

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

**NOTICE REGARDING CURRENT
ADMINISTRATION AND ENFORCEMENT OF
THE ESSENTIAL AIR SERVICE PROGRAM**

I. SUMMARY

The U.S. Department of Transportation Office of the Assistant Secretary for Aviation and International Affairs is providing notice that it will authorize subsidy payments for certain non-completed flights under the Essential Air Service (EAS) Program given the significant reduction in passenger demand caused by the Coronavirus Disease 2019 (COVID-19) public health emergency and the financial impact on air carriers. The Office of Aviation and International Affairs will authorize 50 percent of the contracted per-flight subsidy for flights that are not completed, so long as an EAS air carrier serving a community in the continental United States, Hawaii, and Puerto Rico completes at least one round trip flight a day, six days a week, for that EAS community, and an EAS air carrier serving a community in Alaska completes at least 50 percent of its weekly schedule for that EAS community.

In addition, the Department Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office), a unit within the Office of the General Counsel, is apprising EAS air carriers and eligible communities of the Aviation Enforcement Office's intention not to initiate enforcement action against EAS air carriers for failure to comply with the level-of-service requirements in 49 U.S.C. §§ 41732 and 41733 in situations where the noncompliance takes place during the effective period of this Notice, the significant reduction in passenger demand due to the COVID-19 public health emergency was the cause of the noncompliance, the EAS air carrier complies with the level-of-service requirements provided in this Notice, and the eligible communities do not object to this change in service levels. A community that objects to the above service levels should submit a statement to the relevant docket, as set out in Appendix A, and the Department will work with the community and EAS air carrier to address such objections on a case-by-case basis.

II. BACKGROUND

The EAS Program, administered by the Department under 49 U.S.C. §§ 41731 et seq., ensures that eligible small and rural communities in the United States have access to the national air transportation system, with Federal subsidy where necessary. Currently, 160 eligible communities receive subsidized EAS, and the Department is required to ensure the continuation of EAS at these communities and to oversee the overall operation and management of the EAS Program. Under the EAS Program, when subsidy is needed for an EAS air carrier to serve a community, the Department issues an order to select an air carrier to provide the levels of service

required under Sections 41732 and 41733¹ and enters into a contract with that air carrier² setting the terms for how the Department will pay the compensation. Section 41733(d) of Title 49 of the U.S. Code gives the Department broad discretion to determine when and how to pay such compensation, providing that “[t]he Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate.”

Air carriers that perform EAS are compensated a fixed amount of subsidy per flight based on their overall annual subsidy requests (including estimated costs and revenues), the number of annual scheduled flights, and an assumed completion factor.³ In general, air carriers may seek compensation only for flights that were actually completed; however, the contracts allow for the Department to authorize payment for flights that were not completed for safety reasons or for other circumstances outside of an air carrier’s control. For the latter circumstance, the Department reviews requests for payment for non-completed flights on a case-by-case basis and may require additional documentation and justification by the carrier. Similar relief to EAS carriers has also been granted where airports were closed due to runway construction or repair. For example, in 2016, the Department authorized the reimbursement of certain non-completed flights at 50 percent for the carrier providing EAS at Ogdensburg, NY, due to an airport construction project.

The nationwide impacts of the President’s declaration of a national emergency and State and local actions in response to COVID-19 have had a well-documented impact on the regional airline industry that serves small and rural communities under the EAS Program. COVID-19 cases have been reported in all 50 States as well as the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. As a result, demand for air service and passenger throughput have severely declined. As of April 9, 2020, U.S. airlines were carrying just 4 percent of the passenger volume compared to the same date in 2019.⁴ Air carriers participating in the EAS Program report that they face serious economic consequences.⁵ Several air carriers providing EAS have requested higher subsidy amounts through June 30 due to the COVID-19 public health emergency, or to be compensated fully for flights they cancel because of the COVID-19 public

¹ The requirements for basic essential air service are set forth in 49 U.S.C. § 41732. In general, for a place not in Alaska, minimum service consists of two daily round trips to a hub airport, six days per week. 49 U.S.C. § 41732 (b)(1)(A).

² See 49 U.S.C. § 41737(d) and contract terms set out in Appendix B or C to all EAS air carrier selection orders (see example available at <https://www.regulations.gov/document?D=DOT-OST-2011-0133-0046>. See also *Mesa Air Grp., Inc. v. Dep’t of Transp.*, 87 F.3d 498, 503 (D.C. Cir. 1996) (“The terms of the statute indisputably establish Congress’ intent to make the subsidy agreements contracts[.]”).

³ Air carriers providing EAS to subsidized communities submit claims for their services on a monthly basis, in arrears, after the end of each month.

