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

(a) Notice Required.— 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 90 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.— If an air carrier receiving compensation under section 41733 of this title for providing basic essential air service to an eligible place is required to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section, the Secretary shall 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—

(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.

(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 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—

(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.
(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 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.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41734(a)</td>
<td>49 App.:1389(b)(2).</td>
<td></td>
</tr>
<tr>
<td>41734(b)</td>
<td>49 App.:1389(b)(5) (1st sentence).</td>
<td></td>
</tr>
<tr>
<td>41734(c)</td>
<td>49 App.:1389(b)(5) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>41734(d)</td>
<td>49 App.:1389(b)(6)(A).</td>
<td></td>
</tr>
<tr>
<td>41734(e)</td>
<td>49 App.:1389(b)(6)(B).</td>
<td></td>
</tr>
<tr>
<td>41734(f)</td>
<td>49 App.:1389(b)(7).</td>
<td></td>
</tr>
<tr>
<td>41734(g)</td>
<td>49 App.:1389(b)(8).</td>
<td></td>
</tr>
</tbody>
</table>

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.

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


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.”


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


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.