

CITY OF MERCED

"Gateway to Yosemite"



WELCOME TO YOUR REGIONAL AIRPORT AUTHORITY MEETING OF THE CITY OF MERCED

AUTHORITY MEMBERS

Larry Morelock-Chair, Alvin Osborn-Vice-chair, John Sundgren,
Russ Cowperthwaite, Rodrigo Flores, Ryan Smith and Michael Bodine.

AGENDA

**7:00 pm
COUNCIL CHAMBERS
678 WEST 18th STREET
MERCED, CALIFORNIA**

**TUESDAY
JULY 15, 2014**

(www.cityofmerced.org)

STAFF REPORTS OR OTHER WRITTEN DOCUMENTATION RELATING TO EACH ITEM OF BUSINESS REFERRED TO ON THE AGENDA ARE ON FILE IN THE AIRPORT ADMINISTRATION OFFICE OF THE AIRPORT SUPERINTENDENT. ANY PERSON WHO HAS QUESTIONS CONCERNING ANY AGENDA ITEM MAY CALL THE AIRPORT SUPERINTENDENT AT (209) 385-6873 TO MAKE INQUIRY REGARDING THE NATURE OF THE ITEM DESCRIBED ON THE AGENDA. PRIOR TO EACH REGULAR REGIONAL AIRPORT AUTHORITY MEETING, A COMPLETE AGENDA PACKET IS AVAILABLE FOR REVIEW IN THE FOYER OUTSIDE THE COUNCIL CHAMBERS AND ON THE CITY'S WEBSITE AT WWW.CITYOFMERCED.ORG. ANY DOCUMENTS PROVIDED TO A MAJORITY OF THE COMMITTEE MEMBERS AFTER THIS AGENDA IS POSTED WILL BE AVAILABLE FOR PUBLIC INSPECTION IN THE CITY CLERK'S OFFICE DURING NORMAL BUSINESS HOURS.

FOR CITIZEN PARTICIPATION INSTRUCTIONS, PLEASE REFER TO THE CITY'S WEBSITE AT WWW.CITYOFMERCED.ORG. A HANDOUT IS ALSO AVAILABLE AT THE MEETING ADJACENT TO THE AGENDA. INDIVIDUAL AGENDA ITEMS MAY BE HEARD IN AN ORDER THAT IS DIFFERENT THAN THEY APPEAR ON THE AGENDA TO ACCOMMODATE MEETING PARTICIPANTS.

INFORMATION FOR INDIVIDUALS WITH DISABILITIES:

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk's Office at 209-388-7100.

Assisted Hearing Devices Available for Hearing Impaired
Teletypewriter (TTY) 209-385-6816

THE PUBLIC HAS THE OPPORTUNITY TO ASK QUESTIONS OR COMMENT AT THE TIME SPECIFIC AGENDA ITEMS ARE CONSIDERED. NORMALLY, EACH AGENDA ITEM WILL HAVE A STAFF PRESENTATION, FOLLOWED BY COMMENTS OR QUESTIONS BY THE AIRPORT AUTHORITY MEMBERS. IF REQUESTED BY AN AUDIENCE MEMBER, THE CHAIRPERSON WILL THEN ALLOW THE PUBLIC TO MAKE COMMENTS OR ASK QUESTIONS. AFTER ANY PUBLIC INPUT, THE AUTHORITY MAY HAVE FURTHER DISCUSSION BEFORE TAKING ACTION TO THE NEXT AGENDA ITEM.

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. WRITTEN PETITIONS AND COMMUNICATIONS**
- D. ORAL COMMUNICATIONS**

AT THIS TIME, ANY MEMBER OF THE AUDIENCE MAY COMMENT ON ANY MATTER NOT LISTED ON THE AGENDA. PLEASE STAND AND STATE YOUR NAME AND ADDRESS FOR THE RECORD. THE AUTHORITY WILL NOT TAKE ACTION ON THE ITEM THAT IS BROUGHT TO THEIR ATTENTION THIS EVENING. IF IT REQUIRES ACTION, IT WILL BE REFERRED TO STAFF AND/OR LISTED ON THE NEXT AUTHORITY AGENDA.

