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

Issued by the Department of Transportation
on the 30th day of October, 2001

Fitness Determination of

**SUM AIR SERVICES, INC.
d/b/a Paradise Air**

as a commuter air carrier under section
49 U.S.C. 41738¹

Served: November 2, 2001

Docket OST-01-9718 - 10

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Sum Air Services, Inc. d/b/a Paradise Air is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier using small aircraft.¹

Background

Section 41738 of Title 49 of the United States Code ("the Statute") and section 298.21(d) of the Department's Aviation Economic Regulations direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able to perform the service," and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). 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 carrier's fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and

¹ Specifically, we propose to limit the applicant's authority to the use of aircraft that can be operated under its Part 135 Air Carrier Certificate issued by the Federal Aviation Administration.

(3) will comply with the Statute and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On May 18, 2001, Sum Air filed an application in Docket OST-01-9718 for authority to provide scheduled passenger operations as a commuter air carrier pursuant to section 41738 of the Statute. Fitness information, required by section 204.3 of our regulations, was provided with the application as well as in four subsequent submissions.²

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. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we tentatively conclude that Sum Air is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that Sum Air is fit, willing, and able to provide commuter service.

The Company

Sum Air was incorporated under the laws of the State of Missouri in 1989 and for a number of years operated in the Midwest as an air taxi. In 1998, Sum Air was sold to its present owners and moved from Missouri to Florida.³ As a result of this relocation, Sum Air has not conducted any operations for some time. However, in April 2001, its operations specifications were reissued to it and, since then, the company changed its state of incorporation to Delaware. These steps have positioned the company to commence its proposed scheduled passenger operations between Marathon and Ft. Lauderdale should it be found fit to do so.⁴

² Sum Air filed information supplementing its application on August 16 and October 17, 2001.

³ Sum Air's present owners are Mrs. Ute Steigerwald (50 percent), her stepdaughter--Ms. Christina Steigerwald (16.66 percent), and her daughters--Ms. Amy Steigerwald and Ms. Nicole Steigerwald (each with a 16.67 percent ownership interest).

⁴ At present, Sum Air is in the process of adding a 3-seat Cheyenne III aircraft to its Operations Specifications, having dropped its previously approved 3-seat Cessna 172. However, the company does not intend to use this aircraft in its proposed scheduled passenger service.

FITNESS

Managerial Competence

Mrs. Ute Steigerwald controls Sum Air, together with Paradise Aviation, Inc., a Marathon, Florida, fixed base operator.⁵ While maintaining control of Sum Air through her ownership interest, Mrs. Steigerwald has assigned the duties of President of Sum Air to Ms. Carol Collins.⁶ Ms. Collins will serve as Sum Air's President and Director of Safety. Currently serving as Paradise Aviation's Vice President and Director of Safety, Ms. Collins will become a full-time employee of Sum Air when the company commences operations. Prior to joining Paradise Aviation in 2000, Ms. Collins worked for 15 years as a pilot and flight instructor with Somerset Aviation and Freyburg Aviation, both air taxi operators.⁷

Mr. Dennis Granlund, an Airline Transport Pilot with over 11,000 flight hours, has recently been hired to serve as Sum Air's Chief Pilot. Prior to joining Sum Air, Mr. Granlund first served for six years as a pilot in the United States Air Force and then for ten years as a pilot for Northwest Airlines. Mr. Granlund left Northwest in 1996 and, since that time, has worked as a corporate pilot with Windmaster manufacturing and as a pilot for Chipola Aviation, an air taxi operator.

Mr. Steve Holmstrom, an Airframe and Powerplant Mechanic, will be Sum Air's Director of Maintenance. Currently serving as Chief of Maintenance for Paradise Aviation, Mr. Holmstrom will split his time between his duties with both Sum Air and Paradise Aviation when Sum Air commences scheduled passenger operations.⁸ Prior to joining Paradise Aviation in November 1999, Mr. Holmstrom worked as a mechanic for Dawn Aero (two years), Maryland Airlines (seven years), and Jet International (two years).⁹

Mr. John Edgar "Ed" Steigerwald, an Airline Transport Pilot and the husband of Ute Steigerwald, currently works for Paradise Aviation as its President and Director of Operations. When Sum Air begins scheduled passenger operations, Mr. Steigerwald will assume the position of Director of Operations with the applicant. At the same

⁵ Mrs. Steigerwald owns 100 percent of the stock issued by Paradise Aviation.

⁶ Mrs. Steigerwald will devote her time to overseeing the operations of Paradise Aviation.

⁷ Prior to 1985, Ms. Collins was employed in the medical technology field.

⁸ The applicant expects that, initially, Mr. Holmstrom will devote approximately 20 percent of his time to his duties with Sum Air, moving to full-time as Sum Air's operations expand.

⁹ During the two years Mr. Holmstrom worked for Jet International, he was also employed by Maryland Airlines.

time, while he will continue to serve as Director of Operations of Paradise Aviation, his wife will become President of this company, allowing Mr. Steigerwald to devote approximately 75 percent of his time to overseeing Sum Air's operations. In the 21 years prior to his involvement with Paradise Aviation, Mr. Steigerwald served as President of J.E. Steigerwald Co., a Department of Defense contractor that employed about 250 persons, on average, and repaired Navy vessels.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Sum Air has assembled a management team that has the managerial skills and technical ability to conduct its limited proposed commuter operations. Moreover, the FAA has advised us that the carrier's key technical personnel and the current part-time nature of some of their employment with Sum Air are acceptable to it.¹⁰

Financial Condition and Operating Proposal

If granted the commuter authority it seeks, Sum Air proposes to operate two daily round trips during its peak season (December-June), and one daily round trip during its off-peak season (June-December), between Marathon and Ft. Lauderdale using two first class configured (9-passenger seats) Jetstream 31 aircraft.