⁴ See TSA Checkpoint Data, available at <https://www.tsa.gov/coronavirus/passenger-throughput>.

⁵ See Statement by Regional Airline Association President & CEO Faye Malarkey Black on Passage of the CARES Act, March 27, 2020, available at <https://www.raa.org/statement-from-raa-president-ceo-faye-malarkey-black-on-passage-of-the-cares-act/>.

health emergency. Some of these EAS air carriers have indicated their intention to serve many communities with approximately a 50 percent reduction in scheduled flights.

III. DISCUSSION

The Department finds that it is necessary under the circumstances of the COVID-19 public health emergency to address the viability of EAS across the country. The Department recognizes that the loss of passenger revenue for EAS air carriers is unprecedented, and many EAS air carriers are seeking higher subsidy amounts, reductions in their scheduled flights, and full compensation for flights cancelled due to COVID-19 issues, through the month of June. More than 30 communities have expressed support for requests by their EAS air carriers to reduce the number of flights at their airports.⁶ The Department is required to ensure eligible communities have access to the national air transportation system, and under normal circumstances, where the impact of an issue would be specific to a community or region, the Department would address level of service requirements on a case-by-case basis.⁷ Given the nationwide impact of this public health emergency and the Secretary's responsibility to oversee the EAS Program, the Department has determined that a public notice regarding the administration and enforcement of the EAS program is appropriate in these circumstances.

Administration of EAS Program

During the effective period of this Notice, the Department's Office of Aviation and International Affairs will administer payments under the Department's EAS contracts consistent with past practice regarding payment for certain non-completed flights under circumstances beyond the control of EAS air carriers. As discussed above, EAS air carriers are facing unforeseen and difficult economic challenges due to the COVID-19 public health emergency, most notably the loss of passenger revenue. Many EAS air carriers, including those serving the greatest number of communities in the EAS Program, have approached the Department for ways to address this dramatic change of circumstances in revenue. The Department understands, both anecdotally and from reviewing air carrier EAS subsidy proposals over the years, that passenger revenue can represent 50 percent or more of an EAS air carrier's revenue in an EAS market. EAS carriers rely on passenger revenue to make EAS markets commercially viable, and an important longer-term departmental objective in the EAS Program is to maintain as many commercially viable EAS air carriers as possible to control program costs and promote competitive service levels at subsidized EAS communities. Authorizing payment of 50 percent of the per-flight subsidy for non-completed flights recognizes the loss of passenger revenue and other potential losses in the current, highly unusual environment, while supporting the longer-term departmental objective of controlling costs and promoting competition. Accordingly, the Department will authorize payment of 50 percent of the per-flight subsidy for flights that are not completed due to the impact of COVID-19, provided an EAS air carrier serving a community in the continental United States, Hawaii, and Puerto Rico completes one round trip flight a day, six days a week, for each

⁶ See Letter of Timothy Rogers, Executive Director, Salina Regional Airport, April 3, 2020, available at <https://www.regulations.gov/document?D=DOT-OST-2002-11376-0204>.

⁷ See 49 U.S.C. § 41732(c).

subsidized EAS community, and an EAS air carrier serving a community in Alaska completes at least 50 percent of its weekly schedule for each subsidized EAS community. The impact of the COVID-19 public health emergency makes it inefficient and unnecessary to address requests from EAS air carriers for payment for non-completed flights on a case-by-case basis, as the Department typically does. The Department believes that the approach set forth in this Notice to help EAS carriers in light of the unique circumstances presented by the COVID-19 public health emergency will help ensure the continuation of EAS at eligible communities and thereby maintain those communities' connectivity to the national air transportation system during the COVID-19 public health emergency, the subsequent period of economic recovery, and beyond.

Enforcement of EAS Program

This Notice does not waive the requirements under Section 41732 or 41733. However, unless an eligible community objects to changes in service levels based on its EAS needs, the Aviation Enforcement Office will exercise its discretion and not pursue enforcement action against an EAS air carrier for non-compliance with the service level obligations in Sections 41732 and 41733 if: (1) the non-compliance occurs during the effective period of this Notice; (2) the significant reduction in passenger demand due to the COVID-19 public health emergency was the cause of the noncompliance; and (3) an EAS air carrier in the continental United States, Hawaii, and Puerto Rico completes at least one round trip flight a day, six days a week, for each subsidized EAS community, and an EAS air carrier serving a community in Alaska completes at least 50 percent of its weekly schedule for each subsidized EAS community. A community that objects to the above service levels should submit a statement to the relevant docket, as set out in Appendix A, and the Department will work with the community and EAS air carrier to address such objections on a case-by-case basis. The Department again emphasizes its expectation that, nationwide, each EAS air carrier will use its best efforts to maintain the community's level of service, staying in close communication with its community, and EAS air carriers serving Alaska should especially keep in mind the State's unique needs for passenger, cargo, and mail services.