PLEASE BE BRIEF AND TO THE POINT. AVOID REPEATING WHAT PREVIOUS SPEAKERS HAVE SAID. IF TWO OR MORE INDIVIDUALS ARE HERE AS A GROUP AND WISH TO SPEAK ON ONE SIDE OF AN ISSUE, PLEASE SELECT A SINGLE SPOKESPERSON TO PRESENT YOUR VIEWS.

- E. CONSENT CALENDAR**
 - 1. AIRPORT AUTHORITY MINUTES FOR JUNE 17, 2014.**

Recommendation: Adopt a motion to approve and file.
- F. REPORTS**
 - 1. FINAL ORDER TERMINATING EAS ELIGIBILITY AND ESTABLISHING WAIVER PROCEDURES**

Recommendation: For information only.

2. AIRPORT MANAGER'S REPORT

Recommendation: Discussion as desired by Authority members.

G. AUTHORITY BUSINESS

1. POSSIBLE INCOMPATIBLE LAND USE ACTIVITY

Recommendation: Discussion as desired by Authority members.

2. OTHER BUSINESS FROM AUTHORITY MEMBERS

Recommendation: Discussion as desired by Authority members.

H. ADJOURNMENT:

TO THE NEXT AIRPORT AUTHORITY MEETING, TUESDAY
AUGUST 19, 2014 AT 7:00 PM IN THE CITY COUNCIL CHAMBERS,
678 WEST 18TH STREET MERCED, CA 95340.

**CITY OF MERCED
REGIONAL AIRPORT AUTHORITY MINUTES**

**COUNCIL CHAMBERS
MERCED CIVIC CENTER
678 WEST 18TH STREET
MERCED, CA**

**TUESDAY
JUNE 17, 2014**

A. CALL TO ORDER

Chair Larry Morelock called the meeting to order at 7:00 P.M.

B. ROLL CALL

Members present: Larry Morelock, Alvin Osborn, John Sundgren, Michael Bodine, Russ Cowperthwaite and Ryan Smith.

Members absent: Rodrigo Flores – excused.

Staff Present: Ron Elliott and Jessica Cortright.

C. WRITTEN PETITIONS AND COMMUNICATION

None.

D. ORAL COMMUNICATIONS

None.

E. CONSENT CALENDAR

1. REGIONAL AIRPORT AUTHORITY MEETING MINUTES FOR APRIL 16, 2014.

M/S/C –Osborn/Bodine motioned to approve and file the minutes for April 16, 2014 as submitted.

F. REPORTS

1. ANNUAL ATTENDANCE REPORT

Ron Elliott shared the authority board’s annual attendance report for April 1, 2013 through March 31, 2014 as information only.

2. MARTIN MARCHELLO – PARACHUTE OPERATIONS REQUEST

Ron Elliott shared that there is a pending proposal to have parachute operations at the Merced Regional Airport and that it will be brought to the board in the near future.

3. STEPHEN STUHMER CORPORATE HANGAR

Ron Elliott shared the non-binding letter of intent with Mr. Stuhmer that was sent on June 2, 2014. This letter pertains to the lease of certain property for the purpose of building a personal use hangar at Merced Regional Airport.

4. VERIZON WIRELESS CELL TOWER PROPOSAL

Ron Elliott briefly described the proposal for a cell tower at the Merced Regional Airport.

Mr. Rebecca Anderson with Verizon shared that they would like to place a 100 ft. mono pole cell tower at Thornton and Hawk. This pole will be FAA Compliant and after some discussion, a standard obstruction steady burning light will be placed on the pole as well for safety concerns.

5. HANGAR BBQ LABOR DAY FLY-IN AUG 29 – SEPT 1

Ron Elliott shared that Mr. Stuhmer owner of the Hangar BBQ is entertaining the idea of hosting a Fly In on the upcoming Labor Day weekend. There are several concerns about security and the public entering the airport. This request will need to go to City Council for approval with the proper permits and required insurance to be provided.

6. ESSENTIAL AIR SERVICE PROPOSALS

Ron Elliott reviewed the Department of Transportation's order requesting proposals for Essential Air Service at Merced and/or Visalia, Ca, for a two year period with or without subsidy support. Proposals are due June 27, 2014. Mr. Elliott suggested a sub-committee be formed to review the proposals so that an informed recommendation can be given to city council. Mr. Smith and Mr. Bodine volunteered to serve on this sub-committee, one more citizen will be chosen.

