

## § 272.2

Palau (the Freely Associated States) provides, among other things, for the Department of Transportation (Department), as successor to the Civil Aeronautics Board (Board), to guarantee essential air service, with compensation if necessary, to certain places in these islands. Subparagraph 5(h) of the Agreement provides that the Department shall adopt rules to implement the provisions of paragraph 5 as it in its discretion deems appropriate. Section 221(a)(5) of the Compact, which was adopted by Congress as public laws (Pub. L. 99-239, Jan. 14, 1986; Pub. L. 99-658, Nov. 14, 1986), provides that the Department (as successor to the Board) has the authority to implement the provisions of paragraph 5 of the Agreement. This part implements these provisions of paragraph 5.

[Amdt. No. 272-1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

### § 272.2 Applicability.

This part establishes the provisions applicable to the Department's guarantee of essential air service to places in the Federated States of Micronesia, the Marshall Islands and Palau, and the payment of compensation for such services. The rule applies to U.S. air carriers and Freely Associated State Air Carriers providing essential air service to these places.

[Amdt. No. 272-1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

### § 272.3 Places eligible for guaranteed essential air service.

(a) Subject to the provisions of this part, and paragraph 5 of Article IX of the Federal Programs and Services Agreement, the Department will make provision for the operation of essential air service, with compensation if necessary, to the following places in the Freely Associated States:

In the *Federated States of Micronesia*: Ponape, Truk and Yap.

In the *Marshall Islands*: Majuro and Kwajalein.

In *Palau*: Koror.

(b) The places specified herein in the Federated States of Micronesia, the Marshall Islands or Palau, respectively, shall cease to be eligible places under this part if any of those Governments withdraw from the subsidy pro-

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visions of Article IX of the Federal Programs and Services Agreement in accordance with paragraph 8 of Article IX or Article XII of that Agreement.

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### § 272.4 Applicability of procedures and policies under 49 U.S.C. 41731-42.

Since the authority of the Department to guarantee essential air service is derived from the Federal Programs and Services Agreement and the Compact of Free Association, the provisions and procedures utilized by the Department in implementation of 49 U.S.C. 41731-42 will be followed only to the extent determined by the Department to be consistent with the obligations assumed by the United States in the Agreement and Compact, and the provisions of this part.

[Amdt. No. 272-1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

### § 272.5 Determination of essential air service.

Procedures for the determination of essential air service under this section, and review of that determination, shall, except to the extent otherwise directed by the Department, be governed by § 325.4 (except the application of 49 U.S.C. 41737 in § 325.4(b)); § 325.6(a); §§ 325.8-325.11; § 325.12 (provided that all documents shall be served on the President and the designated authorities of the Freely Associated State concerned); and §§ 325.13 and 325.14 of this chapter.

[Amdt. No. 272-1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

### § 272.6 Considerations in the determination of essential air service.

(a) In the determination of essential air service to an eligible Freely Associated State place, the Department shall consider, among other factors, the following:

(1) The demonstrated level of traffic demand;

(2) The amount of compensation necessary to maintain a level of service sufficient to meet that demand;

(3) The extent to which the demand may be accommodated by connecting

or other services of U.S., Freely Associated State, or foreign carriers by air—through U.S., Freely Associated State, or foreign places—that provide access to the U.S. air transportation system;

(4) Alternative modes of transportation that may be available; and

(5) The peculiar needs of the Freely Associated States for air transportation services.

(b) The Guidelines for Individual Determinations of essential air service set forth in part 398 of this chapter shall be applied only to the extent the Department concludes that they are applicable to the special circumstances affecting transportation to the Freely Associated States and reflective of the provisions of this part.

(c) Nothing in this part shall be construed as providing for a level of essential air service that would exceed the level of service justified by the considerations set forth in paragraph (a) of this section.

[Amdt. No. 272-1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

#### § 272.7 Notice of discontinuance of service.

(a) An air carrier or Freely Associated State Air Carrier shall not terminate, suspend, or reduce air service to any eligible Freely Associated State place, unless it has given notice as specified in this section, if as a result of the reduction of such service the aggregate of the remaining air service provided to such place would be below:

(1) If the Department has not made a determination of essential air service for such place, the level of service specified in Order 80-9-63; and

(2) If the Department has made a determination of essential air service for such place, that level of essential air service.

(b) An air carrier or Freely Associated State Air Carrier wishing to terminate, suspend or reduce air service under paragraph (a) shall file a notice of such proposed reduction in service at least 90 days prior to such service reduction, in accordance with the procedures specified in §§ 323.4, 323.6, and 323.7 of this chapter.

(c) The notice shall be served on the President and the designated Authorities of the Freely Associated State con-

cerned, in addition to the persons specified in § 323.7.

(d) The procedures specified in §§ 323.9-323.18, to the extent applicable to 90-day notices filed by certificated air carriers, shall also be applicable to notices of terminations, suspensions or reductions in service filed under this section.

[Amdt. No. 272-1, 52 FR 5443, Feb. 23, 1987, as amended at 60 FR 43525, Aug. 22, 1995]

#### § 272.8 Obligation to continue service.

(a) If the Department finds that a proposed termination, suspension, or reduction in service by an air carrier or Freely Associated State Air Carrier will, or may, reduce service to an eligible Freely Associated State place below the level of essential air service to such place, whether or not the Department has previously determined the level of essential air service to such place, the Department may direct the air carrier or Freely Associated State Air Carrier concerned to maintain service to such place at a level the Department determines will ensure essential air service to such place, pending the commencement of alternative service as required to maintain the level of essential air service previously, or thereafter, determined by the Department.

(b) During any period the Department requires an air carrier or Freely Associated State Air Carrier to maintain a level of service proposed to be terminated, suspended or reduced, following the filing of a 90 day notice in accordance with § 272.7, the Department will provide for the payment of compensation to such carrier for any losses incurred by that carrier as a result of such required continuation of service in accordance with the procedures set forth in part 271 of this chapter. If the carrier is already receiving compensation pursuant to § 272.9 of this part, the Department will continue to direct payment of such compensation during any period the carrier is required to maintain service. Such payments shall be made by the Department of Interior from funds appropriated for this purpose.

(c) The Department will review its order from time to time and will revise