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A BILL FOR AN ACT

To establish a health care certificate of need program in accordance with the needs of the people of the Federated States of Micronesia; to repeal chapter 3 of title 41 of the Code 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. Short title. This chapter may be cited as the
2 "Federated States of Micronesia Health Care Certificate of Need
3 Act of 1982."

4 Section 2. Purpose.

5 (1) The people of the Federated States of Micronesia
6 are dependent upon the existence of an efficient, effective, and
7 well coordinated program of health care services and disease
8 prevention activities. In order to achieve the necessary level of
9 efficiency, effectiveness, and coordination, there is a continuous
10 compelling need for a rational program for the determination of
11 allocations of scarce health resources.

12 (2) In addition, the impending termination of the
13 Trusteeship Agreement and the probable change in resources
14 available for the delivery of health care and environmental
15 protection require a careful analysis of the proposed allocation
16 of funds and resources to be used to provide health care, related
17 services, and environmental health protection services to ensure
18 that those funds and resources shall be utilized in accordance
19 with the needs of the people of the Federated States of
20 Micronesia.

21 (3) Therefore, it is declared to be the public policy
22 of the Federated States of Micronesia and the purpose of this
23 chapter to develop and operate a program which will identify the
24 health needs of the residents of the Federated States of Micro-
25 nesia and ensure that resources which are proposed for health

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1 programs or services meet those needs in the most efficient and
2 effective manner possible.

3 (4) It is not the intent of this chapter to prohibit or
4 in any way curtail the development of private practice of medicine
5 in the Federated States of Micronesia.

6 Section 3. Definitions. As used in this chapter unless the
7 context otherwise requires:

8 (1) "Affected persons" shall include: the applicant,
9 the Subarea Health Council, persons residing in the geographic
10 area to be served by the applicant, any person who regularly uses
11 health services or facilities within the area to be served by the
12 proposed project, health care facilities and health maintenance
13 organizations located in the service area which provide similar
14 services to those under review, health care facilities and health
15 maintenance organizations which have previously indicated their
16 intention to provide similar services in the future, third party
17 payers who reimburse health care facilities in the service area,
18 and rate review organizations in the service area.

19 (2) "Agency" means the Trust Territory Office of Health
20 Services in its designated capacity as the Micronesia Health
21 Planning and Development Agency which was created by designation
22 agreement between the High Commissioner and the United States
23 Secretary of Health, Education, and Welfare as the Trust
24 Territory's designated agency to administer territorial health
25 planning and development functions. The term "Micronesia Health

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1 Planning and Development Agency" is further defined to be
2 synonymous with the terms "Territorial Health Planning and
3 Development Agency," "State Health Planning and Development
4 Agency," and "Office of Health Planning and Development." These
5 terms may be used interchangeably to mean the same in this chapter
6 or in the regulations adopted under this chapter.

7 (3) "Certificate of need" means an authorization, when
8 required under this chapter, to construct, expand, alter, or
9 convert a health care facility or to initiate, expand, or modify a
10 health care service, or to acquire major medical equipment.

11 (4) "Cost" for the purposes of determining whether a
12 proposed project is subject to review under this chapter means
13 the fair market value or the amount actually paid to acquire a
14 facility or equipment or to initiate a service, whichever is
15 higher.

16 (5) "Date activity undertaken" means the date on which
17 institutional health services are actually started.

18 (6) "Director" means the director of the Trust
19 Territory Office of Health Services in his capacity as the
20 director of the Micronesia Health Planning and Development Agency.

21 (7) "Health care facilities" means hospitals,
22 psychiatric hospitals, tuberculosis hospitals, skilled nursing
23 facilities, kidney disease treatment centers including
24 freestanding hemodialysis units, intermediate care facilities,
25 ambulatory surgical facilities, and such other facilities as the

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1 agency by legislation shall so designate; provided that "health
2 care facilities" shall not include recognized Christian Science
3 sanitariums, or facilities owned and operated by the United States
4 Federal Government.

