

Article VIII

Civil Aviation Safety Service and Related Programs

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Civil Aviation Safety Services and Related Programs

1. The Government of the United States and the Government of the Republic of the Marshall Islands agree that the Federal Aviation Administration (FAA) shall provide aviation safety services in the Republic of the Marshall Islands in accordance with this Article, subject to the availability of appropriated funds, with the common desire to:
  - (a) promote the common interests of the Government of the United States and the Government of the Republic of the Marshall Islands in fostering safe and efficient air service; and
  - (b) provide advice and guidance to aviation safety statutory and regulatory regimes and aviation safety authorities of the Government of the Republic of the Marshall Islands.
2. The Administrator of the Federal Aviation Administration may determine, after consultation with the Government of the Republic of the Marshall Islands, the appropriate level of services and related programs that the Federal Aviation Administration shall provide under the Compact, as amended, and this Agreement, provided the levels of services and related programs are consistent with the principles and objectives of the Compact, as amended, and this Agreement, including paragraphs 1 above and paragraphs 3 and 5 below.
3. On behalf of the Government of the Republic of the Marshall Islands, the Government of the United States shall provide aviation safety services in the Republic of the Marshall Islands as follows:
  - (a) en route air traffic services within that air space including the Republic of the Marshall Islands for which the Government of the United States has responsibility under the appropriate regional air navigation plan approved by the International Civil Aviation Organization (ICAO);
  - (b) flight inspection and ground certification of nondirectional beacons and distance-measuring equipment, and periodic review and evaluation of the need for, and the maintenance, modification, improvement or replacement of, nondirectional beacons, distance-measuring equipment and other aviation navigational systems in the Republic of the Marshall Islands (The nondirectional beacons and distance-measuring equipment shall be removed from service when the need for them no longer exists.); and

- (c) development and updating of instrument approach procedures, standard instrument departure procedures and standard terminal arrival routes for airports in the Republic of the Marshall Islands, and issuance of appropriate Notices to Airmen.
4. The Government of the Republic of the Marshall Islands, pursuant to Section 471 of the Compact, as amended shall take all necessary steps to ensure the conformity of laws, regulations and administrative procedures with the provisions of this Article. The aviation safety services specified under paragraph 3 of this Article shall be provided exclusively pursuant to treaties and other international agreements relating to aviation safety to which the United States is a party and the laws and regulations of the United States. The Government of the Republic of the Marshall Islands shall:
- (a) consistent with Resolutions A23-14, Appendix N, Air Navigation, of ICAO Assembly Resolutions in force as of October 5, 2001, assign and delegate to the Government of the United States sole authority and responsibility for providing aviation safety services as specified in paragraph 3(a) of this Article until such time as those responsibilities are transferred at the request of the Government of the Republic of the Marshall Islands, and with the approval of the ICAO, from the Government of the United States to the Government of the Republic of the Marshall Islands; and
  - (b) grant unobstructed access by FAA personnel and FAA equipment to the property on which the navigational and landing aids set forth in paragraph 3(b) of this Article are located.
5. The FAA shall provide technical assistance to the Government of the Republic of the Marshall Islands to develop civil aviation safety authorities and to assist the Marshall Islands Government in the administration of safety certification and related aviation safety programs. Such technical assistance shall be provided pursuant to implementing agreements to be negotiated from time to time between the Government of the United States and the Government of the Republic of the Marshall Islands. The FAA shall provide such technical assistance in accordance with the provisions of Part A of subtitle VII of Title 49, United States Code, and Chapter 473 of such subtitle. The technical assistance to be provided by the FAA includes, but is not limited to:
- (a) continuing development of aviation safety statutes, regulations and aviation safety authorities;
  - (b) training, in the United States or its territories, of personnel designated by the Government of the Republic of the Marshall Islands;

- (c) stationing of FAA personnel in the Republic of the Marshall Islands to provide continuing advice and guidance to aviation safety authorities at the request of the RMI Government. Such advice and guidance may include assistance to aviation required for certification by the Government of the Republic of the Marshall Islands of airmen, aircraft, airports and air agencies, as the term "air agencies" is used in 49 U.S.C. 44702 and 44707; and
  - (d) equipment, tools, and facilities determined to be necessary to ensure aviation safety.
6. Pursuant to Article III, Title One, of the compact, the Government of the Republic of the Marshall Islands shall protect radio frequency bands allocated in accordance with Article 5 of the Radio Regulations of the International Telecommunications Union to the aeronautical mobile, mobile, aeronautical fixed, fixed, aeronautical radionavigation, and radionavigation services in accordance with the provisions of Radio Regulations annexed to the International Telecommunication Convention, in order to ensure their use free of interference for these allocated purposes in support of civil aviation.
  7. The Government of the Republic of the Marshall Islands, in order to ensure that they transmit and receive the most current meteorological information for civil aviation purposes and that such information provided by them shall be available on a global basis, shall provide continuing access to their telecommunications services for meteorological traffic to and from Guam or other points as may be designated by the Government of the United States in consultation with the Government of the Republic of the Marshall Islands.
  8. The Government of the Republic of the Marshall Islands, in order to ensure that they transmit and receive the most current flight movement and airmen information data for civil aviation purposes, and that such information received or provided by them will be available on a global basis, shall provide continuing access to their telecommunications services for flight movement and airmen information traffic to and from Guam or other entry points into the Aeronautical Fixed Service of the International Civil Aviation Organization as may be designated in accordance with the Convention on International Civil Aviation, Annex 10, Volume 1 and 2, by the Government of the United States in consultation with the Government of the Republic of the Marshall Islands.
  9. The Government of the United States and the Government of the Republic of the Marshall Islands shall from time to time enter into such agreements as may be necessary to implement subparagraphs (b) and (c) of paragraph 3 of this Article.

