

## 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. Enhanced essential air service

(a) PROPOSALS.—(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential air service to an eligible place for which basic essential air service is being provided under section 41733 of this title. The proposal shall—

(A) specify the level and type of enhanced essential air service the State or local government considers appropriate; and

(B) include an agreement related to compensation required for the proposed service.

(2) The agreement submitted under paragraph (1)(B) of this subsection shall provide that—

(A) the State or local government or a person pay 50 percent of the compensation required for the proposed service and the United States Government pay the remaining 50 percent; or

(B)(i) the Government pay 100 percent of the compensation; and

(ii) if the proposed service is not successful for at least a 2-year period under the criteria prescribed by the Secretary under paragraph (3) of this subsection, the eligible place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(3) The Secretary shall prescribe by regulation objective criteria for deciding whether enhanced essential air service to an eligible place under this section is successful in terms of—

(A) increasing passenger usage of the airport facilities at the place; and

(B) reducing the amount of compensation provided by the Secretary under this subchapter for that service.

(b) DECISIONS.—Not later than 90 days after receiving a proposal under subsection (a) of this section, the Secretary shall—

(1) approve the proposal if the Secretary decides the proposal is reasonable; or

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

(c) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. Compensation for enhanced essential air service under this section may be paid only for the costs incurred in providing air service to an eligible place that are in addition to the costs incurred in providing basic essential air service to the place under section 41733 of this title. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of enhanced essential air service;

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

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

(d) REVIEW.—(1) The Secretary shall review periodically the enhanced essential air service provided to each eligible place under this section.

(2) For service for which the Government pays 50 percent of the compensation, based on the review and consultation with the affected community and the State or local government or person paying the remaining 50 percent of the compensation, the Secretary shall make appropriate adjustments in the type and level of service to the place.

(3) For service for which the Government pays 100 percent of the compensation, based on the review and consultation with the State or local government submitting the proposal, the Secretary shall decide whether the service has succeeded for at least a 2-year period under the criteria prescribed under subsection (a)(3) of this section. If unsuccessful, the place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(e) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of enhanced essential air service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days' notice before ending, suspending, or reducing the service. This subsection does not relieve the carrier of an obligation under section 41734 of this title.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1148.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41735(a) .....	49 App.:1389(c)(1), (3)(C).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §419(c); 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, 1512.
41735(b) .....	49 App.:1389(c)(2).	
41735(c) .....	49 App.:1389(c)(5)-(7).	
41735(d) .....	49 App.:1389(c)(3)(A), (B).	
41735(e) .....	49 App.:1389(c)(4).	

In subsections (a)(2)(B)(ii) and (d)(3), the words "air service or air transportation for which compensation is paid" are substituted for "air service for which compensation is payable" for consistency with the source provisions restated in sections 41733 and 41736 of the revised title.

In subsection (a)(3), the word “prescribe” is substituted for “establish” for consistency in the revised title.

In subsection (b), before clause (1), the words “issue a decision” are omitted as unnecessary because of the restatement.

In subsection (c)(1)(B), the words “State or local government or person agreeing to pay compensation under this section” are substituted for “government or person agreeing to pay any non-Federal share” for clarity.

In subsection (c)(2), the words “State or local government or person agreeing to pay compensation under this section” are substituted for “non-Federal payments for enhanced essential air service under this subsection” for clarity.

In subsection (d)(2), the words “For service for which the Government pays 50 percent of the compensation” are substituted for “If the enhanced essential air service approved under this subsection is to be at a 50 percent Federal share” because of the restatement. The words “the remaining 50 percent” are substituted for “the non-Federal” for clarity and consistency in this section.

In subsection (d)(3), the words “For service for which the Government pays 100 percent of the compensation” are substituted for “If the enhanced essential air service approved under this subsection is to be at a 100 percent Federal share” because of the restatement.

#### § 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 submit 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.