



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 5th day of March, 2020

**ALAMOSA, COLORADO
ALTOONA, PENNSYLVANIA
AUGUSTA/WATERVILLE, MAINE
BRADFORD, PENNSYLVANIA
DUBOIS, PENNSYLVANIA
EL CENTRO, CALIFORNIA
FORT DODGE, IOWA
FORT LEONARD WOOD, MISSOURI
JACKSON, TENNESSEE
JOHNSTOWN, PENNSYLVANIA
LANCASTER, PENNSYLVANIA
MASON CITY, IOWA
MERCED, CALIFORNIA
MORGANTOWN, WEST VIRGINIA
MUSCLE SHOALS, ALABAMA
OWENSBORO, KENTUCKY
PARKERSBURG, WEST VIRGINIA/MARIETTA, OHIO
VICTORIA, TEXAS**

**DOT-OST-1997-2960
DOT-OST-2002-11446
DOT-OST-1997-2784
DOT-OST-2003-14528
DOT-OST-2004-17617
DOT-OST-2008-0299
DOT-OST-2001-10682
DOT-OST-1996-1167
DOT-OST-2000-7857
DOT-OST-2002-11451
DOT-OST-2002-11450
DOT-OST-2001-10684
DOT-OST-1998-3521
DOT-OST-2005-20735
DOT-OST-2000-7856
DOT-OST-2000-7855
DOT-OST-2005-20734
DOT-OST-2005-20454**

Under 49 U.S.C. § 41731 *et seq.*

**ORDER TENTATIVELY TERMINATING ESSENTIAL AIR SERVICE ELIGIBILITY
AT CERTAIN COMMUNITIES AND TENTATIVELY GRANTING WAIVERS UNDER
SECTION 458 OF PUBLIC LAW 115-254 FOR OTHER COMMUNITIES**

Summary

By this Order, the U.S. Department of Transportation (the Department) has tentatively determined that the 18 communities listed above required a subsidy-per-passenger in excess of \$200 (the "Subsidy Cap"), a requirement to remain in the Essential Air Service (EAS) program.

The Department has tentatively determined that 12 communities qualify for a waiver from the Subsidy Cap because each of these community's subsidy-per-passenger during Fiscal Year 2019 (FY2019) is lower than the subsidy-per-passenger during any of the three previous fiscal years. The 12 communities are: Alamosa, CO; Altoona, PA; Fort Dodge, IA; DuBois, PA; Jackson, TN; Johnstown, PA; Lancaster, PA; Mason City, IA; Morgantown, WV; Owensboro, KY;

Parkersburg, WV/Marietta, OH; and Victoria, TX. The Department is tentatively granting these communities a waiver under Section 426(d)(1) of Public Law 112-95, as added by Section 458 of Public Law 115-254 (“Section 426(d)(1)”). See Appendix A.

The Department is tentatively granting waivers for Augusta/Waterville, ME; Bradford, PA; El Centro, CA; and Muscle Shoals, AL, because the subsidy-per-passenger during FY2019 is less than 10 percent higher than the highest subsidy-per-passenger from any of the three previous fiscal years. These waivers are tentatively granted under Section 426(d)(2) of Public Law 112-95 as added by Section 458 of Public Law 115-254 (“Section 426(d)(2)”). See Appendix A. A community may receive a waiver under Section 426(d)(2) only once.

Fort Leonard Wood, MO, and Merced, CA, did not qualify for waivers under Section 426(d)(1) or Section 426(d)(2), and, thus, their eligibility for EAS is tentatively terminated. See Appendix A. Either community may petition for a waiver from the Subsidy Cap, under Section 426(c) of Public Law 112-95, as described in this Order.

All 18 communities may file objections to the Department’s tentative findings. The Department will not finalize the tentative findings and, for Fort Leonard Wood and Merced, would not terminate service, until objections and petitions for waivers are considered and a final order is issued.

Objections to the Department’s tentative decision and petitions for waivers from the Subsidy Cap are due within 20 days after the service date of this Order. In addition, the communities identified in this Order may work with an air carrier to submit a proposal to the Department that complies with the Subsidy Cap, as further described in this Order.