Article IX

Civil Aviation Economic Services and Related Programs

Article IX

Civil Aviation

Economic Services and Related Programs

1. The Government of the United States and the Government of the Republic of the Marshall Islands agree that the following provisions shall apply to the economic regulation of air services of the Republic of the Marshall Islands.
2. The Government of the Republic of the Marshall Islands shall exercise independent economic regulatory jurisdiction over air services to, from and within the Republic of the Marshall Islands, which for the purposes of this Agreement are points outside the United States, as the term "United States" is defined in 49 U.S.C. 40102.
3. Subject to approval of the Congress of the United States, the Government of the United States shall maintain:
  - (a) A distinct classification of foreign air carrier, as the term "foreign air carrier" is defined in 49 U.S.C. 40102, to be known as "Freely Associated State Air Carriers." This classification shall apply exclusively to a carrier which:
    - (1) is organized under the laws of the Republic of the Marshall Islands or the United States; and
    - (2) has consent to such classification from the Government of the Republic of the Marshall Islands, and consent to such classification from the Government of the United States pursuant to standards adopted by the Government of the United States for such classification.
  - (b) Authority for the U.S. Department of Transportation to authorize Freely Associated State Air Carriers to carry local traffic between Guam, the Commonwealth of the Northern Mariana Islands, and Honolulu, and within the Commonwealth of the Northern Mariana Islands.
  - (c) The U.S. Department of Transportation shall maintain rules to implement the provisions of this paragraph as the Department in its discretion, deems appropriate.
4. Notwithstanding paragraph 2, the Government of the Republic of the Marshall Islands shall authorize, without restrictions or impairment, United States air

carriers to operate air services to, through, and beyond the Republic of the Marshall Islands; between Majuro and Kwajalein within the Republic of the Marshall Islands; and to establish prices applicable to such air services. The Government of the United States shall promptly notify the Government of the Republic of the Marshall Islands of the filing with the U.S. Department of Transportation of any application by a United States air carrier for authority under the laws of the United States to operate air services pursuant to this paragraph.

5. The Government of the United States shall sympathetically consider a request by the Government of the Republic of the Marshall Islands for negotiation of a bilateral air transport agreement between the Government of the United States and the Government of the Republic of the Marshall Islands. The Governments of the Republic of the Marshall Islands and the United States shall, on the basis of reciprocity, exempt air carriers that are authorized by each other to provide air services, from customs duties and taxes imposed by their national authorities, and shall not impose user charges that exceed an equitable proportion of the reasonable costs of providing the facilities, or which are discriminatory.
6. *The Government of the Republic of the Marshall Islands may terminate the operation of the economic services described in paragraph 3 of this Article. Such partial termination may be effected in the same manner as this Article may be terminated in accordance with Article XII of this Agreement. If the Government of the Republic of the Marshall Islands terminates the operation of paragraph 3 of this Article, the Government of the Republic of the Marshall Islands may, in accordance with Article XII of this Agreement, also terminate the operation of paragraph 4 of this Article.*
7. If the Government of the Republic of the Marshall Islands elects to terminate the operation of paragraph 3 of this Article, and the operation of paragraph 4 of this Article, the remaining provisions of this Article shall cease to be in effect two years after such termination, unless otherwise agreed by the Government of the Republic of the Marshall Islands and the Government of the United States.

Article X

United States Disaster Preparedness and Response Services  
and  
Related Programs

Article X

United States Disaster Preparedness and Response Services and Related Programs

- A. For the period beginning on the effective date of this Agreement and ending on 16 December 2008:
1. The programs and services of the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) shall continue to be available to the Republic of the Marshall Islands to the same extent such programs and services were available in fiscal year 2003.
  2. These programs and services shall be provided pursuant to:
    - (a) The provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 – 5206 (the Stafford Act).
    - (b) Applicable Executive Orders of the President of the United States; and
    - (c) Applicable DHS and FEMA regulations, policies and directives.
  3. Assistance to be provided pursuant to paragraph one of this Article shall be made available to the Government of the Republic of the Marshall Islands in the same manner as assistance is made available to a "State," as defined in Section 102 of the Stafford Act, 42 U.S.C. § 5122. Solely for the purpose of applying the Stafford Act to this Article, the Republic of the Marshall Islands shall be considered to be a "State" as defined in Section 102 of the Stafford Act, 42 U.S.C. § 5122.
  4. The President of the Republic of the Marshall Islands may request a determination by the President of the United States that an emergency or a major disaster exists in the Republic of the Marshall Islands, respectively, in accordance with Sections 401 and 501 of the Stafford Act, 42 U.S.C. §§ 5170 and 5191, respectively. In order to expedite such determination, the request shall simultaneously be forwarded to the Regional Director of FEMA in whose region the Republic of the Marshall Islands is included for the purposes of this Article. The request shall conform to the provisions of 44 C.F.R. Part 206. Upon the declaration of an emergency or a major disaster, FEMA and the Government of the Republic of the Marshall Islands shall execute a FEMA-State Agreement in accordance with 44 C.F.R. § 206.44.

