

Served: April 4, 2003



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

Issued by the Department of Transportation  
on the 4<sup>th</sup> day of April, 2003

In the matter of the revocation of the commuter air carrier  
authority issued to

**SAMOA AVIATION, INC.**

under Section 41110(e) of Title 49 of the United States Code

**Docket OST-2003-14871**

**ORDER TO SHOW CAUSE  
PROPOSING REVOCATION OF COMMUTER AUTHORITY**

**Summary**

By this order, we are proposing to revoke the commuter air carrier authority issued to Samoa Aviation, Inc. (Samoa) for failure to demonstrate that it continues to be fit to conduct scheduled passenger operations as a commuter.

**Background**

Section 41738 of Title 49 of the United States Code (“the 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). Section 41110(e) of the Transportation Code also requires that, once found fit, a commuter air carrier must remain fit in order to continue to hold its authority. The Transportation Code further charges the Department with the responsibility of monitoring the continuing fitness of such air carriers. In evaluating the continuing fitness of a commuter carrier, the Department reviews the carrier’s (1) managerial capabilities, including the sufficiency and qualifications of its key technical personnel (*i.e.*, Director of Operations, Director of Maintenance, Chief Pilot, Director of Safety and Chief Inspector); (2) financial condition and operating plans to ensure that the carrier has adequate resources available to conduct its operations safely and without posing an undue risk to consumers; and (3) disposition to comply with applicable laws and regulations. In addition, we must also find that the company continues to be a U.S. citizen.

By Order 88-12-28, issued December 13, 1988, the Department found Samoa, based in Pago Pago, American Samoa, fit to provide scheduled passenger services as a commuter air carrier. The carrier’s authority became effective on December 21, 1988, and Samoa has operated under

this authority since that time. At present, the company provides scheduled passenger service in the islands of the Pacific.

We began an informal continuing fitness review of Samoa in May 2001 after receiving information from the FAA that the carrier was struggling financially and that its financial difficulties could have a negative impact on the carrier's ability to conduct its air carrier operations. As is our practice when receiving such information, on May 21, 2001, we wrote to Samoa asking the carrier to provide us with updated information in all fitness-related areas, including information on its financial position at that time. In August 2001, the carrier provided a response to that request for information. Our review of this material indicated that the carrier's financial resources appeared to be limited. On October 12, 2001, we requested that Samoa provide us with additional information, including information as to how it intended to continue to support its on-going operations.

On November 17, Mr. Andre Lavigne advised us by e-mail that he intended to purchase a majority ownership interest in the carrier, and that he hoped to provide us with a reply to our October 12 letter by "Tuesday next."<sup>1</sup> After hearing nothing further from the carrier, by letter dated January 2, 2002, we reminded Samoa of our outstanding request for information and its agreement to provide that information. On January 17, Mr. Lavigne provided a "first draft" e-mail response to our earlier inquiry. Mr. Lavigne indicated in his e-mail that a "final draft" of his response would be provided either that day or the next day. We received no further information until February 24, 2002, when we received another e-mail from Mr. Lavigne containing some limited additional information. On February 27, Mr. Lavigne advised us by e-mail that the purchase of 65 percent of the stock by South Seas Group, Inc., a company owned by Mr. Lavigne and his wife, was expected to be completed "within 10 days."<sup>2</sup> Because the information provided still did not resolve all outstanding fitness issues, particularly involving its financial condition and management team, by letter dated March 15, 2002, we informed the carrier of those areas where we required clarifying and/or additional information. On April 9, Mr. Lavigne stated in an e-mail that the information would be forthcoming.

When no further information was received, on May 21, 2002, we again wrote to the carrier to remind it of the need to respond to our inquiry. That letter requested that the carrier provide the information required within 14 days. It also advised Samoa that a failure to respond could be considered a negative indicator of the carrier's compliance posture and/or management capabilities which could result in either enforcement action or in an action to modify, suspend or revoke its commuter authority. On June 17, Mr. Lavigne advised us by telephone that the requested material would be supplied "in the next couple of weeks." It was not. On August 2, we again reminded the carrier of the need to provide us with outstanding fitness information. In that letter, we informed the carrier that, if it failed to fully respond within 14 days, we intended to initiate more formal action against Samoa. Shortly thereafter, we were contacted by a Washington attorney who Samoa had retained to assist it in this matter and who indicated that

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<sup>1</sup> Pending the consummation of the stock sale, Mr. Lavigne had assumed the position of Chief Operating Officer.

<sup>2</sup> According to Samoa, the purchase transaction was subsequently consummated. The carrier states that Mr. Lavigne and his wife, Carrie Lavigne, are both U.S. citizens. The remaining 35 percent of the carrier's stock continues to be held by another U.S. citizen, Mr. Jason Pritchard.

Samoa intended to respond to our inquiry. On September 17, 2002, we received a partial response<sup>3</sup> and were advised that the remaining information was “currently in preparation and should be available within a short time.” We have received no further communication from Samoa or its counsel on this matter.

