

United States Department of State

Washington, D.C. 20520

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MAR 26 1986

Dear Mr. Miller:

We appreciate the opportunity to comment on the draft Executive Order that will define post-termination management responsibilities in the Freely Associated States of Micronesia.

As I suggested in my interim reply to Mr. Carley last week, the long-term implications of how the United States Government decides to manage the relationship will in large part determine whether this new and unique political status will succeed. In an effort to ensure that free association does succeed, we have examined the draft Executive Orders in considerable detail and wish to offer the following specific comments on the second draft provided under cover of your February 28 letter.

Our comments on the first draft, while reflecting differences in the text of the two versions, would have reflected the same kinds of substantive concerns. For your convenience, our comments will be provided section by section.

Section 1

In view of the general provision in Section 2 with respect to the Secretary of Interior's responsibility to seek appropriation of funds, the Department of State considers it essential to specify clearly that appropriations for the purpose of establishing and maintaining representatives and offices as envisioned in Sections 151-153 will be sought by and made to the Department of State.

Mr. James C. Miller III,
Director,
Office of Management and Budget.



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In addition, the Executive Order should expressly recognize the responsibility and authority of the Department of State with respect to the Representatives designated by the Freely Associated States to the U.S., together with their offices and staff. This falls within the general area of foreign accreditation, privileges and immunities, and diplomatic protection. On the other hand, the State Department will not itself be carrying out many of the obligations of the United States set forth in the Compact.

Further, the word "allocate" should be used in sentence one, in addition to "delegate," in order to make it clear that the Secretary of State may confer authority on officials other than his subordinates.

Accordingly, the Department of State recommends the following revisions to Section 1.

1. Revise the relevant part of sentence one to read as follows:

..... and may delegate or allocate such of his authority under this Order

2. Revise the second sentence of this section as follows:

Consistent with Article V of Title I of the Compact of Free Association, the Secretary shall establish and maintain representative offices in the Marshall Islands, the Federated States of Micronesia, and Palau, shall supervise the United States Representatives and their staff, shall receive Representatives to the U.S. designated by the Governments of the Marshall Islands, the Federated States of Micronesia, and Palau, and shall provide in accordance with applicable law for appropriate privileges, immunities and assistance to such Representatives together with their officers and staff.

3. Revise the third sentence as follows:

Subject to such policies as the President may from time to time prescribe and in accordance with applicable law, the Secretary shall take such other actions as may be necessary and appropriate to carry out the authorities and obligations of the United States with respect to the conduct of official relations with the Freely Associated States.



4. If section 3 is revised as indicated below, insert concluding sentence:

The Secretary shall provide through appropriations made to the Department of State such funds as may be necessary to carry out the provisions of this section and of section 4 of this order in addition to activities of the Department of State.

Section 2

This section refers in sentence one to "assistance specified in" the Compact, enabling legislation, and other laws. In the view of the Department of State, the term "specified" might be understood as equivalent to "mentioned" and is thus overly broad and misleading. Certain assistance is mentioned in the Compact and elsewhere which is clearly to be provided by an agency other than the Department of the Interior. Examples of this would be consular assistance (Compact, Section 126) and programs and services of the Legal Services Corporation, the Public Health Service and the Farmers Home Administration (enabling legislation, Section 105(h)). Moreover, appropriations for the latter forms of assistance are not authorized by the Compact and enabling legislation; rather, it is understood that such assistance would be funded from the general appropriations for such programs and services which are made to the respective agencies.

In addition, reference to "assistance specified in other laws of the United States" seems of uncertain meaning and of potentially over-broad scope.

Accordingly, it is recommended that the word "specified" be changed throughout sentence one to "appropriated pursuant to" and that the reference to "other laws" be deleted. Sentence one would then read as follows:

The Secretary of the Interior, in accordance with the laws of the United States, shall make available to and for the Freely Associated States the United States economic and financial assistance appropriated pursuant to Article 1 of Title Two of the Compact, the United States service and program assistance appropriated pursuant to Article II of Title Two of the Compact, the grant, service and program assistance appropriated pursuant to the Compact enabling legislation (P.L. 99-239), and all other United States assistance appropriated pursuant to the Compact and its related agreements.