Sum Air has already paid a substantial portion of its forecast pre-operating expenses as they were incurred. The company anticipates that it has \$46,593 in remaining pre-operating costs.¹¹

Sum Air is projecting first-year total operating expenses of \$747,200 based on flying 237 hours per quarter during its peak season and 118 hours per quarter during its off-peak season. After reviewing the carrier's cost estimates, in light of our past experience with other small start-up commuter airlines, we believe Sum Air's expense projections are reasonable. Therefore, based on our analysis of Sum Air's forecast, it

¹⁰ 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 their skills and technical ability.

¹¹ The figure does not include any employee expense for Sum Air's President, Director of Operations, Chief Pilot, or Director of Maintenance. Sum Air states that these employees have been paid through November 1, 2001. Therefore, should the pre-operating period require a longer lead time, Sum Air's remaining pre-operating expenses may increase substantially.

appears that the carrier will need \$233,393 to meet the Department's financial fitness criteria for its proposed commuter operations.¹²

As evidence of its ability to meet this requirement, Sum Air provided verification from Bank of America showing that it currently had funds on deposit totaling approximately \$253,200.

Thus it appears that, at present, Sum Air has available funds adequate to cover the financial requirements for its initial commuter operations. Therefore, we tentatively conclude that Sum Air will have access to resources sufficient to allow it to commence its proposed commuter operations without posing an undue risk to consumers or their funds. However, we will require that the company provide updated financial information showing that Sum Air continues to have funds sufficient to meet our financial fitness criteria available to it prior to making Sum Air's commuter authorization effective.¹³

Compliance Disposition

We also tentatively conclude that Sum Air has the proper regard for the laws, rules, and regulations governing its services to ensure that its aircraft and operations conform to applicable safety standards and that acceptable consumer relations practices will be followed.

Sum Air has stated that there have been no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices filed against it, its owners, or its key personnel, nor are there any outstanding judgments or pending actions against any of these parties. Moreover, our search of the Department's records found no compliance problems involving Sum Air, its owners, or its key personnel. Further, the FAA has advised us that it has no objections to the Department's grant of Sum Air's request for commuter authority.¹⁴

¹² To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses (\$46,593) and the expenses that are reasonably projected to be incurred during three months of operations (\$186,800). In calculating available resources, projected revenues may not be used.

¹³ This information must include a revised list of Sum Air's pre-operating expenses, broken down between those already paid and those remaining to be paid, as well as independent verification that Sum Air has available funds sufficient to cover all remaining and/or unpaid pre-operating expenses and to provide the necessary working capital reserve.

¹⁴ In order to conduct the proposed commuter operations, Sum Air must also obtain appropriate revisions to its operations specifications to authorize scheduled passenger service. The FAA indicates that this request is being processed and that there do not appear to be any matters of concern.

CITIZENSHIP

49 U.S.C. 41102 requires that authority 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.

In the case of Sum Air, Mrs. Ute Steigerwald and her daughters (Christina, Amy, and Nicole Steigerwald) own all of the company's issued and outstanding stock. Each of these individuals is a U.S. citizen. Further, all of Sum Air's key personnel are U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. Moreover, our review of the applicant has uncovered no reason to suggest that control of Sum Air rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Sum Air is a citizen of the United States and is fit, willing, and able to provide the limited scheduled passenger service it proposes as a commuter air carrier.

OBJECTIONS

We will give interested persons 14 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 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. 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 Sum Air's fitness and commuter authority.

EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

In the event that we find Sum Air fit, willing, and able to conduct the proposed commuter service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier has fulfilled all requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization.¹⁵ Among other things, this includes our receipt of

¹⁵ We also reserve the right to stay the effectiveness of Sum Air's authority if any new information becomes available to us that warrants such action.

evidence that the carrier has been issued Operations Specifications by the FAA authorizing scheduled passenger service under Part 135 of the Federal Aviation Regulations, evidence of liability insurance coverage that meets the requirements of Part 205 of our rules for commuter air carriers, and evidence that Sum Air continues to have adequate financial resources available to it to meet our financial fitness criteria.

Given the relatively limited scope of Sum Air's proposed operations, we propose to limit any authority issued to the applicant to operations conducted under Part 135. Should Sum Air subsequently desire to acquire and operate larger aircraft that would require certification from the FAA under Part 121, it must first be determined fit for such operations.¹⁶

Further, we remind Sum Air 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 commuter 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. In this regard, should Sum Air propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹⁷ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.¹⁸

¹⁶ We note that the operation of larger aircraft could require the carrier to have access to additional funds and/or hire additional management personnel.

¹⁷ The carrier 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 commuter authority.

¹⁸ We also remind Sum Air about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter 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 commuter 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.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order finding that Sum Air Services, Inc. d/b/a Paradise Air is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using small aircraft pursuant to Part 135 of the Federal Aviation Regulations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the award of authority 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-01-9718, 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.¹⁹
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 set out here and awarding Sum Air Services, Inc. d/b/a Paradise Air a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.
5. We will serve a copy of this order on the persons listed in Attachment A.

¹⁹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

6. We will publish a summary of this order in the Federal Register.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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



Specimen
Terms, Conditions, and Limitations

SUM AIR SERVICES, INC.
d/b/a Paradise Air

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations 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 interstate scheduled passenger operations, 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 requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*

(4) *The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.*

(5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all FAA requirements concerning security.*

(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 this authority 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 authority.*

(8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*

(9) *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.*

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

(11) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here 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 such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.*

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