Of principal concern to the Department at the present time is the carrier’s financial position. Despite our repeated requests, we still do not have a current balance sheet and income statement for the carrier. The last balance sheet provided by Samoa was as of May 31, 2001, almost two years ago and prior to its change in ownership. In addition, although Samoa indicated that Mr. Lavigne had provided, or intended to provide, the carrier with an infusion of additional financial resources, it has submitted no verifiable evidence that such resources have been, or will be, forthcoming. As a result, we have no information upon which to assess Samoa’s current financial situation. We are concerned that the carrier’s financial position, which was weak last May, may have deteriorated even further.<sup>4</sup>

While the carrier’s financial situation is of primary concern to us at this time, we also find Samoa’s apparent inability or unwillingness to provide us with the information needed to fully assess its continuing fitness to be extremely troubling.<sup>5</sup> We have made no less than six written requests to the carrier for information and given it ample time to prepare its response. The fact that Samoa is also delinquent in filing other reports required by the Department only heightens our concerns.<sup>6</sup> It is not clear whether Samoa’s continuing failure to provide the Department with required information is intentional or not. What is clear is that such conduct is unacceptable and raises serious questions about the adequacy of Samoa’s managerial capabilities and compliance disposition.

Section 41110(e) places the burden of establishing continuing fitness on each air carrier, and further provides that the Department may, after notice and hearing, modify, suspend, or revoke a carrier’s authority if the carrier fails to comply with the continuing fitness requirement, or if the carrier fails to provide such reports as the Department deems necessary to determine that it remains fit. Despite our repeated attempts over 21 months to obtain sufficient information to determine Samoa’s fitness, we are unable to conclude at this time that the carrier has the financial resources, management capabilities, or compliance disposition to continue to meet our fitness requirements.

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<sup>3</sup> This response contained no financial information.

<sup>4</sup> The limited financial information contained in the Form 298C financial reports filed by Samoa for the four quarters ended December 31, 2001, indicate that the carrier’s operations were not profitable during that year. The Department’s Bureau of Transportation Statistics advises us that Samoa has not yet filed any of the quarterly Form 298C financial reports required during 2002, although all of them are past due.

<sup>5</sup> We also understand from the FAA that the carrier may have undergone some recent changes in its key managers.

<sup>6</sup> We note that the Department uses the Form 298C and other reports filed with us periodically by air carriers to monitor an air carrier’s continuing fitness, as well as the overall state of the aviation industry. Thus, a carrier’s failure to file required reports inhibits our ability to fully carry out our statutory responsibilities.

Under these circumstances, we have tentatively decided to revoke Samoa's commuter authority for failure to demonstrate that it continues to meet the Department's fitness standards. This is not a decision we have made lightly. We are acutely aware that travelers in the geographic area in which Samoa operates are particularly dependent upon having access to air service, and we have attempted throughout this process to be sensitive to Samoa's needs for additional time to file information with us. However, as we have previously informed the carrier, we cannot provide it with an unlimited amount of time to do so. Moreover, we have no basis at present to believe that Samoa is in a position to demonstrate that it remains fit and this may place the public at risk of serious harm.

However, we will afford Samoa and any other interested parties 14 days from the date of service of this order to show cause why our tentative decision here should not be made final. Replies to any filed answers shall be due seven days thereafter. If Samoa wishes to object to this proposed action, it must file its answer within the 14 days allotted here and include with its objection information demonstrating that it remains fit in all areas--management, finances, and compliance.<sup>7</sup> 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 Samoa's fitness and the revocation of its authority.

**ACCORDINGLY,**

1. We direct all interested persons to show cause why we should not issue an order (1) finding that Samoa Aviation, Inc., has failed to demonstrate its continuing fitness and (2) revoking the commuter air carrier authority awarded to it by Order 88-12-28.
2. We direct all interested persons having objections to the issuance of an order revoking Samoa Aviation Inc.'s commuter authority to file their objections with the Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-2003-14871, and serve them upon all persons listed in Attachment B no later than 14 days after the service date of this order; answers to objections shall be filed no later than seven calendar days thereafter.

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<sup>7</sup> Specifically, we would expect any response by Samoa to include the information contained in Attachment A to this order, much of which we had requested previously. Samoa's response should also discuss the reasons why the carrier has repeatedly failed to file fitness and other information requested or required by the Department, including its required 298C reports, and why, in light of such past failure, we should not find that Samoa lacks adequate management capabilities and/or a satisfactory compliance posture.

