

AN ACT

To establish an Administrative Procedure Act for the National Government of the Federated States of Micronesia, and for other purposes.

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

1 Section 1. Definitions. As used in this act:

2 (1) "Agency" means each authority of the Government of the
3 Federated States of Micronesia whether or not it is within or subject to
4 review by another agency, but does not include:

5 (a) the Congress of the Federated States of Micronesia; or

6 (b) the Courts of the Trust Territory and of the Federated
7 States of Micronesia; or

8 (c) the Micronesian Maritime Authority.

9 (2) "Agency action" includes the whole or part of an agency
10 regulation, order, decision, license, sanction, relief, or the equivalent
11 or denial thereof, or a failure to act.

12 (3) "Hearing Officer" means the administrative official
13 authorized to conduct a hearing pursuant to Section 8 of this act.

14 (4) "License" includes the whole or part of any agency permit,
15 certificate, approval, registration, charter, or similar form of permission
16 required by law, but does not include a license required solely for revenue
17 purposes.

18 (5) "Licensing" includes the agency process respecting the
19 grant, denial, renewal, revocation, suspension, annulment, withdrawal,
20 limitation, amendment, modification, or condition of a license.

21 (6) "Order" means the whole or part of a final disposition,
22 whether affirmative, negative, injunctive, or declaratory in form, of an

1 agency in a matter.

2 (7) "Party" means each person or agency named or admitted as a
3 party, or properly seeking and entitled as of right to be admitted as a
4 party, to an agency proceeding.

5 (8) "Person" means an individual, partnership, corporation,
6 association, clan, lineage, state or local government or public or private
7 organization of any character other than an agency.

8 (9) "Regulation" means each agency statement of general
9 applicability that establishes policy, implements, interprets or prescribes
10 law, or describes the organization, procedure, or practice requirements of
11 any agency and which has the force and effect of law. The term includes
12 the amendment or repeal of a prior regulation.

13 (10) "Regulation making" means the process for formulating,
14 amending or repealing a regulation.

15 (11) "Relief" includes the whole or a part of an agency:

16 (a) grant of money, assistance, license, authority,
17 exemption, exception, privilege, or remedy;

18 (b) recognition of a claim, right, immunity, privilege,
19 exemption, or exception; or

20 (c) taking of other action on the application or petition
21 of, and beneficial to, a person.

22 (12) "Sanction" includes the whole or a part of an agency:

23 (a) prohibition, requirement, limitation, or other condi-
24 tion affecting the freedom of a person;

25 (b) withholding or denial of relief;

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- 1 (c) imposition of penalty or fine;
2 (d) destruction, taking, seizure, or withholding of
3 property;
4 (e) assessment of damages, reimbursement, restitution,
5 compensation, costs, charges, or fees;
6 (f) revocation, modification or suspension of a license;
7 or
8 (g) taking other compulsory or restrictive action.

9 Section 2. Procedure for adoption of regulations.

10 (1) Prior to adoption, amendment or repeal of any regulation,
11 the agency shall:

12 (a) publish notice of its intended action for at least
13 30 days by posting copies of the proposed regulation in convenient public
14 places in the state capitals including at least the principal National
15 Government office in each state, each state Governor's office, the office
16 of the clerk of courts of the state and national courts and of the Trust
17 Territory High Court, and in each state capital post office. The notice
18 shall include:

19 (i) a statement of either the terms or substance of
20 the proposed regulation or a description of the subjects and issues
21 involved;

22 (ii) reference to the authorities under which the
23 action is proposed;

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

1 (iv) the proposed effective date.

2 (b) communicate the general nature of the proposed regula-
3 tions and the place where the regulations are available for review by
4 radio announcements in each state in English and in the language or
5 languages of the state;

6 (c) transmit copies of the proposed regulations to the
7 Speaker of the Congress, to the chairman of each standing committee
8 thereof, and to the Legislative Counsel;

9 (d) afford all interested persons reasonable opportunity
10 to submit data, views, or arguments, in writing. In all proceedings under
11 this section, an opportunity for an oral hearing must be granted if
12 requested by the Congress of the Federated States of Micronesia or a
13 committee thereof, a government subdivision or agency, or a state or local
14 government. Hearings afforded pursuant to this provision shall be
15 conducted in accordance with Section 8 of this act. The agency shall
16 consider fully all written and oral submissions respecting the proposed
17 regulation.

18 (2) If the President, or in his absence, the Vice President,
19 finds that the public interest so requires, or that an imminent peril to
20 the public health, safety, or welfare requires adoption of a regulation
21 upon fewer than 30 days' notice, and states in writing his reasons for
22 that finding, an emergency regulation may be adopted without prior notice
23 or hearing upon any abbreviated notice and hearing that is found to be
24 practicable. The regulation may be effective for a period of not longer
25 than 120 days, but the adoption of an identical regulation under

1 Subsection (1) of this section is not precluded.

2 (3) Regulations must be adopted in compliance with this
3 section. A judicial challenge on the basis of non-compliance with the
4 procedural requirements of this section must be commenced within one year
5 from the effective date of the regulation, unless good cause is shown
6 justifying an inability to bring the action timely.

