U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

JAN 10 2014

Michael R. Quinn
President
Asia Pacific Airlines
156 Diablo Road, Suite 203
Danville, CA 94526

Dear Mr. Quinn:

This is in response to your September 6, 2013 letter requesting the legal authority pursuant to which the Federal Aviation Administration (FAA) imposes overflight fees for flights conducted within the airspace of countries located in the Micronesia region. You maintain that the fees have been inappropriately charged to Aero Micronesia, Inc., a United States (U.S.) air carrier operating in U.S. airspace flying to and from U.S. destinations. You state that the fees are inappropriate for flights between [the countries in the Micronesia region] because the FAA is obligated to service the aviation needs of those countries under the Compact of Free Association.

Title 49 U.S.C Section 45301 directs the FAA Administrator to establish fees and a collection process for certain services provided by the Administration. Section 45301(a)(1) states that fees are to be established for "[a]ir traffic control and related services provided to aircraft other than military and civilian aircraft of the United States government or of a foreign government that neither take off from, nor land in, the United States." Title 14 C.F.R. part 187 implements the fee requirement. Appendix B to part 187 provides that the fees are applicable to any person who conducts a flight through U.S.-controlled airspace that does not include a landing or takeoff in the United States. U.S.-controlled airspace is defined as all U.S. airspace either directly owned by the United States or allocated to the United States by the International Civil Aviation Organization (ICAO) or by other countries. *See* 14 C.F.R. part 187, App. B (a).

The Compact of Free Association Act of 1985, as amended, (the Compact) established the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau as sovereign states that were no longer considered United Nations trust territories. *See* 48 U.S.C. 1901 *et seq.* The Compact addresses governmental relations and sets forth certain commitments by the U.S. government relating to economic assistance, defense, and other benefits to the Micronesia region. Specific programs and services to be provided by the U.S. government under the Compact are further delineated in subsidiary agreements to the Compact.

Pursuant to subsidiary agreements with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, the U.S. government provides certain aviation related services. Aviation services provided by the U.S. government include: 1) en route air traffic services; 2) flight inspection and ground certification of nondirectional beacons and distance-measuring equipment; and 3) development and updating of instrument approach procedures, standard instrument departure procedures and standard terminal arrival routes, and issuance of Notices to Airmen. Accordingly, the airspace of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau is U.S.-controlled airspace. *E.g.* Federal Programs and Services Agreement between the Government of the United States and the Government of the Republic of the Republic of the Marshall Islands, Article VIII, 8-1(2).

The Compact of Free Association Amendments Act of 2003 addresses the imposition of user fees for services provided under the Compact. Supplemental provisions relating to domestic program requirements provide that all U.S Federal programs and services are subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs when operating in the United States. The Amendments Act further provides that persons receiving services provided by the U.S. government under the Compact shall be liable for user fees, if any, to the same extent as any person in the United States would be liable for the fees for such services [if provided within] the United States. *See* Compact of Free Association Amendments Act of 2003, Title I, Sec. 105 (a) and (n).

You also asked if the FAA has charged Air Marshall Islands, Inc., overflight fees for air traffic control services between the atolls of Majuro and Kwajalein. The FAA charges operators overflight fees in the Micronesia region consistent with statutory, regulatory, and Compact requirements, including any provisions applicable to operations conducted by Freely Associated State Air Carriers. *E.g.* Federal Programs and Services Agreement between the Government of the United States and the Government of the Federated States of Micronesia, Article IX, 9-2(a) and 9-3(c).

Based on the above, the FAA's overflight fees charged to Aero Micronesia, Inc., for flights conducted within the airspace of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are imposed in accordance with statutory and regulatory requirements, and in accordance with the provisions of the Compact of Free Association, as amended.

This response was prepared by Beverly J. Sharkey, Senior Attorney in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and was coordinated with the FAA Air Traffic Organization. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
Legislation and Regulations, AGC-200