

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)

plus a reasonable return on investment that is at least 5 percent of operating costs.

(f) FINDING REPLACEMENT CARRIERS.—When the Secretary requires an air carrier to continue to provide basic essential air service to an eligible place, the Secretary shall continue to make every effort to find another air carrier to provide at least that basic essential air service to the place on a continuing basis.

(g) TRANSFER OF AUTHORITY.—If an air carrier, providing basic essential air service under section 41733 of this title between an eligible place and an airport at which the Administrator of the Federal Aviation Administration limits the number of instrument flight rule takeoffs and landings of aircraft, provides notice under subsection (a) of this section of an intention to end, suspend, or reduce that service and another carrier is found to provide the service, the Secretary shall require the carrier providing notice to transfer any operational authority the carrier has to land or take off at that airport related to the service to the eligible place to the carrier that will provide the service, if—

(1) the carrier that will provide the service needs the authority; and

(2) the authority to be transferred is being used to provide air service to another eligible place.

(h) NONCONSIDERATION OF SLOT AVAILABILITY.—In determining what is basic essential air service and in selecting an air carrier to provide such service, the Secretary shall not consider as a factor whether slots at a high density airport are available for providing such service.

(i) EXEMPTION FROM HOLD-IN REQUIREMENTS.—If, after the date of enactment of this subsection, an air carrier commences air transportation to an eligible place that is not receiving scheduled passenger air service as a result of the failure of the eligible place to meet requirements contained in an appropriations Act, the air carrier shall not be subject to the requirements of subsections (b) and (c) with respect to such air transportation.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1146; Pub. L. 103–305, title II, § 206(c), Aug. 23, 1994, 108 Stat. 1587; Pub. L. 103–429, §6(81), Oct. 31, 1994, 108 Stat. 4388; Pub. L. 108–176, title IV, §401, Dec. 12, 2003, 117 Stat. 2542; Pub. L. 112–95, title IV, §426(b)(1), Feb. 14, 2012, 126 Stat. 98; Pub. L. 118–63, title V, §561(f), May 16, 2024, 138 Stat. 1215.)

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41734(g)	49 App.:1389(b)(7).	

In subsection (b), the words “If at the end of the notice period under subsection (a) of this section” are substituted for “If an air carrier has provided notice to the Secretary under paragraph (2) of such air carrier’s intention to suspend, terminate, or reduce service to any eligible point below the level of basic essential air service to such point, and if at the conclusion of the applicable period of notice” for clarity and to eliminate unnecessary words.

In subsection (c), the words “either with or without compensation” are omitted as unnecessary. The words “shall require the carrier providing service to continue to provide service for additional 30-day periods” are substituted for “shall extend such requirement for such additional 30-day periods . . . as may be necessary to continue basic essential air service to such eligible point”, and the words “the Secretary shall decide if another carrier will provide service on a continuing basis” are substituted for “making the same determination”, for clarity.

In subsections (d)(1) and (e)(1), the word “fair” is omitted as being included in “reasonable”.

In subsection (d), before clause (1), the words “basic essential air service” are substituted for “air transportation” and “such transportation” for consistency with the source provisions restated in this section. The words “to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section” are substituted for “to continue service to such point beyond the date on which such carrier would, but for paragraph (5), be able to suspend, terminate, or reduce such service below the level of basic essential air service to such point” to eliminate unnecessary words.

In subsection (e), before clause (1), the words “basic essential air service” are substituted for “air transportation” for consistency with the source provisions restated in this section. The words “after the end of the 90-day notice period that is” are substituted for “then” for clarity.

In subsection (f), the words “basic essential air service” are substituted for “air transportation which such air carrier has proposed to terminate, reduce, or suspend” for consistency with the source provisions restated in this section.

In subsection (g)(2), the words “the authority to be transferred is being used only to provide air service to the eligible place” are substituted for “unless . . . such authority is being used to provide air service with respect to more than 1 eligible point” for clarity and because of the restatement.

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (i), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

AMENDMENTS

2024—Subsec. (a). Pub. L. 118–63, §561(f)(1), substituted “Subject to subsection (d), an air carrier” for “An air carrier” and “140” for “90”.

