



## Legislation Text

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**File #:** 16-242, **Version:** 1

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*Report Prepared by: Janet E. Young, Interim Airport Manager*

**SUBJECT:** Relinquishment of FAA Part 139 Certificate for the Merced Regional Airport

### REPORT IN BRIEF

Consider the relinquishment of FAA Part 139 Certificate for the Merced Regional Airport (MCE) due to Aircraft Rescue and Fire Fighting (ARFF) cost.

### RECOMMENDATION

**City Council** - Adopt a motion approving the relinquishment of the City of Merced Regional Airport FAA Part 139 Certificate; and, authorizing the City Manager to execute the necessary documents.

### ALTERNATIVES

1. Approve the relinquishment of FAA Part 139 Certificate for the Merced Regional Airport, as recommended by the City Manager; or,
2. Keep FAA Part 139 Certificate and continue with status quo; or,
3. Refer to staff for reconsideration of specific items; or,
4. Deny and reject all alternatives.

### AUTHORITY

Charter of the City of Merced, Section 200; Merced Municipal Code Section 2.32.020.

### CITY COUNCIL PRIORITIES

Fiscal year 2016-2017 Budget

### DISCUSSION

#### FAA Part 139 Certificate

The reason for considering the surrender of the Part 139 certificate is to address Fire Department staffing costs associated with meeting Part 139 requirements. In the case of an airport such as MCE, Part 139 requires a minimum of one qualified fire fighter to operate the ARFF unit. It is also important to note that the labor union agreement states "three fire fighters will be on an engine or truck." The current situation with one fire fighter stationed during the required times for ARFF duty is amassing significant staffing costs and presents staffing schedule issues. Due to the magnitude of the potential cost savings related to ARFF services provided by the Merced Fire Department to the MCE, the City is strongly considering the relinquishment of the FAA Part 139 certificate currently held by the Airport, a critical component of the City's infrastructure.

Federal regulations mandate that an airport must hold a Part 139 certificate if it receives airline service from "[S]cheduled passenger-carrying operations of an air carrier operating aircraft designed for more than 9 passenger seats, as determined by the aircraft type certificate issued by a competent civil aviation authority..." [14 CFR section 139.1(a)(1)] This was applicable to the Merced Regional Airport until October 2015 when Boutique Air began service, as explained below.

## **Background**

The Merced Regional Airport (MCE) is a commercial airport receiving airline service subsidized by the Essential Air Service (EAS) administered by the U. S. Department of Transportation (DOT). The current the air carrier is Boutique Air, which began service in October 2015 and provides passenger service between Merced and the Los Angeles International Airport (LAX) and the Oakland International Airport (OAK). Service between Merced and Las Vegas McCarran International Airport (LAS) is temporarily suspended pending resolution of a dispute between the airline and McCarran related to the level of landing fees the airport seeks to assess Boutique.

The Airport has a significant impact on the local and regional economy, with commercial and charter passenger traffic stimulating occupancy of hotels and motels, restaurant and retail sales; car rentals; and bus ridership locally and through YARTS. The University of California, Merced is utilizing the commercial air service in growing numbers and it is important for a major research university to have local air service to enable corporate representatives to meet with researchers regarding technology transfer opportunities that will contribute to new business in the area.

## **Essential Air Service (EAS)**

The EAS program was established as a result of airline deregulation to ensure that smaller communities with commercial air service located outside of a specified mileage radius from a medium or large hub could continue to have commercial airline service to connect them to the nation's commercial aviation system. Prior to enactment of the Airline Deregulation Act in 1978, and for a few additional years, Merced was served by major carriers such as United Air Lines operating 727 and 737 type aircraft. For the past several years through the summer of 2015, MCE was served by EAS carriers operating Brasilia aircraft or Beech 1900 aircraft.

Currently there are only two EAS operators flying aircraft certificated to operate with more than nine passenger seats - Great Lakes Airlines and Silver Air. Several EAS carriers operate Cessna Caravan aircraft with no more than nine passenger seats and the current MCE carrier flies Pilatus PC-12 aircraft with eight passenger seats. MCE has held a Part 139 certificate for many years and the certificate was necessary through the term of the prior carrier in order for it to serve Merced by virtue of it being a Part 121 commercial carrier which could operate aircraft with more than nine passenger seats. It appears unlikely that a carrier operating more than nine passenger seats will seek to serve Merced through the EAS program in the foreseeable future. Boutique Air is a Part 135 carrier and can provide passenger service to airports without a Part 139 certificate.