5 (8) "Health Maintenance Organization" means a public or
6 private organization which is qualified under section 1310(d) of
7 the United States Public Health Services Act or which:

8 (a) Provides or otherwise makes available to
9 enrolled participant health care services, including at least
10 usual physician services, hospitalization, laboratory, x-ray,
11 emergency, and preventive services, and out-of-area coverage; and

12 (b) Is compensated (except for copayments) for the
13 provision of the above-listed services to enrolled participants by
14 a payment which is paid on a periodic basis without regard to the
15 date the health care services are provided and which is fixed
16 without regard to the frequency, extent, or kind of health
17 services actually provided; and

18 (c) Provides physician services through physicians
19 who are employees or partners in the organization or through
20 arrangements with individual physicians or groups of physicians.

21 (9) "Institutional health services" means health
22 services provided in or through health care facilities or health
23 maintenance organizations and includes the entities in or through
24 which such services are provided.

25 (10) "Major medical equipment" means a single unit of

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1 medical equipment or a single system of components with related
2 facilities which is used to provide medical and other health care
3 services and which costs more than \$50,000.

4 (10) "Micronesia Health Coordinating Council" means that
5 health coordinating council created by proclamation of the High
6 Commissioner on October 6, 1976, and comprised of the Micronesia
7 National Executive Committee and Subarea Councils for the
8 Federated States of Micronesia, Republic of the Marshall Islands,
9 and Republic of Palau, as described in the Council's bylaws.

10 (11) "Obligation" means entry into a contract
11 enforceable under the laws of this Government; taking of formal
12 action to commit funds within applicant's own organization so as
13 to serve as an in-house contractor; or, in the case of donated
14 property, the date the gift transaction is completed.

15 (12) "Person" means an individual, a trust or estate, a
16 partnership, a corporation, a State, the National Government of
17 the Federated States of Micronesia, a political subdivision, or
18 any legal entity recognized by the Federated States of Micronesia
19 Government.

20 (13) The "territorial health plan" is such comprehensive
21 five-year health plan prepared and established by the Micronesia
22 Health Coordinating Council which shall be based upon State health
23 plans from the several States of the Federated States of
24 Micronesia and shall include a medical facilities plan with
25 appropriate consideration given to the development of facilities.

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1 and services in the private sector and an environmental health
2 section.

3 Section 4. Program established. There is established the
4 Federated States of Micronesia Certificate of Need Program which
5 shall prescribe the means, procedures, and requirements for health
6 care providers to apply for and obtain certificates of need prior
7 to undertaking construction, expansion, alteration, or conversion
8 of health care facilities or initiation, expansion, or
9 modification of certain health care services including acquisition
10 of equipment.

11 Section 5. Coverage; Applicability.

12 (1) Commencing on the effective date of this chapter,
13 no person, whether public or private, shall make capital
14 expenditures for activities enumerated in subsection (2) of this
15 section without first obtaining a certificate of need or an
16 exemption as required under this chapter.

17 (2) A certificate of need shall be required prior to:

18 (a) The development of all new institutional
19 health services including, but not limited to, the construction,
20 development, or other establishment of any new health facility;

21 (b) Any obligation for a capital expenditure by or
22 on behalf of a health care facility, other than to acquire an
23 existing health care facility, in excess of \$50,000, including the
24 costs of surveys, designs, plans, working drawings,
25 specifications, and other activities essential to the acquisition,

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1 improvement, expansion, replacement, or construction of any plant
2 or equipment;

3 (c) The offering by a health care facility of
4 health services which were not offered on a regular basis in or
5 through such health care facility within the 12-month period
6 preceeding the time such services would be offered, if:

7 (i) The obligation of any capital expenditure
8 is entailed by the addition of services; or

9 (ii) Regardless of whether a capital
10 expenditure is entailed, the annual operating costs for such
11 services will exceed \$10,000.

12 (d) The termination of a health service which was
13 offered in or through a health care facility if that termination
14 is associated with obligation of any capital expenditures.