Background

The FAA Modernization and Reform Act, Pub. L. 112-95 (Feb. 14, 2012) (FAA 2012), amended 49 U.S.C. § 41731(a) to change the definition of “eligible place” for the purpose of receiving EAS by adding a new subsection (1)(B). Subsection (1)(B) states that, to be an eligible place for EAS, a community must have averaged 10 or more enplanements per service day, as determined by the Secretary, during the most recent fiscal year beginning after September 30, 2012. This requirement does not apply to locations in Alaska and Hawaii and communities that are more than 175 driving miles from the nearest large- or medium-hub airport.¹ The Secretary may waive the 10-enplanement requirement, on an annual basis, if the community demonstrates to the Secretary’s satisfaction that the reason the location averages fewer than 10 enplanements per day is due to a temporary decline in enplanements.²

The Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. 106-69 (Oct. 9, 1999), prohibits the Department from subsidizing EAS for communities located within the 48 contiguous States when per passenger subsidy amounts exceed \$200, unless the communities are located more than 210 miles from the nearest large- or medium-hub airport. FAA 2012 authorized the Secretary of Transportation to waive the Subsidy Cap, subject to the availability of funds, on a case-by-case basis, for a limited period of time. Pub. L. 112-95, §

¹ See 49 U.S.C. § 41731(c) and (d).

² See 49 U.S.C. § 41731(e).

426(c). The FAA Reauthorization Act of 2018, Public Law 115-254 (Oct. 15, 2018) (FAA 2018), amended this provision to add a new subsection (d), which states:

- (1) The Secretary shall waive application of the subsidy-per-passenger cap described under subsection (c) if the Secretary finds that the community's subsidy-per-passenger for a fiscal year is lower than the subsidy-per-passenger for any of the 3 previous fiscal years.
- (2) The Secretary shall waive application of the subsidy-per-passenger cap if the subsidy-per-passenger for a fiscal year is less than 10 percent higher than the highest subsidy-per-passenger from any of the 3 previous fiscal years. The Secretary may only waive application of the subsidy-per-passenger cap under this paragraph once per community.
- (3) Nothing in this subsection shall be construed to limit the Secretary's ability under subsection (c) to waive application of the subsidy-per-passenger cap.

The Department enforces the Subsidy Cap consistent with the policy and process described in the Essential Air Service Enforcement Policy issued on October 9, 2014.³

Methodology and Enplanement History

To determine whether a community that is eligible for EAS ("EAS community") is subject to the 10-enplanement-per-day and Subsidy Cap requirements, the Department must determine the community's distance, by driving miles, to the nearest large- or medium-hub airport. Distance is measured as the shortest driving distance from the center of the EAS community to the nearest large- or medium-hub airport.⁴

In calculating enplanements per day, the Department added the total annual origin and destination passenger numbers for FY2019 and divided the sum by two, to show passengers in one direction (enplanements at the EAS community) for the entire fiscal year. The quotient was then divided by 313 days, which yields the average daily enplanements at the EAS community. The Department does not use 365 days per year in its calculations because the typical EAS contract provides for the equivalent of six-days-a-week service.⁵

The subsidy-per-passenger was calculated by dividing the annual subsidy actually paid to the air carrier for providing EAS at the EAS community by the total number of enplanements and deplanements at the EAS community on the subsidized EAS air carrier for FY2019, *i.e.*, from October 1, 2018, through September 30, 2019.⁶

³ 79 Fed. Reg. 60951.

⁴ This method of calculating distance to the nearest large- or medium-hub airport is consistent with longstanding Department practice. *See* 54 Fed. Reg. 52766 (Dec. 22, 1989) (amending 14 CFR Part 398).

⁵ For example, the Department typically subsidizes two round trips a day, Monday through Friday, and two round trips over the weekend (12 round trips a week) or three round trips each weekday and over the weekend (18 a week). Given this, the Department uses 313 days (52 weeks x 6 days = 312 + one day = 313), instead of 365 days, in its calculations when measuring compliance with these EAS requirements.

