

## WHAT IS ESSENTIAL AIR SERVICE (EAS)?

Prepared by the Office of Aviation Analysis, U. S. DOT  
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### **BACKGROUND:**

In 1978, when the Airline Deregulation Act (ADA) was enacted, 746 communities in the United States and its territories were listed on air carrier certificates issued under section 401 of the Federal Aviation Act of 1958. Before deregulation, air carriers' operating certificates for most of these communities required 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 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<sup>1</sup> to the Federal Aviation Act, which established the EAS program, which today is administered by the Department of Transportation, to ensure that smaller communities would retain a link to the national air transportation system, with Federal subsidy where 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. The program's guidelines were codified by rulemaking as a Policy Statement of the Department in Volume 14, Code of Federal Regulations (CFR), Part 398. Where necessary, the Department pays subsidy to a carrier to ensure that the specified level of service is provided. Most eligible points, of course, do not require subsidized service; as of April 1, 2009, the Department was subsidizing service at 108 communities in the contiguous 48 states, Hawaii, and Puerto Rico, and 45 in Alaska.

Congress initially authorized the program for a ten-year period, through October 23, 1988. Its interest in ensuring service at small communities remained strong, and before the program's expiration, Congress enacted the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223, which expanded the program and extended it for ten more years, through fiscal year 1998. In so far as service guarantees were concerned, Public Law 100-223 amended section 419 of the Federal Aviation Act by codifying many of the Department's guidelines in 14 CFR 398 as well as specifying an increased minimum level of service—termed "basic" EAS—for any community that was eligible for service under the earlier program and actually receiving service during any part of fiscal year 1988. In addition, Public Law 100-223 provided for a higher level of service—termed "enhanced" EAS—which communities could obtain either by agreeing to a subsidy-sharing commitment or by agreeing to risk the loss of basic service if the Department-funded enhanced service failed to meet agreed levels of passenger use.

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<sup>1</sup> Effective June 1994, the Federal Aviation Act was recodified as subtitles II, III, and V-X of title 49, United States Code, "Transportation." The former section 419 of the Federal Aviation Act is now 49 U.S.C. 41731--41742.

Finally, the new law contained provisions by which new communities could participate in the program if they were willing to pay part of the total subsidy.

The various statutorily-mandated elements comprising basic EAS exceeded the minimums that had prevailed under the Department's discretionary regulatory guidelines since 1978, but, at the time that Public Law 100-223 was enacted, program funding was insufficient for the Department to implement the service upgrades to meet the new standards, much less for what would be necessary to support enhanced service or service at new points. In fact, during fiscal year 1990, twenty-six communities were made ineligible as a result of reduced funding.<sup>2</sup>

However, under the Omnibus Budget Reconciliation Act of 1990, Public Law 100-508, Congress committed to authorize funds (\$38.6 million annually), beginning in fiscal year 1992, that would enable the Department to implement the upgrades necessary to ensure all remaining eligible communities of basic EAS as envisioned by Public Law 100-223. (No specific provision was made in this appropriation for enhanced service or for service at new points.) The revised levels of basic EAS were authorized by the Department by the end of fiscal year 1991. In general, Public Law 100-223 required the following elements of basic EAS:

- (a) service to a hub airport, defined as an FAA-designated medium- or large-hub airport,
- (b) service with no more than one intermediate stop to the hub,
- (c) service with aircraft having at least 15 passenger seats at communities that averaged more than 11 passenger enplanements a day in any calendar year from 1976-1986,
- (d) under certain circumstances, service with pressurized aircraft, and
- (e) flights at reasonable times taking into account the needs of passengers with connecting flights.

In addition, Public Law 100-223 authorized the Department to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of subsidy for the provision of EAS, effective fiscal year 1992. (Previously, the program was funded from the general fund.) The Department's budget for fiscal year 1994, set by the Department of Transportation and Related Agencies Appropriations Act, 1994 (Public

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<sup>2</sup> <sup>1</sup> Winslow, Arizona; Blythe, California; Moultrie/Thomasville, Georgia; Elkhart and Kokomo/Logansport/Peru, Indiana; Clinton, Iowa; Hutchinson and Independence/Parsons/Coffeyville, Kansas; Lewiston/Auburn, Maine; New Bedford/Fall River, Massachusetts; Battle Creek, Benton Harbor/St. Joseph, and Jackson, Michigan; Columbus and Sidney, Nebraska; Rocky Mount/Wilson, North Carolina; Mansfield, Ohio; McAlester, Oklahoma; Salem, Oregon; Clarksville, Tennessee/Ft. Campbell/Hopkinsville, Kentucky; Brownsville and Temple, Texas; Montpelier/Barre, Vermont; and Beloit/Janesville and Manitowoc, Wisconsin.

Law 103-122), provided that the program's annual appropriation be reduced by \$5.2 million, to \$33.4 million. Thus, the Department, using criteria set by Congress in Public Law 103-122,<sup>3</sup> was initially compelled to discontinue subsidy support for EAS at an additional eleven communities,<sup>4</sup> effective December 1, 1993, and at Trenton, New Jersey, effective June 8, 1994. The EAS program was again funded at \$33.4 million for fiscal year 1995. The Department again had to discontinue subsidy support for a community, Danville, Illinois, effective November 30, 1994.

