated by any one of the three MSC
10 jurisdictions does not have to obtain an Entry Assurance
11 Certificate.

12 (b) Vessel engaged in a public governmental
13 purpose. Any vessel not owned and operated by one of
14 the three MSC jurisdictions but nevertheless is engaged
15 in non-commercial shipping activity deemed by the
16 Commission to be a public governmental purpose, does not
17 have to obtain an Entry Assurance Certificate.

18 (c) Shipper. Any person whose primary business
19 is the sale of merchandise may, without a license,
20 dispatch and perform freight forwarding services on
21 behalf of its own shipments, or on behalf of shipments
22 or consolidated shipments of a parent, subsidiary,
23 affiliate, or associated company. Such person shall not
24 receive compensation from the common carrier for any
25 services rendered in connection with such shipments.

1 (d) Inter-island domestic and coast-wide trade
2 carrier. A carrier or other person engaged in solely
3 inter-island domestic and coast-wide commercial shipping
4 is not engaged in the oceanborne foreign commerce and is
5 therefore exempt from compliance with this Chapter.

6 (e) Single-entry shipper. While it is the
7 general policy of the Commission to have all commercial
8 cargo move to and from the MSC jurisdictions by licensed
9 common carriers, a shipper who has, after first
10 approaching any and all relevant Entry Assurance
11 Certificate holder(s) and determining that no licensee
12 can move his or her particular cargo in a sufficiently
13 timely and economic manner, may nonetheless arrange the
14 carriage of said cargo into a port(s) in the MSC
15 jurisdictions without an Entry Assurance Certificate,
16 provided that said shipper obtains a Single Entry Permit
17 in accordance with Section 1417 of this chapter."

18 Section 10. Title 19 of the Code of the Federated States of
19 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
20 by adding a new section 1409 under chapter 14 to read as follows:

21 "Section 1409. Vessel operating without an Entry
22 Assurance Certificate; offense. Any vessel found
23 operating in the waters and/or ports of the Federated
24 States of Micronesia, and engaged in the provision of
25 commercial shipping service without a valid Entry

1 Assurance Certificate, shall be deemed to have committed
2 an offense against safety of navigation, within the
3 meaning of Title 19, Chapter 12 of the F.S.M.C. and
4 shall be subject to the enforcement and jurisdiction
5 provisions provided in the same."

6 Section 11. Title 19 of the Code of the Federated States of
7 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
8 by adding a new section 1410 under chapter 14 to read as follows:

9 "Section 1410. Basic requirements for licensing;
10 eligibility.

11 (a) Necessary qualifications. To be eligible for
12 an Entry Assurance Certificate, the applicant carrier
13 must demonstrate to the Commission that:

14 (1) it is either a sole proprietorship, partnership or
15 a corporation, provided that officer, director or
16 shareholder of an applicant carrier shall serve as a
17 representative of another unless both applicants are
18 joint ventures, jointly owned, or one corporate entity
19 is a subsidiary of the other;

20 (2) It possesses necessary experience, i.e., at least
21 three (3) years in ocean transportation activities, and
22 the necessary character to render ocean transportation
23 services in the common routes for which it is applying;
24 and

1 (3) It has obtained and filed with the Commission a
2 valid performance bond, proof of insurance or other
3 surety acceptable to the Commission in the amount of
4 seventy-five thousand dollars (\$75,000.00) for a non-
5 vessel-operating common carrier, and one million dollars
6 (\$1,000,000.00) for a vessel-operating common carrier
7 applicant, respectively; provided however that the
8 posting of the appropriate performance bond may be
9 waived at the discretion of the Commission upon
10 demonstration by an applicant carrier that it possesses
11 valid liability insurance with a Protection and
12 Indemnity Club.

13 (b) Application fee. Any carrier applying for an
14 Entry Assurance Certificate must submit with its
15 application a nonrefundable application fee of two
16 hundred fifty dollars (\$250.00), made payable to the
17 "Micronesian Shipping Commission."