7. AIRPORT MANAGER'S REPORT

Ron Elliott reviewed the May 2014 monthly report.

G. AUTHORITY BUSINESS

1. POSSIBLE INCOMPATIBLE LAND USE ACTIVITY

None.

2. OTHER BUSINESS FROM AUTHORITY MEMBERS

Ron Elliott shared that he accepted another position and his last official day with the City of Merced will be July 11, 2014. He expressed with the board that the Airport budget is at \$511,000 for the 2014-15 FY, and that the CIP budget should be an important item for the board to follow up on.

H. ADJOURNMENT

Larry Morelock called the meeting adjourned at 7:40 PM until the next Regional Airport Authority meeting on Tuesday, July 15, 2014 at 7:00 pm in the Council Chambers at 678 W 18th Street, in the Civic Center.

Larry Morelock, Chair
Regional Airport Authority

Order: 2014-6-6
Served: June 24, 2014



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

Issued by the Department of Transportation
on the 24th day of June, 2014

Essential Air Service at

**ATHENS, GEORGIA
BRADFORD, PENNSYLVANIA
EL CENTRO, CALIFORNIA
FORT DODGE, IOWA
FRANKLIN/OIL CITY, PENNSYLVANIA
GREENVILLE, MISSISSIPPI
HAGERSTOWN, MARYLAND
JACKSON, TENNESSEE
KINGMAN, ARIZONA
LANCASTER, PENNSYLVANIA
MACON, GEORGIA
MERCED, CALIFORNIA
MUSCLE SHOALS, ALABAMA**

**Docket DOT-OST-2002-11348
Docket DOT-OST-2003-14528
Docket DOT-OST-2008-0299
Docket DOT-OST-2001-10682
Docket DOT-OST-1997-2523
Docket DOT-OST-2008-0209
Docket DOT-OST-2006-25228
Docket DOT-OST-2000-7857
Docket DOT-OST-1996-1899
Docket DOT-OST-2002-11450
Docket DOT-OST-2007-28671
Docket DOT-OST-1998-3521
Docket DOT-OST-2000-7856**

Under 49 U.S.C. 41731 *et seq.*

**FINAL ORDER TERMINATING EAS ELIGIBILITY AND
ESTABLISHING WAIVER PROCEDURES**

Summary

By this Order, the Department is finalizing its tentative decision in Order 2014-4-26, issued April 24, 2014, terminating the eligibility of the communities captioned above under the Essential Air Service (EAS) program based on requirements passed by Congress in the FAA Modernization and Reform Act of 2012 (Public Law No. 112-95).

Background

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.¹ 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.²

The tentative decision in the show-cause Order issued April 24, 2014, gave interested parties until May 14, 2014, to submit objections to the Department's findings. The Department received objections to the show-cause Order from 11 of the 13 communities.

Decision

After careful consideration of this matter, the Department has decided to make final the tentative findings in Order 2014-4-26.

This Order addresses each affected community's comments in detail, below. As a general matter, none of the affected communities disputed the Department's determination that the community is within 175 miles of a large or medium hub or that the community averaged fewer than 10 enplanements a day. Rather, some communities argued that they should remain in the program because extenuating circumstances caused them to be below 10 enplanements per day, such as unreliable service, high fares, pilot shortages, the automatic Federal government budget cuts that began March 1, 2013 (i.e., sequestration), or unfulfilled promises by their EAS carrier. Those arguments do not address the facts upon which the Department is required by statute to base the decision. Instead, those types of arguments should be reserved for communities applying for a waiver from the statutory requirement that a community maintain an average of 10 or more enplanements per service day and will be considered by the Department on their merits at that time. The process for applying for a waiver is discussed later in this Order. Finally, two communities, Athens and Macon, did not submit any objections to the show cause Order.³

Each community's objection and our final determination are described below.

ATHENS

Athens did not submit an objection to the show cause Order. With no objection from Athens, the Department makes final its findings that Athens is within 175 miles of a large or medium hub and had an average of 5.9 enplanements per day in fiscal year 2013. Having failed to meet the statutory requirements, Athens is no longer an eligible community under the EAS program.

