



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

Issued by the Department of Transportation  
on the 12th day of June, 2013

Essential Air Service at

**LEWISTOWN, MONTANA  
MILES CITY, MONTANA  
GLASGOW, MONTANA  
GLEN DIVE, MONTANA  
HAVRE, MONTANA  
SIDNEY, MONTANA  
WOLF POINT, MONTANA**

**Docket DOT-OST-1997-2605**

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

**FINAL ORDER TERMINATING ELIGIBILITY, ALLOWING SUSPENSION OF  
SERVICE, AND REQUESTING PROPOSALS**

**Summary**

By this Order, the Department is: (1) terminating the eligibility of Lewistown and Miles City, Montana, under the Essential Air Service ("EAS") program; (2) allowing Silver Airways, Inc. ("Silver"), to suspend service at Lewistown and Miles City, if it chooses; and (3) soliciting proposals from air carriers interested in providing EAS at Glasgow, Glendive, Havre, Sidney, and/or Wolf Point, Montana, for a new contract, with or without subsidy. Air carriers should file their proposals no later than July 2, 2013. An area map is attached as Appendix A.

**Background**

By Order 2011-1-27, served on February 3, 2011, the Department selected Silver (formally Gulfstream International Airlines) to provide subsidized EAS with 19-passenger Beechcraft B-1900D aircraft at the above communities, for the two-year period ended May 31, 2013. The level of service and subsidy levels for each community under that contract is as follows:

Lewistown	\$1,325,733	12 RTs per week
Miles City	\$1,621,821	12 RTs per week
Glasgow	\$1,166,049	12 RTs per week
Glendive	\$1,193,391	12 RTs per week
Havre	\$1,162,329	12 RTs per week
Sidney	\$2,932,152	17 RTs per week
Wolf Point	\$1,502,378	12 RTs per week

The complete public file for EAS at each of the above Montana communities may be accessed online through the Federal Dockets Management System at: <http://www.regulations.gov> by entering “DOT-OST-1997-2605” in the “SEARCH for: Rules, Comments, Adjudications or Supporting Documents:” field. Additionally, historical traffic and annual subsidy rates are detailed in Appendix B.

### **Legislative Changes**

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.<sup>1</sup> 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.<sup>2</sup>

### **Order to Show Cause**

By Order 2013-3-13, issued on March 28, 2013, the Department tentatively determined to terminate the eligibility of Lewistown and Miles City under the EAS program. Our tentative decision was based on the statutory requirement that the average subsidy per passenger must be less than \$1,000 during the most recent fiscal year per 49 U.S.C. § 41731(a)(1)(C).

For the most recent fiscal year (FY 2012), Silver transported 660 total passengers at Lewistown and 694 total passengers at Miles City at annual subsidy rates of \$1,325,733 and \$1,621,821, respectively. Thus, the corresponding average per passenger subsidy for FY 2012 is \$2,009 at Lewistown, and \$2,337 at Miles City. Order 2013-3-13 directed all interested parties to show cause by April 17, 2013, as to why the Department should not make final its tentative findings and conclusions.

### **Objections to the Department’s Show Cause Order**

The Department received a significant number of letters<sup>3</sup> from various concerned parties objecting to the Department’s tentative decision to terminate EAS at Lewistown and Miles City, Montana, including Governor Steve Bullock, elected community officials, County Commissioners, multiple civic organizations, travel and tourism groups, small

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<sup>1</sup> See 49 U.S.C. § 41731.

<sup>2</sup> Communities in Alaska and Hawaii are exempt.

<sup>3</sup> The Department also received Resolution No. 3811 from the City of Lewistown requesting the Secretary of Transportation delay suspension of EAS service at Lewistown.

business owners, and concerned citizens.<sup>4</sup> There were common threads to most of the comments and they are summarized below.

Numerous objecting parties encouraged the Department to take into consideration Montana's unique geographic circumstances when making a final decision. Montana is the fourth largest state by area in the nation but has only about one million residents. The objectors note that, because of its huge size but sparse population, air transportation is vitally important to quality of life of Montana residents.