18 (c) Application and forms. Any person who wishes
19 to obtain an Entry Assurance Certificate shall submit,
20 in addition to the non-refundable application fee as
21 required by Section 1410(b), a written proposal in
22 triplicate to the Secretariat that contains the
23 following information:

24 (1) Name of carrier, owner, and a brief history. If
25 the applicant is a corporation or partnership, the names

1 of the officers or partners thereof;

2 (2) Description of the service to be provided
3 including the proposed route(s), types, characteristics,
4 number and ownership of vessels to be used. If vessels
5 are to be chartered, a copy of the relevant charter
6 agreements;

7 (3) Service to and from the ports of loading and
8 discharge;

9 (4) Forecasted volume and type of cargo to be carried
10 in the route;

11 (5) Employment policies relative to ship's personnel
12 and other employees;

13 (6) Long-term plan for development of commercial
14 shipping in Micronesia;

15 (7) Applications involving any connecting carrier or
16 transshipment arrangement(s) must include full details
17 of the relevant connecting carrier agreement(s) and must
18 be approved by the Commission prior to implementation;
19 and

20 (8) Applicable tariffs, current financial statement
21 and other supporting information and documents for
22 review and approval by the Commission.

23 (d) Rejection. Any application which appears
24 upon its face to be incomplete or to indicate that the
25 applicant fails to meet the requirements of this

1 chapter, or the Commission's rules and regulations,
2 shall be returned by certified mail or other method
3 reasonably calculated to provide actual notice to the
4 applicant without further processing, together with an
5 explanation of the reason(s) for rejection.

6 (e) Investigation. Each applicant shall be
7 investigated in accordance with Section 1411 of this
8 chapter.

9 (f) Changes in fact. Each applicant and each
10 licensee shall submit to the Commission, in triplicate,
11 an amended application advising of any changes in the
12 facts submitted in the original application, within
13 thirty (30) days after such change(s) occur. Any
14 unreported change may delay the processing and
15 investigation of the application and may result in
16 rejection or denial of the application. No fee is
17 required when reporting changes to an application for
18 initial license under this section.

19 (g) Priority consideration. Priority
20 consideration for the issuance of an Entry Assurance
21 Certificate shall be given to the following category of
22 common carriers, which also meet the basic criteria set
23 out in subsection (a) of this section:

24 (1) A carrier that is wholly owned by citizens of the
25 MSC jurisdictions;

1 (2) A carrier that uses vessels registered by the MSC
2 jurisdictions;

3 (3) A carrier that employs the greatest number of
4 citizens of the MSC jurisdictions; and

5 (4) A carrier that conducts developmental training
6 programs for Micronesian employees."

7 Section 12. Title 19 of the Code of the Federated States of
8 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
9 by adding a new section 1411 under chapter 14 to read as follows:

10 "Section 1411. Investigations of applicant carriers.
11 The Commission shall conduct an investigation of the
12 applicant's qualifications for an Entry Assurance
13 Certificate. Such investigations may address but are
14 not limited to the following:

15 (a) The accuracy of the information submitted in
16 the application;

17 (b) The integrity and financial responsibility of
18 the applicant;

19 (c) The character of the applicant and its
20 qualifying individual; and

21 (d) The length and nature of the applicant's
22 experience in handling ocean transportation services."

23 Section 13. Title 19 of the Code of the Federated States of
24 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
25 by adding a new section 1412 under chapter 14 to read as follows:

1 "Section 1412. Issuance of Entry Assurance Certificate.

2 (a) Qualification necessary for issuance. The
3 Commission will issue an Entry Assurance Certificate if
4 it determines, as a result of its investigation under
5 Section 1411, that the applicant possesses the necessary
6 experience and character to render ocean transportation
7 services and has filed the required bond, insurance or
8 other surety. In making said determination, the
9 Commission shall consider the following criteria:

10 (1) The routes being served must satisfy the basic
11 trade requirements of the three participating
12 jurisdictions;

13 (2) Tariffs charged should be reasonable for the
14 service proposed;

15 (3) Sufficient equipment and assets must be available
16 and committed by the applicant to ensure a reliable and
17 stable service;

18 (4) Service must be flexible to accommodate
19 containerized, break-bulk, and roll-on/roll-off cargo;

20 (5) Capitalization or investment must be sufficient to
21 adequately sustain the proposed service for the duration
22 of the license; and

23 (6) Revenue generated should support the cost of
24 operating the route.