Subsec. (d). Pub. L. 118–63, §561(f)(2), added subsec. (d) and struck out former subsec. (d) which related to continuation of compensation after 90-day notice period.

Subsec. (e). Pub. L. 118–63, §561(f)(3), substituted “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

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
41734(a)	49 App.:1389(b)(2).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §419(b)(2), (5)–(8); 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, 1509, 1510.
41734(b)	49 App.:1389(b)(5) (1st sentence).	
41734(c)	49 App.:1389(b)(5) (last sentence).	
41734(d)	49 App.:1389(b)(6)(A).	
41734(e)	49 App.:1389(b)(6)(B).	
41734(f)	49 App.:1389(b)(8).	

notice was given under subsection (a) plus a reasonable return on investment that is at least 5 percent of operating costs.” for “providing that service after the 90-day notice period required by subsection (a) of this section, the Secretary shall provide the carrier with compensation after the end of the 90-day notice period that is sufficient—” and pars. (1) and (2) which read as follows:

“(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

“(2) to provide the carrier 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 is required to provide the service continues.”

Subsec. (f). Pub. L. 118-63, §561(f)(4), inserted “air” after “find another”.

2012—Subsec. (d). Pub. L. 112-95, in introductory provisions, substituted “provide the carrier with compensation sufficient—” for “continue to pay that compensation after the last day of that period. The Secretary shall pay the compensation until the Secretary finds another carrier to provide the service to the place or the 90th day after the end of that notice period, whichever is earlier. If, after the 90th day after the end of the 90-day notice period, the Secretary has not found another carrier to provide the service, the carrier required to continue to provide that service shall receive compensation sufficient—”.

2003—Subsec. (i). Pub. L. 108-176 added subsec. (i).

1994—Subsec. (g)(2). Pub. L. 103-429 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “the authority to be transferred is being used only to provide air service to the eligible place.”

Subsec. (h). Pub. L. 103-305 added subsec. (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-95, title IV, §426(b)(2), Feb. 14, 2012, 126 Stat. 98, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to compensation to air carriers for air service provided after the 30th day following the date of enactment of this Act [Feb. 14, 2012].”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

DEFINITIONS

For definitions of the terms “slot” and “high density airport” used in subsec. (h) of this section, see section 41714(h) of this title.

[§ 41735. Repealed. Pub. L. 118-63, title V, § 561(g), May 16, 2024, 138 Stat. 1216]

Section, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1148, related to enhanced essential air service.

§ 41736. Air transportation to noneligible places

(a) PROPOSALS AND DECISIONS.—(1) A State or local government may propose to the Secretary of Transportation that the Secretary provide compensation to an air carrier to provide air

transportation to a place that is not an eligible place under this subchapter. Not later than 90 days after receiving a proposal under this section, the Secretary shall—

(A) decide whether to designate the place as eligible to receive compensation under this section; and

(B)(i) approve the proposal if the State or local government or a person is willing and able to pay 50 percent of the compensation for providing the transportation, and notify the State or local government of the approval; or

(ii) disapprove the proposal if the Secretary decides the proposal is not reasonable under paragraph (2) of this subsection, and notify the State or local government of the disapproval and the reasons for the disapproval.

(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors—

(A) the traffic-generating potential of the place;

(B) the cost to the United States Government of providing the proposed transportation; and

(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;

(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;

(3) the place is more than 150 miles from the nearest hub airport; and

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

Paragraph (4) does not apply to any community approved for service under this section during the period beginning October 1, 1991, and ending December 31, 1997.

(c) LEVEL OF AIR TRANSPORTATION.—(1) If the Secretary designates a place under subsection (a)(1) of this section as eligible for compensation under this section, the Secretary shall decide, not later than 6 months after the date of the designation, on the level of air transportation to be provided under this section. Before making a decision, the Secretary shall consider the views of any interested community, the appropriate State authority of the State in which the place is located, and the State or local government or person agreeing to pay compensation for the transportation under subsection (b)(4) of this section.

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may sub-