

ATTACHMENT A

Essential Air Service – US Department of Transportation

Overview

The Airline Deregulation Act (ADA), passed in 1978, removed federal control over such areas as fares, routes, and market entry of new airlines. The Essential Air Service (EAS) program was put into place to guarantee that communities that were served by certificated air carriers prior to passage of the ADA maintain a minimum level of scheduled air service. Eligibility requirements for communities to receive EAS have changed over time.

The United States Department of Transportation (the Department) is mandated by Congress to provide eligible EAS communities with access to the National Air Transportation System. This is generally accomplished by subsidizing, when necessary, two round trips a day with 30- to 50-seat aircraft, or additional frequencies with smaller aircraft, usually to a large- or medium-hub airport. As of Fall 2024, the Department provides EAS subsidy to air carriers, or grants to communities through the Alternate EAS (AEAS) program, to 65 communities in Alaska and 112 communities in the 48 contiguous states, Hawaii, and Puerto Rico that otherwise may not receive any scheduled air service.

Most eligible communities are served with traditionally published schedules operated by certificated air carriers and commuter air carriers. Some communities in the contiguous 48 states are served by carriers operating public charter services and some in Alaska served by air taxis. Communities in the AEAS program manage their own air service (currently all public charter service) using grants funded by the Department.

History of EAS

Before airline deregulation, the Government required air carriers to schedule and provide at least two daily round trips at each point on their certificates. During the pre-ADA Congressional discussions, the prospect of allowing carriers to terminate scheduled air service without prior Government approval raised concern that communities with relatively lower traffic levels would lose service entirely as carriers shifted their operations to larger, potentially more lucrative markets. To address this concern, Congress added section 419 to the Federal Aviation Act, which established the EAS program to ensure that smaller communities would retain a link to the National Air Transportation System, with Federal subsidy when necessary. Initially, the program was authorized for ten years. After multiple extensions of that period, the program is now permanently authorized by Congress.

Until January 1, 1985, the Civil Aeronautics Board (CAB) managed this process. The Department assumed management of the EAS program on that date and continues to do so per Congressional mandate.

Community Eligibility

Title 49 U.S.C. § 41731 outlines the eligibility criteria of communities for EAS. In general, a community is eligible if it:

- was an eligible point to receive essential air service under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;
- received scheduled air transportation at any time after January 1, 1990; and
- is not listed in Department of Transportation Orders 89–9–37 and 89–12–52 as a place ineligible for compensation under the essential air service program.

A community is also eligible if it was determined to be eligible for subsidized small community air service between October 1, 1988 and the enactment of Public Law 114-190.

An eligible EAS community is also a community that, at any time during the period between September 30, 2010, and September 30, 2011, inclusive—

- i. received essential air service for which compensation was provided to an air carrier under this subchapter; or
- ii. received a notice of intent to terminate essential air service during this time period, and the Secretary required the air carrier to continue to provide such service to the community.

This eligibility criteria does not apply to Alaska and Hawaii. Communities in Alaska and Hawaii that were eligible at the time of deregulation, in 1978, and later had an EAS determination notice, or were added through other legislation, are eligible for EAS and may begin to receive subsidized air service if the last air carrier at the eligible community files a proper termination notice and the Department determines that the eligible community cannot be served without subsidy. A list of eligible communities is located at <https://www.transportation.gov/policy/aviation-policy/current-list-eligible-eas-communities>.

To remain eligible for EAS, communities must comply with all other applicable EAS eligibility requirements, many of which were amended in the FAA Reauthorization Act of 2024, Pub L. No. 118-63, May 16, 2024, 138 Stat 1025, 1215 (“FAA 2024”). Title 49 U.S.C. § 41731(a)(1)(B) provides that a community must maintain an average of 10 enplanements per service day or more, as determined by the Secretary of Transportation, during the most recent fiscal year, to remain eligible for EAS. Communities that are more than 175 driving miles from the nearest large or medium hub airport are exempt from this requirement under 49 U.S.C. § 41731(d).

In addition, 49 U.S.C. § 41731(a)(1)(C)(iii) requires that EAS communities less than 175 miles from the nearest large or medium hub airport have an average subsidy per passenger, as determined by the Secretary, of less than \$650. Under 49 U.S.C. § 41731(c), this requirement does not apply to EAS eligible communities located in the states of Alaska and Hawaii.