25 (b) To whom issued. The Commission will issue an

1 Entry Assurance Certificate only in the name of the
2 applicant, whether the applicant is a sole
3 proprietorship, a partnership, or a corporation. An
4 Entry Assurance Certificate issued to a sole proprietor
5 doing business under a trade name shall be in the name
6 of the sole proprietor, indicating the trade name under
7 which the licensee will be conducting business. Only
8 one license shall be issued to any applicant regardless
9 of the number of names under which such applicant may be
10 doing business, and except as otherwise provided in this
11 part, such license is limited exclusively to use by the
12 named licensee and shall not be transferred without
13 prior Commission approval to another person."

14 Section 14. Title 19 of the Code of the Federated States of
15 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
16 by adding a new section 1413 under chapter 14 to read as follows:

17 "Section 1413. Denial of license. If the Commission
18 determines, as a result of its investigation under
19 Section 1411, that the applicant common carrier:

20 (a) Does not possess the necessary experience or
21 character to render ocean transportation services;

22 (b) Has failed to respond to any lawful inquiry
23 of the Commission; or

24 (c) Has made any materially false or misleading
25 statement to the Commission in connection with its

1 application; then, a letter of intent to deny the
2 application shall be sent to the applicant by registered
3 or certified mail or other method reasonably calculated
4 to provide actual notice, stating the reason(s) why the
5 Commission intends to deny the application. If the
6 applicant submits a written request to the Secretariat
7 for a hearing on the proposed denial within thirty (30)
8 days after receipt of notification, such hearing shall
9 be granted by the Commission pursuant to Section 1419 of
10 this chapter. Otherwise, denial of the application will
11 become effective and the applicant shall be so notified
12 by certified mail or other method reasonably calculated
13 to provide actual notice. Applicant carriers whose
14 Entry Assurance applications have been denied shall not
15 resubmit them annually or during the term of Entry
16 Assurance Certificates for the same common routes as
17 determined by the Commission, unless otherwise notified
18 by the Commission to do so because a change of
19 circumstances so warrant."

20 Section 15. Title 19 of the Code of the Federated States of
21 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
22 by adding a new section 1414 under chapter 14 to read as follows:

23 "Section 1414. Revocation or suspension of license.

24 (a) Grounds for revocation. Except for the
25 automatic revocation for termination of proof of

1 financial responsibility as provided under Section 1415,
2 an Entry Assurance Certificate may be suspended or
3 revoked, after the licensee has been served a thirty
4 (30) day notice and given an opportunity to be heard by
5 the Commission, for the following reasons:

6 (1) Failure to provide the service proposed;

7 (2) Failure to perform in accordance with relevant
8 international shipping and safety standards;

9 (3) Failure to comply with this chapter and/or rules
10 and regulations promulgated by the Commission in
11 accordance with Section and approved by the Secretary;

12 (4) Failure to submit reports and other information as
13 required by the Commission;

14 (5) Failure to pay the annual Entry Assurance
15 Certificate fee within two (2) months upon notification
16 by the Commission of the approved original and/or
17 renewal Entry Assurance application;

18 (6) Making a materially false or misleading statement
19 to the Commission in connection with an application for
20 a license or an amendment to an existing license;

21 (7) Failure to respond to any lawful order or inquiry
22 by the Commission;

23 (8) Failure to investigate, where appropriate, whether
24 another person involved in the oceanborne foreign
25 commerce has filed with the Commission evidence of its

1 financial responsibility, as provided under Section
2 1415;

3 (9) The unauthorized issuance of an original bill of
4 lading of another carrier whom is not licensed by the
5 Commission;

6 (10) Where the Commission determines that a common
7 carrier is engaging in unauthorized use of its Entry
8 Assurance Certificate, such as using its license to
9 effectively bring an unlicensed carrier to operate under
10 its name.

11 (11) Where the Commission otherwise determines that the
12 applicant carrier is not qualified or no longer
13 qualified to render ocean transportation services."

14 (b) Notice of revocation. The Commission shall
15 publish in the _____ a notice of each revocation.

16 (c) Violations of this chapter by Single-entry
17 shippers. Where a Single-entry shipper violates the
18 terms and conditions of his or her Single-entry Permit,
19 the Commission may assess against said shipper a civil
20 penalty akin to that levied against licensees, in
21 accordance with Section 1421."