This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a safeguard from departmental enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way. Also, this action does not limit the Department's authority under 49 U.S.C. § 41734 to hold in a carrier after the carrier submits a termination notice.

IV. WITHDRAWAL OF RELIEF

This Notice is effective as of March 1, 2020, the date that the COVID-19 outbreak in the United States constituted a national emergency,⁸ and will remain in effect through June 30, 2020, unless extended by the Department.

By:

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Dated: April 29, 2020

⁸ On March 13, 2020, President Trump issued a [Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus \(COVID-19\) Outbreak](#) and described sweeping actions to control the spread of COVID-19 in the United States. In that Proclamation, President Trump found that the COVID-19 outbreak in the United States constituted a national emergency beginning on March 1, 2020.

Appendix A

Docket Numbers for Communities Receiving Subsidized EAS Service

Although this list includes communities receiving Alternate Essential Air Service (AEAS), this Notice does not apply to grant agreements for those communities.

<u>State</u>	<u>EAS Community</u>	<u>Regulations.gov docket</u>
AK	Adak	OST-2000-8556
AK	Akhiok	OST-2017-0046
AK	Akutan	OST-2000-7068
AK	Alitak	OST-2000-6945
AK	Amook Bay	OST-2000-6945
AK	Angoon	OST-2006-25542
AK	Atka	OST-1995-363
AK	Central	OST-1998-3621
AK	Chignik	OST-2015-0245
AK	Chignik Lake	OST-2015-0245
AK	Chisana	OST-1998-4574
AK	Circle	OST-1998-3621
AK	Cordova	OST-1998-4899
AK	Diomedes	OST-2009-0260
AK	Egegik	OST-2015-0242
AK	Ekwok	OST-2015-0175
AK	Elfin Cove	OST-2002-11586
AK	Excursion Inlet	OST-2002-12014
AK	False Pass	OST-2015-0059
AK	Gulkana	OST-1995-492
AK	Gustavus	OST-1998-4899
AK	Healy Lake	OST-1998-3546
AK	Hydaburg	OST-1999-6245
AK	Igiugig	OST-2015-0176
AK	Kake	OST-2008-0217
AK	King Cove	OST-2015-0177
AK	Kitoy Bay	OST-2000-6945
AK	Koliganek	OST-2016-0011
AK	Lake Minchumina	OST-2008-0237
AK	Levelock	OST-2015-0243
AK	Manley Hot Springs	OST-2004-17563
AK	May Creek	OST-1995-492
AK	McCarthy	OST-1995-492
AK	McGrath	OST-2017-0108
AK	Minto	OST-2004-17563
AK	Moser Bay	OST-2000-6945
AK	New Stuyahok	OST-2016-0010
AK	Nikolski	OST-1995-363
AK	Olga Bay	OST-2000-6945
AK	Pelican	OST-2002-11586
AK	Perryville	OST-2015-0116
AK	Petersburg	OST-1998-4899
AK	Pilot Point	OST-2015-0178
AK	Port Alexander	OST-1999-6244

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Docket Numbers for Communities Receiving Subsidized EAS Service

AK	Port Bailey	OST-2000-6945
AK	Port Heiden	OST-2016-0012
AK	Port Williams	OST-2000-6945
AK	Seal Bay	OST-2000-6945
AK	South Naknek	OST-2015-0060
AK	St. George	OST-2017-0109
AK	St. Paul Island	OST-2019-0038
AK	Tatitlek	OST-2013-0030
AK	Tenakee	OST-2006-25542
AK	Twin Hills	OST-2015-0117
AK	Uganik	OST-2000-6945
AK	Ugashik	OST-2015-0179
AK	West Point	OST-2000-6945
AK	Wrangell	OST-1998-4899
AK	Yakutat	OST-1998-4899
AK	Zachar Bay	OST-2000-6945
AL	Muscle Shoals	OST-2000-7856
AR	El Dorado/Camden	OST-1997-2935
AR	Harrison	OST-1997-2935
AR	Hot Springs	OST-1997-2935
AR	Jonesboro	OST-1997-2935
AZ	Page	OST-1997-2694
AZ	Prescott	OST-1996-1899
AZ	Show Low	OST-1998-4409
CA	Crescent City	OST-1997-2649
CA	El Centro	OST-2008-0299
CA	Merced	OST-1998-3521
CO	Alamosa	OST-1997-2960
CO	Cortez	OST-1998-3508
CO	Pueblo	OST-1999-6589
GA	Macon	OST-2007-28671
HI	Hana	OST-1999-6502
HI	Kamuela	OST-1997-2833
IA	Burlington	OST-2001-8731
IA	Fort Dodge	OST-2001-10682
IA	Mason City	OST-2001-10684
IA	Waterloo	OST-2011-0132
IL	Decatur	OST-2006-23929
IL	Marion/Herrin	OST-2000-7881
IL	Quincy/Hannibal, MO	OST-2003-14492
KS	Dodge City	OST-1998-3502
KS	Garden City	OST-1998-3503
KS	Hays	OST-1998-3497
KS	Liberal/Guymon, OK	OST-1998-3498
KS	Salina	OST-2002-11376
KY	Owensboro	OST-2000-7855
KY	Paducah	OST-2009-0299