⁶ The Essential Air Service Enforcement Policy stated that the Department would calculate per passenger subsidy using annual subsidy contract amounts, but would consider using the actual subsidies paid to calculate a

Tentative subsidy-per-passenger calculations for FY2019

State	EAS Community	FY2019 Passenger Traffic (Enplanements and Deplanements)*	FY2019 Actual Subsidy Paid	FY2019 Subsidy-per-passenger
AL	Muscle Shoals	11,266	\$2,781,656	\$247
CA	El Centro	10,062	\$2,496,136	\$248
CA	Merced	13,436	\$3,125,653	\$233
CO	Alamosa	14,208	\$2,884,080	\$203
IA	Fort Dodge	12,792	\$2,990,268	\$234
IA	Mason City	13,325	\$2,998,638	\$225
KY	Owensboro	9,812	\$2,221,146	\$226
ME	Augusta/Waterville	10,293	\$2,106,546	\$205
MO	Fort Leonard Wood	10,067	\$2,956,157	\$294
PA	Altoona	7,318	\$2,563,219	\$350
PA	Bradford	8,012	\$2,380,048	\$297
PA	DuBois	11,022	\$3,206,927	\$291
PA	Johnstown	11,291	\$3,056,926	\$271
PA	Lancaster	10,685	\$2,540,127	\$238
TN	Jackson	7,381	\$1,918,976	\$260
TX	Victoria	9,615	\$2,934,891	\$305
WV	Morgantown	12,228	\$3,167,700	\$259
WV	Parkersburg/Marietta, OH	7,808	\$1,916,970	\$246
* USDOT, Bureau of Transportation Statistics, T100 Market				

Decision

First, the Department determines that all EAS communities subject to the 10-enplanement requirement met that requirement in FY2019.

Second, the Department has tentatively determined that all 18 communities at issue here are within 210 miles of the nearest large- or medium-hub airport and, thus, are subject to the Subsidy Cap. See Appendix C. Further, the Department has tentatively determined that all 18 communities at issue here required a subsidy-per-passenger in excess of the Subsidy Cap in FY2019. The table above lists the communities that the Department has tentatively determined to be noncompliant with the Subsidy Cap, their total enplanements and deplanements in FY2019, the actual subsidy paid to air carriers providing EAS, and the per passenger subsidy for FY2019.

community's average per passenger subsidy, upon request. For efficiency, the Department has decided to rely on its calculation of actual subsidies paid in this enforcement action. For all communities, the average subsidy-per-passenger based on actual subsidies paid is lower than the annual subsidy contract amounts because of flight completion rates. Thus, the Department finds that all communities subject to enforcement in this Order benefit from the use of actual subsidies paid. Comments are welcome on this.

Third, the Department tentatively finds that Alamosa, CO; Fort Dodge, IA; Mason City, IA; Owensboro, KY; Altoona, PA; DuBois, PA; Johnstown, PA; Lancaster, PA; Jackson, TN; Victoria, TX; Morgantown, WV; and Parkersburg, WV/Marietta, OH, had a subsidy-per-passenger in FY2019 that was lower than the subsidy-per-passenger for any of the three previous fiscal years, as described in Appendix A. If the Department later finalizes these findings, the Secretary shall waive application of the Subsidy Cap as required by Section 426(d)(1).

Fourth, the Department tentatively finds that Augusta/Waterville, ME; Bradford, PA; El Centro, CA; and Muscle Shoals, AL, had a subsidy-per-passenger in FY2019, that was less than 10 percent higher than the highest subsidy-per-passenger from any of the three previous fiscal years, as described in Appendix A. None of these communities has previously received a waiver under Section 426(d)(2). If the Department later finalizes these findings, the Secretary shall waive application of the Subsidy Cap as required by Section 426(d)(2). A community may only receive a Section 426(d)(2) waiver one time.

Finally, after careful consideration of this matter, the Department has tentatively decided to terminate the eligibility of Fort Leonard Wood, MO, and Merced, CA. These communities may petition the Department for a waiver of the Subsidy Cap under Section 426(c), as discussed below.

Objections

Objections submitted in response to this Order should be strictly limited to disputing the tentative findings contained in this Order, i.e., the mileage, subsidy calculations, or passenger data. Such objections should be fully documented and should contain complete information on the data used by the parties objecting.

