

Order 2004-6-22
Served: June 25, 2004



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

Issued by the Department of Transportation
on the 25th day of June, 2004

Application of

HOMER AIR, INC.

Docket OST-01-9181

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 Homer Air, Inc. (“Homer”) is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail as a certificated air carrier using small aircraft.¹

Background

Section 41102 of Title 49 of the United States Code (Transportation) (“the Transportation Code”) 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 Transportation Code 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 Transportation Code and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On March 15, 2001, Homer filed an application in Docket OST-01-9181 for a certificate to provide interstate scheduled air transportation of persons, property, and mail pursuant to

¹ Specifically, we propose to limit Homer’s authority to the use of aircraft that can be operated under Part 135 of the Federal Aviation Regulations (14 CFR 135).

section 41102.² Homer accompanied its application with some of the fitness information as required by section 204.3 of our regulations. Homer supplemented its application on April 6, 2001.

On April 9, 2001, Smokey Bay Air, Inc. (Smokey), a certificated air carrier based in Homer, Alaska, submitted a late-filed objection to Homer's application.³ Smokey raised several issues involving Homer's management team, including the fact that Mr. Neil Bergt, a former owner and officer of MarkAir, Inc., would be one of the applicant's "key personnel," a matter that was not disclosed by Homer.⁴ Citing Mr. Bergt's alleged troublesome past, Smokey urged the Department to reject the application. Smokey also asserted that various financial projections--including Homer's revenue forecasts, aircraft maintenance expenses and aircraft lease expenses--were of questionable accuracy, and further claimed that Homer did not have an acceptable compliance disposition.

On April 16, 2001, Homer filed a reply to Smokey's objection. Homer stated that Mr. Bergt was merely a consultant to the carrier's President and held no ownership or management position. Homer also responded to Smokey's other allegations regarding its financial forecasts and compliance history.

On May 7, 2001, Smokey filed a second answer in response to the application, in which it reiterated many of the same concerns as in its initial objection.⁵

On May 22, 2001, we requested additional information from Homer regarding Mr. Bergt's role with the company, both present and future.

Homer responded on May 29, 2001, stating that Mr. Bergt would act only as a paid consultant to Homer's President and would have no management role with the carrier. According to Homer, Mr. Bergt's duties were to assist Mr. Pruhs, Homer's new owner, with the acquisition of the company; assist with obtaining a certificate from the Department; evaluate Homer's existing and historical financial performance; evaluate the carrier's market opportunities and existing fleet; and establish Homer's scheduled operations. Homer indicated that Mr. Bergt worked approximately 40 hours a week in this role and was paid \$5,000 per month.

On July 2, 2001, we advised Homer that we had received a copy of an Amended Complaint filed by the U.S. Department of Justice against Alaska Central Express (ACE) for violation of the False Claims Act which included allegations that ACE was involved in defrauding the

² The application was filed originally in the name of "C&L, Inc. d/b/a Homer Air". On May 29, 2001, Homer advised us that it had changed its corporate name to "Homer Air, Inc.", and requested that its certificate be issued in that name.

³ Smokey accompanied its objection with a motion for leave to file late, which we will grant.

⁴ MarkAir was a certificated air carrier based in Alaska that operated until October 1995.

⁵ After we received these comments, we advised Smokey that such a filing was not authorized by our rules. On May 16, as amended on May 24, Smokey filed a motion for leave to file an otherwise unauthorized document. Smokey alleged that it was responding to Homer's supplement filed on April 6, 2001, which it had not received until after its initial objection was filed. We will grant the motion.

U.S. Postal Service in connection with the carriage of mail in Alaska.⁶ The complaint also stated that Mr. Neil Bergt and members of his family “owned and operated” the airline. We indicated that these were extremely serious allegations, not only because of the nature of the allegations themselves, but because Mr. Bergt had agreed that he would not have a role in the operations or management of ACE without the Department’s approval.⁷ We advised Homer that, in light of the fraud allegations and the fact that Mr. Bergt was serving as a paid consultant to Homer, which is considered one of the “key personnel” with the carrier, Mr. Bergt’s continued participation with Homer raised substantial concerns over the company’s compliance disposition. We stated that, as long as Mr. Bergt was involved with Homer, we would not be able to proceed with a favorable fitness determination of the applicant until such time as the matters involving Mr. Bergt were satisfactorily resolved.

