

PRELIMINARY INVESTIGATION REGULATIONS
(Sections 428, 429, 431 of Chapter 4 of the National Maritime Act, 1997)

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PRELIMINARY INVESTIGATION REGULATIONS
(Section 428, 429, 430 of Chapter 4 of the National Maritime Act, 1997)

PART 1 GENERAL PROVISIONS

1.1 Authority - These Regulations are promulgated by the Secretary of Transportation, Communications and Infrastructure pursuant to the authority granted to him under section 402, Chapter 4 of Title 19 of the Code of the Federated States of Micronesia, and provide for the conduct of a Preliminary Investigation into the circumstances or causes of a marine casualty required under section 429 of the Act, and appointment of Investigators as required by Chapter 4.

1.2 Purpose - The fundamental purpose of investigating an accident or a marine casualty under these Regulations is to determine its circumstances and the causes with the aim of avoiding any future occurrence of a similar casualty in order to:

- (a) reduce the loss of life and injuries at sea;
- (b) prevent or reduce loss of property;
- (c) protect the marine environment;
- (d) raise public confidence in the transportation system; and
- (e) protect economic resources.

1.3 Short Title - These Regulations may be cited as the Preliminary Investigation Regulations.

1.4 Application - These Regulations shall apply to casualties or accidents involving or occurring on board:

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

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

"accident" or "casualty" means, for the purposes of these Regulations and of sections 428 and 429 of the Act, any contingency whereby a vessel:

- (i) is involved in an accident, marine incident or casualty resulting in damage of any kind to the vessel, property or the environment, or any personal injury or loss of life;
- (ii) receives damage that may render it unsafe;
- (iii) has been in a position of great peril;
- (iv) fouls or does damage to a pipeline, submarine cable or marine aid to navigation; or
- (v) is in difficulty and is required to put back into a port in the Federated States of Micronesia.

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

"disabled" means not under command for a period of more than 12 hours, or for any lesser period if, as a result, the vessel needs assistance to reach port;

"grounding" means making involuntary contact with the ground, except for touching briefly so that no damage is caused, and "goes aground" shall be construed accordingly;

"hazardous incident" means any incident or event by which the safety of a vessel or any person on board is imperiled, or as a result of which serious damage to any vessel or structure or damage to the environment might be caused;

"investigation" means any investigation carried out by an Investigator, including but not limited to an inquiry;

"Investigator" means the qualified person appointed by the Secretary under section 429 of the Act;

"major injury" means an injury that requires admittance to a hospital or medical center;

"pleasure craft" means a vessel primarily used for sport or recreation;

"Preliminary Investigation" means an investigation ordered under section 428 of the Act, and involves those staff of the Division of Marine Transportation and other maritime personnel who have been appointed by the Secretary;

"serious casualty" means an accident to a vessel of 12 meters or more in length, causing loss of life or major injury, or loss of or material damage to the vessel;

"stranded" means to go aground and cannot immediately be refloated;

"vessel's boat" includes a lifeboat or liferaft, painting punt and any boat normally carried by a vessel.

PART 2 REPORTING OF CASUALTIES AND ORDERING OF INVESTIGATION

2.1 Duty to Report Casualties

- (a) Except as provided in paragraph (b), when a casualty occurs the master shall send a report to the Secretary as soon as is practicable by the quickest means available, and in any case not later than 24 hours after the vessel next arrives at a port.
- (b) Where a vessel is lost or presumed lost or is abandoned, then such a report shall be sent by the owner, the master, or a senior surviving officer as soon as is practicable by the quickest means available.
- (c) A report made to any maritime authority in each of the States of the FSM shall be regarded as complying with the requirement under paragraph (a).

