



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

Issued by the Department of Transportation
on the 8th day of July, 1999

Served: July 12, 1999

Application of

INLAND AVIATION SERVICES, INC.

Docket OST-98-3857

for a certificate of public convenience and necessity
under 49 U.S.C. 41102 to engage in interstate
scheduled air transportation of persons, property and
mail

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

Summary

By this order, we tentatively find that Inland Aviation Services, Inc., is a citizen of the United States and is fit, willing, and able to provide interstate scheduled air transportation of persons, property and mail and should be issued a certificate of public convenience and necessity for such operations.

Background

Section 41102 of Title 49 of the United States Code (Transportation) (“the Statute”) directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are “fit, willing, and able” to perform such transportation, and to comply with the Statute and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On May 18, 1998, Inland Aviation Services, Inc., located in Aniak, Alaska, filed an application in Docket OST-98-3857 for a certificate to provide interstate scheduled air transportation of persons, property, and mail pursuant to section 41102 of the Statute. Inland Aviation accompanied its application with the fitness information required by section 204.3 of our regulations.¹

No answers were filed to the application and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Inland Aviation is a U.S. citizen and is fit, willing, and able to operate its proposed interstate scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

Inland Aviation is currently registered and operating as an air taxi. It was organized as a corporation under the laws of the State of Alaska in August 1995 under the name of Bethel Aircraft Services, Inc. In June 1996, Mr. Stephen Hill purchased the carrier from its original owner. He changed the name to Inland Aviation and moved the company from Bethel to Aniak. Inland Aviation currently serves points in Alaska using two six-seat Cessna 207, one three-seat Cessna 172, one five-seat Helio H-295, and one five-seat Helio H-395 aircraft. Ownership of the company is now distributed between Mr. Hill (41 percent), Mr. Eric A. Feige (39 percent), Mr. Michael A. Murphy (10 percent), and Mr. Ray Dorsey (10 percent). These individuals also serve as the carrier's Board of Directors with Mr. Hill serving as the Chairman.

If its application is approved, Inland Aviation intends to provide scheduled passenger service between Aniak and Kalskag, Alaska, three days per week. In addition, the carrier intends to carry mail for which it is seeking certificate authority.

Managerial Competence

Mr. Stephen L. Hill has served as Inland Aviation's President and Chairman of the Board since purchasing the carrier in 1996. He holds an FAA Commercial Pilot Certificate and has logged over 5,000 hours of flight time. Mr. Hill has 20 years of experience managing maintenance, transportation and real estate facilities for the Kuspuk School District in Alaska. In addition, he is currently serving his third term as the mayor of Aniak.

Mr. Dean Nelsen assumed the position of Inland Aviation's Chief Pilot in December 1998 after serving as a line pilot with the carrier since 1988. He has recently been promoted to Director of Operations. Prior to joining Inland Aviation, he served as a line pilot with various companies including: Denali Wilderness Lodge, Anvik River Lodge and South Central Air. During the summers of 1996 and 1997, he owned and operated Midnight Sun Trophy Pike Adventures, a

¹ Inland Aviation filed information supplementing its application on July 17, August 20, September 2, and October 8, 1998, and February 1 and May 17, 1999.

fishing guide business. He holds an FAA Airline Transport Pilot Certificate and has accumulated over 3,500 hours of flight time.

Ms. Maureen Dandell joined Inland Aviation as its Chief Pilot in February 1999. She acquired her initial aviation experience at the Palo Alto Flying Club where she was employed from September 1987 to September 1995 in positions ranging from office manager to Assistant Chief Pilot. While employed at the Palo Alto Flying Club, she was a part-time traffic reporter with Metro Traffic in San Francisco. From October 1995 to January 1999, she was employed as a Line Pilot and Check Airman with Hageland Aviation. She holds an FAA Airline Transport Pilot Certificate and has accumulated over 9,100 hours of flight time.

Mr. Ray Dorsey serves as Inland Aviation's Director of Maintenance. He has 22 years of experience as a mechanic working for various Part 135 air carriers. He currently owns and operates Ray's Aeromotive in Kenai, Alaska, providing aircraft repair and overhaul services to customers throughout Alaska, including Inland Aviation.² Mr. Dorsey holds an FAA Airframe and Powerplant Mechanic License with Inspection Authorization.

In view of the experience and background of the applicant's key personnel,³ we tentatively conclude that Inland Aviation has demonstrated that it has the management skills and technical ability to conduct its limited proposed service.⁴

Financial Plan and Operating Proposal

² Mr. Dorsey intends to spend about 35 percent of his time serving as the Director of Maintenance of Inland Aviation.