Section 3

The Department of State objects to the definition of the purpose of the Interagency Group contained in subpart (a), as it may give rise to confusion regarding the authority and responsibility of the Department of State under Section 1 and, in general, for the conduct of foreign affairs. This subpart should be revised to clarify that the mandate of the Interagency group is to provide oversight and policy guidance, but not to determine United States policy or to direct its implementation. This subpart should therefore be revised along the following lines:

(a) There is established an Interagency Group on Freely Associated State Affairs for the purpose of providing policy guidance and oversight with respect to the implementation of the Compact and United States relations with the Freely Associated States.

Subsection (b) uses the undefined term "principal" with reference to officers. To avoid confusion as to what level of officers may be designated, we recommend substituting "his designee" and "designees" respectively.

For the sake of consistency, subpart (c) should refer to the making of recommendations concerning implementation of the Compact as well as concerning United States relations with the Freely Associated States.

The Department of State has considerable difficulty with the present wording of subpart (d), which seems potentially to contradict and to create confusion regarding the authority and responsibility of the Secretary of State. We would oppose the creation of a semi-autonomous office which does not report to and take direction from the Secretary of State.

Subpart (d)(1) appears to provide for a mandatory delegation of functions of the Secretary of State under Sections 105 (b)(1) and 105 (b)(5) of P.L. 99-239. The scope of such delegation, however, is unclear. Section 105 (b)(1) confers authority for supervising United States representatives and also for government-to-government relations generally. Thus, delegation of Section 105 (b)(1) authority seems to undermine and conflict with the responsibility of the Secretary of State, as recognized in Section 1 and in subpart (d)(5) of this section. Section 105 (b)(5) of P.L. 99-239, on the other hand, does not confer any functions on the Secretary of State. The reference to this section is therefore, at best, of uncertain meaning.



Subpart (d)(2) presents similar difficulties. It does not appear necessary or useful for the Executive Order to provide that the Director of an office shall direct that office. Further, the provision that the Director shall be a member of the Interagency Group conflicts with the authority of the Secretary of State to designate a principal officer to chair the Group, as provided in subpart (b).

Subparts (d)(3) and (d)(5) have been deleted as superfluous and inappropriate. The first sentence of (d)(4) has been rewritten for clarity.

The Department of State accordingly suggests that this subpart be revised as follows:

(1) There shall be in the Department of State an Office of Freely Associated States Affairs to conduct relations with the Freely Associated States and related matters, as the Secretary of State shall direct, and provide appropriate support to the Interagency Group.

(2) The Office shall be headed by a Director designated by the Secretary of State, to whom the Secretary of State may delegate any or all of his authority and responsibility as described in Section 1 of this order. The Director shall serve as Executive Secretary to the Interagency Group.

(3) Additional personnel may be seconded to the Office of Freely Associated States Affairs by the Department of Defense, the Department of the Interior and other departments as appropriate. Executive departments and agencies shall, to the extent permitted by law, provide such information, advice and administrative services and facilities as may be necessary for the fulfillment of the functions of the Office.

Section 6(b)

Obligations concerning the Compact are also relevant in this connection. The obligations arising out of or concerning the Compact include statutory and constitutional requirements as well as international obligations. Accordingly, we suggest the deletion of the word "international" from this section, to read as follows:




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Nothing contained in this Order shall be construed as modifying the rights or obligations of the United States under the provisions of the Compact or as affecting or modifying the responsibility of the Secretary of State and the Attorney General to interpret the obligations of the United States arising out of or concerning the Compact.

We look forward to working with OMB and the other responsible Federal agencies in developing a management plan for the Freely Associated States that is efficient and effective.

Sincerely,



James W. Dyer
Acting Assistant Secretary
Legislative and Intergovernmental Affairs