It is important to note that the EAS program does not require participating airports to hold a Part 139 certificate. In fact, four EAS airports have surrendered their Part 139 certificates for various cost-avoidance reasons. The Visalia Airport is the only California EAS airport to have done so and the primary basis for the action was the cost of ARFF operations to the City. In addition, Boutique Air management has indicated that the company has no objection to the proposed action by the City of Merced.

## **ARRF Requirement**

The Part 139 certificate requires that the ARFF coverage must be in place for a period 15 minutes before a scheduled landing to 15 minutes after takeoff. (Section 139.5) Part 139 also carries the requirement that the response time must be less than three minutes from the time of the call to a point midway on the farthest runway used by the commercial air carrier aircraft, at which time the ARFF vehicle must begin application of extinguishing agent. [Section 139.319(h)(2)(i)]

The number of flights operated daily by Boutique Air essentially requires that Station 52 (located at the Airport) ARFF personnel must be available and able to meet these performance parameters from early morning through late evening. If the Part 139 certificate was to be surrendered, the airport would not be subject to the ARFF timed response requirements and would be regarded as a general aviation airport. This would enable the Fire Department to have the ability to dispatch the Station 52 personnel to another off-airport emergency and bring in ARFF qualified fire fighters from another station to serve the airport as needed. The Fire Department would strive to have Station 52 personnel on scene during the designated arrival and departure times at the airport, but the surrender of the Part 139 certificate would permit the City to avoid the cost of an additional three person ARFF crew to be positioned full-time at Station 52 to meet the requirements of the Part 139 certificate.

The cost of the additional three person ARFF crew is estimated to be approximately \$300,000 to \$350,000 per year. This type of cost consideration motivated the City of Visalia to relinquish the Airport's Part 139 certificate. The Visalia Airport however, does have a larger staff and the ARFF operations were assumed by existing staff who received appropriate training. The approach envisioned by the City of Merced calls for the Fire Department to continue to provide these services through protocols to be developed by the Fire Department in coordination with the MCE staff.

## **Basis for Surrender of FAA Part 139 Certificate for Cost-Saving Purposes**

The FAA has opined that it is not necessary for an airport receiving commercial service through a carrier operating a Cessna 208(B) Caravan to hold a Part 139 Certificate. The FAA opinion was based on the fact that the Caravan, which is certified by the FAA as a "normal" category aircraft which "...is limited to airplanes that have a seating configuration, excluding pilot seats, of nine or less, a maximum certificated takeoff weight of 12,500 pounds or less, and is intended for nonacrobatic operation....". [14 CFR section 23.3(a)] The Pilatus PC-12 aircraft flown by Boutique Air is also certified as a "normal" category airplane for which a Part 139 certificate would not be necessary.

This fact creates the opportunity for the City to evaluate whether or not to surrender the Part 139 certificate as a cost-savings measure. Should a circumstance arise in the future where it becomes necessary to hold a Part 139 certificate, the airport would need to request an FAA Part 139 inspection.

## **TSA**

There have been questions raised regarding potential TSA impacts associated with the surrender of the Part 139 at the MCE. Staff has conferred with the TSA office in Fresno and received affirmation that the Part 139 certificate was not related to TSA and that there is no TSA regulation or requirement that commercial airports served by TSA must have a Part 139 certificate.

Moreover, the City of Visalia informed the TSA that the Visalia Airport certificate had been

surrendered and this resulted in no changes to the TSA coverage or services. Staff assumes the same for MCE.

### **Conclusion**

Relinquishing the certificate would not affect the EAS commercial airline service offered by Boutique Air. It would be essential for the Fire Department protocols for timely response to alarms related to the commercial aircraft to be ready for implementation before the surrender of the certificate could be accomplished.

The Airport Authority has been consulted regarding this potential action and will more fully consider the matter prior to the City Council Meeting. In addition, it would be necessary for the Airport to maintain the safety and security inspection standards of Part 139 even if the certificate is surrendered, in order for commercial operations to function safely and smoothly. This objective would need to be accomplished prior to the relinquishment of the certificate.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed if the Part 139 is surrendered.

If no action is taken, there could be a \$300,000 - \$350,000 impact to General Fund.