³ In addition to the individuals noted above, Inland Aviation has designated other persons who appear to be well qualified to hold their respective managerial positions with the Company. Mr. Michael Murphy, one of the carrier's stockholders, serves in a part-time capacity as the Vice President of Business Operations. He has 16 years of flying experience, he holds an FAA Airline Transport Pilot Certificate, and he has logged over 16,000 hours of flight time. He also currently works for Alaska Central Express as the Director of Operations. Mr. Eric Feige previously served as Inland Aviation's Director of Operations, but relinquished all FAA-required management duties as a result of certain enforcement actions, as described below (see Compliance Disposition, Page 5). However, he continues to serve as Secretary/Treasurer and as a line pilot as needed. He has over eight years of aviation experience, primarily as a line pilot, holds an FAA Airline Transport Pilot Certificate, and has accumulated over 4,000 hours of flight time. We find that the past enforcement actions do not have a material bearing on Mr. Feige's current responsibilities.

⁴ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals. The FAA has advised us that all of Inland Aviation's management are qualified and acceptable for their positions.

If granted the certificate authority it seeks, Inland Aviation intends to provide limited scheduled passenger service between Aniak and Kalskag, Alaska. In addition, the carrier intends to carry mail. The company expects that its proposed scheduled operations will total less than 100 additional flight hours per year.⁵

The applicant furnished data on its proposed flight operations, forecast monthly load factors and revenue and operating costs. Inland Aviation also provided a detailed narrative explanation of how its projections were derived, based on management experience in the aviation industry, and historical operational data. The applicant projects first-year total operating revenues of \$15,600 and total operating expenses of \$12,800, based on a total of 94 hours of scheduled operations a year, resulting in an estimated profit of approximately \$2,800. Inland Aviation has indicated that, since it is currently operating and will require no additional aircraft or personnel, pre-operating costs will be minimal. We have examined the applicant's estimated expenses and find them to be reasonable. Based on our analysis of its forecasts, it appears that Inland Aviation will need access to resources of at least \$3,200 to meet the Department's financial fitness criteria for its proposed limited scheduled operations.⁶

Funding for Inland Aviation's operations has been and will continue to be provided by its current operations. The carrier submitted a balance sheet as of May 12, 1999. Inland Aviation's working capital as of that date was \$5,000 with a current ratio of 2.6:1 and positive equity of \$8,703. As of that date, the carrier had total assets of \$11,645 and total liabilities of \$2,941. Inland Aviation also filed an income statement for the year ended December 31, 1998, and for the period January 1, 1999, through May 12, 1999, which showed that the carrier had a profit of \$9,936 for those periods. The First National Bank of Anchorage has provided verification that as of May 13, 1999, Inland Aviation had a balance of \$19,841 in its bank account.

Based on the above, we tentatively conclude that Inland Aviation has, through internal funds, access to sufficient financial resources to enable it to commence its proposed limited scheduled passenger operations without posing an undue risk to consumers or their funds. However, should Inland Aviation expand its operations, such as through the acquisition of larger aircraft that must be operated under Part 121 of the Federal Aviation Regulations (FARs), this financial fitness determination might no longer be valid. Therefore, as discussed in the "Certificate Conditions and Limitations" section below, we have decided to limit Inland Aviation's authority to the operation of aircraft that can be operated under Part 135 of the FARs, i.e, with 9 or fewer seats.

⁵ The distance between Aniak and Kalskag is 22 nautical miles. The carrier proposes to provide one round trip a day three days a week. The carrier will use a Cessna 172 which is currently in its fleet and will not need any additional personnel to provide the proposed service.

⁶ This amount is comprised of approximately one-fourth of the applicant's estimated total first-year operating costs of \$12,811. In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

Compliance Disposition

Inland Aviation stated that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years. Inland Aviation further stated that there are no pending investigations, enforcement actions, or formal complaints filed by the Department against it, its key personnel, or persons having a substantial interest in it with respect to compliance with the Statute or the Department's regulations. We examined the Department's records and have found that during the past three years, with the exception of the accidents and incidents described below, Inland Aviation has been the subject of one FAA enforcement case which was closed with a warning letter.