7 Section 3. Filing and availability of regulations.

8 (1) Each agency shall file in the office of the Registrar of
9 Corporations, the office of each state governor and with the clerks of
10 court of both the State and National courts, and of the Trust Territory
11 High Court, a certified copy of each regulation adopted by it, including
12 all regulations existing on the effective date of this act.

13 (2) The Registrar of Corporations and the Clerk and assistant
14 clerks of the Supreme Court shall keep a permanent register of regulations
15 open to public inspection. Each such official shall provide, promptly
16 upon request to him, copies of all regulations requested. Copies shall be
17 provided without charge to agencies and officials of the National and state
18 governments and to other persons at reasonable prices to cover costs of
19 copying and postage.

20 Section 4. Taking effect of regulations. Each regulation hereafter
21 adopted is effective 10 days after compliance with Section 2(1) of this
22 act, except that:

23 (a) if a later date is required by a statute or specified
24 in the regulation, the later date is the effective date;

25 (b) subject to applicable statutory provisions, an

1 emergency regulation becomes effective immediately upon filing with the
2 Registrar of Corporations, and the mailing under registered cover copies
3 thereof to each of the State Governors, and Clerks of Court in the
4 Federated States, or at such later date as the regulation may provide.
5 The president's statement setting forth the circumstances which
6 necessitated the emergency regulation shall be filed with the regulation.
7 The agency shall take appropriate measures to make emergency regulations
8 known to the persons who may be affected by them.

9 Section 5. Petition for adoption, amendment or repeal of regulations.

10 Any interested person may petition an agency requesting the adoption,
11 amendment, or repeal of a regulation. Within 30 days after submission of
12 a petition, the agency shall either deny the petition in writing, stating
13 its reasons for the denial, or shall initiate regulation making proceedings
14 in accordance with this act.

15 Section 6. Petition for advisory opinions by agencies. Any
16 interested person may petition an agency for advisory opinions as to the
17 applicability of any statutory provision or of any regulation or order of
18 the agency. Ruling disposing of petitions shall be issued within 30 days
19 after submission of a petition.

20 Section 7. Petition for an agency order. Any interested person
21 requesting agency action may petition the agency for an order, which order
22 shall be issued within 30 days of the submission of the petition, unless
23 the statute authorizing the agency action requires or expressly permits a
24 decision or order in a different period of time.

25 Section 8. Hearings.

1 (1) Any person aggrieved by agency action is entitled to a
2 hearing before the highest administrative official of the Department or
3 Office of which the agency is a part. Hearings shall be initiated by the
4 submission of a petition to such administrative official.

5 (2) Hearings shall be conducted and orders shall be made in
6 accordance with Section 9 of this act; PROVIDED, HOWEVER, that in the
7 event and to the extent that any other law establishes another procedure
8 for administrative review of the particular matter the provisions of such
9 other law shall be controlling.

10 Section 9. Conduct of hearings.

11 (1) All parties and all persons who have an interest in the
12 controversy who are known to the agency or hearing officer, and any
13 person requesting individual notice shall be entitled to personal notice
14 of all hearings. Persons entitled to notice of hearing shall be timely
15 informed of:

16 (a) the time, place, and nature of the hearing;

17 (b) the legal authority and jurisdiction under which the
18 hearing is to be held;

19 (c) the particular sections of the statutes and
20 regulations involved; and

21 (d) the issues presented.

22 (2) If the agency or other party is unable to state the matters
23 in detail at the time the notice is served, the initial notice may be
24 limited to a statement of the issues involved. Thereafter, upon applica-
25 tion, a more definite and detailed statement shall be furnished.

1 (3) Unless precluded by law, disposition without a hearing may
2 be made of any contested matter by stipulation, agreed settlement,
3 consent, order, or default.

4 (4) The hearing shall be held within 30 calendar days after the
5 submission of the petition, unless the petitioner requests a delay. At
6 the hearing, the petitioner, the management official responsible for the
7 agency action which is the subject matter of the controversy, and such
8 other persons as the hearing officer shall permit, shall each have the
9 right to be heard, to present evidence, to confront all adverse witnesses,
10 and to be represented by counsel of his own choosing.

11 (5) At the hearing, technical rules of evidence shall not
12 apply. At the discretion of the hearing officer, evidence may be taken
13 stenographically or by recording machine. The hearing officer is
14 authorized to issue subpoenas for witnesses and tangible evidence at the
15 request of any party or on his own motion. Hearings shall be public
16 except when the petitioner requests a closed hearing.

17 (6) Within fifteen days after the conclusion of a hearing, the
18 hearing officer shall prepare a full written statement of his findings of
19 fact and his decision. The hearing officer shall forthwith transmit his
20 findings of fact and decision to all parties. The decisions of the
21 hearing officer shall constitute final agency disposition of the action.

