

ESSENTIAL AIR SERVICE

ATTACHMENT 1

Overview

The Airline Deregulation Act (ADA), passed in 1978, gave air carriers almost total freedom to determine which markets to serve domestically and what fares to charge for that service. The Essential Air Service (EAS) program was put into place to guarantee that small communities that were served by certificated air carriers before airline deregulation maintain a minimal level of scheduled air service. The United States Department of Transportation (the Department) is mandated to provide eligible EAS communities with access to the National Air Transportation System. This is generally accomplished by subsidizing two round trips a day with 30- to 50-seat aircraft, or additional frequencies with aircraft with 9-seat or fewer, usually to a large- or medium-hub airport. The Department currently subsidizes commuter and certificated air carriers to serve approximately 60 communities in Alaska and 115 communities in the lower 48 contiguous states that otherwise would not receive any scheduled air service.

History of EAS

Before airline deregulation, air carriers' operating certificates for most of these communities required air carriers to schedule and provide two daily round trips at each point on their certificates. During the pre-ADA debates, 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. Under this program, the Department determines the minimum level of service required at each eligible community by specifying a hub through which the community is linked to the national network, a minimum number of round trips and available seats that must be provided to that hub, certain characteristics of the aircraft to be used, and the maximum permissible number of intermediate stops to the hub.

Community Eligibility

The Department of Transportation and Related Agencies Appropriations Act, 2000, prohibits the Department from subsidizing EAS to communities located within the 48 contiguous States receiving per passenger subsidy amounts exceeding \$200, unless the communities are located more than 210 miles from the nearest large- or medium-hub airport. On October 9, 2014, the Department issued a Notice of Enforcement Policy announcing how the Department intended to enforce compliance with the requirements of the \$200 cap. The Final Notice of Enforcement Policy on the \$200 cap was issued on October 9, 2014. As stated in that Notice of Enforcement Policy, all communities receiving subsidized EAS had until September 30, 2015, based on data

from October 1, 2014, through September 30, 2015, to ensure compliance with the \$200 subsidy cap or possibly face termination of subsidy eligibility.

The FAA Modernization and Reform Act of 2012 amended 49 U.S.C. § 41731(a)(1)(B) to change the definition of “eligible place” for the purpose of receiving EAS. The amendment states that to be eligible, a community must maintain an average of 10 enplanements or more per service day, as determined by the Secretary, during the most recent fiscal year beginning after September 30, 2012. The legislation exempts locations in Alaska and Hawaii and communities that are more than 175 driving miles from the nearest large- or medium-hub airport.

The Secretary also has the authority to waive the 10-enplanement standard, on an annual basis, if the community can demonstrate that the reason the location averages fewer than 10 enplanements per day is due to a temporary decline in enplanements. 49 U.S.C. § 41731(e).

Among other things, 49 U.S.C. § 41731 states that to be eligible, a community must have had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, as determined by the Secretary of Transportation or face termination of subsidy eligibility, regardless of distance to a hub airport.

The Consolidated and Further Appropriations Act, 2015, Public Law No. 113-235 states, “[T]hat none of the funds in this Act or any other Act shall be used to enter into a new contract with a community located less than 40 miles from the nearest small-hub airport before the Secretary has negotiated with the community over a local cost share.” Therefore, the Department is required to negotiate a local cost share with communities located less than 40 miles from a small-hub.

Instructions for Air Carriers Interested in Providing EAS

When selecting carriers to provide EAS, the Department generally establishes two-year contracts, however, four-year contracts are increasingly common. This allows for the competitive bidding process to keep subsidy costs in check and to give communities and the Department opportunities to switch air carriers if appropriate. Four-year contracts, proposed by a carrier that has a history of providing reliable EAS at a community and supported by that community provide more certainty for communities and carriers, as well as provide more stability for annual subsidy costs for the Department. 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. Near renewal time, the Department issues a Request for Proposals (RFP) approximately 6 to 9 months prior to the expiration of the current contract to all air carriers holding scheduled authority and institutes a carrier-selection proceeding. Air carriers submit service and subsidy proposals in response to the Department’s RFPs via email. Those RFPs advise the applicants that their proposals should be submitted on a sealed bid, “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.

Selection Process

After the Department receives proposals, the Department formally solicits the views of the communities as to which carrier and option they prefer. After receiving the communities' views, the Department is directed by 49 U.S.C. § 41733(c)(1) to consider five factors when making a carrier selection not in Alaska: (1) the demonstrated reliability of the applicant in providing scheduled air service; (2) the contractual and marketing arrangements the applicant has made with a large carrier to ensure service beyond the hub airport; (3) the interline agreements that the applicant has made with larger carriers to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier(s) through one reservation, ticket, and baggage check in; (4) the preferences of the actual and potential users of air transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users of the service; and (5) whether the air carrier has included a plan in its proposal to market its service to the community. In addition, the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, and continued by the Continuing Appropriations Act, 2016, Pub. L. 114-53, provides that when selecting a carrier to provide EAS, the Department may consider the relative subsidy requirements, thus codifying a factor that the Department has considered since the inception of the EAS program.

In Alaska, the Department is required to consider the experience of the applicant in providing scheduled air service, in Alaska, or significant patterns of non-scheduled air service under an exemption granted under § 40109(a) and (c)-(h).

After all of the above applicable factors have been considered, the Department issues a decision designating the successful air carrier and specifying the specific service pattern (routing, frequency and aircraft type), subsidy rate, and effective period of the rate. It is possible to change the terms of the contract during the contract period if the carrier and community agree and the carrier agrees to the same or lower subsidy rate.

Compensation Procedures

The Department pays the carriers in arrears on a per-flight-completed basis. At the beginning of each month, carriers submit 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 would be reduced accordingly.

The carrier understands that it may forfeit its compensation for any flights that it does 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. The carrier understands that an aircraft take-off and landing at its 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. The Department expects that these situations will occur very rarely. Flights that never take off because of weather are not generally compensable; rather, those scenarios should be included in carriers' calculations of their expected completion factor along with mechanical problems, ATC 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.

Reference:

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