

**CHAPTER 5****Certification of Seamen****SECTIONS**

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**Editor's note:** The former provisions of chapters 1 to 12 of this title were repealed in their entirety by PL 10-76 § 1 and replaced by the provisions of PL 10-76, the "National Maritime Act, 1997" codified at chapters 1 to 13 of this title. PL 10-76 took effect April 1, 1998.

**§ 501. Application of chapter.**

Except for section 511 of this chapter which shall apply to foreign seamen of any nationality employed on foreign vessels, this chapter applies to citizens and nationals of the Federated States of Micronesia employed on any vessel, whether or not such vessel is registered, and includes citizens of the Federated States of Micronesia employed on foreign vessels.

**Source:** PL 10-76 § 89.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

**Case annotations:** Case annotations found throughout this title may refer to the earlier provisions of the National Maritime Act of 1993

that was repealed by PL 10-76, the National Maritime Act, 1997. These annotations are retained for reference purposes as some of the language of the National Maritime Act, 1997 is similar to the language of the former National Maritime Act of 1993.

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within exclusive admiralty and maritime jurisdiction of FSM Supreme Court. FSM Const. art. XI, § 6(a). *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 68-71 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under art. IX, § 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under art. XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court under art. XI, § 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 72 (Kos. 1982).

### **§ 502. Regulations for certification of seamen.**

(1) The Secretary shall promulgate regulations relating to the certification of seaman, taking into account the standards of training, certification and watchkeeping contained in the STCW Convention, and these regulations shall have the force and effect of law.

(2) Where the STCW Convention requires education and training arrangements, the Secretary may provide for equivalent arrangements.

**Source:** PL 10-76 § 90.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

### **§ 503. Appointment of Principal Shipping Officer and Shipping Officers.**

(1) The Secretary shall appoint a Principal Shipping Officer who shall oversee the implementation and enforcement of the provisions of this chapter relating to training, qualifications, and certification of seamen.

(2) The Secretary shall also appoint other Shipping Officers to assist the Principal Shipping Officer in matters relating to training, qualifications and certification of seamen.

(3) The Secretary shall by regulation determine the credentials and experience necessary to qualify as a Shipping Officer.

**Source:** PL 10-76 § 91.

#### **§ 504. Certificates of Competency.**

(1) The Secretary shall determine by regulation the requirements for the issuance of Certificates of Competency for each class and designation of qualified seamen and the procedures to be followed in order to meet the requirements.

(2) The Principal Shipping Officer shall issue Certificates of Competency to seamen who meet the requirements prescribed by regulation.

(3) A Certificate of Competency is valid evidence that the holder has met all requirements for seamen in the class and designation specified on the certificate and that the holder is competent to perform all duties of seamen in such class and designation, subject to any condition which may be specified on the certificate.

(4) Upon request, a qualified seaman shall produce the seaman's Certificate of Competency to any Shipping Officer or to the owner or master of a vessel on which the seaman is employed.

(5) A person who goes to sea falsely purporting to be a seaman qualified in a class or designation for which the person has not been issued a Certificate of Competency commits a civil offense and shall be liable to a fine not exceeding \$50,000.

**Source:** PL 10-76 § 92.

#### **§ 505. Certificates of Sea Service.**

(1) The master of all vessels to which this chapter applies shall issue to seamen upon discharge from the vessel a Certificate of Sea Service in a form approved by the Secretary, specifying:

- (a) the name of the seaman;
- (b) the name, official number, nationality and type of vessel on which the seaman was employed;
- (c) the capacity in which the seaman was employed;
- (d) the period of the seaman's service on the vessel;
- (e) the date and place of the seaman's engagement and discharge; and
- (f) conduct and performance evaluations of the seaman during the period of service on the vessel.

(2) Anyone who fraudulently alters or forges a Certificate of Sea Service commits a civil offense and shall be liable to a fine not exceeding \$10,000.

**Source:** PL 10-76 § 93.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.

**§ 506. Identity cards and record books.**

The Principal Shipping Officer may issue and require seamen to carry a seaman's identity card and keep a seaman's employment record book in the form prescribed in the regulations.

**Source:** PL 10-76 § 94.

**§ 507. Register of Seamen.**

The Principal Shipping Officer shall keep a Register of Seamen at the Department, which shall be available and open for inspection by the public during normal business hours.

**Source:** PL 10-76 § 95.

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

**§ 508. Requirement for Certified Seamen.**

- (1) All Registered Vessels shall carry the proper number of certificated seamen required by regulations.
- (2) No vessel shall proceed to sea without carrying the number of certificated seamen prescribed for that type and size of vessel.
- (3) An owner or master who fails to comply with subsections (1) and (2) of this section commits a national offense, punishable by a fine not exceeding \$100,000 or imprisonment for not more than one year, or both.