BRADFORD

Tom Frungillo, the Airport Director of the Bradford Regional Airport, submitted an objection on behalf of the community. The Airport Director did not dispute the passenger or mileage numbers. However, he argued that passenger numbers were above 10 enplanements per day until Gulfstream [International] Airlines (now Silver Airways) took over the EAS contract in 2008. The Airport Director blamed the decline on poor service, lack of sales and marketing efforts and high fares out of the Cleveland hub. Furthermore, he stated that the decrease in

¹ 49 U.S.C. § 41731(c) & (d).

² 49 U.S.C. § 41731(e).

³ This does not prejudice Athens or Macon's ability to apply for a waiver, as discussed later in this Order.

service at the Cleveland hub has affected the local airport and its customers by reducing service options and making the local service less attractive. With no objection from the community to the facts that Bradford is within 175 miles of a large or medium hub or that it averaged fewer than 10 enplanements per day, we find that Bradford, which is within 175 miles of a large or medium hub and had an average of 6.9 enplanements per day in fiscal year 2013, has not met the statutory requirements. As such, Bradford is no longer an eligible community under the EAS program.

EL CENTRO

By letter dated May 13, 2014, U.S. Congressman Juan Vargas encouraged the Department to consider the unique circumstances that lead to El Centro enplaning 9.5 passengers per day during fiscal year 2013. In that letter, he attributes the low number of enplanements to a change in EAS service providers, which left the community without codeshare and interline agreements with larger air carriers. Additionally, the community's hub destination was changed from Los Angeles International Airport (LAX) to San Diego and Burbank. Congressman Vargas did not dispute the Department's finding that El Centro enplaned fewer than 10 passengers per day; rather, he encouraged the Department to change the methodology to include the previous three fiscal years, as opposed to the most recent fiscal year.

By letter dated May 12, 2014, the Mayor of the City of Imperial, Mr. Geoff Dale, stated that the community does not dispute the data, but encourages the Department to consider some of the extenuating circumstances that led to El Centro enplaning fewer than 10 passengers per day. Mayor Dale explained that the community has "generated approximately 20 passengers per day in 2009 through 2012." The Mayor further explained that the most recent fiscal year enplanement data is a temporary decline and not consistent with the level of enplanements the community previously generated.

By letter dated May 12, 2014, California State Senator Ben Hueso urged the Department to consider the negative economic impact on El Centro as a result of losing EAS eligibility. Additionally, Senator Hueso encouraged the Department to take into consideration the fact that the community has surpassed the 10 passenger enplanement threshold in four of the last five years, and only barely missed the 10 enplanement level by 0.5 passengers per day.

Additionally, the Department received similar letters from the County Executive Office, the El Centro Chamber of Commerce, Imperial Valley Economic Development Corporation, the Southern California Association of Governments, Imperial County Office of Education, Imperial Valley Regional Occupational Program, Imperial Chamber of Commerce, Imperial County Transportation Commission, California Assembly Member, Mr. V. Manuel Perez, the Imperial County Board of Supervisors, and from several businesses and concerned citizens. Those letters urged the Department to consider the community's historical enplanement data and the economic impact of losing EAS eligibility, and take into account that the community has some of the highest unemployment in the nation and was negatively impacted by the economic downturn of 2008. None of these letters disputed our tentative findings.

We recognize the arguments made by the community; however, the requirements of the statute do not provide us the discretion to consider these factors in reaching our final decision. Given

that there is no objection to the facts that El Centro is within 175 miles of large or medium hub and had an average of 9.5 enplanements per day in fiscal year 2013, we find that El Centro has not satisfied the statutory requirements and is no longer eligible for EAS.

FORT DODGE

Rhonda Chambers, the Director of Aviation for the Fort Dodge Regional Airport, and Paul Trombino, III, the Director of the Iowa State Department of Transportation (IDOT), submitted objections to the show-cause Order. Neither objector disputed the factual basis for the tentative decision, although the Airport Director stated that the mileage is not reflective of the most traveled route from Fort Dodge to Omaha, NE, while acknowledging that the shortest distance is well under the 175-mile threshold.⁴ IDOT blamed recent statutory and regulatory changes to pilot training requirements and flight and duty standards for numerous canceled flights, as the main reason for not meeting the 10-enplanement threshold. They stated that the decline in passenger enplanements is temporary and, historically, Fort Dodge easily exceeded the 10-enplanement-per-day requirement.