On July 24, 2001, Homer filed a response to our July 2 letter, including a letter from Mr. Bergt refuting the statement in the Amended Complaint that he had any involvement in ACE; claiming that the Department of Justice made “a conscious decision not to make any allegation” against him and he was not named as a party to the ACE complaint; and arguing that the statement that he owned and operated ACE was untrue and unfounded. Homer also questioned whether in the Department’s regulations consultants are considered “key personnel” and whether the Department had imposed any on-going restrictions on Mr. Bergt’s involvement with commercial air transportation.

On August 2, 2001, we replied to Homer’s response. With respect to consultants being considered “key personnel”, we stated that 14 CFR 204.2(i) defines “key personnel” as including “ the directors, president, chief executive officer, chief operating officer. . .as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.” [emphasis added] With respect to the restrictions on Mr. Bergt’s involvement with ACE, we cited sections of Order 96-8-22 reiterating various agreements with Mr. Bergt’s wife and son limiting their roles with the carrier, and with the majority owner of the carrier (Mr. Donald Swortwood) pertaining to the need for Mr. Swortwood to maintain control of the carrier’s operations. We also cited a July 29, 1999, letter from the Department’s Deputy Assistant Secretary for Aviation and International Affairs to Mr. Bergt’s wife stating that neither she nor Mr. Bergt “may become engaged in the day-to-day management of the carrier” and “that Mr. Bergt may not be involved in any manner in the affairs of ACE” without “formal action by the Department.” Finally, we advised Homer that, in order to properly evaluate the statements made by Mr. Bergt in his letter, we would need him to provide a sworn affidavit describing in full any involvement he may have had at ACE since 1996.

On August 15, 2001, Mr. Bergt filed such an affidavit in which he indicated that he was not authorized to make decisions on behalf of the company, speak for the company, direct any officer or employee of the company, or own any stock in the company. He did acknowledge that, from time to time, he attended several board meetings as an advisor to his wife, who was the minority shareholder in the carrier, and that he would provide his opinions and advice whether solicited or not. He also stated that he had provided some lobbying services on

⁶ *United States of America ex rel. Albert Wilt v. Alaska Central Express*, Case No. A00-113 (JWS), Amended Complaint for Violation of the False Claims Act (31 U.S.C. Section 3729, *et seq.*), D. Alaska, Filed June 25, 2001.

⁷ See Order 96-8-22, issued August 19, 1996, involving the fitness of Alaska Central Express.

behalf of ACE to the Alaska Congressional Delegation for which he was paid a fee and expenses.

On November 2, 2001, Homer submitted a supplemental filing in which it indicated that Mr. Bergt had been appointed the Director of Operations for Homer after the previous Director had resigned, and updated its list of aircraft operated.

On September 23, 2002, Homer filed a letter from its owner and President, Mr. Pruhs, advising the Department that a settlement with the Department of Justice in the ACE case was being negotiated and would likely be completed by the end of the year.

On April 8, 2003, Homer filed another supplement to its application in which it indicated that Mr. Bergt had resigned his management position as Director of Operations for Homer and had terminated his services as a consultant to Homer and to Mr. Pruhs. According to Homer, Mr. Bergt is still qualified as a line pilot for Homer and had offered to serve as a reserve, on-call pilot, if needed. Homer further stated that Mr. Bryan Bergt, Neil Bergt's son, had assumed the position of Director of Operations.

On May 22, 2003, we asked Homer to provide updated information in support of its application, including information regarding any future role Mr. Neil Bergt would have with the carrier, including his ability to influence management decisions at the carrier through his son, Bryan, the new Director of Operations.

On October 8, 2003, we sent a follow-up to the carrier reminding it of our outstanding request for information.

On November 5, 2003, Homer filed updated information, including more recent financial statements and updated compliance information, as well as information on various management changes that had been made at the carrier, including the replacement of Bryan Bergt with Andy Smircich as Director of Operations.⁸

At our request, on December 15, 2003, Mr. Pruhs provided a sworn affidavit attesting that Neil Bergt "is not and will not be authorized to act as an officer, director, manager, or spokesperson of Homer Air" or to make any decisions on behalf of Homer, serve as a consultant or in any other advisory position, or direct any officer or employee of Homer. Homer also provided background information on a new Chief Pilot that it had hired.

On December 19, 2003, Smokey filed a response to Homer's December 15 supplement. In it, Smokey alleges that the sworn affidavit of Mr. Pruhs did not appear to be properly executed in that it did not appear to contain a stamp or embossed seal by the notary; and that the proposed Chief Pilot did not appear to have the required FAA qualifications for that position.