**Source:** PL 10-76 § 96.

**§ 509. Suspension or revocation of Certificates of Competency.**

(1) Where there are reasonable grounds to believe that the holder of a Certificate of Competency is unfit for duty for any reason, the Principal Shipping Officer may immediately suspend the seaman's certificate after notice to the seaman, PROVIDED HOWEVER, that a hearing shall be set within 10 days on the action to be taken against the seaman who shall be given written notice of such hearing.

- (2) The notice of hearing shall state:
  - (a) the time, date and place of hearing;
  - (b) the facts upon which the finding of unfitness was based;
  - (c) that the seaman's Certificate of Competency may be suspended or revoked; and

(d) that the seaman has the right to contest any action to be taken against him.

(3) The hearing shall be conducted in accordance with title 17 of this code.

(4) A seaman may waive his right to a hearing under this section and agree to the proposed suspension or revocation, PROVIDED HOWEVER, such waiver shall be in writing, and shall contain a statement that the seaman has had the opportunity to discuss the matter with the seaman's own attorney.

(5) At the hearing, unless the hearing is waived by the seaman under subsection (4) of this section, if the finding of unfitness is sustained, and the evidence so warrants, the Secretary may suspend or revoke the seaman's Certificate of Competency, or issue a public or private reprimand to the seaman.

(6) Where the decision is to suspend or revoke a Certificate of Competency, the written notice of decision shall:

- (a) state the reasons for the suspension or the revocation;
- (b) state the dates of suspension or the date of revocation; and
- (c) require delivery of the certificate to the Principal Shipping Officer.

(7) A seaman whose Certificate of Competency has been revoked or suspended shall deliver the certificate to the Principal Shipping Officer within 15 days.

**Source:** PL 10-76 § 97.

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

### **§ 510. Appeals.**

(1) Where a Certificate of Competency is revoked or suspended or a seaman is issued a reprimand, the seaman may seek judicial review in the Trial Division of the Supreme Court, pursuant to title 17 of this code.

(2) If an appeal is not filed within 60 days of the date on which the decision of the Secretary was made, the decision of the Secretary shall become final and may not be appealed.

(3) The decision of the Secretary shall remain in effect pending final outcome of any appeal.

**Source:** PL 10-76 § 98.

**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

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

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedures are found in title 17 of this code.

### **§ 511. Port State control regarding certification of foreign seamen.**

(1) While in any of the ports of the Federated States of Micronesia, every foreign vessel shall be subject to inspection by a Shipping Officer to verify that all seamen serving on board who are required to hold a Certificate of Competency or its equivalent are so certificated or hold an appropriate dispensation. Certificates of Competency or their equivalents issued to foreign seamen shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of a certificate is not the person to whom the certificate was originally issued.

(2) Inspections conducted by a Shipping Officer under subsection (1) of this section shall be limited to the following:

(a) verification that all seamen serving on board who are required by the STCW Convention to be certificated hold a valid Certificate of Competency or its equivalent, or a valid dispensation;

(b) assessment of the ability of the seamen on board the vessel to maintain watchkeeping standards as required by the STCW Convention if there are clear grounds for believing that such standards are not being maintained because, while in any of the ports or waters of the Federated States of Micronesia, any of the following has occurred:

(i) the vessel has been involved in a collision, grounding, or stranding;

(ii) there has been a discharge of any substance from the vessel when underway, at anchor or at berth, which discharge may violate the laws of the Federated States of Micronesia or any of its states, or violate an international convention to which the Federated States of Micronesia is a party, or international customary law; or

(iii) the vessel has been maneuvered in an erratic or unsafe manner, or navigational course markers or traffic separation schemes have not been followed.

(3) In the event that any deficiencies are found under subsection (1) of this section or under the inspection procedures conducted under subsection (2) of this section, the Secretary shall inform the master of the vessel in writing and, through appropriate diplomatic channels, the maritime authority of the nation whose flag the vessel is entitled to fly, so that appropriate action may be taken. Such notification shall specify the details of the deficiencies found and the grounds on which the Shipping Officer has determined that the deficiencies pose a danger to persons, property or the environment.

(4) Any of the following shall constitute deficiencies as set forth in subsection (3) of this section:

(a) failure of seamen employed on the vessel to have any certificate required under the STCW Convention, or a valid dispensation therefor;

(b) failure of navigational or engineering watch arrangements to conform to the requirements specified for the vessel by the flag nation;

(c) absence in a watch of a person qualified to operate equipment essential to safe navigation or the prevention of pollution; or

(d) inability of the master to provide rested persons for the first watch at the commencement of a voyage and subsequent relieving watches.

(5) If, taking into account the size and type of the vessel and the length and nature of the voyage, the deficiencies referred to in subsection (4) of this section are not corrected and it is determined that any such deficiency poses a danger to persons, property or the environment, the Secretary shall direct the Principal Shipping Officer to take steps to ensure that the vessel does not sail unless and until these deficiencies have been corrected to the extent that the danger has been removed.

(6) Failure to correct the deficiencies referred to in subsection (4) of this section shall be grounds for detaining the vessel.

**Source:** PL 10-76 § 99.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Territory, Economic Zones and Ports of Entry are found in title 18 of this code.