

Pub. L. 105-277, div. A, §101(g) [title III, §334], Oct. 21, 1998, 112 Stat. 2681-439, 2681-471.

Pub. L. 105-66, title III, §336, Oct. 27, 1997, 111 Stat. 1447.

§ 41732. Basic essential air service

(a) GENERAL.—Basic essential air service provided under section 41733 of this title is scheduled air transportation of passengers and cargo—

(1) to a medium or large hub airport less than 650 miles from an eligible place (unless such airport or eligible place are located in a noncontiguous State); or

(2) to a small hub or nonhub airport, when in Alaska or when the nearest medium or large hub airport is more than 400 miles from an eligible place.

(b) MINIMUM REQUIREMENTS.—Basic essential air service shall include at least the following:

(1)(A) for a place not in Alaska, 2 daily round trips 6 days a week, with not more than one intermediate stop on each flight; or

(B) for a place in Alaska, a level of service at least equal to that provided in 1976 or 2 round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(2) flights at reasonable times considering the needs of passengers with connecting flights at the airport and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places.

(3) service provided in aircraft with at least 2 engines and using 2 pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least 2 engines and using 2 pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(c) WAIVERS.—Notwithstanding section 41733(e), upon request by an eligible place, the Secretary may waive, in whole or in part, subsections (a) and (b) of this section or subsections (a) through (c) of section 41734. A waiver issued under this subsection shall remain in effect for a limited period of time, as determined by the Secretary.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1144; Pub. L. 115-254, div. B, title IV, §456, Oct. 5, 2018, 132 Stat. 3350; Pub. L. 118-63, title V, §561(b)(1), (c), May 16, 2024, 138 Stat. 1214, 1215.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41732(a)	49 App.:1389(k)(1) (1st sentence).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §419(k)(1); added Oct. 24, 1978, Pub. L. 95-504, §33(a), 92 Stat. 1732; Dec. 8, 1983, Pub. L. 98-213, §10, 97 Stat. 1461; Oct. 4, 1984, Pub. L. 98-443, §9(r), 98 Stat. 1708; restated Dec. 30, 1987, Pub. L. 100-223, §202(a)(1), (2), (b)(1), 101 Stat. 1507, 1516.
41732(b)	49 App.:1389(k)(1) (last sentence).	

In subsection (a), before clause (1), the words “provided under section 41733 of this title” are added for

clarity. In clause (2), the words “from an eligible place” are added for clarity.

In subsection (b), before clause (1), the words “Basic essential air service” are substituted for “Such transportation” for clarity and consistency in the revised title. In clause (1)(B), the word “1976” is substituted for “calendar year 1976” to eliminate unnecessary words. The words “appropriate State authority of Alaska” are substituted for “State agency of the State of Alaska” for clarity and consistency with the source provisions restated in section 41734(a) of the revised title. The words “agree to a different level of service” are substituted for “otherwise specified under an agreement” for clarity. In clause (2), the word “prices” is substituted for “rates, fares, and charges” and “fares” because of the definition of “price” in section 40102(a) of the revised title. In clause (3), before subclause (A), the word “boardings” is substituted for “enplanements” for clarity and consistency in the revised title. The words “from 1976-1986” are substituted for “beginning after December 31, 1975, and ending on or before December 31, 1986” to eliminate unnecessary words. In subclause (B), the words “affected community” are substituted for “community concerned” for consistency with the source provisions restated in clause (1)(B) of this section. In clause (5), the words “for at least 60 consecutive operating days” are substituted for “on each of 60 consecutive operating days” for clarity.

Editorial Notes

AMENDMENTS

2024—Subsec. (a)(1). Pub. L. 118-63, §561(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “to a hub airport that has convenient connecting or single-plane air service to a substantial number of destinations beyond that airport; or”.

Subsec. (a)(2). Pub. L. 118-63, §561(c)(1), inserted “medium or large” after “nearest”.

Subsec. (b)(3) to (6). Pub. L. 118-63, §561(c)(2), redesignated par. (5) as (3) and struck out former pars. (3), (4), and (6) which read as follows:

“(3) for a place not in Alaska, service provided in an aircraft with an effective capacity of at least 15 passengers if the average daily boardings at the place in any calendar year from 1976-1986 were more than 11 passengers unless—

“(A) that level-of-service requirement would require paying compensation in a fiscal year under section 41733(d) or 41734(d) or (e) of this title for the place when compensation otherwise would not have been paid for that place in that year; or

“(B) the affected community agrees with the Secretary in writing to the use of smaller aircraft to provide service to the place.

“(4) service accommodating the estimated passenger and property traffic at an average load factor, for each class of traffic considering seasonal demands for the service, of not more than—

“(A) 50 percent; or

“(B) 60 percent when service is provided by aircraft with more than 14 passenger seats.

“(6) service provided by pressurized aircraft when the service is provided by aircraft that regularly fly above 8,000 feet in altitude.”

2018—Subsec. (c). Pub. L. 115-254 added subsec. (c).