On January 23 and 30, 2004, we asked Homer to provide third-party verification that it had the necessary funds to meet our financial fitness criterion.

⁸ According to Homer, Bryan Bergt terminated his relationship with Homer on October 1, 2003.

On February 23, Homer filed the requested third-party verification as well as information on its new Chief Pilot.

On April 15, we requested some clarifying information and updates on Homer's financial condition.

On May 5 and June 1, Homer filed its responses.

In light of the resignation of Mr. Bergt from his positions with Homer, the fact that his son is also no longer employed by that carrier, and Mr. Pruhs' assurances that Mr. Bergt will not be involved with the carrier in the future, our concerns over Mr. Bergt's role with Homer have at this time been alleviated. Moreover, as discussed in the **Certificate Conditions and Limitations** section below, we intend to impose a reporting requirement on Homer with respect to any future involvement of Mr. Bergt in that carrier's operations.

We have, therefore, decided to proceed with a determination of Homer's fitness to hold a certificate. Based on our review of the pleadings in this proceeding, as well as other information available to us, we tentatively conclude that Homer is a U.S. citizen and, subject to conditions, is fit, willing, and able to operate its proposed limited 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.

FITNESS

The Company

Homer was founded in the late 1960's as an on-demand air taxi operator based in Homer, Alaska. In 1974, Larry Thompson and Cecil Garten formed C&L, Inc., and purchased all of the stock of the carrier.⁹ In February 2001, the carrier's stock was sold to John Dana Pruhs, a U.S. citizen. Since its founding, the company has offered on-demand services throughout southcentral Alaska, including the Kachemak Bay villages of Seldovia, Port Graham, and Nanwalek, as well as to regions of the Kenai Peninsula, Prince William Sound, Kodiak Island, and Bristol Bay.

Homer presently operates a fleet of three aircraft including two 5-seat Cessna 206's and one 9-seat Britain Norman Islander 2A. The carrier holds an intrastate on-demand Operating Certificate from the FAA, and has applied for an Air Carrier Certificate in order to conduct the proposed operations. If granted the certificate it seeks, Homer proposes to operate one scheduled passenger flight, five days per week, between Homer and Seldovia, Port Graham and Nanwalek, using one of its Cessna 206 aircraft.

Managerial Competence

Mr. John Dana Pruhs is the sole owner of Homer and serves as the carrier's President. He received a B.S. degree from the California Polytechnic State University in 1980. Mr. Pruhs holds an Airline Transport Pilot certificate from the FAA. He flew for Wright Air Service in Fairbanks between 1979 and 1980. During the next nine years, he held positions as an engineer with Alaska International Construction and Enserch Corporation, both in Fairbanks.

⁹ In 1978, Mr. Garten sold his stock to Mr. Thompson, who became the carrier's sole owner.

In 1989, Mr. Pruhs assumed the presidency of Pruhs Corporation upon the retirement of his father, the company's founder. Pruhs Corporation specializes in the construction of roads and highways and fiber-optic installations. Mr. Pruhs continues as President of Pruhs Corporation and will spend, on average, 10 percent of his time on matters involving Homer, leaving the management of the day-to-day operations of the carrier to the Directors of Operations and Maintenance.

Mr. Joseph D. Benallo joined Homer in June 2003 as the carrier's Director of Maintenance. Between March 1987 and October 1989, Mr. Benallo worked in various aviation industry positions while he was studying to obtain his FAA mechanic certification. In October 1989, he was hired as a mechanic with Richmor Aviation, staying with that company until October 1990. From then until January 1999, he worked in various non-aviation-related positions. In January 1999, he was hired by Flight Patterns as an aircraft mechanic. In June 1999, he was hired by McCall Air as an aircraft maintenance technician; and in June 2001, he became McCall Air's Director of Maintenance. He held that position until joining Homer in June 2003. Mr. Benallo holds an Airframe and Powerplant Mechanic Certificate from the FAA.

Mr. Andy Smircich is Director of Operations for Homer. He is a 1995 graduate of the U.S. Air Force Academy and an Airline Transport Pilot. After leaving the Air Force in 1999, Mr. Smircich was hired by Sundance Aviation as a part-time flight instructor and pilot; during this time, he also worked part-time as a pilot for Flying Z Aviation and as a flight instructor for AMI Aviation Services. In April 2000, he joined Homer as a pilot and check airman. He became Homer's Chief Pilot in April 2002 and Director of Operations in October 2003. Mr. Smircich has accumulated over 5,900 hours of flight time, most of which was in the position of pilot-in-command.