Waiver Procedures

As discussed above, the Secretary may grant waivers from the Subsidy Cap under Section 426(c) of Public Law 112-95, which states, “subject to the availability of funds, the Secretary may waive, on a case-by-case basis, the subsidy-per-passenger cap established by section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (Pub. L. 106-69; 113 Stat. 1022). A waiver issued under this subsection shall remain in effect for a limited period of time, as determined by the Secretary.”

Any petition for a waiver from the Subsidy Cap should include all information the petitioner deems relevant to the Secretary’s consideration of the petition.

Communities that are identified as tentatively non-compliant with the Subsidy Cap should also include, in their petitions, how they plan to achieve compliance if waivers are granted.

All petitions for waivers must be submitted within 20 days after the service date of this Order, with the title “Petition of (EAS community) for a waiver from the Subsidy Cap, Docket DOT-OST-(appropriate Docket number from page 1 of this Order),” to ensure timely consideration in accordance with 49 CFR § 5.13(c). All petitions must be filed electronically to Kevin.Schlemmer@dot.gov, Venkatesh.Paluvai@dot.gov, and EAS@dot.gov. The Department will consider each petition for waiver based upon the individual merits and circumstances of that

community. Each petition received by the Department will be made available at <https://www.regulations.gov>.

Proposals for Service that Comply with Subsidy Cap

Title 49 U.S.C. § 41733(f)(2) states that the Secretary must establish procedures to permit a community to work directly with an air carrier to submit a proposal that would not exceed the Subsidy Cap prior to termination of eligibility for non-compliance with the Subsidy Cap. Communities are encouraged to work with the air carrier providing subsidized EAS to submit a proposal that complies with the minimum service requirements at 49 U.S.C. § 41732(b) for a subsidy below the Subsidy Cap. Air carriers should express a willingness to amend their current Order for EAS service to reduce the subsidy, consistent with the submitted proposal. Communities wishing to submit a proposal in accordance with 49 U.S.C. § 41733(f)(2) must submit their proposals no later than 20 days following the service date of this Order.

Appendix B shows the maximum subsidy levels at the 18 communities during FY2019 that are required to be in compliance with the Subsidy Cap, assuming that enplanements remain constant at FY2019 levels. If the Department determines that a proposal is reasonable, the Department will amend the community's current Order for EAS service to align with the proposal, and take no further action based on the community's FY2019 non-compliance with the Subsidy Cap.

Next Steps

If the Department finalizes the tentative findings to terminate a community's EAS eligibility in a subsequent order, the Department will specify an effective date for termination of EAS eligibility at that community. In that event, if a specific air carrier providing EAS at one of the affected communities decides to suspend service on or after the effective date, the Department will expect it to contact all passengers who hold reservations for flights that will be suspended to inform them of the suspension and assist them in arranging alternative transportation or to provide a refund, without penalty, if requested.

The Department reminds air carriers that their contracts and service obligations remain in full force until the completion of this process. In the meantime, the Department hereby requires the incumbent air carriers to provide EAS at the communities until further notice, which will be included in the Department's final order on this matter.

This Order is issued under authority delegated in 49 CFR § 1.25a(b)(6)(ii)(D).

ACCORDINGLY,

1. For Fiscal Year 2019, the Department tentatively finds that the 18 communities listed in Appendix A required a subsidy-per-passenger in excess of \$200 and are located fewer than 210 miles from the nearest large- or medium-hub, as stated in Appendix C, and, therefore, tentatively did not comply with Section 332 of Public Law 106-69;
2. For Fiscal Year 2019, the Department tentatively waives Section 332 of Public Law 106-69 for Alamosa, CO; Altoona, PA; DuBois, PA; Fort Dodge, IA; Jackson, TN; Johnstown, PA; Lancaster, PA; Mason City, IA; Morgantown, WV; Owensboro, KY; Parkersburg, WV/Marietta, OH; and Victoria, TX, in accordance with Section 426(d)(1)

of Public Law 112-95, as added by Section 458 of Public Law 115-254, because the Department tentatively finds that they required a subsidy-per-passenger for Fiscal Year 2019 that is lower than the subsidy-per-passenger for at least one of the three previous fiscal years;