We recognize the arguments made by the community. However, the requirements of the statute do not provide us the discretion to consider these factors in reaching our final decision. Given that the community did not contest our tentative findings that Fort Dodge is within 175 miles of a large or medium hub, and had an average of 9.4 enplanements per day in fiscal year 2013, we find that Fort Dodge has not met the statutory requirements and is no longer an eligible community under the EAS program.

FRANKLIN/OIL CITY

Douglas Baker, the Mayor of Franklin, Otho Bell, the Airport Director of the Venango Regional Airport, the Board of Venango County Commissioners, and the Oil Region Alliance submitted objections. No objectors disputed either the passenger or mileage findings in the show-cause Order. All three objectors stated that Silver Airways, the incumbent carrier, has provided unreliable service and that became the primary reason for its fewer than 10 enplanements per day. They stated that Silver canceled a significant percentage of its flights each year since 2008 when it became the community's EAS carrier, especially over the winter months. In addition, they stated that Silver failed to market the Venango County Regional Airport. The Airport Director states that Silver has not been willing to establish a well-timed schedule, including overnighting an aircraft despite the fact that the airport built a hangar for that expressed purpose. The community feels that a reliable carrier with a consistent schedule, reasonable fares to Pittsburgh, and experience operating in a northern climate, would surpass the 10 enplanement per day threshold.

We recognize the arguments made by the community. However, the requirements of the statute do not provide us the discretion to consider these factors in reaching our final decision. Because there were no objections to our tentative findings that Franklin/Oil City is within 175 miles of a large or medium hub, and had an average of 5.0 enplanements per day in fiscal year

⁴ As we stated in show-cause Order 2014-4-26, and consistent with longstanding and current Department practice, we measure the shortest driving distance from the center of the EAS community to the beginning of the airport property of the nearest medium- or large-hub airport. See 54 Fed. Reg. 52766 (December 22, 1989) (amending 14 CFR Part 398).

2013, we find that Franklin/Oil City has not met the statutory requirements and, thus, is no longer an eligible community under the EAS program.

GREENVILLE

The Honorable John H. Cox III, Mayor of Greenville, submitted an objection. The community does not dispute the mileage numbers or the fact that the passenger enplanements were fewer than 10.⁵ However, the community contested the final termination order, stating that the community failed to make 10 enplanements per day during fiscal year 2013 solely due to the poor air service provided by Silver Airways, the incumbent air carrier. The community pointed out that for the nine-year period prior to Silver Airways' beginning service at Greenville, the community averaged 14,932 origin and destination passengers, or an average of 23.9 passenger enplanements per day.

We recognize the arguments made by the community. However, the requirements of the statute do not provide us the discretion to consider these factors in reaching our final decision. In the absence of any objection to our findings that Greenville is within 175 miles of a large or medium hub and had an average of 9.3 enplanements per day in fiscal year 2013, we find that Greenville has not satisfied the statutory requirements, and thus, is no longer an eligible community under the EAS program.

HAGERSTOWN

Philip Ridenour, Airport Director, submitted an objection letter cosigned by the Board of County Commissioners of Washington County, Maryland. The letter stated that they do not object to the Department's methodology for calculating enplanements, nor the 175-mile standard. Rather, they claim that their EAS carrier suffered poor performance due to a lack of qualified pilots, equipment that was not suitable to winter operations, and management that was not committed to marketing the service. They believe that Hagerstown could exceed the 10-enplanement threshold with a reliable service provider.

We recognize the arguments made by the community. However, the requirements of the statute do not provide us the discretion to consider these factors in reaching our final decision. Given no objection to the factual tentative findings that Hagerstown is within 175 miles of a large or medium hub and had an average of 3.9 enplanements per day in fiscal year 2013, we find that Hagerstown has not satisfied the statutory requirements. Thus, Hagerstown is no longer an eligible community under the EAS program.

JACKSON

By letter dated May 7, 2014, the Executive Director of Jackson-Madison County Airport Authority, Mr. Steve Smith, explained that Jackson does not dispute the Department's findings,

⁵ Although Greenville did not dispute that it averaged fewer than 10 enplanements per day in fiscal year 2013, it did contest the actual passenger numbers the Department reported. While the Department found that Greenville averaged 9.3 enplanements per day, the community claimed it averaged 9.65 enplanements per day. A letter submitted from Silver Airways' station manager, states that their June 2013 traffic was 253 enplanements and 234 deplanements, 206 passengers greater than what Silver Airways reported to the Department (191 enplanements and 90 deplanements). However, even assuming the corrected numbers, the community enplaned fewer than the statutory requirement of 10 enplanements per service day.

however, the community “disagrees with the arbitrary manner the data is applied to disqualify Jackson from the EAS program.”

