



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

Issued by the Department of Transportation
on the 14th day of December, 2012

Essential Air Service at

ELY, NEVADA

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

Docket DOT-OST-1995-361

**ORDER TO SHOW CAUSE PROPOSING TERMINATION OF
ESSENTIAL AIR SERVICE ELIGIBILITY**

Summary

By this Order, the Department is directing interested persons to show cause as to why the Department should not terminate the eligibility of Ely, Nevada, under the Essential Air Service (EAS) program and allow Great Lakes Aviation, Ltd. (Great Lakes), to suspend service at the community. Objections to the Department's tentative decision are due within 20 days of the service date of this Order. An area map is attached as Appendix A.

Background

By Order 2010-9-13, September 14, 2010, we re-selected Great Lakes to provide subsidized EAS at Ely utilizing 19-seat Beech 1900D turboprop aircraft, for the two-year period through September 30, 2012, at an annual subsidy of \$1,752,067. Subsidized service was to consist of either 6 nonstop round trips a week to Las Vegas or 6 nonstop or one-stop round trips a week to Denver.

By Order 2012-11-18, issued on November 16, 2012, the Department extended the subsidy rate for Great Lakes, established by Order 2010-9-13, for the period October 1, 2012, until further Departmental action while we examine Ely's long-term eligibility in the EAS program.

The complete public file for EAS at Ely may be accessed online through the Federal Dockets Management System (FDMS) at: <http://www.regulations.gov> by entering

“DOT-OST-1995-361” in the “SEARCH for: Rules, Comments, Adjudications or Supporting Documents:” field.

Recent Developments

The Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 (Public Law 112-95), signed into law on February 14, 2012, amended the definition of “eligible place” for the purpose of receiving EAS.¹ The amendment, among other things, states that to be eligible, a community must have had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, as determined by the Secretary of Transportation.

Passenger Traffic and Subsidy History

Great Lakes has served the community since March 2008. Historical traffic and annual subsidy rates are detailed in Appendix B. For the most recent fiscal year (FY 2012), Great Lakes transported 1,070 total passengers at an annual subsidy rate of \$1,752,067. Thus, the corresponding average per passenger subsidy for FY 2012 was \$1,637.45.

Decision

After careful consideration of this matter, the Department has tentatively decided to terminate the subsidy eligibility of Ely under the EAS program and allow Great Lakes to end service at the community because the community is no longer eligible to receive EAS.

We will give interested persons 20 days after the service date of this Order to submit objections. Objections should be fully documented and contain complete information on the data used by the persons objecting. If we later finalize the tentative findings in a subsequent Order, the Department would make the Order effective 30-45 days thereafter to allow for an orderly shutdown. In that event, if Great Lakes decides to suspend service upon the effective date of that Order, we 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 of the ticket price, without penalty, if requested.

This Order is issued under authority delegated in 49 CFR Part 1.56a(f).

ACCORDINGLY,

1. The Department tentatively finds that Ely, Nevada, is no longer an eligible EAS community;
2. The Department directs all interested persons to show cause within 20 days of the date of service of this Order why we should not make final the tentative findings and conclusions set forth above. Objections should be filled with Docket Operations, M-30,

¹ See 49 U.S.C. § 41731

West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.²

3. The Department directs Great Lakes Aviation, Ltd. to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years from the service date of this Order or until the Department indicates that the records may be destroyed, whichever comes first. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

4. We will afford full consideration to the matters and issues raised in any timely and properly filed objections before we take further action.³

5. This docket will remain open until further order of the Department; and

6. Docket Operations will serve copies of this Order on the parties listed in Appendix D.

By:

SUSAN L. KURLAND
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov/>

² In addition, copies of comments may be e-mailed to dennis.devany@dot.gov, scott.faulk@dot.gov, eas@dot.gov, or faxed to the Chief, EAS & Domestic Analysis Division, at (202) 366-7638. Regardless of whether copies are faxed to the EAS & Domestic Analysis Division, all objections should be filed with Docket Operations, M-30, at the above address.

³ Since the Department is providing for the filing of objections to this Order, we will not entertain petitions for reconsideration.

AREA MAP



**Passenger Traffic and Annual Essential Air Service Subsidy at
Ely, Nevada**

Year Ended	Enplaned Passengers	Deplaned Passengers	Enplaned + Deplaned Passengers	Annual Federal Subsidy	Subsidy Per Passenger
9/30/2010	204	222	426	\$1,864,717	\$4,377.27
9/30/2011	433	418	851	\$1,752,067	\$2,058.83
9/30/2012	540	530	1,070	\$1,752,067	\$1,637.45
Source: BTS T-100 Market					

NOTE:

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plans outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with the order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the stipulated amounts or at the stipulated service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

Funds are not currently available for performance under this order beyond March 31, 2013. The Department's obligation for performance under this order beyond March 31, 2013, is subject to the availability of appropriated funds from which payment for services can be made. No legal liability on the part of the Government for any payment may arise for performance under this order beyond March 31, 2013, until funds are made available to the Department for performance. If funds are not made available for performance beyond March 31, 2013, the Department will provide notice in writing to the carrier.

All claims for payment must be submitted within 60 days of the last day of service provided under this order.

SERVICE LIST

Great Lakes, Chuck Howell
Great Lakes, Michael Matthews
Ely Airport, Patrice Lytle