5. The President of the Republic of the Marshall Islands may request a determination by FEMA that fire management assistance be provided to the Republic of the Marshall Islands pursuant to 42 U.S.C. § 5187. The request shall conform to the requirements set forth in 44 C.F.R. Part 204. Upon a fire management assistance declaration, FEMA and the Government of the Republic of the Marshall Islands shall execute a FEMA-State Agreement in accordance with 44 C.F.R. § 204.25:
6. The Government of the Republic of the Marshall Islands may request an annual grant from the United States, for disaster preparedness, which shall not exceed fifty (50) percent of the cost of improving, maintaining and updating disaster assistance plans, including evaluation of natural hazards and development of the programs and actions to mitigate such hazards, provided that no such grant shall exceed fifty thousand dollars (\$50,000) per annum and, provided further, that the Republic of the Marshall Islands shall be eligible to receive such grants only if funding for these purposes is available to the States of the United States.
7. The Government of the Republic of the Marshall Islands assumes all rights, obligations and liabilities arising out of the programs and services provided under this Article, including matching fund obligations that may be required by law or for which a commitment has been made by agreement between FEMA and the Government of the Republic of the Marshall Islands.
8. To the extent necessary to permit FEMA to fulfill its obligations under this Agreement following the declaration of a major disaster or emergency, the Government of the Republic of the Marshall Islands shall:
  - (a) make available to FEMA, at no cost, equipment or facilities in its territory, including facilities necessary for communications:
  - (b) permit FEMA to operate telecommunications services in its territory;
  - (c) endeavor to make available radio frequencies for the exclusive use by FEMA;
  - (d) assist FEMA representatives in inter-island and intra-island movement for the purpose of accomplishing predeclaration damage assessment, post-declaration damage survey and the provision of disaster assistance to include the movement of supplies and equipment; and
  - (e) upon request, provide representatives of FEMA and the Controller General of the United States access to any books, documents, papers, and records that pertain to federal funds, equipment and supplies received under this Article, for the purpose of audit and examination.

9. The Government of the Republic of the Marshall Islands shall set forth in a governmental emergency plan the procedures and assignments of responsibility which are required for the Government of the Republic of the Marshall Islands to prepare for and respond to disasters and to facilitate the delivery of disaster assistance by the Government of the United States.
  10. The Government of the Republic of the Marshall Islands may appeal any determination of the Regional Director related to federal assistance provided under this Article. An appeal shall first be submitted to the Regional Director of FEMA for reconsideration; if such appeal is denied, the Government may submit a second appeal in accordance with FEMA regulations. Action on the second appeal shall be final.
- B. Following the effective date of this Agreement, the Government of the United States and the Government of the Republic of the Marshall Islands shall seek to reach agreement on a modification of this Article to provide for alternate disaster assistance arrangements involving a significant role for the U.S. Agency for International Development (USAID). Should the parties not reach agreement, effective on 16 December 2008, all emergency and disaster preparedness, response and recovery assistance shall be provided to the Republic of the Marshall Islands as follows:

The USAID shall be responsible for the provision of emergency and disaster relief assistance in accordance with its statutory authorities, regulations and policies. The Republic of the Marshall Islands may additionally request that the President of the United States make an emergency or major disaster declaration. If the President declares an emergency or major disaster, FEMA and USAID shall jointly (a) assess the damage caused by the emergency or disaster and (b) prepare a reconstruction plan including an estimate of the total amount of Federal resources that are needed for reconstruction. USAID shall carry out reconstruction activities in the Republic of the Marshall Islands in accordance with the reconstruction plan. For purposes of the United States Government's Disaster Relief Fund appropriations, the funding of the activities to be carried out pursuant to this paragraph shall be deemed to be necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq.

The Government of the Republic of the Marshall Islands may request an annual grant in accordance with the terms set forth in 42 U.S.C. § 5131(d). DHS may provide to the Republic of the Marshall Islands such assistance to the same extent that such assistance is available to the States of the United States. Funding for this assistance may be made available from appropriations made to DHS for preparedness activities.

- C. Any reference in this Article to a provision of the United States Code constitutes the incorporation of the language of such provision into this Article as such provision was in force on the effective date of this Article.
  
- D. Notwithstanding the provisions of subsection (e) of section 211 of the Compact, as amended, or other sections of the Compact, as amended, the funds referenced in subsection (e) of section 211 of the Compact, as amended, shall be handled in accordance with section 105(f)(1)(A)(ii) of the Compact of Free Association Amendments Act of 2003.