Because the community did not dispute the Department’s tentative findings, we find that Jackson, which is within 175 miles of a large or medium hub and had an average of 7.8 enplanements per day in fiscal year 2013, has not met the statutory requirements. Based on these findings, Jackson is no longer an eligible community under the EAS program.

KINGMAN

David French, Executive Director of the Kingman Airport, submitted an objection. The Director acknowledged that the community did not meet the 10-enplanemet requirement, but he questioned which airport should be the community’s EAS hub and indicated that dual-hub service would be optimum for the community.⁶ The Director also mentioned recent changes to pilot requirements as a reason for the airport’s low passenger levels.

The community acknowledged that it does not meet the statutory criteria for an “eligible community” on the basis of its average enplanements (2.7 enplanements per day in fiscal year 2013). Kingman also does not object to our finding that it is within 175 miles of a large or medium hub. Having failed to meet the statutory requirements, we find that Kingman is no longer an eligible community under the EAS program.

LANCASTER

Airport Director David Eberly submitted an objection. Mr. Eberly did not dispute the Department’s calculations of enplanements, but stated that the temporary decline in passengers was due to the EAS carrier’s lack of reliability, and not the result of any action or inaction on behalf of the Lancaster Airport Authority or Lancaster County. Lancaster stated that service reliability has and will continue to improve now that their EAS carrier has a new management team in place, which will allow Lancaster to meet the 10-enplanement requirement in the future.

Although we recognize the community’s concerns, the statutory requirements do not afford us the discretion to consider these factors in reaching our final decision. Because the community did not object to our findings that Lancaster is within 175 miles of a large or medium hub and had an average of 6.3 enplanements per day in fiscal year 2013, we find that Lancaster has not met the statutory requirements and thus, is no longer an eligible community under the EAS program.

MACON

The community did not submit an objection.

With no objection from Macon, we find that Macon has not satisfied the statutory requirements because it is within 175 miles of a large or medium hub and had an average of 4.0 enplanements per day in fiscal year 2013. Thus, Macon is no longer an eligible community under the EAS program.

⁶ Great Lakes currently provides Kingman nonstop service to Los Angeles International (LAX) and direct (one-stop) service to Denver International (DEN).

MERCED

By letter dated May 1, 2013, Mayor Pro-Tempore of the City of Merced, Mr. Josh Pedrozo, did not dispute the Department's tentative findings. Rather, Mr. Pedrozo provided reasons why Merced enplaned fewer than 10 passengers, which has historically not been an issue for the community. According to the letter, Merced averaged 24 enplanements from 2002 through 2008; Great Lakes started serving the community in 2008, and since that time, the air carrier made 11 schedule changes. Additionally, Great Lakes frequently did not meet the on-time criteria of +5 minutes for departure and +16 minutes for arrival. For the above reasons, Mr. Pedrozo believes that customer confidence, loyalty, and satisfaction with the community's air service were greatly diminished.

Although we recognize the community's concerns, the statute does not provide us the discretion to weigh these factors in reaching our final determination. In the absence of any objection to our tentative findings that Merced is less than 175 miles from the nearest large or medium hub and had an average of 7.7 enplanements per day in fiscal year 2013, we find that Merced has not met the statutory requirements and, thus, is no longer an eligible community under the EAS program.

MUSCLE SHOALS

Barry Griffith, Airport Director at Northwest Alabama Regional Airport, submitted an objection. Mr. Griffith did not object to the passenger or mileage numbers. However, he contested the final termination order, stating that the reason the community failed to make 10 enplanements per day during fiscal year 2013 was due strictly to the poor air service provided by Silver Airways, the incumbent air carrier. Mr. Griffith also mentioned that other EAS communities in Mississippi served by Silver Airways have seen drastic reductions in passenger enplanements from the time that Silver became their EAS carrier. Mr. Griffith further pointed out that for the nine-year period prior to Silver Airways becoming the service provider at Muscle Shoals, the community averaged 12,170 annual origin and destination passengers, or 19 passenger enplanements per day.

