

CHAPTER 7
Social Security Board
and Administration

SECTIONS

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§ 701. Board—Established—Composition—Compensation.

There is created a Federated States of Micronesia Social Security Board of five members nominated by the President and confirmed by the Congress of the Federated States of Micronesia to operate the Social Security Program authorized by this subtitle. Nominations to the Board shall take into account the need to have adequate geographical representation and to have representatives from public and private sector employers and employees. Members of the Board shall serve three year terms, and the Board shall provide for its own organization and procedure. Any vacancies on the Board shall be filled for the unexpired term only. Where a vacancy is for one year or less, it shall be filled by appointment by the President, otherwise vacancies shall be filled by nomination by the President and confirmation by the Congress. The Social Security Administrator shall be an *ex officio* member of the Board. Members of the Board who are not State or National Government employees shall be paid at the rate of \$30 per day and necessary travel expenses when actually attending meetings of the Board.

Source: PL 2-74 § 201; PL 5-120 § 5.

Cross-reference: The statutory provisions on the TT Social Security Act are found in subtitle I of this title.

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.

§ 702. Board—Powers and duties generally.

The Board shall have the powers and privileges of a corporation, shall have an official seal, and shall in the name of “Federated States of Micronesia Social Security Administration” transact all business, enter into contracts, invest all funds or retain a firm to invest or reinvest funds under the Board’s supervision, and, under its rules, regulations, and conditions, transfer or assign such funds as herein authorized, purchase annuities, and hold in trust for the purposes for which received, all cash, securities, and other properties of the system. In the name “Federated States of Micronesia Social Security Administration” it may sue and be sued. The responsibility for the proper operation of this subtitle shall be vested in the Board. The Board shall appoint a Social Security Administrator who shall have responsibility for the general administration of the Social Security System, and who shall have the power to employ and to delegate duties to such employees of the Social Security Administration as deemed feasible and desirable to carry out the provisions of this subtitle.

Source: PL 2-74 § 202.

§ 703. Promulgation of regulations—Hearings—Employees—Annual report.

The Board may adopt, amend, or rescind regulations for the administration of this subtitle pursuant to chapter 1 of title 17 of this code. It may hold hearings or make decisions upon hearings delegated to others for the purpose of determining any question involving any right, benefit, or obligation of any person subject to this subtitle. It may fix the compensation of such employees it deems necessary within the limits of available administrative funds budgeted for its operation, and it may contract for special actuarial and other counseling on a fee basis. It shall bond itself and its employees in such amounts as it shall fix. It shall receive audited accounts of the Social Security System within 90 days of the end of the fiscal year of the system and transmit these accounts to the President and the Congress of the Federated States of Micronesia. The annual accounts and reports shall be made available to the public. It shall submit to the President and the Congress for each fiscal year a report on its operations and the condition of its funds, and subject to section 707 of this chapter, in such report shall make recommendations for amendments to this subtitle as it deems desirable.

Source: PL 2-74 § 203.

Cross-reference: Chapter 1 of title 17 of this code is on FSM Administrative Procedures. 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.

§ 704. Maintenance of records—Disclosure of records.

(1) The Administrator shall receive and maintain files and records of all employers and all employees subject to this subtitle. Such records shall not be disclosed to any person except as may be required in the administration of this subtitle or in connection with a hearing conducted in accordance with the provisions of this subtitle.

(2) Notwithstanding the foregoing or any other provision of law, the Administrator, the Secretary of the Department of Finance and Administration, and their designated employees, are authorized to exchange tax information with one another for the purpose of cross-matching taxpayer returns and records and identifying noncompliance with this title or with other tax statutes. Information received by an agency pursuant to the foregoing sentence shall be subject to the confidentiality rules of that receiving agency. The Administrator and the Secretary of the Department of

Finance and Administration shall determine who shall be “designated employees” for the purpose of this section.

Source: PL 2-74 § 204; PL 12-51 § 1.

Editor’s note: Subsection (2) was added by PL 12-51 § 1.

§ 705. Appointment of branch managers.