Additionally, the objectors point to the fact that enplanements were higher when air transportation was provided by Great Lakes Aviation Ltd. (Great Lakes) with a hub destination of Denver. When Silver was awarded the EAS contract in 2011, the hub destination changed from Denver to Billings, and subsequently, enplanements declined. Under these circumstances, the objecting parties request additional time, approximately two years, to replace Silver with another suitable air carrier and change the hub destination back to Denver.

Additionally, many of the objectors state that these communities have no bus or rail service and that EAS is the only form of public transportation available to the citizens of Lewistown and Miles City. Therefore, terminating air service would eliminate their only access the national air transportation system.

Various objecting parties claim that terminating EAS at Lewistown and Miles City would have a detrimental effect on the airport, the local travel and tourism industry, and the communities' ability to attract and retain businesses and high-quality educators. Moreover, the objectors fear that the remaining five EAS communities in Montana could be in jeopardy of losing its service in the coming years if either Lewistown or Miles City is eliminated from the EAS program.

## **Decision**

The objecting parties have not disputed our tentative determination that the communities' average per passenger subsidy for FY 2012 is \$2,009 at Lewistown, and \$2,337 at Miles City - well above the \$1,000 limit. As stated above, Public Law 112-95 amended the definition of "eligible place" to include the requirement that during the most recent fiscal year, a community must have had an average subsidy per passenger of less than \$1,000.

With regard to the low enplanement numbers on air transportation to the hub airport of Billings, the Department notes that during the previous air carrier-selection case in 2011, the majority of the seven EAS Montana communities, by a 6 to 1 margin, favored Silver with the hub destination being Billings.<sup>5</sup>

While passenger enplanements were higher several years ago when Great Lakes provided service to Denver, the statute does not allow the Department to look prospectively when

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<sup>4</sup> The Department also received several letters in support of our tentative decision.

<sup>5</sup> See Order 2011-1-27, issued on February 3, 2011.

determining whether the communities meet the eligibility requirement; rather, the statute requires that the Department look back to the most recent *prior* fiscal year.

Given this statutory requirement, the Department hereby finalizes its tentative findings in Order 2013-3-13, and allows Silver to terminate service.<sup>6</sup> In order to allow for an orderly shutdown, we will continue to authorize subsidy through July 15, 2013, and allow Silver to suspend service at that time. If Silver does decide to suspend service at the communities, the Department expects it to contact all passengers who hold reservations for flights that will be suspended to inform them of the suspension, and to assist them in arranging alternative transportation or to provide them with a refund of their ticket price, without penalty, if requested.

### **Request for Proposals**

As the end of the current contract approaches, we are here requesting proposals from air carriers interested in providing EAS at Glasgow, Glendive, Havre, Sidney, and/or Wolf Point, Montana, with or without subsidy, for a new two-year period. Air carriers should file their proposals no later than July 15, 2013. After that date, our staff will docket proposals, thereby making them public, and direct each air carrier to serve a copy of its proposal on the civic parties and other applicants. Shortly thereafter, we will provide a summary of the proposals to community officials and ask them for their final comments. We will give full consideration to all proposals filed in a timely manner.<sup>7</sup>

Interested air carriers should prepare their proposals with every expectation that their initial proposals will represent their *final* and *only* proposals. However, we retain the discretion to negotiate proposals with air carriers when we deem it desirable; in such cases, of course, we will give all applicants the same opportunity. We also retain the discretion to reject outright all unreasonable or unrealistic proposals and re-solicit a new round of proposals. However, negotiation or rejections are only an occasional exception to the rule.

We are here providing interested air carriers with some basic information to serve as guidance when they prepare their proposals, but we will not prescribe a precise format for their proposals. We expect proposals to adequately describe the service being proposed and the annual amount of subsidy being requested. The applicants can make their own judgments as to the level of detail they wish to present; however, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, revenues and expenses. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected communities and the Department.<sup>8</sup>

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6 We take this action pursuant to 49 U.S.C. §§ 40101(a)(7), (11), and (16), and 41731-42; *see also* 14 CFR Parts 271, 323, 325.