Although we recognize the community's concerns, the statute does not afford us the discretion to consider these concerns in reaching our final determination. Because the community did not object to our tentative finding that Muscle Shoals is within 175 miles of a large or medium hub and had an average of 6.3 enplanements per day in fiscal year 2013, we determine that Muscle Shoals has not met the statutory requirements, and, thus, is no longer an eligible community under the EAS program.

Continuity of Service

Notwithstanding the determination by the Department and this Order, the incumbent carriers must provide EAS at these communities, pending the communities' potential petition for a waiver and our consideration of the merits of that petition as further outlined below. Carriers that fail to provide EAS at their respective communities may be referred to the Department's Office of Aviation Enforcement and Proceedings for appropriate handling. This Order does not preclude carriers from starting or continuing air service at these communities without subsidy.

Petitions for Waivers

The Department will consider petitions for a waiver of 49 U.S.C. § 41731(a)(1)(B) under the authority provided in 49 U.S.C. § 41731(e). Specifically, each petition must be filed in accordance with 49 CFR Part 5.11(b).⁷ The petition should state that it is a request for exemption from 49 U.S.C. § 41731(a)(1)(B) and include an explanation of the nature and extent of the relief sought and any information and arguments available to the petitioner to support the petition for waiver.

As required by 49 U.S.C. § 41731(e), the Secretary's authority to grant a waiver of the 10 enplanement per day requirement is limited to those situations where it is clear that the failure to meet the 10 enplanement requirement is due to a temporary decline. Although we would not be inclined to view a community that has averaged fewer than 10 enplanements per year over a long period of time as being temporary, we do intend to evaluate each petition based upon the individual merits and circumstances of that community.

All petitions for a waiver must be submitted within 30 days of the service date of this Order (by July 24, 2014) with the title "Petition of (EAS community) for a waiver from the 10-enplanement statute, Docket-OST-DOT-(appropriate Docket number from page 1 of this Order)," in order to ensure timely consideration in accordance with 49 CFR Part 5.11(b). All petitions must be filed electronically to EAS@dot.gov or by FAX to 202-366-7638. Each petition received by the Department will be made available at <http://www.regulations.gov>. *Any requests for a waiver submitted prior to the date of this Order will not be considered.* Communities that requested a waiver in their response to the show-cause Order must resubmit their request, including any supporting arguments and information, in accordance with the procedures described in this Order.

Proposals to Restore Eligibility

For communities whose eligibility for EAS is terminated by this Order or whose petition for a waiver is denied by the Department, 49 U.S.C. § 41733(g) permits a State or local government to submit a joint proposal with an air carrier for the restoration of their EAS subsidy. Upon receipt of a joint proposal, the Secretary will restore a community's eligibility for EAS subsidy if the Secretary determines that:

- (i) The rate of subsidy per passenger under the proposal does not exceed the subsidy cap established by section 322 of Pub. L. 106-69;
- (ii) The proposal is likely to result in an average number of enplanements per day in excess of 10; and
- (iii) The proposal is consistent with the legal and regulatory requirements for the EAS program.

This Order is issued under authority delegated in 49 CFR Part 1.25a(b).

⁷ Because 49 U.S.C. § 41731(e) permits the Secretary to waive the 10-enplanement requirement, the Department is exercising its statutory waiver authority through its petition for exemption process set forth in 49 CFR Part 5.11

ACCORDINGLY,

1. The Department finalizes its tentative findings in Order 2014-4-26;
2. The Department finds that Athens, Georgia, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Athens on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
3. The Department finds that Bradford, Pennsylvania, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Bradford on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
4. The Department finds that El Centro, California, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at El Centro on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
5. The Department finds that Fort Dodge, Iowa, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Fort Dodge on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
6. The Department finds that Franklin/Oil City, Pennsylvania, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Franklin/Oil City on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
7. The Department finds that Greenville, Mississippi, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Greenville on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
8. The Department finds that Hagerstown, Maryland, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Hagerstown on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;
9. The Department finds that Jackson, Tennessee, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Jackson on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;

10. The Department finds that Kingman, Arizona, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Kingman on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;