15 (e) The obligation of any capital expenditure by
16 or on behalf of a health care facility which changes the bed
17 capacity of a health care facility by increasing or decreasing the
18 total number of beds (or distributing beds among various
19 categories or relocating such beds from one physical facility or
20 site to another) by 10 beds or 10 percent of total bed capacity,
21 whichever is less, over a 2-year period;

22 (f) The acquisition by any person of major medical
23 equipment to be owned by or located in a health care facility or,
24 regardless of ownership or location, if the equipment is to be
25 used to provide patient care services, to inpatients or

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1 outpatients, unless such services are provided on an occasional
2 basis in the event of natural disaster, major accident, or
3 equipment failure;

4 (g) If any person acquires an existing health care
5 facility, that person shall file a notice of intent with the
6 Agency as prescribed under section 6 of this chapter. A
7 certificate of need shall be required for such acquisition unless
8 the Agency finds that the acquirer is a health maintenance
9 organization; or that no changes will result in facilities or
10 services rendered due to the acquisition;

11 (h) In the event that the Agency issues a
12 certificate of need for a project and within one year of the date
13 the project was undertaken there is a change in that project
14 associated with a capital expenditure, regardless of the amount of
15 the expenditure, that change will be subject to certificate of
16 need review.

17 (3) A certificate of need which normally would be
18 required under subsection (2) of this section will not be required
19 if:

20 (a) A health care facility is being acquired by a
21 health maintenance organization or if the acquisition will not
22 result in a change of services or modification of the facility,
23 including the organizational structure;

24 (b) The applicant is a health maintenance
25 organization if: /

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1 (i) It has a current enrollment or
2 reasonable anticipated future enrollment of at least 50,000
3 persons in the service area;

4 (ii) The proposed facility or service will be
5 reasonably accessible to the enrolled population;

6 (iii) At least 75 percent of the persons to be
7 served will be enrollees; and

8 (iv) An acquisition of a facility or
9 equipment is by lease, the lease will be in effect for at least 15
10 years duration after such acquisition.

11 (c) Major medical equipment is acquired by or on
12 behalf of a clinical laboratory to provide clinical laboratory
13 services, if:

14 (i) The clinical laboratory is independent
15 of a physician's office and a hospital; and

16 (ii) It is determined under title XVIII of
17 the United States Social Security Act to meet the requirements of
18 paragraphs (10) and (11) of 1861(s) of that act.

19 (4) The Agency must issue a certificate of need for a
20 capital expenditure necessary to:

21 (a) Eliminate or prevent a safety hazard;

22 (b) Comply with licensure standards; or

23 (c) Comply with accreditation or certification
24 standards required for the applicant to receive reimbursement
25 under title XVIII or XIX of the United States Social Security Act;

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1 PROVIDED that prior to issuance of such a certificate of need the
2 Agency finds that:

3 (i) The facility or service for which the
4 capital expenditure is proposed is needed; and

5 (ii) The obligation of the capital
6 expenditure is consistent with the State health plan.

7 (5) For capital expenditures not meeting the criteria
8 set forth in subsection (4) of this section, the Agency shall
9 issue a certificate of need, if it is found that:

10 (i) The proposed facility, services, or
11 equipment is needed by the population to be served;

12 (ii) Such facility, service, or
13 equipment is consistent with the Trust Territory health plan; and

14 (iii) The project complies with this
15 chapter and regulations adopted under this chapter. The criteria
16 to be used by the Agency in determining need for the facility,
17 service, or equipment shall be as set forth in section 7 of this
18 chapter.

19 Section 6. Applications.

20 (1) Applications for certificates of need and notices
21 of intent shall be filed with the Agency on application forms
22 provided by the Agency and shall contain such information and be
23 in such form as the director may require.

24 (2) At least 30 days before any person acquires or
25 enters into a contract to acquire an existing health care facility

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1 or major medical equipment which will not be located in or owned
2 by a health care facility, the person shall notify the Agency of
3 the intended acquisition. Such notice of intent shall be in
4 writing, containing such information as required by regulations as
5 the Agency may promulgate.

6 (1) The Agency shall act upon any application submitted
7 pursuant to this chapter within 90 days of receipt of such
8 application, PROVIDED that for reasonable cause and upon notice to
9 the applicant, the Agency may extend its time for review for a
10 specific period not to exceed 30 additional days. In cases where
11 the Agency requests the applicant to provide additional
12 information subsequent to submission of the application, the
13 Agency must, at the request of the applicant, extend the review
14 period for no less than an additional 15 days. Failure to act
15 upon the application within the time period herein prescribed
16 shall be deemed grounds for the applicant to seek judicial remedy
17 but shall not be deemed an approval or denial of the certificate
18 of need by the Agency.