22 Section 16. Title 19 of the Code of the Federated States of
23 Micronesia, as amended by Public Law No. 10-76, is hereby further
24 enacted by adding a new section 1415 under chapter 14 to read as
25 follows:

1 "Section 1415. Financial Responsibility requirements.

2 (a) Form and amount. Except as otherwise
3 provided in this part, no person may operate as a common
4 carrier in the oceanborne foreign commerce of the MSC
5 jurisdictions unless that person furnishes a bond, proof
6 of insurance, or other surety in a form and amount
7 determined by the Commission to insure financial
8 responsibility.

9 (1) Any person operating in the oceanborne foreign
10 commerce as a common carrier, as defined in Section 1402
11 of this chapter, shall furnish evidence of financial
12 responsibility in the following amounts:

13 (i) Any person operating as an Non-vessel-
14 operating common carrier shall furnish evidence of
15 financial responsibility in the amount of seventy-five
16 thousand dollars (\$75,000.00); and

17 (ii) Any person operating as an Vessel-
18 operating common carrier shall furnish evidence of
19 financial responsibility in the amount of one million
20 dollars (\$1,000,000.00); provided however that the
21 posting of the appropriate performance bond may be
22 waived at the discretion of the Commission upon
23 demonstration by an applicant carrier that it possesses
24 valid liability insurance with a Protection and
25 Indemnity Club.

1 (b) Common trade name. Where more than one
2 person operates under a common trade name, separate
3 proof of financial responsibility is required covering
4 each corporation or person separately providing ocean
5 transportation services.

6 (c) Claims against a common carrier. The
7 Commission may seek payment from the bond, insurance, or
8 other surety that is obtained by a common carrier
9 pursuant to this section.

10 (d) Payment pursuant to Commission order. If the
11 Commission issues an order or assesses a penalty
12 pursuant to Section 1421 of this chapter, a bond,
13 insurance, or other surety shall be available to pay
14 such order or penalty."

15 Section 17. Title 19 of the Code of the Federated States of
16 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
17 by adding a new section 1416 under chapter 14 to read as follows:

18 "Section 1416. Proof of compliance.

19 (a) No common carrier may transport cargo for the
20 account of a shipper known by the carrier to be a Non-
21 vessel-operating common carrier unless the carrier has
22 determined that the Non-vessel-operating common carrier
23 has a tariff and financial responsibility as required by
24 Section 1415.

25 (b) A common carrier can obtain proof of a Non-

1 vessel-operating common carrier's compliance with the
2 tariff and financial responsibility requirements by:

3 (1) Reviewing a copy of the tariff published by the
4 Non-vessel-operating common carrier; or

5 (2) Consulting the Commission to verify that the Non-
6 vessel-operating common carrier has filed evidence of
7 its financial responsibility.

8 (c) A common carrier that has employed the
9 procedure prescribed in either paragraphs (b) (1) or
10 (b) (2) of this section shall be deemed to have met its
11 obligation, unless the common carrier knew that such
12 NVOCC was not in compliance with the tariff and
13 financial responsibility requirements.

14 (d) The Commission will keep in the office of its
15 Secretariat a list of all carrier and conference
16 tariffs, and a list of any other persons who have
17 furnished the Commission with evidence of financial
18 responsibility, current as of the last date on which the
19 list is updated. The Commission will update this list on
20 a periodic basis."

21 Section 18. Title 19 of the Code of the Federated States of
22 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
23 by adding a new section 1417 under chapter 14 to read as follows:

24 "Section 1417. *Single-entry shippers, procedure.* A
25 shipper who has approached any and all relevant Entry

1 Assurance Certificate holder(s) and determined that none
2 of them, within their existing service, can accommodate
3 his or her particular cargo in a sufficiently timely and
4 economic manner, may select a carrier of his or her
5 choice to carry the cargo, provided that shipper first:

6 (a) Obtains a written release from the relevant
7 Entry Assurance Certificate holder(s), provided however
8 that the Commission may waive this requirement if said
9 release(s) is unreasonably withheld;

10 (b) Designates an agent at the relevant MSC
11 port(s) of call;

12 (c) Furnishes a signed agreement whereby both the
13 shipper and the carrier of the shipper's choosing submit
14 themselves to the legal jurisdiction of the relevant MSC
15 country(ies) and agrees to comply with all applicable
16 governmental laws and regulations during the limited
17 period of operations in the MSC region; and

18 (d) Ensures that the selected carrier submits to
19 the Commission a copy of its Protection and Indemnity
20 insurance coverage and a valid Certificate of Financial
21 Responsibility for Oil Pollution;

22 (e) Tenders to the Commission the requisite
23 \$25,000.00 Single Entry Permit fee."