7 Air carriers should not expect the Department to accept late filings. In cases where an air carrier proposes to provide EAS without subsidy and we determine that service can be reliably provided without such compensation, we typically do not proceed with the carrier-selection case. Instead, we simply rely on that carrier's subsidy-free service as proposed.

8 In selecting a carrier to provide subsidized EAS, 49 U.S.C. § 41733(c)(1) directs us to consider five factors: (a) scheduled service reliability; (b) contractual and marketing arrangements with a larger carrier to

With specific respect to Glasgow, Glendive, Havre, Sidney, and Wolf Point, the Department expects proposals consistent with what the communities are currently receiving, with continued service to a suitable hub airport that offers numerous connecting opportunities to the national air transportation system. Communities and air carriers are encouraged to work together in advance of the due date for proposals to design a service pattern that is desirable to the community and meets the operational needs of the airline interested in submitting a proposal. In addition, air carriers should be very clear as to whether a specific community's proposal is on a stand-alone basis, or whether it is part of a larger, inseparable package with other communities.

We encourage proposals that meet those requirements in an efficient manner. Air carriers are also welcome to propose more than one service option, if they choose; they need not limit themselves to those requirements if they envision other, potentially more attractive service possibilities -- different hubs, for example -- with subsidy requirements that remain competitive.

### **Service and Traffic History**

Silver has operated subsidized service at the above communities since 2011. During the fiscal year ended 2012, the most recent fiscal year for which data are available, Glasgow averaged 6 enplanements a day, Glendive 2, Havre 3, Sidney 34, and Wolf Point 8.<sup>9</sup> In order to assist air carriers in making their traffic and revenue forecasts, we have included historical traffic data in Appendix B.

### **Filing Requirements**

Air carrier proposals should be submitted to the Department with all materials merged into a single document. The document will be published on [www.regulations.gov](http://www.regulations.gov) and each page should be formatted to be viewed online.

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.<sup>10</sup> Consequently, all air carriers receiving Federal subsidy for EAS must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those

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ensure service beyond the hub airport; (c) interline arrangements that the applicant has made with a larger carrier at the hub; (d) community views, giving substantial weight to the views of the elected officials representing the users; and (e) whether the air carrier has included a plan in its proposal to market its service to the community. In addition, the Consolidated Appropriations Act, 2008, Public Law 110-161, provides that, when selecting a carrier to provide EAS, the Department may consider the relative subsidy requirements, thus codifying a factor that we have considered since the inception of the program.

<sup>9</sup> See Appendix B for historical traffic data.

<sup>10</sup> The regulations applicable to these areas are: (1) 49 CFR Part 20 -- restrictions on lobbying; (2) 49 CFR Part 21 -- Nondiscrimination in federally-assisted programs of the Department of Transportation -- Effectuation of title VI of the Civil Rights Act of 1964; 49 CFR Part 27 -- Nondiscrimination on the basis of disability in programs and activities receiving or benefiting from Federal financial assistance; and 14 CFR Part 382 -- Nondiscrimination on the basis of disability in air travel; and (3) 49 CFR Part 29 -- Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).

air carriers whose subsidies exceed \$100,000 over the life of the rate-term must also certify that they are in compliance with the regulations governing lobbying activities. Because the Department is prohibited from paying subsidy to air carriers that do not submit these documents, all air carriers that plan to submit proposals involving subsidy should be aware that the selected air carrier will be required to complete the required certifications. Interested air carriers requiring more detailed information regarding these requirements should contact the Office of Aviation Analysis at (202) 366-5903.<sup>11</sup>

### **Community and State Comments**

The communities and State are welcome to submit comments at any time. We encourage prospective applicants to contact the communities before they submit their proposals so that they can tailor them to the communities' needs, as they will not be able to amend them after the due date. As noted earlier, we will provide a summary of the proposals to the civic parties shortly after July 2, the due date for proposals, and ask them to submit their final comments.