19 (4) Prior to an exemption pursuant to subsection (3) of
20 section 5 of this chapter, a notice of intent must be filed with
21 the Agency and the Agency shall render a finding as to the
22 applicability of the exemption within 30 days of receipt of such
23 notice.

24 Section 7. Review criteria. The Agency shall adopt
25 regulations under this chapter which shall prescribe specific

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1 criteria for the reviewing of certificate of need applications
2 which criteria shall include at least the following general
3 considerations; PROVIDED that criteria adopted for review may vary
4 according to the purpose for which a particular review is being
5 conducted or the type of health service reviewed; and PROVIDED
6 FURTHER that such regulations shall be adopted in accordance with
7 section 14 of this chapter:

8 (1) The relationship of the health services reviewed to
9 the territorial health plan and annual implementation plans;

10 (2) The relationship of services rendered to the
11 long-range development plan, if any, of the person providing or
12 proposing such services;

13 (3) The need that the population served or to be served
14 by such services has for such services and the extent to which
15 residents of the area, and in particular low-income persons,
16 racial and ethnic minorities, women, handicapped, and other
17 underserved groups, and the elderly, are likely to have access to
18 these services. In the case of a reduction or elimination of
19 services, including relocation of a facility or service, the extent
20 to which the alternative arrangements, and the effect of the
21 reduction, elimination, or relocation on the ability of low-income
22 persons, racial and ethnic minorities, women, handicapped persons
23 and other underserved groups, and the elderly, to obtain the needed
24 health care;

25 (4) The availability of less costly or more effective

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1 alternative methods of providing such services;

2 (5) The immediate and long-term financial feasibility
3 of the proposal, as well as the probable impact of the proposal on
4 the costs of and charges for providing health services by the
5 person proposing the new institutional health services;

6 (6) The relationship of the services proposed to be
7 provided to the existing health care system of the area in which
8 such services are proposed to be provided and the probable impact
9 of the proposal on the economic and social development of the
10 Federated States of Micronesia;

11 (7) The contribution of the proposed service or
12 facility to meeting the health needs of medically underserved
13 groups which have traditionally experienced difficulties in
14 obtaining equal access to health services, particularly those
15 needs identified in the Trust Territory health plan as priorities.
16 For the purpose of determining the extent the proposed service or
17 facility will be accessible, the Agency shall consider:

18 (a) The extent to which medically underserved
19 populations currently use the applicant's services in comparison
20 to the percentage of the population in the service area which is
21 underserved and the extent to which medically underserved
22 populations are expected to use the proposed services if approved;

23 (b) The performance of the applicant in meeting
24 its obligations, if any, under applicable Federal regulations
25 requiring provision of uncompensated care, community service, or

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1 access by minorities and handicapped persons to programs receiving
2 Federal financial assistance; and

3 (c) The extent to which the applicant offers a
4 range of means by which a person will have access to its services,
5 (e.g. outpatient services, hospital privileges, etc.).

6 (d) The availability of resources, (including health
7 personnel, management personnel, and funds for capital and
8 operating needs) for the provision of the services proposed to be
9 provided and the need for alternative uses of those resources as
10 identified by the Trust Territory health plan;

11 (e) The relationship, including organizational
12 relationship, of the health services proposed to be provided to
13 auxiliary or support services;

14 (f) The effect of the means proposed for the delivery
15 of health services on the clinical needs of health professional
16 training programs in the area in which services are to be
17 provided;

18 (g) If proposed health services are to be available in
19 a limited number of facilities, the extent to which the health
20 profession schools in the area will have access to the services
21 for training purposes;

22 (h) Special needs and circumstances of those entities
23 which provide a substantial portion of their services or resources
24 or both to individuals not residing in the health service areas in
25 which the entities are located or in adjacent health service

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1 areas;

2 (13) The special needs and circumstances of biomedical
3 or behavioral research projects which are designed to meet a
4 National need and for which local conditions offer special
5 advantages;

6 (14) In the case of a construction project:

7 (a) The costs and methods of the proposed
8 construction, including the costs and methods of energy provision;
9 and