3. For Fiscal Year 2019, the Department tentatively waives Section 332 of Public Law 106-69 for Augusta/Waterville, ME; Bradford, PA; El Centro, CA; and Muscle Shoals, AL, in accordance with Section 426(d)(2) of Public Law 112-95, as added by Section 458 of Public Law 115-254, because the Department tentatively finds that they required a subsidy-per-passenger for Fiscal Year 2019 that is less than 10 percent higher than the highest subsidy-per-passenger from any of the three previous fiscal years.
4. The Department tentatively terminates the eligibility of Fort Leonard Wood, MO, and Merced, CA to receive Essential Air Service. These communities may petition for waiver from the Subsidy Cap under Section 426(c) of Public Law 112-95;
5. The Department directs all interested persons to show cause within 20 days after the date of service of this Order why the Department should not make final the tentative findings and conclusions set forth above and/or file a petition for a waiver from Section 332 of Public Law 106-69. Objections and petitions for waivers should be filed electronically to Kevin.Schlemmer@dot.gov, Venkatesh.Paluvai@dot.gov, and EAS@dot.gov;
6. Communities that wish to submit proposals for EAS that comply with the Subsidy Cap must do so within 20 days of the date of service of this Order. Compliant proposals should be filed electronically to Kevin.Schlemmer@dot.gov, Venkatesh.Paluvai@dot.gov, and EAS@dot.gov, or by FAX at 202-366-7638;
7. The Department will afford full consideration to the matters and issues raised in any timely and properly filed objections and petitions for waivers before taking further action;
8. These dockets will remain open until further order of the Department; and

9. The Department will serve this Order on the civic and airport officials of Alamosa, CO (San Luis Valley Regional Airport); Augusta/Waterville, ME (Augusta State Airport); Altoona, PA (Altoona-Blair County Airport); Bradford, PA (Bradford Regional Airport); DuBois, PA (DuBois Regional Airport); El Centro, CA (Imperial County Airport); Fort Dodge, IA (Fort Dodge Regional Airport); Fort Leonard Wood, MO (Waynesville-St. Robert Regional Airport); Jackson, TN (McKellar-Sipes Regional Airport); Johnstown, PA (John Murtha-Cambria County Airport); Lancaster, PA (Lancaster Airport); Mason City, IA (Mason City Municipal Airport); Merced, CA (Merced Regional Airport); Morgantown, WV (Morgantown Municipal Airport); Muscle Shoals, AL (Northwest Alabama Regional Airport); Owensboro, KY (Owensboro-Daviess County Regional Airport); Parkersburg, WV/Marietta, OH (Mid-Ohio Valley Regional Airport); and Victoria, TX (Victoria Regional Airport); Boutique Air, Inc.; Hyannis Air Service, Inc. d/b/a Cape Air; Multi-Aero, Inc. d/b/a Air Choice One; Mokulele Flight Service, Inc. d/b/a Mokulele Airlines; and Southern Airways Express, LLC.

By:

David E. Short
Deputy Assistant Secretary
Aviation and International Affairs

(SEAL)

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at <http://www.regulations.gov>*

**EAS communities tentatively non-compliant with the \$200 per passenger subsidy cap
for Fiscal Year 2019, noting if a community is tentatively eligible for a waiver under
Public Law 115-248, Sec. 426(d)(1) or Sec. 426(d)(2)**