24 Section 19. Title 19 of the Code of the Federated States of
25 Micronesia, as enacted by Public Law No. 10-76, is hereby amended

1 by adding a new section 1418 under chapter 14 to read as follows:

2 "Section 1418. General duties and Responsibilities of
3 Applicant Carriers; Reports to the Commission.

4 (a) Entry Assurance Certificate; name and number.

5 Each licensee shall carry on its business only under the
6 name in which its Entry Assurance Certificate is issued
7 and only under its license number as assigned by the
8 Commission.

9 (b) Every licensee shall keep, and prominently
10 display, on any and all vessels operating in the waters
11 and ports of the three participating MSC jurisdictions,
12 a copy of its Entry Assurance Certificate(s).

13 (c) Use of license by others; prohibition. No
14 Entry Assurance Certificate holder shall permit its
15 license or name to be used by any person who is not a
16 bona fide individual employee of the licensee.
17 Unincorporated branch offices of the licensee may use
18 the license number and name of the licensee if such
19 branch offices:

20 (1) have been reported to the Commission in writing;
21 and

22 (2) are covered by said licensee's financial
23 responsibility as provided by Section 1415.

24 (d) Arrangements with carriers whose licenses
25 have been revoked. Unless prior written approval from

1 the Commission has been obtained, no Entry Assurance
2 Certificate holders shall, directly or indirectly:

3 (1) Agree to perform shipping services on shipments as
4 an associate, correspondent, officer, employee, agent,
5 or sub-agent of any person whose license has been
6 suspended or revoked;

7 (2) Assist in the furtherance of any ocean
8 transportation business of such person;

9 (3) Share forwarding fees or freight compensation with
10 any such person; or

11 (4) Permit any such person, directly or indirectly, to
12 participate, through ownership or otherwise, in the
13 control or direction of the ocean transportation
14 services of the licensee.

15 (e) False or fraudulent claims, false
16 information. No Entry Assurance Certificate holder
17 shall prepare or file or assist in the preparation or
18 filing of any claim, affidavit, letter of indemnity, or
19 other paper or document concerning an ocean
20 transportation transaction which it has reason to
21 believe is false or fraudulent, nor shall any such
22 licensee knowingly impart to a principal, shipper,
23 common carrier or other person, false information
24 relative to any ocean transportation transaction.

25 (f) Response to requests of Commission. Upon the

1 request of the Commission, an Entry Assurance
2 Certificate holder shall make available promptly for
3 inspection or reproduction all records and books of
4 account in connection with its ocean transportation
5 activities which concern, even partly, one or more of
6 the MSC jurisdictions."

7 Section 20. Title 19 of the Code of the Federated States of
8 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
9 by adding a new section 1419 under chapter 14 to read as follows:

10 "Section 1419. Rules and regulations; rulemaking.

11 (a) The Administrative Procedures Act,
12 inapplicable. The Administrative Procedure Act, which
13 is codified at Title 17 of the Code of the Federated
14 States of Micronesia, shall not apply to the rulemaking
15 authority of the Commission as set forth in this
16 chapter. Instead, the Commission is a sui generis
17 intergovernmental organization that has the authority to
18 promulgate its own rules and regulations as provided in
19 this part. The Commission shall adopt, in accordance
20 with this section, such rules and regulations as may be
21 necessary and convenient for the exercise of the powers
22 and performance of the duties set forth in this chapter.
23 Such rules and regulations shall have the full force and
24 effect of law in the Federated States of Micronesia.

