



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

Issued by the Department of Transportation  
on the 10<sup>th</sup> day of November, 2016

Essential Air Service at

**ALAMOSA, COLORADO  
ALTOONA, PENNSYLVANIA  
CLARKSBURG/FAIRMONT, WEST VIRGINIA  
DUBOIS, PENNSYLVANIA  
EL CENTRO, CALIFORNIA  
HAGERSTOWN, MARYLAND  
JACKSON, TENNESSEE  
JAMESTOWN, NEW YORK  
JOHNSTOWN, PENNSYLVANIA  
KEARNEY, NEBRASKA  
LANCASTER, PENNSYLVANIA  
OWENSBORO, KENTUCKY  
PARKERSBURG, WEST VIRGINIA/MARIETTA, OHIO  
PENDLETON, OREGON  
PRESCOTT, ARIZONA  
SALINA, KANSAS  
SCOTTSBLUFF, NEBRASKA  
SHOW LOW, ARIZONA  
TUPELO, MISSISSIPPI  
VICTORIA, TEXAS  
VISALIA, CALIFORNIA  
WATERTOWN, SOUTH DAKOTA**

**DOT-OST-1997-2960  
DOT-OST-2002-11446  
DOT-OST-2005-20736  
DOT-OST-2004-17617  
DOT-OST-2008-0299  
DOT-OST-2006-25228  
DOT-OST-2000-7857  
DOT-OST-2003-14950  
DOT-OST-2002-11451  
DOT-OST-1996-1715  
DOT-OST-2002-11450  
DOT-OST-2000-7855  
DOT-OST-2005-20734  
DOT-OST-2004-19934  
DOT-OST-1996-1899  
DOT-OST-2002-11376  
DOT-OST-2003-14535  
DOT-OST-1998-4409  
DOT-OST-2009-0305  
DOT-OST-2005-20454  
DOT-OST-2004-19916  
DOT-OST-2001-10644**

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

**ORDER GRANTING WAIVERS**

**Summary**

By this Order, the United States Department of Transportation (the Department) grants the waiver petitions of all the Essential Air Service (EAS) communities named above.

## **Background**

The FAA Modernization and Reform Act, Pub. L. No. 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.<sup>1</sup> The Secretary may waive Section 41731(a)(1)(B) (“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.<sup>2</sup> Of the 22 communities listed on this Order, eight were not in compliance with this eligibility requirement in Fiscal Year 2015.

The Department of Transportation and Related Agencies Appropriations Act, 2000, Pub. L. No. 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 to the nearest large- or medium-hub airport (the “Subsidy Cap”). On October 9, 2014, the Department issued a Notice of Enforcement Policy announcing how the Department intended to enforce compliance with the Subsidy Cap.<sup>3</sup> As stated in the Notice of Enforcement Policy, all communities receiving subsidized EAS had until September 30, 2015, based on data from October 1, 2014, through September 30, 2015, to ensure compliance with the Subsidy Cap or face possible termination of eligibility for EAS subsidy. 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. All 22 communities listed on this Order required a subsidy per passenger in excess of the Subsidy Cap in Fiscal Year 2015.

All communities listed on page 1 of this Order submitted petitions for a waiver. Of the 22 petitions received, 20<sup>4</sup> stated that poor service provided by their EAS airline caused the communities’ noncompliance with one or both eligibility requirements.<sup>5</sup> These communities essentially argued that the poor service affected consumer confidence and depressed demand for air service, such that the enplanement and/or subsidy per passenger numbers in Fiscal Year 2015 were not representative of these communities’ true demand for air service or subsidy need. Of the remaining two communities, Owensboro’s petition stated that their EAS carrier’s downgrade

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<sup>1</sup> See 49 U.S.C. § 41731(c) and (d).

<sup>2</sup> See 49 U.S.C. § 41731(e).

<sup>3</sup> On May 1, 2014, the Department published a Notice of Proposed Enforcement Policy for the Subsidy Cap in the Federal Register, 79 Fed. Reg. 24632, for comment. After a 60-day public comment period and review, the Department issued the Final Notice of Enforcement Policy on October 9, 2014, 79 Fed. Reg. 60951.

<sup>4</sup> The communities that attributed their non-compliance to poor performance by their EAS carrier are: Alamosa, CO; Altoona, PA; Clarksburg/Fairmont, WV; Dubois, PA; El Centro, CA; Hagerstown, MD; Jackson, TN; Jamestown, NY; Johnstown, PA; Kearney, NE; Lancaster, PA; Parkersburg, WV/Marietta, OH; Pendleton, OR; Prescott, AZ; Salina, KS; Scottsbluff, NE; Show Low, AZ; Tupelo, MS; Visalia, CA; and Watertown, SD.

<sup>5</sup> Poor service is being defined as excessive cancellations and delays, frequent changes in aircraft type, and/or lack of responsiveness from the incumbent airline to address air service problems.

from 9-passenger aircraft to an 8-passenger aircraft resulted in fewer enplanements and, thus, caused the community to slightly exceed the Subsidy Cap. Victoria's petition argued that a waiver was warranted because the community's passenger numbers are still recovering from poor service provided by their EAS carrier under a previous contract, and that progress has been made with their current air carrier to return them to compliance. Most of the communities pointed out that they now have a new EAS carrier and service is improving, which was either already producing higher enplanements and lower per passenger subsidies, or was expected to result in higher enplanements and lower subsidy payments as consumer confidence rebounds. The waiver petitions also described affirmative steps that the communities are taking, working with their EAS carriers, to ensure compliance with the eligibility requirements in future years.