10 (b) The probable impact of the construction
11 project on the costs of providing health services by the person
12 proposing the construction project and on the costs and charges to
13 the public of providing health services by other persons;

14 (15) The special circumstances of health care facilities
15 with respect to the need for conserving energy;

16 (16) Factors which affect the effect of competition on
17 the supply of health services being reviewed;

18 (17) Improvements and innovations in the financing and
19 delivery of health services which foster competition and serve to
20 promote quality assurance and cost effectiveness;

21 (18) The efficiency and appropriateness of the use of
22 existing services and facilities similar to those proposed;

23 (19) In the case of existing services or facilities, the
24 quality of care provided by those facilities in the past;

25 (20) When an application is made by an osteopathic or

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1 allopathic facility to construct, expand, or modernize a health
2 care facility or add services or acquire major medical
3 equipment, the need will be considered on the basis of the need
4 for and the availability in the community of services and
5 facilities for osteopathic and allopathic physicians and their
6 patients;

7 (21) In the case of applications by health maintenance
8 organizations, the only criteria to be applied for determination
9 of need shall be:

10 (a) The needs of enrolled members and reasonably
11 anticipated new members of the health maintenance organization for
12 the health services proposed to be provided; and

13 (b) The availability of the new health services
14 from nonhealth maintenance organization providers or other health
15 maintenance organizations in a reasonable and cost-effective
16 manner which is consistent with the basic method of operation of
17 the health maintenance organization. In assessing the
18 availability of these services from other providers, the Agency
19 shall consider only whether the services from these providers:

20 (i) Would be available under a contract of
21 at least 5 years duration;

22 (ii) Would be available and conveniently
23 accessible through physicians and other health professionals
24 associated with the health maintenance organization;

25 (iii) Would cost no more than if the services

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1 were provided by the applicant health maintenance organization;
2 and

3 (iv) Would be available in a manner which is
4 administratively feasible to the applicant health maintenance
5 organization.

6 Section 8. Withdrawal. The Agency may withdraw a
7 certificate of need if:

8 (1) The applications contain false or misleading
9 information or intentionally omits material facts; or

10 (2) Circumstances based upon which the certificates of
11 need were issued have changed or new circumstances have developed
12 which alter the need for the projects; PROVIDED that said changed
13 or new circumstances occur prior to the commencement of
14 construction or substantial expenditure or obligation of funds.

15 (3) All applications for a certificate of need shall
16 include a timetable for implementing the project. The Agency
17 shall periodically evaluate the progress of the applicant towards
18 implementing the project according to the timetable submitted.
19 Failure of the applicant to make a good faith effort toward
20 implementation may constitute grounds for withdrawal of the
21 certificate of need.

22 (4) Any holder of a certificate of need shall be
23 entitled to an administrative hearing prior to the suspension of
24 its certificate of need.

25 Section 9. Reconsideration of Agency action.

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1 (1) The Agency shall order a public hearing on an
2 application upon written request by any person for the purposes of
3 reconsidering an Agency decision, PROVIDED that:

4 (a) The request is received within 30 days
5 after the decision was rendered; and

6 (b) A good cause is shown. A request for
7 public hearing shall be deemed to have shown good cause if it:

8 (i) Presents significant relevant
9 information not previously considered by the Agency;

10 (ii) Demonstrates that there have been
11 significant changes in factors or circumstances relied upon by the
12 Agency in making its decision;

13 (iii) Demonstrates that the Agency failed to
14 follow appropriate procedures prescribed in these regulations; or

15 (iv) That the Agency acted without regard for
16 a conflict of interest situation.

17 (2) The Agency shall provide public notice of
18 reconsideration hearings and adopt hearing procedures in
19 accordance with this chapter and regulations adopted under the
20 provisions of section 14 of this chapter.

21 Section 10. Judicial review.

22 (1) Any person adversely affected by a final decision
23 of the Agency with respect to a certificate of need or an
24 application for exemption may, within a reasonable time after the
25 decision is made, obtain judicial review in accordance with title

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1 17 of the Code of the Federated States of Micronesia.