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.<sup>8</sup>
4. In the event no objections are filed, we will consider all further procedural steps to be waived and we will enter an order finding that Samoa Aviation, Inc., has failed to demonstrate its continuing fitness and revoking its commuter authority.
5. We will serve a copy of this order on the persons listed in Attachment B.
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>*

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<sup>8</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

**SAMOA AVIATION**  
**INFORMATION REQUEST**

1. According to information previously provided, in 2002, the South Seas Group, Inc. (SSG) purchased approximately 65 percent of the stock of Samoa.
  - a. State the address, telephone number and principal business of SSG.
  - b. State whether SSG is a U.S. citizen as defined in section 40102(a)(15) of the Transportation Code.
  - c. Provide a current balance sheet and 12-month income statement for SSG. These statements should include all required explanatory footnotes, including whether the documents were prepared in accordance with Generally Accepted Accounting Principles. They should also identify the preparer of the balance sheet and income statement, his/her qualifications and relationship to the company, and whether there have been any changes in the SSG's financial position subsequent to the date of the financial statements that had, or are likely to have, a material impact on SSG's financial position. (NOTE: To be considered "current", the balance sheet must be at a date no more than 90 days prior to the date filed with the Department; the income statement must be for a 12-month period ending the same date as the balance sheet.)
  - d. Provide an affidavit attesting that Samoa is a U.S. citizen as defined in section 40102(a)(15) of the Transportation Code.
  
2. Samoa's September 2002 submission reflected the following key personnel: Andre Lavigne, Jason Pritchard, Keith Landrigham (directors), Paul Bailey (Vice President), Michael Wilkins (Director of Operations), Vila Aetonu (Director of Maintenance), Scott Theno (Director of Quality Control), Chester Bentley (Director of Safety).
  - a. State whether the above listing reflects the carrier's current key personnel. If not, identify any new or changed personnel.
  - b. To the extent not previously filed with the Department, provide a complete resume (including dates, places, and position(s) held, for any prior employment) for any of the above-listed or any new or changed personnel. For any new or changed key personnel since September 2002, provide the compliance information required by sections 204.3(l), (m), (o), (p) and (q) of our rules for each such individual.
  
3. In September 2002, Samoa advised the Department that it was operating two DeHavilland DHC-6 aircraft and that it had two other (non-operating) aircraft in its fleet. Has there been any change in the carrier's fleet since then? If so, describe such changes.
  
4. In September 2002, Samoa advised the Department that it had 62 employees and was providing scheduled services between Pago Pago and Fagali'I (Apia), Samoa, Faleolo International, Samoa, Maota (Savaii), Samoa, and Vava'u, Kingdom of Tonga. Please provide an updated description of Samoa's current operations, including each market served and the daily and weekly round trips in each market. Please discuss any plans Samoa may have to expand or curtail its operations over the upcoming 6-12 months. State the number of employees currently employed by Samoa.

5. Provide a forecast income statement for the carrier's planned operations over the next 12 months.
6. Provide a current balance sheet and 12-month income statement for Samoa. These statements should include all required explanatory footnotes, including whether the documents were prepared in accordance with Generally Accepted Accounting Principles. They should also identify the preparer of the balance sheet and income statement, his/her qualifications and relationship to the airline, and whether there have been any changes in the company's financial position subsequent to the date of the financial statements that had, or are likely to have, a material impact on Samoa's financial position. (Note: To be considered "current", the balance sheet must be at a date no more than 90 days prior to the date filed with the Department; the income statement must be for a 12-month period ending the same date as the balance sheet.)
7. Information previously provided by Samoa indicated that many of its financial obligations were overdue, but that the carrier's new ownership had discussed the company's obligations with its major creditors and established plans to repay those obligations.
  - a. Provide a current aging of Samoa's liabilities into the following categories: Current; 30-59 days past due; 60-89 days past due; and 90 days or more past due. For any obligations more than 60 days past due, state the circumstances under which they are past due and when they are expected to be paid. (Note: To the extent that any plans for repaying past due obligations have been reached with creditors, the carrier should provide third-party verification of such repayment plans.)
  - b. State whether Samoa is on a cash-only basis with any of its creditors. If it is, discuss how Samoa is meeting such requirement(s).
  - c. State whether Samoa is currently meeting its payroll obligations in a timely manner. If not, discuss what steps the carrier has taken, or will take, to rectify this situation.
8. Provide a bank statement(s) or other third-party verification showing Samoa's current cash on hand.
9. State the amount of any funds already provided to Samoa by Mr. Lavigne. In addition, state the amount of any additional funds Mr. Lavigne intends to provide to Samoa in the future, along with third-party verification of his ability to meet any such funding commitment.
10. Discuss any steps Samoa has taken, or intends to take, to obtain additional financial resources to support its on-going air carrier operations. In this connection, please discuss how the carrier plans to finance any upcoming significant maintenance or operational needs, as well as support any planned expansion of operations.
11. Certification: Samoa's response to this Information Request must contain the following certification:

Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the response, who shall be a principal owner, senior officer, or internal counsel of Samoa*], in my individual capacity and as the authorized representative of Samoa, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the response. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

**SERVICE LIST FOR SAMOA AVIATION, INC.**

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