Pursuant to 49 U.S.C. § 41731(a)(1)(C)(i) and (ii), EAS communities that are not less than 175 miles from the nearest large or medium hub airport, except for those in Alaska and Hawaii, must have had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, regardless of the distance to the nearest large- or medium-hub airport. Effective October 1, 2026, this amount is reduced to \$850.

Under 49 U.S.C. § 41731(e)(1), the Secretary may waive, on an annual basis, subsections (a)(1)(B) and (a)(1)(C)(iii) with respect to an eligible place if such place demonstrates to the Secretary's satisfaction that the reason the eligibility requirements of such subsections are not met is due to a temporary decline in demand. Limitations on these waivers begin October 1, 2026, when the Secretary may not provide a waiver for any community (a) in more than two consecutive fiscal years; or (b) in more than five fiscal years within 25 consecutive years.

Instructions for Air Carriers Interested in Providing EAS

When selecting carriers to provide EAS, the Department establishes contracts with terms that generally range from two to four years. This allows for a competitive bidding process to help keep subsidy costs in check and to give communities and the Department opportunities to switch air carriers if appropriate. By design, the contracts for carriers to provide EAS across the nation expire on a staggered basis throughout the year. Thus, the Department is continuously establishing subsidy rates for new contracts.

As the end of a current contract approaches, the Department issues a Request for Proposals (RFP) to all air carriers holding scheduled authority and initiates a carrier-selection proceeding via the community's docket on www.regulations.gov. Air carriers submit service and subsidy proposals in response to the Department's RFPs via email. Each RFP advises the applicants that their proposals should be submitted on a sealed bid, on a "best and final" basis, and set forth the level of service – frequency, aircraft size, and hubs – that would be appropriate for the community given its location and traffic history.

Air Carrier Selection Process

After the Department receives proposals, the Department formally solicits the views of the communities as to which air carrier proposal they prefer. After receiving the communities' views, the Department is directed by 49 U.S.C. § 41733(c)(1) to consider the following factors when making a carrier selection:

- (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 of the service;

(D) whether the air carrier has included a plan in its proposal to market its service 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 49 U.S.C. subsections 40109(a) and (c)-(h); and

(F) the total compensation proposed by the air carrier for providing scheduled air service under this section.

After consideration of the applicable factors have been considered, the Department issues an order designating the selected air carrier and specifying the specific service pattern (routing, frequency and aircraft type), annual subsidy, subsidy-per-flight rates, and effective period of performance for the contract.

Compensation Procedures

The Department pays the carriers in arrears on a per-flight-completed basis. At the beginning of each month, each carrier submits claims for the prior month based on the number of flights that it actually completed in conformance with the contract. Carriers submit invoices requesting a subsidy amount in accordance with maximum allowances stipulated by the contract and detailing the service actually completed, including date of service, aircraft type, routing, and frequency of service, and any actual variations from the service contemplated by the contract. When a carrier is forced by operational exigencies to make ad hoc service adjustments to its service -- aircraft type or routing -- the carrier reports those deviations on its invoice and appropriate adjustments are made. For instance, if the carrier substituted a smaller, less expensive aircraft type than agreed to, perhaps because the larger aircraft had a mechanical problem, the subsidy rate may be reduced accordingly.

Flights that air carriers do not operate in conformance with the terms and stipulations of the terms of the contract, including the service plans outlined in the selection order and any other significant elements of the required service, without prior Departmental approval, may result in such flights being ineligible for compensation. A take-off and landing at the scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. By certain weather cancellations, the Department is referring generally to those situations in which the aircraft takes off for its destination but returns to the origin airport because of extreme weather conditions either en route or at the destination airport -- and the Department reserves the right to request additional information and make a decision on a case-by-case basis. The Department expects that these situations will occur very rarely. Flights that are canceled by the air carrier without pushback from the gate due to inclement weather are not generally compensable; those scenarios should be included in carriers' calculations of their expected completion factor along with mechanical problems, air traffic control issues, crew shortages/flight and duty time issues, etc.

In addition, if the carrier does not schedule or operate its flights in full conformance with the terms of the contract for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the terms of the contract during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the National Air Transportation System provided to the community.

Source: US Department of Transportation Website

<https://www.transportation.gov/policy/aviation-policy/small-community-rural-air-service/essential-air-service>