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Docket Numbers for Communities Receiving Subsidized EAS Service

ME	Augusta/Waterville	OST-1997-2784
ME	Bar Harbor	OST-2011-0185
ME	Presque Isle/Houlton	OST-2000-8012
ME	Rockland	OST-1997-2784
MI	Alpena	OST-2009-0300
MI	Escanaba	OST-2003-15128
MI	Hancock/Houghton	OST-2009-0302
MI	Iron Mountain/Kingsford	OST-1999-5175
MI	Ironwood/Ashland, WI	OST-1996-1266
MI	Manistee/Ludington	OST-1996-1711
MI	Muskegon	OST-2009-0301
MI	Pellston	OST-2011-0133
MI	Sault Ste. Marie	OST-2009-0303
MN	Bemidji	OST-2011-0134
MN	Brainerd	OST-2011-0135
MN	Chisholm/Hibbing	OST-2003-15796
MN	International Falls	OST-2009-0304
MN	Thief River Falls	OST-2001-10642
MO	Cape Girardeau/Sikeston	OST-1996-1559
MO	Fort Leonard Wood	OST-1996-1167
MO	Kirksville	OST-1997-2515
MS	Greenville	OST-2008-0209
MS	Laurel/Hattiesburg	OST-2001-10685
MS	Meridian	OST-2008-0112
MS	Tupelo	OST-2009-0305
MT	Butte	OST-2011-0136
MT	Glasgow	OST-1997-2605
MT	Glendive	OST-1997-2605
MT	Havre	OST-1997-2605
MT	Sidney	OST-1997-2605
MT	West Yellowstone	OST-2003-14626
MT	Wolf Point	OST-1997-2605
ND	Devils Lake	OST-1997-2785
ND	Dickinson	OST-1995-697
ND	Jamestown (ND)	OST-1997-2785
NE	Alliance	OST-2000-8322
NE	Chadron	OST-2000-8322
NE	Grand Island	OST-2002-13983
NE	Kearney	OST-1996-1715
NE	McCook	OST-1997-3005
NE	North Platte	OST-1999-5173
NE	Scottsbluff	OST-2003-14535
NH	Lebanon/White River Jct.	OST-2003-14822
NM	Carlsbad	OST-2002-12802
NM	Clovis	OST-1996-1902
NM	Silver City/Hurley/Deming	OST-1996-1903

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Docket Numbers for Communities Receiving Subsidized EAS Service

NY	Massena	OST-2012-0163
NY	Ogdensburg	OST-1997-2842
NY	Plattsburgh	OST-2003-14783
NY	Saranac Lake/Lake Placid	OST-2000-8025
NY	Watertown (NY)	OST-2013-0188
OR	Pendleton	OST-2004-19934
PA	Altoona	OST-2002-11446
PA	Bradford	OST-2003-14528
PA	DuBois	OST-2004-17617
PA	Johnstown	OST-2002-11451
PA	Lancaster	OST-2002-11450
PR	Mayaguez	OST-2004-19622
SD	Aberdeen	OST-2011-0137
SD	Pierre	OST-2011-0138
SD	Watertown (SD)	OST-2001-10644
TN	Jackson	OST-2000-7857
TX	Victoria	OST-2005-20454
UT	Cedar City	OST-2003-16395
UT	Moab	OST-1997-2827
UT	Vernal	OST-1997-2706
VA	Staunton	OST-2002-11378
VT	Rutland	OST-2005-21681
WI	Eau Claire	OST-2009-0306
WI	Rhineland	OST-2011-0109
WV	Beckley	OST-1997-2761
WV	Clarksburg/Fairmont	OST-2005-20736
WV	Greenbrier/White Sulphur Springs/Lewisburg	OST-2003-15553
WV	Morgantown	OST-2005-20735
WV	Parkersburg/Marietta, OH	OST-2005-20734
WY	Cody	OST-2011-0121
WY	Laramie	OST-1997-2958