Statutory Notes and Related Subsidiaries

RESTRICTION ON LENGTH OF ROUTES

Pub. L. 118-63, title V, §561(b)(2), (3), May 16, 2024, 138 Stat. 1215, provided that:

“(2) EXCEPTION.—The amendment made by paragraph (1) [amending this section] shall not apply to an eligible place that is served by an air carrier selected to receive essential air service compensation under subchapter II of chapter 417 of title 49, United States Code, if—

“(A) such service is in effect upon the date of enactment of this Act [May 16, 2024]; and

“(B) such service is provided by the same air carrier that provided service on the date of enactment of this Act.

“(3) SUNSET.—Paragraph (2) shall cease to have effect on October 1, 2028.”

§ 41733. Level of basic essential air service

(a) DECISIONS MADE BEFORE OCTOBER 1, 1988.—For each eligible place for which a decision was made before October 1, 1988, under section 419 of the Federal Aviation Act of 1958, establishing the level of essential air transportation, the level of basic essential air service for that place shall be the level established by the Secretary of Transportation for that place by not later than December 29, 1988.

(b) DECISIONS NOT MADE BEFORE OCTOBER 1, 1988.—(1) The Secretary shall decide on the level of basic essential air service for each eligible place for which a decision was not made before October 1, 1988, establishing the level of essential air transportation, when the Secretary receives notice that service to that place will be provided by only one air carrier. The Secretary shall make the decision by the last day of the 6-month period beginning on the date the Secretary receives the notice. The Secretary may impose notice requirements necessary to carry out this subsection. Before making a decision, the Secretary shall consider the views of any interested community and the appropriate State authority of the State in which the community is located.

(2) Until the Secretary has made a decision on a level of basic essential air service for an eligible place under this subsection, the Secretary, on petition by an appropriate representative of the place, as defined by the Secretary, shall prohibit an air carrier from ending, suspending, or reducing air transportation to that place that appears to deprive the place of basic essential air service.

(c) AVAILABILITY OF COMPENSATION.—(1) If the Secretary decides that basic essential air service will not be provided to an eligible place without compensation, the Secretary shall provide notice that an air carrier may apply to provide basic essential air service to the place for compensation under this section. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the demonstrated reliability of the applicant in providing scheduled air service;

(B) the contractual, marketing, code-share, or interline arrangements the applicant has made with a larger air carrier serving the hub airport;

(C) the preferences of the actual and potential users of air transportation at the eligible place, including the views of the elected officials representing the users;

(D) whether the air carrier has included a plan in its proposal to market its services to the community;

(E) for an eligible place in Alaska, the experience of the applicant in providing, in Alaska, scheduled air service, or significant patterns of non-scheduled air service under an exemption granted under section 40109(a) and (c)–(h) of this title; and

(F) the total compensation proposed by the air carrier for providing scheduled air service under this section.

(2) Under guidelines prescribed under section 41737(a) of this title, the Secretary shall pay the rate of compensation for providing basic essential air service under this section and section 41734 of this title.

(d) COMPENSATION PAYMENTS.—The Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation to an air carrier for providing basic essential air service to an eligible place when the Secretary decides the compensation is no longer necessary to maintain basic essential air service to the place.

(e) REVIEW.—The Secretary shall review periodically the level of basic essential air service for each eligible place. Based on the review and consultations with an interested community and the appropriate State authority of the State in which the community is located, the Secretary may make appropriate adjustments in the level of service, to the extent such adjustments are to a level not less than the basic essential air service level established under subsection (a) for the airport that serves the community.

(f) NOTICE TO COMMUNITIES PRIOR TO TERMINATION OF ELIGIBILITY.—

(1) IN GENERAL.—The Secretary shall notify each community receiving basic essential air service for which compensation is being paid under this subchapter on or before the 45th day before issuing any final decision to end the payment of such compensation due to a determination by the Secretary that providing such service requires a rate of subsidy per passenger in excess of the subsidy cap.

(2) PROCEDURES TO AVOID TERMINATION.—The Secretary shall establish, by order, procedures by which each community notified of an impending loss of subsidy under paragraph (1) may work directly with an air carrier to ensure that the air carrier is able to submit a proposal to the Secretary to provide essential air service to such community for an amount of compensation that would not exceed the subsidy cap.

(3) ASSISTANCE PROVIDED.—The Secretary shall provide, by order, information to each community notified under paragraph (1) regarding—

(A) the procedures established pursuant to paragraph (2); and

(B) the maximum amount of compensation that could be provided under this subchapter to an air carrier serving such community that would comply with basic essential air service and the subsidy cap.

(g) PROPOSALS OF STATE AND LOCAL GOVERNMENTS TO RESTORE ELIGIBILITY.—

(1) IN GENERAL.—If the Secretary, after the date of enactment of this subsection, ends payment of compensation to an air carrier for providing basic essential air service to an eligible place because the Secretary has determined that providing such service requires a rate of subsidy per passenger in excess of the subsidy cap or that the place is no longer an eligible place pursuant to section 41731(a)(1)(B), a State or local government may submit to the Secretary a proposal for re-