

“(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-

storing compensation for such service. Such proposal shall be a joint proposal of the State or local government and an air carrier.

(2) DETERMINATION BY SECRETARY.—The Secretary shall issue an order restoring the eligibility of the otherwise eligible place to receive basic essential air service by an air carrier for compensation under subsection (c) if—

(A) a State or local government submits to the Secretary a proposal under paragraph (1); and

(B) the Secretary determines that—

(i) the rate of subsidy per passenger under the proposal does not exceed the subsidy cap;

(ii) the proposal is likely to result in an average number of enplanements per day that will satisfy the requirement in section 41731(a)(1)(B); and

(iii) the proposal is consistent with the legal and regulatory requirements of the essential air service program.

(h) SUBSIDY CAP DEFINED.—In this section, the term “subsidy cap” means the subsidy-per-passenger cap established under section 41731(a)(1)(C).

(i) COMMUNITY PETITION FOR REVIEW.—

(1) PETITION.—An appropriate representative of an eligible place, as defined by the Secretary, may submit to the Secretary a petition expressing no confidence in the air carrier providing basic essential air service under this section and requesting a review by the Secretary. A petition submitted under this subsection shall demonstrate that the air carrier—

(A) is unwilling or unable to meet the operational specifications outlined in the order issued by the Secretary specifying the terms of basic essential air service to such place;

(B) is experiencing reliability challenges with the potential to adversely affect air service to such place; or

(C) is no longer able to provide service to such place at the rate of compensation specified by the Secretary.

(2) REVIEW.—Not later than 2 months after the date on which the Secretary receives a petition under paragraph (1), the Secretary shall review the operational performance of the air carrier providing basic essential air service to such place that submitted such petition and determine whether such air carrier is fully complying with the obligations specified in the order issued by the Secretary specifying the terms of basic essential air service to such place.

(3) TERMINATION.—If based on a review under paragraph (2), the Secretary determines non-compliance by an air carrier with an order specifying the terms for basic essential air service to the community, the Secretary may—

(A) terminate the order issued to the air carrier; and

(B) issue a notice pursuant to subsection (c) that an air carrier may apply to provide basic essential air service to such place for compensation under this section and select an applicant pursuant to such subsection.

(4) CONTINUATION OF SERVICE.—If the Secretary makes a determination under paragraph (3) to terminate an order issued to an air carrier under this section, the Secretary shall ensure continuity in air service to the affected place.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1145; Pub. L. 106–181, title II, §209(b), Apr. 5, 2000, 114 Stat. 95; Pub. L. 112–95, title IV, §§423–425, Feb. 14, 2012, 126 Stat. 97, 98; Pub. L. 118–63, title V, §§561(d), 565(a), May 16, 2024, 138 Stat. 1215, 1218.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41733(a) .....	49 App.:1389(b)(1)(A) (less last sentence last 24 words), (C).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §419(b)(1), (3), (4), (9); 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, 1508, 1509, 1511.
41733(b)(1) ..	49 App.:1389(b)(1)(A) (last sentence last 24 words), (B).	
41733(b)(2) ..	49 App.:1389(b)(9).	
41733(c) .....	49 App.:1389(b)(3).	
41733(d) .....	49 App.:1389(b)(4).	
41733(e) .....	49 App.:1389(b)(1)(D).	

In subsection (a), the words “the level of basic essential air service for that place shall be the level established by the Secretary of Transportation for that place” are substituted for “Such determination shall be made” because the determinations for those places have been made. The words “by not later than December 29, 1988” are substituted for “no later than the last day of the 1-year period beginning on December 30, 1987” for clarity. The words “and only after consideration of the views of any interested community and the State agency of the State in which such community is located” and 49 App.:1389(b)(1)(C) are omitted as executed.

In subsections (b)(1) and (e), the words “appropriate State authority” are substituted for “State agency” for clarity and consistency with the source provisions restated in section 41734(a) of the revised title.

In section (b)(2), the words “that appears to deprive” are substituted for “which reasonably appears to deprive” to eliminate an unnecessary word.

In subsection (c)(1), before clause (A), the words “an air carrier may apply to provide basic essential air service to the place for compensation” are substituted for “applications may be submitted by any air carrier that is willing to provide such service to such point for compensation” for clarity and to eliminate unnecessary words.

Editorial Notes

REFERENCES IN TEXT

Section 419 of the Federal Aviation Act of 1958, referred to in subsec. (a), is section 419 of Pub. L. 85–726, which was classified to section 1389 of former Title 49, Transportation, and was repealed and reenacted as this subchapter by Pub. L. 103–272, §1(e), 7(b), July 5, 1994, 108 Stat. 1143, 1379.

The date of enactment of this subsection, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 112–95, which was approved Feb. 14, 2012.

AMENDMENTS

2024—Subsec. (b)(2). Pub. L. 118–63, §565(a)(1), inserted “, as defined by the Secretary” after “appropriate representative of the place”.