For fiscal year 1996, Congress appropriated \$22.6 million to the Department to fund the EAS program. This represented a \$10.8 million, or about one-third, reduction from the \$33.4 million that had been appropriated for the program for fiscal years 1994 and 1995. This funding level was insufficient to maintain full EAS at fiscal year 1995 levels at all eligible points that were receiving subsidized service. In order to fit the program to the appropriation, the Department looked for guidance to the Conference Committee Report and noted that:

The conferees fully intend that all essential air service communities that are participating in the program in fiscal year 1995 will continue to be eligible for participation in the essential air service program in fiscal year 1996, albeit at reduced levels. The conferees expect that the Department may be required to make pro-rata reductions in the subsidy or daily/weekly service levels to manage the funding reductions included in the conference report.

Consequently, unlike in earlier rounds of funding cuts in which certain communities were eliminated entirely from subsidized-service eligibility, the Department was directed to implement subsidy reductions across the board. The Department did this by discontinuing subsidy support for weekend service, service to more than one hub, and service in excess of two round trips each weekday. (See Order 95-11-28, November 17, 1995, for a full discussion.) During fiscal year 1996 the Department also discontinued subsidy support for three communities that failed the statutory eligibility requirements originally set by Public Law 103-122: Danville, Virginia; Worthington, Minnesota; and Anniston, Alabama.

The EAS program was funded at \$25.9 million for fiscal year 1997. No structural changes were made.

Beginning in fiscal year 1998, Congress funded the EAS program at \$50 million a year by the Rural Air Service Survival Act, which is part of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264. That legislation also removed the September 30, 1998, sunset date when the program would otherwise have ended. The Department has used these funds to restore compliance with the statutory

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<sup>3</sup> A community is ineligible to receive subsidized EAS if it is within 70 miles of a medium or large hub, or if its subsidy exceeds \$200 per passenger (unless it is more than 210 miles from a medium or large hub.)

<sup>4</sup> Gadsden, Alabama; Stockton, California; Galesburg, Illinois; Bloomington, Muncie/Anderson/New Castle, and Terre Haute, Indiana; Laconia, New Hampshire; Santa Fe, New Mexico; Paris, Texas; Hot Springs, Virginia; and Elkins, West Virginia.

EAS requirements established in the Airport and Airway Safety and Capacity Expansion Act of 1987 (discussed above).

The Fiscal Year 2000 Appropriations Act, PL-106-69, made permanent a requirement that no EAS subsidies will be provided to communities other than Alaska that are located fewer than 70 highway miles from the nearest large or medium hub airport, or that require a rate of subsidy per passenger in excess of \$200 unless the community is greater than 210 surface miles from the nearest large or medium hub airport.

The EAS statute was once again amended by Congress in *Vision 100—Century of Aviation Reauthorization Act*, PL 108-176, December 12, 2003. Congress increased the authorized appropriation, in addition to the \$50 million in overflight fees, from \$15 million to \$77 million. Moreover, Congress created community and regional choice programs that include the Alternate EAS Pilot Program and the Community Flexibility Pilot Program. To date, no community has applied to participate in either of these programs. Congress also created a code-sharing pilot program that gives the Secretary the discretion to require air carriers providing subsidized EAS and major air carriers serving large hub airports to participate in code-share arrangements. On July 12, 2005, the Department issued a Notice requesting comments on and interest in participating in the code-sharing pilot program. Comments received by communities, air carriers and other interested parties were predominately against the concept of forcing air carriers into code-share agreements. Vision-100 also created the EAS local participation program in which 10 EAS communities located in proximity to hub airports are required to assume 10 percent of their EAS subsidy costs for a 4-year period. However, each subsequent Appropriation prohibited the Secretary from enacting that provision, and that prohibition has now been made permanent. Section 411, of Vision-100, created the National Commission on Small Community Air Service; however, this section has never been funded so it has not been established.

After the attacks of 9-11, all carriers suffered dramatic decreases in traffic and increases in revenue due to additional security requirements. Carriers not operating subsidized service pursuant to EAS contracts reduced service to reflect the lower traffic levels. However, carriers operating under EAS contracts could not adjust their service, because contracts specify that minimum service levels be provided. Moreover, those new security-screening burdens were particularly onerous on the short-haul service typical provided at subsidized communities, because short-haul passengers could readily drive to nearby hubs in lieu of being screened. Because the existing contracts were no longer remunerative, the Department granted program-wide relief by DOT Order 2001-2-11. Between October 1, 2001, and October 1, 2008, the number of subsidized EAS communities outside of Alaska increased from 74 to 107.

Finally, Section 409, of Vision-100 allowed communities that had lost their EAS eligibility due to a determination of their proximity to the nearest hub airport, to petition the Secretary to review such determination. (That provision was effective from the date of enactment backwards in time two years; thus, it no longer is in force.) In reviewing such a petition the Secretary was directed to determine the highway mileage between the

community and the nearest medium hub airport or large hub airport by identifying the most commonly used route. If a community was deemed eligible to be reinstated in the program, such determination was only valid until September 30, 2007.