

Order 2014-10-25
Served: October 29, 2014



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

Issued by the Department of Transportation
on the 29th day of October, 2014

Fitness Determination of

GEM AIR, LLC

as a commuter air carrier under section 49 U.S.C. § 41738

Docket DOT-OST-2014-0020

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

Summary

By this order, we tentatively find that Gem Air, LLC (“Gem Air”) is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier, subject to conditions.

Background

Section 41738 of Title 49 of the United States Code (“Transportation Code”) and section 298.21(d) of the Department’s Aviation Economic Regulations (14 CFR 298.21(d)) 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 an air 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 (3) will comply with the Transportation Code and regulations imposed by Federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On January 20, 2014, Gem Air, an on-demand air taxi serving the state of Idaho and operating under 14 CFR Part 298 of the Department’s regulations and Part 135 of the Federal Aviation Regulations (“FARs”), filed an application in Docket DOT-OST-2014-0020 for authority to

conduct scheduled passenger operations as a commuter air carrier. The air carrier accompanied its application with fitness information required by section 204.3 of our regulations.¹

FITNESS

The Company

Gem Air was formed as a limited liability company under the laws of the State of Idaho on December 21, 2007. Ownership of Gem Air is held equally by Ms. JoAnn Wolters and Mr. Daniel Schroeder,² both of whom are U.S. citizens. Gem Air initially began in 2000 as Mountain Bird Inc. d/b/a Salmon Air, an air taxi that later received commuter authorization from the Department in 2002. Ms. Wolters and Mr. Schroeder sold the company in 2005 and in 2007, they repurchased the company and changed its name to Gem Air.³

Managerial Competence

Gem Air's management and key personnel consist of the following individuals, each of whom is a U.S. citizen.

Ms. JoAnn Wolters – Chief Executive Officer (“CEO”) and General Manager

Mr. Daniel Schroeder – Director of Operations and Chief Pilot

Mr. Russell Linn - Director of Maintenance

Ms. JoAnn Wolters has served as CEO and General Manager of Gem Air since the company was formed in 2007. She is also Co-owner and President of Spirit Air, Inc., a Chapter S Idaho corporation which leases aircraft to Gem Air (2000-present). Previously, Ms. Wolters was Co-owner and Manager of Mountain Bird, Inc. d/b/a Salmon Air and served as its President from 1981 to 2005. She was an Instructor at Emery School of Aviation (1979-1980) and Owner and Manager of Sportsland of Laramie, Wyoming (1972-1978). Ms. Wolters attended the University of Wyoming and the Embry School of Aviation and holds Commercial Pilot and Certified Flight Instructor (“CFI”) certificates.

Mr. Daniel Schroeder has served as Director of Operations and Chief Pilot of Gem Air since 2007. He is also Co-owner of Spirit Air, Inc. (2000-Present). Before that, Mr. Schroeder was a Pilot, Check Airman, and Training Captain for McCall Aviation (2009-2013) and Co-owner, Pilot, Director of Operations, and Check Airman for Mountain Bird, Inc. d/b/a Salmon Air (1981-2006). Mr. Schroeder was also an Instructor at Emery School of Aviation (1978-1980), was employed at Angel Fire Corp (1973-1977) and Central Office Equipment (1971-1973), and served in the United States Army (1969-1971). Mr. Schroeder holds an Airline Transport Pilot (“ATP”) certificate and a Certified Flight Instructor, Instrument (“CFI-I”) certificate with over 21,000 hours of total time.

¹ Gem Air supplemented its application with additional information, most recently on August 26, 2014.

² JoAnn Wolters and Dan Schroeder are wife and husband.

³ In 2009, all service operations conducted under the Salmon Air trade name were sold to McCall Aviation, Inc., a former U.S. commuter air carrier.