### **Decision**

After careful consideration of this matter, the Department has decided to grant the waiver petitions of all 22 communities.

For the eight communities that seek a waiver from the 10-enplanement requirement, a review of those communities' enplanement data over the past few years, in combination with the arguments put forth in their waiver petitions, demonstrates to the Department's satisfaction that the decline in enplanements at these eight communities is temporary.

For the 22 communities that seek a waiver from the Subsidy Cap, the Department acknowledges that there were challenges arising from the air service provided at these communities that caused the increase in the per passenger subsidy paid to the EAS carriers. As noted in the waiver petitions, many communities currently have a new air carrier and passenger levels are increasing. In addition, these communities have indicated that they are working with their carrier to improve service and attract passengers, and expect their subsidy per passenger to decline.

The waivers granted by this Order apply to Fiscal Year 2015. Communities are expected to have been compliant for Fiscal Year 2016, which ended September 30, 2016. Compliance based on Fiscal Year 2016 will be assessed at a later date.

### **Next Steps**

The Department expects all communities and the airlines providing their subsidized service to work together to ensure compliance with the 10-enplanement requirement, the Subsidy Cap, and all other eligibility criteria.

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

### **ACCORDINGLY,**

1. The Department grants the petitions for a waiver from the requirement at 49 U.S.C. § 41731(a)(1)(B) for Fiscal Year 2015 for the eight communities listed in Appendix A. These communities will next be reassessed based on Fiscal Year 2016 data (October 1, 2015, through September 30, 2016);

2. The Department grants the petitions for a waiver for the communities listed in Appendix B and waives Section 332 of Public Law 106-69 (the Subsidy Cap) for Fiscal Year 2015. These communities will next be reassessed based on Fiscal Year 2016 data (October 1, 2015, through September 30, 2016);
3. These dockets will remain open until further order of the Department; and
4. The Department will serve copies of this Order on the mayors, civic, and airport officials at the communities identified in this Order and the airlines that are serving these communities.

By:

**JENNY T. ROSENBERG**  
Acting Assistant Secretary for  
Aviation and International Affairs

(SEAL)

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

<b>EAS Communities determined to have fewer than 10 enplanements per service day in Fiscal Year 2015</b>				
<b>EAS Community/State</b>	<b>YE 9/30/15 Pax Total</b>	<b>YE 9/30/15 Enplanements/Day</b>	<b>Nearest Large or Medium Hub</b>	<b>Distance (miles) to Large/Medium Hub</b>
Altoona, PA	4,568	7.3	PIT	112
El Centro, CA	5,228	8.4	SAN	114
Hagerstown, MD	2,374	3.8	IAD	78
Jackson, TN	2,427	3.9	BNA	137
Jamestown, NY	3,289	5.3	BUF	76
Lancaster, PA	2,620	4.2	PHL	86
Show Low, AZ	3,508	5.6	PHX	173
Victoria, TX	5,977	9.5	IAH	119

<b>EAS Communities determined to have per passenger subsidies in excess of \$200 for Fiscal Year 2015</b>					
<b>EAS Community/State</b>	<b>YE 09/30/15 Passenger Totals (Both directions)</b>	<b>Actual subsidy paid - year ended 09/30/15</b>	<b>Subsidy per Passenger</b>	<b>Nearest Lg. or Med Hub</b>	<b>Miles to Nearest Lg. or Med. Hub<sup>1</sup></b>
Alamosa, CO	6,119	\$1,640,276	\$268	ABQ	205
Altoona, PA	4,568	\$1,920,171	\$420	PIT	112
Clarksburg/Fairmont, WV	9,218	\$2,278,596	\$247	PIT	96
DuBois, PA	6,793	\$2,199,316	\$324	PIT	112
El Centro, CA	5,228	\$1,947,342	\$372	SAN	114
Hagerstown, MD	2,374	\$1,453,430	\$612	IAD	78
Jackson, TN	2,427	\$1,435,281	\$591	BNA	139
Jamestown, NY	3,289	\$1,790,066	\$544	BUF	76
Johnstown, PA	8,485	\$2,338,824	\$276	PIT	84
Kearney, NE	9,493	\$2,077,827	\$219	OMA	181
Lancaster, PA	2,620	\$2,002,455	\$764	PHL	86
Owensboro, KY	7,481	\$1,551,120	\$207	BNA	138
Parkersburg, WV/Marietta, OH	8,907	\$3,338,140	\$375	CMH	110
Pendleton, OR	8,422	\$1,797,333	\$213	PDX	205
Prescott, AZ	6,916	\$2,056,469	\$297	PHX	102
Salina, KS	2,824	\$997,557	\$353	MCI	186
Scottsbluff, NE	7,480	\$1,621,737	\$217	DEN	192
Show Low, AZ	3,508	\$1,112,976	\$317	PHX	173
Tupelo, MS	5,181	\$1,725,914	\$333	BNA	203
Victoria, TX	5,977	\$2,420,118	\$405	IAH	119
Visalia, CA	9,297	\$1,899,753	\$204	BUR	178
Watertown, SD	2,688	\$2,446,273	\$910	MSP	207

<sup>1</sup> Mileage calculations for Alamosa, Pendleton, and Watertown were affirmed in Order 2016-8-21