

§ 272.9

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the level of required service as necessary to maintain only the level of essential air service determined by the Department for that place, considering all other service to such place in accordance with § 272.6(a)(3).

(d) During the period any such air carrier or Freely Associated State Air Carrier is required to maintain service under this section, the Department will make every effort to obtain alternative service, with compensation if necessary, as required to maintain essential air service to such place.

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

§ 272.9 Selection of a carrier to provide essential air service and payment of compensation.

(a) If the Department finds that essential air service will not be maintained to an eligible Freely Associated State place, the Department shall invite applications to provide the service required to maintain essential air service to such place.

(b) If the Department determines that essential air service will not be provided to such place in the absence of the payment of subsidy compensation to a carrier or carriers, the Department shall determine the compensation necessary, considering all other service to such place in accordance with § 272.6(a)(3), to maintain the level of essential air service determined by the Department under § 272.5, and the times and manner of the payment of such compensation.

(c) The compensation determined by the Department to be necessary to maintain essential air service to such place shall be paid by the Department of Interior out of funds appropriated for that purpose, to the carrier or carriers selected by the Department.

(d) The Department shall continue to specify compensation to be paid to a carrier or carriers under this section only as long as the Department determines that essential air service will not be provided to the Freely Associated State in the absence of the payment of such compensation.

(e) Except as permitted in paragraph (f) of this section, the Department shall select a U.S. air carrier or car-

riers to provide essential air service for compensation.

(f) The Department may select a Freely Associated State Air Carrier, holding a foreign air carrier permit issued in accordance with subpart D of part 211 of this chapter, to provide essential air service for compensation, only if—

(1) No U.S. air carrier is available to provide the required essential air service; or

(2) The compensation necessary for the provision of the required essential air service would be substantially less than the compensation necessary if such essential air service were to be provided by a U.S. air carrier.

(g) Any order of the Department selecting a Freely Associated State Air Carrier to provide such essential air service shall be submitted to the President of the United States not less than 10 days prior to its effective date and shall be subject to stay or disapproval by the President.

(h) Among the criteria that will be considered by the Department in its determination of the carrier or carriers to be selected to perform the required essential air service are:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the Freely Associated States concerned;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the Freely Associated States for which essential air service is proposed to be provided;

(3) The amount of compensation that will be required to provide the proposed essential air service;

(4) The impact of the proposed service on service provided to other Freely Associated State points; and

(5) The views of the Governments of the Freely Associated States concerned.

(i) The Department may from time to time, on its own motion, or upon application of any carrier or government, review and change its selection of a carrier to provide essential air service, or its determination as to the compensation necessary to provide such essential air service.

(j) All applications or other documents filed or issued in proceedings under this section shall be served upon the President of the Freely Associated State concerned and the Authorities designated by that Government(s) in accordance with Article II, paragraph 10, of the Federal Programs and Services Agreement supplemental to the Compact of Free Association, and such Government shall be a party to any such proceeding. In reaching its determination, the Department will carefully consider any views of such Government that have been submitted.

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

§ 272.10 Conditions applicable to carriers serving a subsidized market.

(a) The Department may, after providing an opportunity for comment by the carrier or carriers affected, impose service, fare or rate conditions on any U.S., Freely Associated State, foreign air carrier, or foreign carrier by air as a precondition to the payment of compensation necessary to maintain essential air service, whether or not the affected carrier is itself receiving subsidy compensation in the market, if it finds that:

(1) Essential air service in a Freely Associated State market or markets will not be provided in the absence of the payment of compensation;

(2) Specified service, rate or fare conditions are or will be necessary or desirable to minimize the required subsidy compensation; and

(3) The imposition of such conditions will not unduly impair the service provided in the market.

(b) To the extent the carrier or carriers upon whom the conditions are imposed pursuant to paragraph (a) of this section do not hold a certificate, permit, or other authority from the Department that may be amended to effectively implement the specified conditions, the Department may notify the Government(s) of the Freely Associated States concerned that the imposition of such conditions on those carriers by those Governments shall be a precondition to the payment of the subsidy compensation required to maintain essential air service in the market in question.

(c) The Department may withhold or suspend its provision for the payment of subsidy compensation required to maintain essential air service unless and until the Freely Associated State(s) concerned take the necessary action to impose the specified conditions on the carriers referred to in paragraph (b) of this section, and those carriers have complied with the specified conditions.

(d) Any order of the Department imposing conditions, or requiring the imposition of conditions, pursuant to this paragraph shall be submitted to the President for review not less than 10 days prior to its effective date, and shall be subject to stay or disapproval by the President.

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

§ 272.11 Effective date of provisions.

The provisions of this part shall not become effective for Palau until the Compact of Free Association and Article IX of the Federal Programs and Services Agreement become effective for Palau.

§ 272.12 Termination.

These provisions shall terminate on October 1, 1998, unless the program of essential air service to the Federated States of Micronesia, the Marshall Islands, and Palau is specifically extended by Congress.

This amendment is issued under the authority of 49 CFR 1.57(1).

[Amdt. 272-2, 56 FR 1732, Jan. 7, 1991, as amended at 60 FR 43525, Aug. 22, 1995]

**PART 291—CARGO OPERATIONS
IN INTERSTATE AIR TRANSPORTATION**

Subpart A—General

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