Within the last year, the carrier has been involved in two accidents and two incidents. The first accident occurred on June 19, 1998, when an aircraft experienced an in-flight engine failure resulting in an off-airport landing. There were no passenger injuries, but the aircraft sustained substantial damage. Although the matter is still under investigation, initial indications are that the failure was caused by a broken crankshaft and could not have been anticipated in routine and required operator maintenance. The second accident occurred on September 13, 1998, when, on takeoff, the aircraft's tail hit an object on an unimproved landing strip. The aircraft sustained substantial damage. Neither the pilot nor the passengers were injured. The first incident occurred on July 21, 1998, when one of the carrier's float aircraft made a hard landing in a lake after failing to gain sufficient speed to remain airborne. There were no passenger injuries and only minor damage to the floats. Mr. Feige, the Director of Operations at that time and pilot-in-command, received a 90-day suspension of his pilot certificate after the FAA determined that the aircraft load was unsecured which caused the aircraft to be out of weight and balance limitations.⁷ The second incident occurred on February 20, 1999, when the aircraft lost engine power on approach due to fuel starvation. The pilot-in-command was able to switch tanks and restore power.⁸ There were no injuries or damage to the aircraft.

Aside from the suspension of Mr. Feige's pilot license, no enforcement action has been taken against the carrier. However, as a result of these occurrences, the FAA initiated an Office Safety Inspection Program (OSIP) review of the carrier in December 1998. Although minor discrepancies were found, most of these were corrected over the course of the inspection. The FAA has indicated that there were no substantive findings that would jeopardize Inland Aviation's being found fit by the Department.

Further, the FAA has advised us that the company has applied for certification as a scheduled air carrier under Part 135 of the Federal Aviation Regulations and that the certification process is proceeding normally. The FAA also advised that all key personnel have been found qualified to hold their respective positions.

In light of these considerations, we tentatively conclude that Inland Aviation will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel

⁷ Mr. Feige has since relinquished his position as Director of Operations and currently serves as the carrier's Secretary and Treasurer. The 90-day suspension of his Airline Transport Pilot Certificate began December 2, 1998, and the certificate has been reinstated.

⁸ After an investigation conducted by Inland Aviation, the pilot was reprimanded and put on leave without pay. He was given additional ground training and several flight reviews by the Chief Pilot. The FAA has indicated that action against his pilot certificate is unlikely. The FAA has not proposed any enforcement action against the carrier.

conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Inland Aviation is a corporation organized under the laws of Alaska and is owned by U.S. citizens. All of the company's key personnel are U.S. citizens, and Inland Aviation has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute. Finally, our review of the applicant's citizenship has uncovered no reason to suggest that control of Inland Aviation rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Inland Aviation is a citizen of the United States and is fit, willing, and able to conduct the limited interstate scheduled passenger operations proposed in its application.

OBJECTIONS

We will give interested persons 14 calendar days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with

detailed economic analyses.⁹ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Inland Aviation's fitness, and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

CERTIFICATE CONDITIONS AND LIMITATIONS

If Inland Aviation is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of

⁹ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (See Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

evidence that Inland Aviation has been certified by the FAA to engage in the scheduled passenger operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of 14 CFR 205.5(b), and a statement of any changes it may have undergone since its fitness was examined.

Furthermore, we remind Inland Aviation of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Moreover, given the limited scope of Inland Aviation's proposed operations, we will impose certain limitations on its authorization to provide scheduled air service as a certificated air carrier. The Department has adopted a policy, consistent with the recommendations of the FAA 90-Day Safety Review, issued September 16, 1996, of imposing conditions in fitness orders to facilitate appropriate monitoring of individual air carriers' growth.¹⁰ Along these lines, we note that our finding of fitness for Inland Aviation is based on the operating plans described in its application, namely, aircraft that can be operated under Part 135 of the FARs. Were the applicant to propose to expand its operations to include larger aircraft, our fitness findings, particularly those regarding the adequacy of its financial resources, might no longer apply.¹¹ Therefore we propose to limit any authority issued to Inland Aviation to operations with aircraft that can be operated under Part 135. Should Inland Aviation subsequently desire to operate larger aircraft, it must first be determined fit for such operations. Furthermore, should Inland Aviation propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹² The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).¹³

¹⁰ See, e.g., Orders 98-1-3, 97-10-22, 97-11-34, and 97-12-18.

¹¹ In this regard, we note that the operation of scheduled passenger operations with aircraft having a seating capacity of 10 or more would require the carrier to transition to Part 121 of the FARs, a step which may require the applicant to obtain additional management personnel and/or incur additional financial outlays.

¹² Inland Aviation may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. Moreover, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

¹³ We also remind Inland Aviation about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated

To aid the Department in its responsibility to monitor the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,¹⁴ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Inland Aviation Services, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-98-3857, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.¹⁵
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

¹⁴ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

¹⁵ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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http://dms.dot.gov/reports/reports_aviation.asp

SPECIMEN

Attachment



Terms, Conditions, and Limitations

INLAND AVIATION SERVICES, INC.

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the operations proposed under

this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder may not operate aircraft designed to have a maximum passenger capacity of more than 9 passenger seats.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:

(a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(b) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.