25 (b) Initiation of procedure to issue, amend, or

1 repeal a rule or regulation. The Commission on its own
2 initiative may initiate the issuance, amendment, or
3 repeal of a rule or regulation through notice of
4 proposed rulemaking. Prior to adoption, amendment, or
5 repeal of any rule or regulation, the Commission shall:

6 (1) Publish notice of its intended action for at least
7 thirty (30) days by posting a copy of the proposed rule
8 or regulation in convenient public places including at
9 least the principal National Government office in each
10 State and each State capital post office. The notice
11 shall include:

12 (i) a statement of either the terms or
13 substance of the proposed rule or regulation, or a
14 description of the subjects and issues involved;

15 (ii) reference to the authorities under which
16 the action is proposed;

17 (iii) the time when, the place where, and the
18 manner in which interested persons may present their
19 views thereon; and

20 (iv) the proposed effective date;

21 (2) Communicate the general nature of the proposed
22 rule or regulation;

23 (3) Transmit copies of the proposed rule or regulation
24 to the Speaker of the Congress and to the Legislative
25 Counsel of the Congress;

1 (4) Afford all interested persons reasonable
2 opportunity to submit data, views, or arguments, in
3 writing. The Commission may conduct a hearing on any
4 proposed rule or regulation, or change thereto, if
5 requested by the Congress of the Federated States of
6 Micronesia, or a committee thereof;

7 (5) In the case of any common carrier whom the
8 Commission knows or has reason to know may have an
9 interest in the proposed adoption, amendment, or repeal
10 of any rule or regulation, the Commission shall send
11 notice of its intended action at least thirty (30) days
12 to any such carrier by registered or certified mail, or
13 by other means reasonably calculated to give notice.

14 (c) Petition for adoption of rules. Any person
15 may petition the Commission requesting the adoption,
16 amendment, or repeal of a rule. The Commission shall
17 prescribe the form of petitions and the procedure for
18 their submission, consideration, and disposition.
19 Within sixty (60) days after submission of a petition,
20 the Commission shall either deny the petition in
21 writing, summarily stating its reasons for the denial,
22 or shall initiate rulemaking proceedings in accordance
23 with this section.

24 (d) Rules and regulations must be adopted in
25 compliance with this section. A judicial challenge on

1 the basis of noncompliance with the procedural
2 requirements of this section must be commenced within
3 one (1) year from the effective date of the rule or
4 regulation.

5 (e) When this section inapplicable. This section
6 shall not apply to interpretative rules, general
7 statements of policy, organization rules, procedure, or
8 practice of the Commission, or any situation in which
9 the Commission for good cause finds (and incorporates
10 such findings in such rule) that notice and public
11 procedure are impracticable, unnecessary, or contrary to
12 the public interest.

13 (f) Content of rules. The Commission will
14 incorporate in any rules and regulations adopted a
15 concise general statement of their basis and purpose.

16 (g) The publication or service of any substantive
17 rule or regulation shall be made not less than thirty
18 (30) days prior to its effective date except (1) as
19 otherwise provided by the Commission for good cause
20 found, or (2) in the case of rules granting or
21 recognizing exemption or relieving restriction;
22 interpretative rules; or statements of policy.

23 (h) Negotiated rulemaking. The Commission, upon
24 its own motion, may establish a negotiated rulemaking
25 committee to negotiate and develop consensus on a

1 proposed rule, if use of such a committee is determined
2 by the Commission to be in the public interest.

3 (i) Effective date of rules and regulations. Each
4 regulation hereafter adopted is effective ten (10) days
5 after compliance with subsection (b) of this section."

6 Section 21. Title 19 of the Code of the Federated States of
7 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
8 by adding a new section 1420 under chapter 14 to read as follows:

9 "Section 1420. Administrative hearings.

10 (a) Hearing, when required. Apart from the
11 hearing required under Section 1413(c) of this chapter
12 for applicant carriers, a hearing shall also be required
13 (i) prior to the suspension or revocation of an Entry
14 Assurance Certificate, as provided under Section
15 1414(a), and (ii) prior to the assessment of any civil
16 penalty, as provided under Section 1421(a). All
17 hearings shall be initiated by providing the relevant
18 Entry Assurance Certificate holder with thirty (30) days
19 notice by registered or certified mail, or by other
20 means reasonably calculated to give notice.

21 (b) By Commission. Administrative hearings
22 conducted for the purpose of enforcing this chapter and
23 ensuring that no violation thereof has, or will likely
24 occur, are to be commenced by order of the Commission
25 upon its own motion.

1 (c) Content of order. In the order instituting a
2 proceeding, the Commission shall establish dates by
3 which the initial decision and the final Commission
4 decision will be issued. These dates may be extended by
5 order of the Commission for good cause shown."