2 (2) The court shall affirm the decision of the Agency
3 unless it finds it to be arbitrary or capricious or not made in
4 compliance with applicable law;

5 (3) For the purposes of this section, "person adversely
6 affected" shall include the Agency, any person previously defined
7 as "affected" in section 3 of this chapter, and any person who
8 participated in the review proceedings before the Agency.

9 Section 11. Nontransferability. A certificate of need
10 issued under this chapter is not transferable without the prior
11 written approval of the Agency.

12 Section 12. Civil penalties. Any person violating any of
13 the provisions of section 5 of this chapter shall be subject to the
14 imposition of a civil fine in the amount of \$500 for each
15 violation; PROVIDED that for the purpose of determining the amount
16 of fine to be imposed under this chapter, violations shall be
17 deemed recurring with each week or fractional part thereof that a
18 violation continues being construed as a separate violation.

19 Section 13. Reporting. The director shall submit an annual
20 report to the Congress of the Federated States of Micronesia on or
21 before January 10 of each year on all activities of the Agency and
22 all funds received by the Agency pursuant to, or by virtue of this
23 chapter.

24 Section 14. Regulations - Promulgation.

25 (1) The Agency shall adopt and promulgate the /

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1 regulations authorized in section 7 of this chapter in accordance
2 with the procedures and requirements of the Federated States of
3 Micronesia Administrative Procedures Act, title 17 of the Code of
4 the Federated States of Micronesia, except that compliance by the
5 Agency with the requirements of subsection (2) of this section
6 shall constitute compliance with all the publication and notice
7 requirements set forth in title 17 of the Code of the Federated
8 States of Micronesia and further that notwithstanding the
9 provisions in sections 103 and 104 of title 17 of the Code of the
10 Federated States of Micronesia regarding the filing and effective
11 date of regulations, regulations adopted and promulgated under
12 this chapter shall be filed and become effective in accordance
13 with subsection (3) of this section.

14 (2) In the adoption and promulgation of regulations
15 pursuant to section 7 of this chapter, the Agency shall prior to
16 the adoption of such regulations do the following:

17 (a) Prior to the adoption of regulations
18 prescribing a review process, or any revision thereof, the Agency
19 shall:

20 (i) Give all interested parties a reasonable
21 opportunity to offer written comments on the review procedures
22 proposed for adoption;

23 (ii) Distribute copies of its proposed,
24 adopted, and revised or amended review procedures to public and
25 private health organizations, the Micronesia Health Coordinating

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1 Council, the Governors of the Federated States of Micronesia, the
2 High Commissioner, the Secretary of Health, Education and Welfare,
3 the President of the Federated States of Micronesia, and such
4 other interested persons as shall request them; including rate
5 setting agencies and health maintenance organizations should such
6 be established within the Federated States of Micronesia; and

7 (iii) The Agency shall notify the general
8 public of its intent to adopt procedures and criteria, or
9 revisions thereof, through publication in at least one newspaper
10 of general circulation in the Federated States of Micronesia.

11 (3) The Agency shall file in the Office of the
12 Registrar of Corporations of the National Government of the
13 Federated States of Micronesia, the office of each State Governor,
14 and with the Clerks of Court of both the State and National Courts
15 and the Trust Territory High Court, a certified copy of the review
16 procedure regulation adopted by it.

17 (4) Each regulation adopted is effective 10 days after
18 completion of the requirements of subsection (2) of this section.

19 (5) The regulations adopted and promulgated by the
20 Agency in July of 1979 in accordance with the act are hereby
21 confirmed and shall remain in effect until amended, repealed, or
22 superseded by the Agency acting pursuant to and in accordance with
23 this chapter.

24 Section 15. Rights and liabilities unaffected. The repeal
25 in section 16 of this act does not affect the status of any civil


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1 or criminal actions, rights, or liabilities existing before the
2 repeal takes effect.

3 Section 16. Repealer. Chapter 3 of Title 41 of the Code of
4 the Federated States of Micronesia is hereby repealed in its
5 entirety.

6 Section 17. Effective date. This act shall become law upon
7 approval by the President of the Federated States of Micronesia or
8 upon its becoming law without such approval.

9
10 Date: 10/27/82

Introduced: 

Luke M. Tman
(by request)