Mr. Zack Tappan joined Homer in April 2004 as the carrier's Chief Pilot. He began his aviation career in 1997 as a flight student with Alaska Flying Network where he received his commercial pilot's certificate and ratings in 1999. He continued with Alaska Flying Network as a flight instructor until 2000. In March of that year, he joined Inland Aviation as a pilot and became a check airman in April 2001. In March 2002, he was promoted to the position of Chief Pilot, a position he held until joining Homer. Mr. Tappan has accumulated over 4,000 hours of flight time as a pilot, most of which were in the capacity of pilot-in-command.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Homer has assembled a management team that has the managerial skills and technical ability to conduct its proposed service. Moreover, the FAA has advised us that all of the individuals holding key technical positions with Homer are qualified and have been approved for those positions.¹⁰

¹⁰ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the applicant'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.

Financial Plan and Operating Proposal

Under the requested certificate, Homer plans to initiate a limited scheduled service of one flight each day, five days per week, from Homer to Seldovia, Port Graham, and Nanwalek, using a 5-seat Cessna 206 aircraft, which is currently in its fleet.¹¹

Homer estimates that the first year expenses for the proposed scheduled service will be \$40,388. The company further asserts that it does not expect to incur any significant additional startup costs to implement its proposed scheduled service, because the company has been in the same business and the same locale for over 30 years and its company personnel, pilots, aircraft, and any remaining infrastructure required for its proposed scheduled service are already a part of its ongoing operations and its existing personnel will handle obtaining the additional authority needed from the FAA. Finally, Homer states that it will need to obtain higher insurance coverage to comply with the minimums required by the Department, and the cost of such additional insurance is approximately \$3,870.

Financial information reported by Homer, whose fiscal year ends on March 31, indicates that for the 12 months ending March 31, 2003, the carrier incurred a net loss of \$174,464. For the 12 months ending March 31, 2004, Homer reported a net loss of \$116,084. According to its balance sheet dated March 31, 2004, Homer has current assets of \$112,203 and current liabilities of \$239,435, resulting in negative working capital of \$127,232 and a current assets to current liabilities ratio of .47 to 1. This same statement showed negative stockholder's equity of \$31,863.

In order to meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are reasonably projected to be incurred during three months of operations.¹² Because projected expenses during the first several months of operation frequently do not include all of the 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 cost forecast. In addition, if the applicant's most recent balance sheet shows a negative working capital balance, the amount of that deficit is considered a pre-operating expense in calculating the amount of funds that the applicant must have available to meet the financial fitness criteria. Thus, Homer will need access to approximately \$141,200 to meet our fitness test, covering its negative working capital of \$127,232, the cost of additional insurance (\$3,870), plus \$10,097, which is one quarter of its projected first year operating expense of \$40,388. As already noted, Homer states that it has already paid its other pre-operating expenses.

Homer states that it has available the assets to fund the total costs of the proposed scheduled service. Homer submitted information, together with sworn affidavits from Mr. Pruhs and his wife, Deanna, dated February 19, 2004, indicating that they were the sole and equal owners in the Pruhs Corporation, and that this company had a portfolio value in excess of \$400,000 as of December 31, 2003.¹³ The affidavits also stated that the capital assets of this portfolio were

¹¹ Homer indicates that its proposed scheduled service will amount to approximately 182 flight hours a year.

¹² In determining available resources, projected revenues may not be used.

¹³ Homer provided a copy of the Pruhs Corporation financial statement to verify this information, along verification from its financial advisor that these assets can be easily liquidated if necessary.

not obligated, leveraged, or committed in any way and were readily convertible to working capital, and Mr. and Mrs. Pruhs committed to making these funds available as needed for Homer's proposed scheduled service operations.

In light of the availability of these resources, as well as Homer's proposed limited operations, we tentatively conclude that the carrier has sufficient financial resources available to enable it to commence its proposed scheduled passenger operations without posing an undue risk to consumers or their funds.¹⁴

Compliance Disposition

Homer states 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. The applicant also states 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 Transportation Code or the Department's regulations.

According to the FAA, Homer's current operations are being conducted in a satisfactory manner, its management team has been cooperative in resolving issues that may arise, and the carrier is taking the necessary steps to amend its operating authority in order to conduct scheduled passenger operations. In addition, the FAA has advised us that it knows of no reason why the carrier should not be granted the authority it is seeking.