6 Section 22. Title 19 of the Code of the Federated States of
7 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
8 by adding a new section 1421 under chapter 14 to read as follows:

9 "Section 1421. Assessment of civil penalties; Criteria
10 for determining amount; Compromise.

11 (a) Procedure for assessment of penalty. The
12 Commission may assess a civil penalty only after notice
13 and an opportunity for a hearing, as provided under
14 Section 1420. Civil penalty assessment proceedings,
15 including settlement negotiations, shall be governed by
16 those rules and regulations adopted by the Commission
17 pursuant to its rulemaking authority. All settlements
18 must be approved by the Executive Committee. The full
19 text of any settlement must be included in the final
20 order of the Commission.

21 (b) Criteria for determining amount of penalty.
22 In determining the amount of any penalties assessed, the
23 Commission shall take into account the nature,
24 circumstances, extent and gravity of the violation
25 committed and the policies for deterrence and future

1 compliance with this chapter and the Commission's rules
2 and regulations. The Commission shall also consider the
3 respondent carrier's degree of culpability, history of
4 prior offenses, ability to pay and such other matters as
5 justice requires. In no case, however, shall the
6 Commission assess a civil penalty in excess of fifty
7 thousand dollars (\$50,000.00).

8 (c) *Compromise of civil penalties.*

9 (1) *Scope.* The Commission, when it has reason to
10 believe a violation has occurred, may invoke the
11 compromise procedures of this section.

12 (2) *Notice.* When the Commission considers it
13 appropriate to afford an opportunity for the compromise
14 of a civil penalty, it will, except where circumstances
15 render it unnecessary, send a Notice and Demand Letter
16 to the respondent carrier, by registered or certified
17 mail, or by other means reasonably calculated to give
18 notice. The Notice and Demand Letter will describe
19 specific violation(s) on which the claim is based,
20 including the particular facts, dates and other elements
21 necessary for the respondent carrier to identify the
22 specific conduct constituting the alleged violation; the
23 amount of the penalty demanded; and the names of
24 Commission personnel with whom the demand may be
25 discussed, if the person desires to compromise the

1 penalty. The Notice and Demand Letter will also state
2 the deadlines for the institution and completion of
3 compromise negotiations and the consequences of failure
4 to compromise.

5 (d) Request for compromise. Any person receiving
6 a Notice and Demand Letter, provided for in the
7 preceding subsection, may, within the time specified,
8 deny the violation, or submit matters explaining,
9 mitigating or showing extenuating circumstances, as well
10 as make voluntary disclosures of information and
11 documents.

12 (e) Criteria for compromise. In addition to the
13 factors set forth in subsection (b) of this section, in
14 compromising a civil penalty claim, the Commission may
15 consider litigation probabilities and the cost of
16 collecting on claims and other expenses related to
17 enforcement.

18 (f) Disposition of claims in compromise
19 procedures.

20 (1) When a penalty is compromised and the respondent
21 carrier agrees to settle for that amount, a compromise
22 agreement shall be executed. This agreement, after
23 reciting the nature of the claim, will include a
24 statement evidencing the respondent carrier's agreement
25 to the compromise of the Commission's penalty claim for

1 the amount set forth in the agreement and will also
2 embody an approval and acceptance provision which is to
3 be signed by at least two (2) members of the Executive
4 Committee. Upon compromise of the penalty in the agreed
5 amount, a duplicate original of the executed agreement
6 shall be furnished to the respondent carrier.

7 (g) Delegation of compromise authority. The
8 Executive Committee of the Commission is specifically
9 delegated the authority to issue Notice and Demand
10 Letters, and to negotiate the terms of compromises of
11 civil penalties as set forth in this section, provided
12 however that any Notice and Demand Letter or other
13 document issued by the Commission in connection with
14 this section be signed by at least two (2) members of
15 the Executive Committee.

16 (h) Nonpublic proceedings. Unless otherwise
17 ordered by the Commission, all proceedings under this
18 section shall be nonpublic."

19 Section 23. Title 19 of the Code of the Federated States of
20 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
21 by adding a new section 1422 under chapter 14 to read as follows:

22 "Section 1422. Payment of penalty; method; default.