22 (7) The hearing officer may:
23 (a) administer oaths and affirmations;
24 (b) rule on the admissibility of evidence;
25 (c) take dispositions or have dispositions taken when the

1 ends of justice would be served;

2 (d) regulate the course of the hearing;

3 (e) hold conferences for the settlement or simplification
4 of the issues by consent of the parties;

5 (f) dispose of procedural requests or similar matters;

6 (g) make or recommend orders or decisions in accordance
7 with this act; and

8 (h) take such other action as would serve the ends of
9 justice.

10 (8) Except to the extent required for the disposition of ex
11 parte matters as authorized by law, the hearing officer may not consult
12 a person or party or representative of a person or party on a fact in
13 issue unless notice and opportunity are given to allow all parties to
14 participate.

15 (9) The hearing officer may:

16 (a) communicate with other members of the agency, except
17 as limited by Subsection (8) of this section; and

18 (b) have the aid and advice of one or more personal
19 assistants, and of the Attorney General and his staff if such assistance
20 would not be in violation of Subsection (8) of this section. Such
21 assistants shall be constrained in the same manner as the hearing officer
22 as provided in Subsections (8) and (9) of this section.

23 (10) Any oral or documentary evidence may be received, but the
24 hearing officer as a matter of policy shall provide for the exclusion of
25 irrelevant, immaterial, unreliable, or unduly repetitious evidence.

1 Findings of fact shall be based exclusively on the evidence and on matters
2 officially noticed. Except as otherwise provided by law, privileges
3 relating to evidence in the courts of the Trust Territory and the Federated
4 States shall apply in the conduct of hearings. A sanction may not be
5 imposed or order or decision issued except on consideration of the whole
6 record supported by and in accordance with substantial evidence. A party
7 is entitled to present his case or defense by oral or documentary evidence,
8 to submit rebuttal evidence, and to conduct such cross-examination as may
9 be required for a full and true disclosure of the facts.

10 Section 10. Special provisions with regard to licensing.

11 (1) When a licensee has made timely and sufficient application
12 for renewal of any existing license for any activity of a continuing
13 nature, the existing license does not expire until the application has been
14 finally determined by the agency.

15 (2) Except in cases of willful misconduct by a licensee, or
16 except as otherwise provided by law, no revocation, suspension, annulment,
17 or withdrawal of any license is lawful unless, the agency gave written
18 notice to the licensee of facts or conduct which warrant the intended
19 action, and the licensee was given an opportunity to show compliance
20 with all lawful requirements for the retention of the license. If the
21 President finds that the public health, safety, or welfare requires
22 emergency summary suspension of a license, suspension may be ordered. In
23 such case, the licensee shall be entitled to a prompt hearing in
24 accordance with Sections 8 and 9 of this act.

25 Section 11. Judicial review of contested cases.

1 (1) This section applies, according to the provisions hereof,
2 except to the extent that statutes enacted by the Congress of the Federated
3 States of Micronesia explicitly limit judicial review.

4 (2) A person adversely affected or aggrieved by agency action is
5 entitled to judicial review thereof in the Supreme Court of the Federated
6 States of Micronesia, and prior to its organization, in the Trial Division
7 of the High Court. The court shall conduct a de novo trial of the matter
8 and may receive in evidence any or all of the record from the administrative
9 hearing that is stipulated to by the parties.

10 (3) To the extent necessary to decision and when presented, the
11 reviewing court shall decide all relevant questions of law and fact,
12 interpret constitutional and statutory provisions, and determine the meaning
13 or applicability of the terms of an agency action. The reviewing court
14 shall:

15 (a) compel agency action unlawfully withheld or
16 unreasonably delayed; and

17 (b) hold unlawful and set aside agency action and decisions
18 found to be:

19 (i) arbitrary, capricious, an abuse of discretion, or
20 otherwise not in accordance with law;

21 (ii) contrary to constitutional right, power,
22 privilege, or immunity;

23 (iii) in excess of statutory jurisdiction, authority,
24 or limitations, or a denial of legal rights;

25 (iv) without substantial compliance with the

1 procedures required by law; or

2 (v) unwarranted by the facts.

3 Section 12. Appeals. An aggrieved party may obtain a review of any
4 final judgment of the Trial Division of the Supreme Court or High Court
5 under this act by appeal to the Appellate Division of the appropriate
6 court. The appeal shall be taken as in other civil cases, and the
7 judgment be reviewed by considering the finding of the Trial Division in
8 light of whether it was justified by substantial evidence of record.

9 Section 13. Other authorized authority subject to this act. The
10 provisions of this act shall apply to all agency action unless Congress
11 shall by law hereafter provide otherwise.

12 Section 14. Effective date. This act shall become law upon approval
13 by the President, or upon its becoming law without such approval.

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March 3, 1981

Tosiwo Nakayama
Tosiwo Nakayama
President
Federated States of Micronesia