

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON DC 20301

March 6, 1986

Mr. James H. Carley
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Carley:

This is in response to your request, dated February 13, 1986, for Department of Defense views on a proposed draft Executive Order entitled, "Management of the Compact of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau."

The Department of Defense endorses the point made in the "Explanation of Proposed Executive Order" that we must proceed as expeditiously as possible to bring the Compact into full force and effect at an early date. Most notably at Kwajalein, the continued delay in establishing an effective date for the Compact poses difficulties for Defense Department activities.

There is language in the proposed Executive Order that conflicts with the authority of the Department of Defense, and we have enclosed changes to correct those provisions. Additionally, comments are provided to help clarify how the Executive Order will be implemented. All of these proposed changes have been agreed to by the Office of Micronesia Status Negotiations.

Sincerely,


H. Lawrence Garrett, III

Enclosure



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DoD revisions for Proposed Executive Order entitled, "Management of the Compact of Free Association With the Republic of the Marshall Islands, The Federated States of Micronesia, and the Republic of Palau."

In section 1, line 2, delete the word "official". The use of the term "official" appears to preclude dealings between Department of Defense personnel and officials of the governments of the freely associated states in the absence of a delegation of authority from the Secretary of State.

In section 1, line 9, change "... Title Two of the Compact" to "Title One of the Compact," and insert after that citation, ", Section 105 (b)(1) of the Compact enabling legislation, P.L. 99-239," to establish by reference the statutory authority of the Secretary of State. *done*

In Section 1, final sentence, delete "Subject to such policies as the President may from time to time prescribe and". The context of an Executive Order and the supervision of the Secretary of State by the President are well understood.

In Section 1, line 14, substitute the words "ensure that" for "carry out"; delete the phrase "unless otherwise specified," and add at the end of the sentence, "are carried out.". The substituted language clearly indicates that it is not the responsibility of the Secretary of State to actually carry out all Compact obligations, but to see to it that the appropriate US Government agency or department does so.

In Section 3, line 5, delete the phrase "determining and causing the implementation of", and substitute "establishing and implementing". The substitute language more accurately sets forth the role of the interagency group. The provision in section 3 to the effect that funding for the Office of Freely Associated State Affairs should be borne "one half by the Department of State and one half by the other participating agencies" has, it is understood, been changed by OMB so that funding will be consistent with applicable law. *done*

As a result of P.L. 99-239, the US representatives in the freely associated states will be appointed by the President and confirmed by the Senate. The office which supervises their activities and provides policy direction to them must be headed by an official of equivalent or higher rank. To ensure this, recommend that the words "including the authority to supervise the United States Representatives referred to in Section 4 of this Order," be inserted after "Section 1 of this Order," in the last sentence of Section 3.



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It is also understood that in section 4, line 2, the Executive Order's specification that the President must rely on the Secretary of State's nominations will be deleted. MP

In Section 5, final sentence, delete "military operations within the jurisdiction of the freely associated states." and insert in its place, "the authority and responsibility of the Government of the United States for security and defense matters in or relating to the freely associated states." The authority and responsibility of the Department of Defense is not limited to "military operations."