

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-

mit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the factors listed in section 41733(c)(1) of this title; and

(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;

(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and

(C) the Secretary decides the compensation is necessary to maintain the transportation to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(e) REVIEW.—The Secretary shall review periodically the level of air transportation provided under this section. Based on the review and consultation with any interested community, the appropriate State authority of the State in which the community is located, and the State or local government or person paying compensation under this section, the Secretary may make appropriate adjustments in the level of transportation.

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

(g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier providing air transportation for compensation under this section may end, suspend, or reduce that transportation below the level of transportation established by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation under this section at least 30 days' notice before ending, suspending, or reducing the transportation.

(h) SUNSET.—

(1) PROPOSALS.—No proposal under subsection (a) may be accepted by the Secretary after the date of enactment of this subsection.

(2) PROGRAM.—The Secretary may not provide any compensation under this section

after the date that is 2 years after the date of enactment of this subsection.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1149; Pub. L. 106-181, title II, §202, Apr. 5, 2000, 114 Stat. 91; Pub. L. 115-254, div. B, title IV, §453(b), Oct. 5, 2018, 132 Stat. 3348.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41736(a)	49 App.:1389(d)(1), (2)(A), (C).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §419(d); 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; re-stated Dec. 30, 1987, Pub. L. 100-223, §202(a)(1), (2), (b)(1), 101 Stat. 1507, 1513.
41736(b)	49 App.:1389(d)(2)(B).	
41736(c)(1) ..	49 App.:1389(d)(3)(A).	
41736(c)(2) ..	49 App.:1389(d)(4).	
41736(d)	49 App.:1389(d)(5), (7), (8).	
41736(e)	49 App.:1389(d)(3)(B).	
41736(f)	49 App.:1389(d)(2)(D).	
41736(g)	49 App.:1389(d)(6).	

In subsection (a)(1), before clause (A), the words “that the Secretary provide compensation to an air carrier to provide air transportation” are substituted for “for compensated air transportation in accordance with this subsection” for clarity. In clause (B)(i), the word “transportation” is substituted for “proposed compensated air transportation” to eliminate unnecessary words.

In subsections (c)–(g), the word “transportation” is substituted for “service” for consistency with the source provisions restated in subsections (a) and (b) of this section.

In subsections (c)(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 subsection (d), the text of 49 App.:1389(d)(5) is omitted as unnecessary because of the restatement.

In subsection (f), the word “prescribe” is substituted for “establish” for consistency in the revised title and with other titles of the United States Code.

Editorial Notes

REFERENCES IN TEXT

Section 401 of the Federal Aviation Act of 1958, referred to in subsec. (b)(1), is section 401 of Pub. L. 85-726, which was classified to section 1371 of former Title 49, Transportation, and was repealed by Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For disposition of section 1371 of former Title 49, see Table at the beginning of Title 49.

The date of enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 115-254, which was approved Oct. 5, 2018.

AMENDMENTS

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

2000—Subsec. (b). Pub. L. 106-181 inserted concluding provisions.

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.

§ 41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid;

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided;

(D) include provisions under which the Secretary may encourage an air carrier to improve air service for which compensation is being paid under this subchapter by incorporating financial incentives in an essential air service contract based on specified performance goals, including goals related to improving on-time performance, reducing the number of flight cancellations, establishing reasonable fares (including joint fares beyond the hub airport), establishing convenient connections to flights providing service beyond hub airports, and increasing marketing efforts; and

(E) include provisions under which the Secretary may execute a long-term essential air service contract to encourage an air carrier to provide air service to an eligible place if it would be in the public interest to do so.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter.

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter, the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(e) ADJUSTMENTS TO ACCOUNT FOR SIGNIFICANTLY INCREASED COSTS.—

(1) IN GENERAL.—If the Secretary determines that air carriers are experiencing significantly increased costs in providing air service or air transportation for which compensation is being paid under this subchapter, the Secretary may increase the rates of compensation payable under this subchapter without regard to any agreement or requirement relating to the renegotiation of contracts or any notice requirement under section 41734.

(2) READJUSTMENT IF COSTS SUBSEQUENTLY DECLINE.—If an adjustment is made under paragraph (1), and total unit costs subsequently decrease to at least the total unit cost reflected in the compensation rate, then the Secretary may reverse the adjustment previously made under paragraph (1) without regard to any agreement or requirement relating to the renegotiation of contracts or any notice requirement under section 41734.

(3) SIGNIFICANTLY INCREASED COSTS DEFINED.—In this subsection, the term “significantly increased costs” means a total unit cost increase (but not increases in individual unit costs) of 10 percent or more in relation to the total unit cost reflected in the compensation rate, based on the carrier's internal audit of its financial statements if such cost increase is incurred for a period of at least 2 consecutive months.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1151; Pub. L. 108-176, title IV, §402(a), Dec. 12, 2003, 117 Stat. 2543; Pub. L. 112-95, title IV, §427(a), Feb. 14, 2012, 126 Stat. 99; Pub. L. 118-63, title V, §561(h), May 16, 2024, 138 Stat. 1216.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41737(a)	49 App.:1389(f).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §419(e)(2)-(g); 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, 1515.
41737(b)	49 App.:1389(e)(2).	
41737(c)	49 App.:1389(g).	
41737(d)	49 App.:1389(l).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §419(l); added Nov. 5, 1990, Pub. L. 101-508, §9113(b)(1), 104 Stat. 1388-363.

In subsection (a)(1), before clause (A), the word “prescribe” is substituted for “establish” to eliminate an executed word. The words “air service or air transportation under this subchapter” are substituted for “air service under this section” for consistency with the source provisions restated in sections 41733, 41735, and 41736 of the revised title. In clause (C), the words “the service or transportation for which compensation is being provided” are substituted for “such service” for clarity.

In subsection (a)(2), the words “compensation provided to a carrier under this subchapter” are substituted for “required compensation” for clarity.

In subsection (b), the words “air service or air transportation” are substituted for “air service” for consistency with the source provisions restated in sections 41733, 41735, and 41736 of the revised title.

In subsection (d)(2), the reference to fiscal year 1992 is omitted as obsolete.