Under these circumstances, and in light of the statement by Mr. Pruhs that Mr. Bergt will not be involved with the carrier in any capacity, we tentatively conclude that Homer 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 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, that at least 75 percent of the outstanding voting stock be owned by U.S. citizens, and that the carrier must actually be controlled by U.S. citizens.

As stated earlier, all of Homer's stock is owned by John Dana Pruhs, a U.S. citizen. All of Homer'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 Transportation Code. Finally, our review of the applicant's citizenship has uncovered no reason to suggest that control of Homer rests with non-U.S. citizens.

¹⁴ As noted in the **Certificate Conditions and Limitations** section below, prior to making any certificate awarded to Homer effective, it will need to provide updated financial information on any remaining pre-operating expenses still needing to be paid, and on its available resources to cover its expenses.

Based on the above, we tentatively conclude that Homer 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 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 Homer's fitness and certification.

CERTIFICATE CONDITIONS AND LIMITATIONS

If Homer is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that Homer has been certified by the FAA to engage in the proposed scheduled 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, and a revised list of pre-operating expenses already paid and those remaining to be paid, along with third-party verification that the company continues to have available sufficient funds to meet our financial fitness criteria.¹⁵

Moreover, we note that our tentative findings of fitness for Homer are based on the operating plans described in its application, namely the use of small aircraft operated under Part 135 of the Federal Aviation Regulations. Were the applicant to propose to expand its operations to include larger aircraft, our fitness findings might no longer apply. In addition, the carrier's current FAA authority limits it to operations within the State of Alaska only. Therefore, we propose to limit any authority issued to the applicant to operations conducted under Part 135 and within the State of Alaska. Should Homer subsequently desire to acquire and operate larger aircraft that would require certification from the FAA under Part 121, or service outside

¹⁵ On June 1, 2004, Homer filed an updated Aviation Accident Family Assistance Plan with the Department (Docket OST-96-1960) and with the National Transportation Safety Board, in accordance with the Department's Notice of January 20, 2004. The carrier states that it does not intend to operate any covered international flight segments as defined in 14 CFR 243.3, which would require the filing of a description of how the carrier intends to collect and transmit passenger manifest information.

of the State, it must provide evidence that it has received appropriate FAA authority and be determined fit for such operations.¹⁶

Furthermore, we remind the company 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. Thus, should Homer propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹⁷ In addition to this standing requirement, we condition Homer's certificate on compliance with the following requirement: Homer must obtain prior Departmental approval before entering into any form of agreement or arrangement with Neil Bergt, any member of his family, or any entity owned or controlled by Mr. Bergt or a member of his family.

Finally, to aid the Department in monitoring the fitness of new carriers, we have adopted a requirement that all newly certificated carriers must submit a detailed progress report, within 45 days following the end of the first year of certificated 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 these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,¹⁸ 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.

The compliance of the company with these requirements is essential if we are to carry out our responsibilities under the Transportation Code.¹⁹

ACCORDINGLY:

¹⁶ We note that the operation of larger aircraft or to an area that is geographically distant 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. 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 carrier fails to file this updated 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.

¹⁸ 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.

¹⁹ We also remind Homer 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 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.

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 Homer Air, 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, Washington, DC 20590, in Docket OST-01-9181, 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.²⁰
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 grant the motions of Smokey Bay Air, Inc., for leave to file a late document and for leave to file an otherwise unauthorized document.
6. We will serve a copy of this order on the persons listed in Attachment A.
7. We will publish a summary of this order in the Federal Register.

By:

KARAN K. BHATIA
Assistant Secretary for
Aviation and International Affairs

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

²⁰ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



SPECIMEN
Terms, Conditions, and
Limitations

HOMER AIR, 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'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.

(4) The holder's authority to operate under this certificate is limited to operations conducted within the State of Alaska.

(5) 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.

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

(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 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.

* 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.

(9) The holder is authorized to conduct charter flights in accordance with the provisions of 14 CFR 212 and the terms of this certificate.

(10) 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.

(11) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(1)), it must first comply with the requirements of 14 CFR 204.5.

(12) The holder may not enter into any form of agreement or arrangement with Neil Bergt, any member of his family, or any entity owned or controlled by Mr. Bergt or a member of his family without obtaining prior approval from the Department.

(13) 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. 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.

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