Subsec. (c)(1)(B). Pub. L. 118–63, §561(d)(1)(A), added subpar. (B) and struck out former subpar. (B) which

read as follows: “the contractual and marketing arrangements the applicant has made with a larger carrier to ensure service beyond the hub airport;”.

Subsec. (c)(1)(C). Pub. L. 118-63, § 561(d)(1)(C), (D), redesignated subpar. (D) as (C) and substituted “including” for “giving substantial weight to”. Former subpar. (C) struck out.

Pub. L. 118-63, § 561(d)(1)(B), struck out subpar. (C) which read as follows: “the interline arrangements that the applicant has made with a larger carrier to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier through one reservation, ticket, and baggage check-in;”.

Subsec. (c)(1)(D), (E). Pub. L. 118-63, § 561(d)(1)(C), redesignated subpars. (E) and (F) as (D) and (E), respectively. Former subpar. (D) redesignated (C).

Subsec. (c)(1)(F). Pub. L. 118-63, § 561(d)(1)(E)-(G), added subpar. (F). Former subpar. (F) redesignated (E).

Pub. L. 118-63, § 561(d)(1)(C), redesignated subpar. (F) as (E).

Subsec. (h). Pub. L. 118-63, § 561(d)(2), substituted “under section 41731(a)(1)(C)” for “by section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (Public Law 106-69; 113 Stat. 1022)”.

Subsec. (i). Pub. L. 118-63, § 565(a)(2), added subsec. (i).

2012—Subsec. (c)(1)(E), (F). Pub. L. 112-95, § 423, added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (f). Pub. L. 112-95, § 424, added subsec. (f).

Subsecs. (g), (h). Pub. L. 112-95, § 425, added subsecs. (g) and (h).

2000—Subsec. (e). Pub. L. 106-181 inserted before period at end “”, 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”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

##### SEASONAL SERVICE

Pub. L. 115-254, div. B, title IV, § 451(b), Oct. 5, 2018, 132 Stat. 3347, provided that: “The Secretary of Transportation may consider the flexibility of current operational dates and airport accessibility to meet local community needs when issuing requests for proposal of essential air service at seasonal airports.”

##### EFFECT ON CERTAIN ORDERS

Pub. L. 106-181, title II, § 209(c), Apr. 5, 2000, 114 Stat. 95, provided that: “All orders issued by the Secretary [of Transportation] after September 30, 1999, and before the date of the enactment of this Act [Apr. 5, 2000] establishing, modifying, or revoking essential air service levels shall be null and void beginning on the 90th day following such date of enactment. During the 90-day period, the Secretary shall reconsider such orders and shall issue new orders consistent with the amendments made by this section [amending this section and section 41742 of this title].”

#### § 41734. Ending, suspending, and reducing basic essential air service

(a) NOTICE REQUIRED.—Subject to subsection (d), an air carrier may end, suspend, or reduce air transportation to an eligible place below the level of basic essential air service established for that place under section 41733 of this title only after giving the Secretary of Transportation, the appropriate State authority, and the affected communities at least 140 days’ notice before ending, suspending, or reducing that transportation.

(b) CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.—If at the end of the notice period under subsection (a) of this section the Secretary has not found another air carrier to provide basic essential air service to the eligible place, the Secretary shall require the carrier providing notice to continue to provide basic essential air service to the place for an additional 30-day period or until another carrier begins to provide basic essential air service to the place, whichever occurs first.

(c) CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.—If at the end of the 30-day period under subsection (b) of this section the Secretary decides another air carrier will not provide basic essential air service to the place on a continuing basis, the Secretary shall require the carrier providing service to continue to provide service for additional 30-day periods until another carrier begins providing service on a continuing basis. At the end of each 30-day period, the Secretary shall decide if another carrier will provide service on a continuing basis.

(d) CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.—

(1) IN GENERAL.—If an air carrier receiving compensation under section 41733 for providing basic essential air service to an eligible place is required to continue to provide service to such place under this section after the 140-day notice period under subsection (a), the Secretary—

(A) shall provide the carrier with compensation sufficient to pay to the carrier the amount required by the then existing contract for performing the basic essential air service that was being provided when the 140-day notice was given under subsection (a);

(B) may pay an additional amount that represents a reasonable return on investment; and

(C) may pay an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier or provider is required to provide the service continues.

(2) AUTHORITY.—The Secretary may incorporate contract termination penalties or conditions on compensation into a contract for an air carrier to provide service to an eligible place that take effect in the event an air carrier provides notice that it is ending, suspending, or reducing basic essential air service.

(e) COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE WITHOUT COMPENSATION.—If the Secretary requires an air carrier providing basic essential air service to an eligible place without compensation under section 41733 of this title to continue providing that service after the 140-day notice period required by subsection (a), the Secretary may provide the air carrier with compensation after the end of the 140-day notice period to pay for the fully allocated actual cost to the air carrier of performing the basic essential air service that was being provided when the 140-day notice was given under subsection (a)