2.2 Ordering of Investigation

- (a) Any casualty to which these Regulations apply may be investigated. When a casualty occurs, the Secretary shall decide whether or not an investigation is required. Where a report has been received under section 2.1, he shall cause the master or owner to be notified of his decision. He may, before deciding, cause to be obtained such further information as he considers necessary. The owner or master of the vessel concerned shall, upon being so required, provide such further information to the best of his ability and knowledge.
- (b) The Secretary may order, in view of the importance or seriousness of the casualty, that the investigation take the form of a Preliminary Investigation, to be carried out by one or more Investigators of marine casualty appointed by him under section 429 of the Act, or additionally or alternatively by such other person or persons whom he may appoint specifically for the purpose. Such other person or persons shall have the same powers conferred on an Investigator by subsection 429(1) of the Act and subsection 3.1(a) of these Regulations.
- (c) The Secretary shall serve notice on any person who, in his opinion, may be required to give accurate account of the casualty, and he may invite, in writing, any persons who desire to make representations to the Investigator.

2.3 Preservation of Evidence - The owner and master shall, so far as is possible, ensure that all charts, log books and other records and documents which might reasonably be considered pertinent to a casualty reportable under section 2.1 be kept and no alteration be made to entries therein, and any equipment that might reasonably be considered pertinent to such a casualty shall, so far as is practicable, be left undisturbed, until either:

- (a) Notification is received from the Secretary that no investigation is to take place; or
- (b) If notification is received that an investigation is to take place, the Secretary or the Investigator carrying out the investigation indicates that he no longer requires them.

PART 3 INVESTIGATION INTO MARINE CASUALTIES

3.1 Conduct of Investigations

- (a) The Investigator or Investigators shall have the unrestricted powers and authority to:
 - (i) go on board any vessel relevant to the case;
 - (ii) inspect the vessel's logbooks, certificates and any document on board the vessel;
 - (iii) enter any property or facility in order to establish facts;
 - (iv) subpoena witnesses and require the production of evidence;
 - (v) interview witnesses; and
 - (vi) disassemble or do anything to an item of physical evidence in order to establish facts pertinent to the case.
- (b) Subject to the powers conveyed on the Investigator under paragraph (a) and section 429 of the Act, an Investigator shall conduct an investigation at such times and places and in such manner as appears to him most conducive to achieving the fundamental purpose set out in section 1.2 of these Regulations.
- (c) An investigation may extend to all events and circumstances preceding the casualty that, in the opinion of the Investigator, may be relevant to its cause or outcome or consequences.
- (d) Every person required to attend before an Investigator shall be allowed reimbursement of his expenses of attending, which, in the opinion of the Secretary, are reasonable.

- (e) Upon completion of an investigation the Investigator shall submit his findings to the Secretary as to the facts of the casualty and, where the facts cannot be established with certainty, his opinion as to the most probable facts. He shall clearly distinguish between established facts and conjecture. He shall also submit his analysis and his conclusions together with such observations and recommendations as he thinks fit to make.
- (f) At any time during the course of an investigation the Secretary may determine that the investigation shall be discontinued, and in that event, no submission by the Investigator need be made.

3.2 Report of Preliminary Investigation

- (a) Subject to subsection (e) below, where a Preliminary Investigation has taken place, the Investigator shall make a report to the Secretary, which shall include the Investigator's findings and his own observations thereon, and any recommendations that he considers appropriate.
- (b) Subject to subsections (c) and (d) below, the Secretary may, unless he orders a Marine Inquiry under section 430 of the Act and unless in his opinion there is good reason to the contrary, publish the report if:
 - (i) it appears to him that to do so will improve the safety of life at sea and help to prevent marine accidents in the future; or
 - (ii) it relates to a serious casualty to a vessel registered in the Federated States of Micronesia.
- (c) Where the report or any investigation indicates that an offence may have been committed and that prosecution of any person is being considered, the Secretary shall not publish the report until either prosecution, including any appeal, has been concluded or it has been decided not to prosecute.
- (d) Where an inquiry is being considered into the conduct of a holder of a Certificate of Competency or a holder of a Certificate of Proficiency, then the Secretary shall not publish the report until the proceedings under section 430 of the Act have been completed or it has been decided not to pursue such proceedings.
- (e) Except when a Formal Investigation has been ordered, or where subsections (c) and (d) apply, if in the opinion of the Investigator the reputation of any person is likely to be adversely affected by the report then the Secretary shall not publish the report until:
 - (i) that person (or if that person be deceased, then such person as