State	EAS Community	FY2016 Subsidy per passenger	FY2017 Subsidy per passenger	FY2018 Subsidy per passenger	FY2019 Subsidy per passenger	Tentative waiver under Sec. 426(d)(1)	Tentative waiver under Sec. 426(d)(2)
AL	Muscle Shoals	\$243	\$222	\$235	\$247	Not eligible	Yes, FY19 less than 10% higher than FY18
CA	El Centro	\$231	\$192	\$198	\$248	Not eligible	Yes, FY19 less than 10% higher than FY16
CA	Merced	\$182	\$178	\$209	\$233	Not eligible	Not eligible
CO	Alamosa	\$295	\$211	\$195	\$203	FY19 less than FY17	N/A
IA	Fort Dodge	\$281	\$243	\$202	\$234	FY19 less than FY17	N/A
IA	Mason City	\$241	\$218	\$186	\$225	FY19 less than FY16	N/A
KY	Owensboro	\$239	\$218	\$205	\$226	FY19 less than FY16	N/A
ME	Augusta/Waterville	\$189	\$186	\$190	\$205	Not eligible	Yes, FY19 less than 10% higher than FY18
MO	Fort Leonard Wood	\$179	\$180	\$203	\$294	Not eligible	Not eligible
PA	Altoona	\$448	\$304	\$322	\$350	FY19 less than FY16	N/A
PA	Bradford	\$242	\$265	\$276	\$297	Not eligible	Yes, FY19 less than 10% higher than FY18
PA	DuBois	\$412	\$331	\$296	\$291	FY19 less than FY18	N/A
PA	Johnstown	\$281	\$348	\$340	\$271	FY19 less than FY18	N/A
PA	Lancaster	\$379	\$268	\$238	\$238	FY19 less than FY17	N/A
TN	Jackson	\$318	\$269	\$182	\$260	FY19 less than FY17	N/A
TX	Victoria	\$538	\$380	\$531	\$305	FY19 less than FY18	N/A
WV	Morgantown	\$156	\$210	\$282	\$259	FY19 less than FY18	N/A
WV	Parkersburg/ Marietta, OH	\$406	\$168	\$253	\$246	FY19 less than FY18	N/A

Section 426(d)(1) waives the Subsidy Cap for communities if the community's subsidy-per-passenger for FY2019 is lower than the subsidy-per-passenger for any of the three previous fiscal years.

Section 426(d)(2) waives the Subsidy Cap for communities if the community's subsidy-per-passenger for a fiscal year is less than 10 percent higher than the highest subsidy-per-passenger from any of the three previous fiscal years. The Secretary may only waive application of the subsidy-per-passenger cap under this paragraph once per community.

Maximum annual subsidy to be compliant with \$200 per passenger subsidy cap

State	EAS Community	FY2019 Passenger Traffic (Enplanements and Deplanements)	Actual Subsidy Paid	Maximum Annual Subsidy to be Compliant
AL	Muscle Shoals	11,266	\$2,781,656	\$2,253,200
CA	El Centro	10,062	\$2,496,136	\$2,012,400
CA	Merced	13,436	\$3,125,653	\$2,687,200
CO	Alamosa	14,208	\$2,884,080	\$2,841,600
IA	Fort Dodge	12,792	\$2,990,268	\$2,558,400
IA	Mason City	13,325	\$2,998,638	\$2,665,000
KY	Owensboro	9,812	\$2,221,146	\$1,962,400
ME	Augusta/Waterville	10,293	\$2,106,546	\$2,058,600
MO	Fort Leonard Wood	10,067	\$2,956,157	\$2,013,400
PA	Altoona	7,318	\$2,563,219	\$1,463,600
PA	Bradford	8,012	\$2,380,048	\$1,602,400
PA	DuBois	11,022	\$3,206,927	\$2,204,400
PA	Johnstown	11,291	\$3,056,926	\$2,258,200
PA	Lancaster	10,685	\$2,540,127	\$2,137,000
TN	Jackson	7,381	\$1,918,976	\$1,476,200
TX	Victoria	9,615	\$2,934,891	\$1,923,000
WV	Morgantown	12,228	\$3,167,700	\$2,445,600
WV	Parkersburg/Marietta, OH	7,808	\$1,916,970	\$1,561,600

EAS communities and mileage to hub airports

State	EAS Community	Nearest Large/Medium Hub	Driving Miles to Nearest Hub
AL	Muscle Shoals	BNA	122
CA	El Centro	SAN	114
CA	Merced	SJC	107
CO	Alamosa	ABQ	205
IA	Fort Dodge	OMA	156
IA	Mason City	MSP	133
KY	Owensboro	BNA	138
ME	Augusta/Waterville	BOS	168
MO	Fort Leonard Wood	STL	136
PA	Altoona	PIT	112
PA	Bradford	PIT	77
PA	DuBois	PIT	112
PA	Johnstown	PIT	84
PA	Lancaster	PHL	86
TN	Jackson	BNA	137
TX	Victoria	AUS	119
WV	Morgantown	PIT	75
WV	Parkersburg/Marietta, OH	CMH	110