23 (a) Method. Payment of penalties by the
24 respondent carrier is to be made by bank cashier's check
25 or other instrument acceptable to the Commission. All

1 checks or other instruments submitted in payment of
2 claims shall be made payable to the "Micronesian
3 Shipping Commission."

4 (b) Default in payment. Where a respondent fails
5 or refuses to pay a penalty properly assessed under
6 Section 1420, or compromised and agreed to under that
7 section, appropriate collection efforts will be made by
8 the Commission. Such default constitutes an additional
9 and separate ground for suspension or revocation of the
10 respondent's Entry Assurance Certificate, after notice
11 and an opportunity for a hearing, unless such notice and
12 hearing have been waived by the respondent in writing."

13 Section 24. Title 19 of the Code of the Federated States of
14 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
15 by adding a new section 1423 under chapter 14 to read as follows:

16 "Section 1423. Judicial Review.

17 (a) A person who has exhausted the administrative
18 process prescribed by Sections 1420, 1421, and 1422 of
19 this chapter and who is aggrieved by a final decision by
20 the Commission arising under this chapter and/or duly
21 adopted rules and regulations is entitled to judicial
22 review thereof in the Supreme Court of the Federated
23 States of Micronesia.

24 (b) Proceedings for review are instituted by
25 filing a petition in the Trial Division of the Supreme

1 Court within thirty (30) days after receipt of the final
2 decision of the Commission. Copies of the petition
3 shall be served upon the Commission and all parties of
4 record.

5 (c) The filing of the petition does not itself
6 stay enforcement of the Commission decision. The
7 Commission may grant, or the reviewing court may order,
8 a stay upon appropriate terms.

9 (d) Within sixty (60) days after the service of
10 the petition, or within further time allowed by the
11 court, the Commission shall transmit to the reviewing
12 court a copy of the entire record of the proceedings
13 under review. By stipulation of all parties to the
14 review proceedings, the record may be shortened. A party
15 unreasonably refusing to stipulate to limit the record
16 may be taxed by the court for the additional costs. The
17 court may require or permit subsequent corrections or
18 additions to the record.

19 (e) If, before the date set for hearing,
20 application is made to the court for leave to present
21 additional evidence, and it is shown to the satisfaction
22 of the court that the additional evidence is material
23 and that there were justifiable reasons for failure to
24 present it in the proceeding before the agency, the
25 court may order that the additional evidence be taken

1 before the Commission upon conditions determined by the
2 court. The Commission may modify its findings and
3 decision by reason of the additional evidence and shall
4 file that evidence and any modifications, new findings,
5 or decisions with the reviewing court.

6 (f) The review shall be conducted by the court
7 and shall be confined to the record. In cases of
8 alleged irregularities in procedure before the agency,
9 not shown in the record, proof thereon may be taken in
10 the court. The court, upon request of either party,
11 shall hear oral argument and receive written briefs.

12 (g) The court shall not substitute its judgment
13 for that of the Commission as to the weight of the
14 evidence on questions of fact. The court may affirm the
15 decision of the Commission or remand the case for
16 further proceedings. The court may reverse or modify
17 the decision if substantial rights of the appellant have
18 been prejudiced because the administrative findings,
19 inferences, conclusions, or decisions are:

20 (1) a violation of constitutional or statutory
21 provisions;

22 (2) in excess of the statutory authority of the
23 Commission;

24 (3) made upon unlawful procedure;

25 (4) affected by other error of law;

1 (5) clearly erroneous in view of the reliable,
2 probative, and substantial evidence in the whole record;
3 or
4 (6) arbitrary, or capricious, or characterized by
5 abuse of discretion or clearly unwarranted exercise of
6 discretion."

7 Section 25. Title 19 of the Code of the Federated States of
8 Micronesia, as enacted by Public Law No. 10-76, is hereby amended
9 by adding a new section 1424 under chapter 14 to read as follows:
10 "Section 1424. Appeals. An aggrieved party may obtain
11 a review of any final judgment of the Trial Division of
12 the Supreme Court under this chapter by appeal to the
13 Appellate Division of the Supreme Court, which appeal
14 shall be taken as in other civil cases."

15 Section 26. This act shall become law upon approval by the
16 President of the Federated States of Micronesia or upon its
17 becoming law without such approval.

18

19 Date: 11/21/12

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)

20