11. The Department finds that Lancaster, Pennsylvania, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Lancaster on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;

12. The Department finds that Macon, Georgia, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Macon on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;

13. The Department finds that Merced, California, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Merced on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;

14. The Department finds that Muscle Shoals, Alabama, is no longer an eligible EAS community. The Department will terminate subsidy for EAS at Muscle Shoals on September 30, 2014, and its EAS carrier may terminate service on or after this date, unless the community files a waiver petition as described in this Order;

15. The Department sets the due date for waiver petitions as July 24, 2014. Petitions should be emailed to EAS@dot.gov or by FAX to 202-366-7638 with the title "Petition of (EAS community) for waiver from the 10-enplanement statute, Docket-OST-DOT-(appropriate Docket number from page 1 of this Order)";

16. Before terminating service, the carrier(s) serving the communities identified in this Order must notify any passengers holding reservations for travel after the suspension date, assist those passengers in making alternate air transportation arrangements, or provide a refund of the ticket price, without penalty, if requested;

17. These dockets will remain open until further order of the Department; and

18. The Department will serve copies of this Order on the mayors, civic, and airport officials at the communities identified in this Order.

By:

SUSAN L. KURLAND
Assistant Secretary for
Aviation and International Affairs

(SEAL)

*An electronic version of this document is available
at <http://www.regulations.gov>*

Appendix A

			YE 9/30/13	YE 9/30/13	Nearest	Approx.	Nearest	Approx.
			Passenger	Enplanements	Large	Miles to	Medium	Miles to
<u>FAS Community</u>	<u>State</u>	<u>Carrier serving</u>	<u>Totals*</u>	<u>Per Day</u>	<u>Hub</u>	<u>L-Hub</u>	<u>Hub</u>	<u>M-Hub</u>
Athens	Georgia	SeaPort	3,681	5.9	ATL	72		n/a
Bradford	Pennsylvania	Silver Airways	4,292	6.9		n/a	BUF	77
El Centro	California	SeaPort	5,950	9.5	SAN	114		n/a
Fort Dodge	Iowa	Great Lakes/suspended	5,868	9.4		n/a	OMA	156
Franklin/Oil City	Pennsylvania	Silver Airways	3,134	5.0		n/a	PIT	85
Greenville	Mississippi	Silver Airways	5,836	9.3		n/a	MEM	154
Hagerstown	Maryland	Sun Air	2,419	3.9	IAD	78		n/a
Jackson	Tennessee	SeaPort	4,865	7.8		n/a	MEM	86
Kingman	Arizona	Great Lakes	1,661	2.7	LAS	121		n/a
Lancaster	Pennsylvania	Sun Air	3,943	6.3	PHL	86		n/a
Macon	Georgia	Silver Airways	2,482	4.0	ATL	82		n/a
Merced	California	Great Lakes	4,810	7.7		n/a	SJC	107
Muscle Shoals	Alabama	Silver Airways	3,973	6.3		n/a	BNA	122
* Enplanements and deplanements								

ORDERS OUTLINING SERVICE TO BE PROVIDED

<u>EAS Community</u>	<u>Order(s)</u>
ATHENS, GEORGIA	2012-9-27
BRADFORD, PENNSYLVANIA	2012-9-23
EL CENTRO, CALIFORNIA	2013-1-2 and 2013-4-3
FORT DODGE, IOWA*	2011-11-30
FRANKLIN/OIL CITY, PENNSYLVANIA	2012-9-23
GREENVILLE, MISSISSIPPI	2012-5-17
HAGERSTOWN, MARYLAND	2012-8-9
JACKSON, TENNESSEE	2014-1-23
KINGMAN, ARIZONA	2013-6-1
LANCASTER, PENNSYLVANIA	2012-8-9
MACON, GEORGIA	2013-2-26
MERCED, CALIFORNIA	2012-9-9
MUSCLE SHOALS, ALABAMA	2012-5-17
*Great Lakes' service is currently suspended	

To: Regional Airport Authority
From: Ronald K. Elliott, Airport Manager
Date: July 15, 2014
Re: Possible Incompatible Land Use Activity

No activity this month.

To: Regional Airport Authority
From: Ronald K. Elliott, Airport Manager
Date: July 15, 2014
Re: Other Business from the Authority

Discussion as desired by authority members.