- appears to the Investigator to best represent the deceased's interest) is served with a copy of the report or that part of it which affects him;
- (ii) that person or his representative has been given a period of 30 days to make representations to the Investigator either in person or in writing;
 - (iii) the Investigator has considered any such representations and has notified the person concerned or his representative of his conclusions on them, and of what changes, if any, he intends to make to the report; and
 - (iv) the person or his representative has been given a further 30 days in which he may submit to the Investigator an alternative text for any passages in the report which remain in issue.
- (f) The Investigator on submitting the report to the Secretary shall, in addition, refer to any section of the report under subsection (e) of this section and shall set out the substance of any representations made in response, together with his conclusions and a record of any action he has taken. He shall also quote in full any alternative texts submitted under paragraph (e)(iv) above; and, if the Secretary decides to publish the report, he shall publish any such texts with it as an appendix, unless in his opinion there is good reason not to do so.
- (g) The Secretary shall forward any recommendations contained in the report to those persons or organizations who in his opinion are most fitted to implement them.
- (h) Notwithstanding the preceding subsections of this section, the Secretary may at any time during the course of an investigation release information and recommendations if, in his opinion, it is necessary or desirable to do so in the interests of safety.

PART 4 MISCELLANEOUS PROVISIONS

4.1 Summaries of Investigations

- (a) The Secretary shall prepare and publish from time to time collective summaries of investigations.
- (b) A summary report of any investigation may be published, and if not published shall be otherwise made available to any person requesting it who satisfies the Secretary of his legitimate interest, pursuant to the Purpose of these Regulations outlined in section 1.2.

4.2 Reopening of Investigation

- (a) The Secretary may cause any investigation to be reopened either generally or as to any part thereof, and shall do so:
 - (i) if after the completion of the investigation in his opinion new and important evidence has been discovered, or
 - (ii) if for any other reason there are, in his opinion, grounds for suspecting that a miscarriage of justice has occurred.
- (b) Any investigation that is reopened shall be subject to and conducted in accordance with the provisions of these Regulations relating to such an investigation.

4.3 Extension of Time - The Secretary, in respect of the periods of 30 days prescribed in paragraphs (e)(ii) and (e)(iv) of section 3.2, shall have the power to extend the said periods, and shall not unreasonably refuse to do so, and this power may be exercised notwithstanding that the prescribed period has expired.

4.4 Penalties

- (a) A master, owner or officer who fails without reasonable cause to report an accident as required by section 2.1, or a master or owner who fails to provide information as required by section 2.2, commits an offense and shall be liable upon conviction to a fine not exceeding \$20,000.
- (b) Any person who fails without reasonable cause to comply with section 2.3, commits an offense and shall be liable upon conviction to a fine not exceeding \$40,000.

APPROVALS

Pursuant to the authority vested in me as Secretary of Transportation, Communications and Infrastructure by sections 428, 429 and 430 of Title 19 of the Code of the Federated States of Micronesia, I hereby issue and promulgate these Preliminary Investigation Regulations. These Regulations shall become effective upon approval by the President and compliance with Title 17 of the Code of the Federated States of Micronesia.

Date: _____

Akilino H. Susaia, Secretary
Department of Transportation,
Communications & Infrastructure

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

Date: _____

Paul E. McIlrath, Secretary
Department of Justice

I approve the adoption of these Regulations.

Date: _____

Leo A. Falcam, President
Federated States of Micronesia

EFFECTIVE DATE

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

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