Mr. Russell Linn has served as Director of Maintenance for Gem Air since 2010. Before that, he was the Director of Maintenance (1996-2007) and later a Pilot for Salmon Air (2008-2009). Mr. Linn was also a Truck Driver for Swift Transportation (2007-2008), an Electro Mechanic for Trans World Airlines (1988-1996), and an Avionics Mechanic for Continental Airlines (1987-1988). Mr. Linn has completed a number of maintenance training courses including, PT6A, Quest Kodiak, Cessna Caravan, MD-80, and B-767 and B-747 maintenance and avionics courses.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Gem Air has demonstrated that it has both senior management and key technical personnel who have the managerial skills and technical ability to support its proposed operations. Moreover, the FAA has advised us that they know of no reason to act unfavorably on the company's commuter application.⁴

Operating Proposal and Financial Plan

The applicant currently provides seasonal on-demand air taxi operations from Salmon, Idaho.⁵ All aircraft used by Gem are owned by Spirit Air Inc. ("Spirit"), a Chapter S, Idaho Corporation formed in 1999 to act as an aircraft holding company. As previously stated, Spirit is co-owned by Ms. Wolters and Mr. Schroeder.

Gem Air is currently operating the following aircraft under Part 135:

Number of Aircraft	Make/Model	Number of Passenger Seats
1	Quest Kodiak-100	9 Pax
1	PA-31-350	9 Pax
1	PA-34-200T (Seneca)	6 Pax

The company is requesting commuter authority to conduct scheduled operations of 5 round trips a week throughout the year between Salmon and Boise, Idaho. Air service will initially be provided using the 9-passenger Quest Kodiak aircraft. Gem Air does not anticipate any other aircraft acquisitions at this time, though the Seneca will be considered for possible scheduled operations if necessary.

In establishing financial fitness, the Department typically asks an applicant to demonstrate that it has access to financial resources sufficient to cover its pre-operating expenses and any negative working capital balance, plus a working capital reserve equal to the operating costs that are reasonably projected to be incurred during three months of "normal" operations. Because projected expenses during the first several months of air service frequently do not include all

⁴ Before authorizing an air carrier to conduct air transportation operations, the FAA also evaluates certain of the air carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the FARs. The FAA's evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability.

⁵ The applicant's owners previously operated Part 135 air service between Salmon and Boise, Idaho, as Mountain Bird, Inc. d/b/a Salmon Air and also operated an Essential Air Service contract in Moab, Vernal, and Salt Lake City, Utah. They sold Mountain Bird Inc. d/b/a Salmon Air in 2005.

costs 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 costs. Further, in calculating available resources, projected revenues may not be used.

Gem Air provided forecasts of its pre-operating costs and its first-year operating expenses associated with its current and proposed commuter operations. Gem Air states that its pre-operating costs, included those expenses associated with obtaining new Operations Specifications, training of pilots, establishing terminals and airport parking expenses, marketing expenses, and insurance, totaling approximately \$28,000, have already been paid in anticipation of receiving commuter authority. The applicant states that its pre-operating expense forecast is based upon its owners’ experience gained while operating the same Salmon-Boise-Salmon route in previous years. Additionally, the hanger and office space used by Gem Air in Salmon are owned by the applicant. Gem Air does not anticipate incurring any further pre-operating expenses. Gem Air also provided a forecast of its first-year operating expenses. The air carrier projects its first-year expenses will total approximately \$358,456. We have reviewed the applicant’s forecasts and find them to be reasonable. Therefore, we estimate that Gem Air will require approximately \$89,614 to meet our financial fitness criteria.⁶

In support of its ability to fund its proposed commuter operations, Gem Air submitted historical and current financial statements showing the company’s financial posture. For calendar years 2012 and 2013, Gem Air reported net losses of \$57,651 and \$43,575, respectively, on operating revenues of \$12,385 and \$5,612, respectively. For the first six months ending June 30, 2014, the company reported a net loss of \$55,241 on operating revenues of \$15,567. Gem Air’s balance sheet at June 30, 2014, shows the company has current assets of \$99,081 and current liabilities of \$55.00, indicating positive working capital of \$99,026. Gem Air also submitted third-party verification, dated August 4, 2014, that shows that Gem Air has \$164,228 on deposit in its name.

In light of the above, we tentatively conclude that Gem Air will have access to sufficient financial resources to enable it to commence the proposed operations without posing an undue risk to consumers or their funds.⁷

Compliance Disposition

The applicant states that there are no actions or outstanding judgments against it, persons holding a substantial interest in it, or its key personnel, and that none of these parties have been the subject of any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations, or other legal action during the past ten years. Gem Air also states that there are no pending investigations, enforcement actions, or formal complaints involving the applicant, persons holding a substantial interest in it, or its key personnel with respect to compliance with the Statute or the Department’s regulations.