The Administrator shall have the authority to employ branch managers and delegate such power to such branch managers as may by regulation be prescribed.

Source: PL 2-74 § 205.

§ 706. Audit of records—Power to subpoena—Administration of oaths.

The Board and its authorized representatives shall have the power to audit employer records, issue subpoenas, and administer oaths appropriate to the administration of this subtitle.

Source: PL 2-74 § 206.

Case annotations: Congress may constitutionally authorize by statute administrative agencies to perform many different investigatory functions, among them the auditing of books and records, the issuance of subpoenas requiring the disclosure of information relevant to the agency’s functions, and requiring the sworn testimony of witnesses. *FSM Soc. Sec. Admin. v. Weilbacher*, 7 FSM R. 137, 141-42 (Pon. 1995).

§ 707. Actuaries and actuarial valuations.

The Board shall employ or contract with actuaries or actuarial firms for the purpose of making actuarial valuations of the Federated States of Micronesia Social Security System not less frequently than each three years after the date of commencement of the system. Such reports made to the Board shall be submitted with appropriate recommendations for changes in the system and amendments to this subtitle to the President and to the Congress of the Federated States of Micronesia. An actuarial report prepared by a qualified actuary which analyzes the impact on the system of any proposed amendment which has financial implications must accompany the proposed amendment. In particular, proposals to amend section 603, sections 801 to 807, inclusive, sections 901 and 902 or chapter 10 of this subtitle must be accompanied by an actuarial report.

Source: PL 2-74 § 207, modified.

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.

§ 708. Review of Board determinations.

Any person aggrieved by a final order of the Board may obtain a review of the order in the Trial Division of the Supreme Court of the Federated States of Micronesia by filing in Court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be served on the Board, by service on its secretary or other designated agent, and thereupon the Board shall certify and file in Court a copy of the record upon which the order was entered. The findings of the Board as to the facts, if supported by competent, material, and substantial evidence, shall be conclusive. If either party applies to the Court for leave to adduce additional material evidence and shows to the satisfaction of the Court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the Court may order the additional evidence to be taken by the Board and to be adduced upon the hearing in such manner and upon such conditions as the Court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The judgment of the Court upon the record shall be final, subject to review by the Appellate Division of the Supreme Court upon petition of any aggrieved party, including the Board, within 60 days from judgment.

Source: PL 2-74 § 208.

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 Procedures 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.fmsupremecourt.org/>.

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Case annotations: An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by such an order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. When no such showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. *Clarence v. FSM Social Sec. Admin.*, 13 FSM R. 150, 152 (Kos. 2005).

Although, it would have been desirable for the claimant to have undergone vision testing as contemplated by the Board, the question under 53 F.S.M.C. 708 is whether there are now facts of record, supported by competent, material, and substantial evidence, sufficient for the findings of the Board to be deemed conclusive and when on a review of the record, the court finds that there is sufficient evidence in the record to deny the disability claim, it will affirm the Board's final decision in its entirety. *Clarence v. FSM Social Sec. Admin.*, 13 FSM R. 150, 153 (Kos. 2005).

Any person aggrieved by a Social Security Board final order may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in

part. *Andrew v. FSM Social Sec. Admin.*, 12 FSM R. 78, 79-80 (Kos. 2003).

In an appeal from an administrative agency to the FSM Supreme Court appellate division, Appellate Rule 26(b) would control. That rule precludes the appellate division from enlarging the time for filing a notice of appeal from an administrative agency. Because this provision limits the appellate division's power to enlarge time, it is jurisdictional. *Andrew v. FSM Social Sec. Admin.*, 12 FSM R. 78, 80 (Kos. 2003).

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. *Andrew v. FSM Social Sec. Admin.*, 12 FSM R. 78, 81 (Kos. 2003).

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence. *Alokoa v. FSM Social Sec. Admin.*, 16 FSM R. 271, 276 (Kos. 2009).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. *Alokoa v. FSM Social Sec. Admin.*, 16 FSM R. 271, 276 (Kos. 2009).