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

### **ACCORDINGLY,**

1. We terminate the eligibility of Lewistown and Miles City, Montana, under the Essential Air Service program, effective July 16, 2013;
2. We will continue to authorize subsidy for Silver Airways, Inc. for the provision of EAS at Lewistown and Miles City, Montana, as described in Appendix A of Order 2011-1-27, through July 15, 2013;
3. We allow Silver Airways, Inc., to suspend service at Lewistown and Miles City, Montana, after July 15, 2013, if it chooses; and
4. We request that air carriers interested in providing Essential Air Service at Glasgow, Glendive, Havre, Sidney, and/or Wolf Point, Montana, submit their proposals, with or without subsidy requests, no later than July 15, 2013. The proposals should be e-mailed to: [EAS@dot.gov](mailto:EAS@dot.gov) with the title "Proposal to Provide Essential Air Service at Glasgow, Glendive, Havre, Sidney, and/or Wolf Point, Montana, Docket DOT-OST-1997-2605;"<sup>12</sup>
5. This docket will remain open until further order of the Department; and

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<sup>11</sup> The certifications are available online under "Reports and Publications" at <http://www.dot.gov/policy/aviation-policy/small-community-rural-air-service/essential-air-service>

<sup>12</sup> Questions regarding filings in response to this Order may be directed to Scott Faulk at (202) 366-9721 or [scott.faulk@dot.gov](mailto:scott.faulk@dot.gov).

6. We will serve copies of this Order on the mayors of Lewistown, Miles City, Glasgow, Glendive, Havre, Sidney, and Wolf Point, Montana, and the airport managers of Lewistown Municipal Airport, Miles City Airport/Frank Wiley Field, Wokal Field/Glasgow International Airport, Dawson Community Airport, Havre City-County Airport, Sidney-Richland Municipal Airport, Wolf Point International Airport, and the service list for this docket.

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/>

**AREA MAP**





**Passenger Traffic and Annual Essential Air Service Subsidy at Montana<sup>1</sup>**

**Lewistown**

	Total Enplanements	Total Deplanements	Total Traffic	Annual Subsidy at April 1	Subsidy per Pax
<b>12 Months Ended</b>					
Sep. 30, 2012	337	323	660	\$1,325,733	\$2,009

**Miles City**

	Total Enplanements	Total Deplanements	Total Traffic	Annual Subsidy at April 1	Subsidy per Pax
<b>12 Months Ended</b>					
Sep. 30 2012	350	344	694	\$1,621,821	\$2,337

**Glendive**

	Total Enplanements	Total Deplanements	Total Traffic	Annual Subsidy at April 1	Subsidy Per Pax
<b>12 Months Ended</b>					
Sep. 30, 2012	693	632	1,325	1,193,391	\$901

**Havre**

	Total Enplanements	Total Deplanements	Total Traffic	Annual Subsidy at April 1	Subsidy per Pax
<b>12 Months Ended</b>					
Sep. 30 2012	1,091	1,056	2,147	\$1,162,329	\$541

**Glasgow**

	Total Enplanements	Total Deplanements	Total Traffic	Annual Subsidy at April 1	Subsidy per Pax
<b>12 Months Ended</b>					
Sep. 30 2012	693	1,876	2,569	\$1,166,049	\$453

<sup>1</sup> Source: Bureau of Transportation Statistics: Schedule T-100

**Wolf Point**

	<b>Total Enplanements</b>	<b>Total Deplanements</b>	<b>Total Traffic</b>	<b>Annual Subsidy at April 1</b>	<b>Subsidy per Pax</b>
<b>12 Months Ended</b>					
Sep. 30 2012	2,612	2,494	5,106	\$1,502,378	\$294

**Sidney**

	<b>Total Enplanements</b>	<b>Total Deplanements</b>	<b>Total Traffic</b>	<b>Annual Subsidy at April 1</b>	<b>Subsidy per Pax</b>
<b>12 Months Ended</b>					
Sep. 30 2012	11,582	10,653	22,235	\$2,932,152	\$131

**Example of General Terms and Conditions for Essential Air Service**

The air 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 air 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 air 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 air 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 air carrier to provide service on these routes. The air 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 air 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 air 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 may not be available for performance under this Solicitation beyond September 30, 2013. The Government's obligation for performance under this Solicitation beyond September 30, 2013, is subject to the availability of 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 solicitation beyond September 30, 2013, until funds are made available to the Department for performance. If funds are not made available for performance beyond September 30, 2013, the Department will provide notice in writing to the air carrier.

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