Our search of the Department’s records found no compliance problems with Gem Air and our review of FAA records indicates that Gem Air has not been involved in any incidents or

⁶ The \$89,614 is one-quarter of Gem Air’s estimated first-year expenses.

⁷ As is our practice, prior to making any authority awarded to Gem Air effective, we will require the company to demonstrate that it continues to have the financial resources needed to meet our financial criteria.

accidents in a 5-year period from July 2009 through July 2014. Additionally, the FAA has informed us that it has no concerns over the safety of Gem Air's operations.

In light of these circumstances, we tentatively conclude that Gem Air has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards, and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 of the Transportation Code requires that an applicant for commuter 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, that at least 75 percent of the outstanding voting interest be owned by U.S. citizens, and that the air carrier must be under the actual control of U.S. citizens.

As previously stated, Gem Air is organized as a limited liability company in the State of Idaho and is in good standing. The company is equally owned by Ms. JoAnn Wolters and Mr. Daniel Schroeder, wife and husband, both of whom are U.S. citizens. There are no other ownership interests in the company and the company has no subsidiaries. Gem 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. Our review of the applicant's citizenship has uncovered no reason to suggest that control of Gem Air rests with non-U.S. citizens.

In light of the foregoing, we tentatively find that Gem Air is owned and actually controlled by U.S. citizens, consistent with 49 U.S.C. § 40102(a)(15) and is fit, willing, and able to provide the proposed scheduled passenger operations, subject to conditions.

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 such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses. 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. 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 Gem Air's fitness and Commuter Air Carrier Authorization.

EFFECTIVE COMMUTER CONDITIONS & LIMITATIONS

If Gem Air is found fit and issued the Commuter Air Carrier Authorization 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 authorization. Among other things, this includes our receipt of evidence that Gem Air has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of section 205.5(b) of our rules for all of its aircraft, third-party verification of available funding necessary to meet the Department's fitness requirements, and a statement of changes it may have undergone since its fitness was examined.

In addition, consistent with the applicant's proposed operations, we propose to limit any authority issued to Gem Air to operations using aircraft that can be operated under FAR Part 135. Should Gem Air desire to operate aircraft that would require certification from the FAA under Part 121, it must first provide the Department with at least 45 days advance notice of such plans and provide updated information establishing its fitness for such expansion.⁸

Furthermore, we remind Gem Air of the requirements of 49 U.S.C. § 41110(e). Specifically, that section requires that, once an air carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that 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. Therefore, if Gem Air is issued an effective commuter authorization and should it subsequently propose substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁹ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).¹⁰

Additionally, if Gem Air is granted effective authority, it would be required to 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 submission of a first year progress report is conditioned upon all newly authorized air carriers and was adopted as policy by the Department to aid in monitoring the fitness of new air carriers. The report should include a description of the air

⁸ We note that the operation of larger aircraft could require the air carrier to have access to additional funds and hire additional management personnel.

⁹ The air 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. In addition, 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 air carrier fails to file this updated information or if the information fails to demonstrate that the air 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 air carrier's commuter authority.

¹⁰ We also remind Gem 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.

carrier's current operations (number and type of aircraft, principle markets served, total number of full-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,¹¹ and a listing of current senior management and key technical personnel. The air 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 finding that Gem Air, LLC 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 award of authority set forth here to file them with Department of Transportation Dockets, 1200 New Jersey Ave. SE, Room W12-140, Washington, D.C. 20590, in Docket DOT-OST-2014-0020 and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 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.¹²
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:

SUSAN L. KURLAND
Assistant Secretary
for Aviation and International Affairs

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

¹¹ These financial statements should include a balance sheet as of the end of the company's first full year of commuter flight operations and a 12-month income statement ending that same date.

¹² Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

Attachment



SPECIMEN

Terms, Conditions, and Limitations

GEM AIR, LLC

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 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 authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulation. 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.

(4) *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.*

(5) *The holder may not operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.*

(6) *The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all U.S. Government requirements concerning security, including, but not limited to 49 CFR Part 1544.**

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

(8) *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.*

(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*

** To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.*

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.

Attachment A

**SERVICE LIST FOR
GEM AIR, LLC**

JOANNE WOLTERS
GEM AIR LLC
31 HAMNER DRIVE
SALMON ID 83467

PETER LYNCH
ASST CHIEF COUNCEL FOR
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FEDERAL AVIATION
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PATRICK DARLING
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