

Served: July 16, 2004



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

Issued by the Department of Transportation  
on the 13<sup>th</sup> day of July, 2004

Applications of

**PRIMARIS AIRLINES, INC.**

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

**Dockets OST-2003-14773  
and  
OST-2003-14774**

**ORDER CONFIRMING ORAL ACTION AND  
ISSUING EFFECTIVE CERTIFICATES**

**Summary**

By this order, we (1) confirm our oral action of June 10, 2004, making the interstate and foreign certificates issued to Primaris Airlines, Inc. (Primaris) effective for charter operations, and (2) reissue the carrier's certificates to reflect their effectiveness.

**Background**

By Order 2003-9-19, served September 24, 2003, the Department found Primaris fit to engage in interstate and foreign scheduled air transportation and issued to it a certificate authorizing the carrier to engage in interstate scheduled air transportation of persons, property, and mail. By Order 2003-11-21, served November 24, 2003, the Department issued Primaris a companion certificate authorizing it to engage in foreign scheduled passenger air transportation between the U.S., on the one hand, and Canada, France, and Germany, on the other hand. The effectiveness of the authority in these certificates was conditioned, among other things, upon the carrier's (1) receiving authority from the Federal Aviation Administration (FAA) authorizing such operations, (2) submitting evidence that it had obtained liability insurance coverage meeting the requirements of Part 205 of the Department's rules, and (3) providing updated fitness information, including evidence that it had obtained the financial resources necessary to meet our financial test for the operations authorized.

On May 5, 2004, Primaris provided updated fitness information along with a Certificate of Insurance (OST Form 6410).<sup>1</sup> On June 7, it submitted a copy of its FAA Air Carrier Certificate as well as relevant portions of its FAA Operations Specifications.

Primaris states that, although it still plans to provide the interstate and foreign scheduled passenger operations for which it was initially certificated, it has not yet raised the financial resources needed to do so.<sup>2</sup> In the meantime, Primaris requested that the Department make its certificate authority effective to the extent necessary to allow it to conduct charter services with a B-757 aircraft it has acquired while it continues its efforts to raise funds for its planned scheduled services. In this connection, Primaris also requested that we waive the standard six (business) day waiting period contained in its certificates and award it effective charter authority as soon as possible after concluding our review of the information and documentation the carrier provided.

According to Primaris, there have been no major changes in areas impacting its ownership, management or compliance posture. With respect to its ownership, Primaris states that there are currently 31 shareholders, 29 of whom are U.S. citizens.<sup>3</sup> The company further states that there have been no significant changes in its management team or compliance posture since the issuance of the show cause order in this case (*see* Order 2003-9-1, served September 4, 2003).<sup>4</sup> The carrier also provided updated information on the pre-operating expenses it has incurred thus far, as well as a one-year service proposal and forecast expenses for one B-757.<sup>5</sup>

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<sup>1</sup> Between May 5 and June 7, the carrier provided additional information.

<sup>2</sup> Primaris' scheduled service plans call for it to provide low-fare scheduled services--targeting the business traveler--between major metropolitan areas in the U.S. as well as between the U.S. and foreign cities. The company anticipates having as many as 15 100-seat B-757 aircraft in operation during its first year of such services and plans to raise over \$60 million to support the start-up of those services. Primaris is raising these funds through a private stock offering.

<sup>3</sup> MW27, LLC, a company owned primarily by Mark Morris, the carrier's founder and CEO, continues to be Primaris' majority shareholder, holding 58.57 percent of Primaris' outstanding stock. According to Primaris, its U.S. shareholders currently hold a total of 93.4 percent of the company's stock; two non-U.S. citizens hold the remaining 6.6 percent.

<sup>4</sup> As to its personnel, Primaris advised us of the following changes: *Richard Ziskind* joined Primaris in February 2004 as its Chief Marketing Officer. Most recently, he served as Senior Vice President-Sales and Marketing for PrivatAir, and he has other aviation marketing experience dating back to 1983. *Dale Hocking* is the carrier's Director of Maintenance. Mr. Hocking holds an FAA Airframe and Powerplant Mechanic license and has held airline maintenance positions, including employment with Champion Air (Line Maintenance Lead Technician/Supervisor, 2001-2003), National Airlines (Line Maintenance and Maintenance Control, Supervisor/Manager, 1999-2001), and Northwest Airlines (Line Maintenance Lead Technician, 1979-1986, and Line Maintenance Supervisor, 1986-1999). *James Cira* has been appointed Vice President-Charter ACMI Operations. Mr. Cira has been involved with Primaris since 2002, and obtained his current position in December 2003. He was a Boeing 757 captain at National Airlines from 1999-2002 and has held Captain or pilot positions at other airlines as well. He holds a B.S. in Aeronautical Science from Embry-Riddle Aeronautical University as well as an FAA-issued Airline Transport Pilot license. Messrs. Ziskind, Hocking and Cira are all U.S. citizens.

<sup>5</sup> Primaris projects approximately 1,695 block hours during its first year of such charter services, most of which it expects to provide on an ACMI (aircraft, crew, maintenance and insurance) basis.

The information provided by Primaris shows total pre-operating expenses of approximately \$4.65 million, of which approximately \$1.29 million had not yet been paid. It forecast approximately \$8.97 million in first-year charter expenses. We have reviewed the charter forecast and believe it to be reasonable for the limited operations proposed. Based on this information, Primaris needs approximately \$3.53 million to meet our financial test for its proposed charter operations.<sup>6</sup>

Primaris provided a balance sheet for itself at April 30, 2004, showing that, at that date, it had approximately \$1.55 million in cash, positive working capital of \$1.49 million (for a current assets to current liabilities ratio of 7.5 to 1), \$1.9 million in total assets, \$3.2 million in negative retained earnings, and \$1.65 million in positive stockholders' equity. In addition to the \$1.49 million in positive working capital reflected on the company's April 30 balance sheet, Primaris also has subsequently obtained \$500,000 in additional equity investment from one of its shareholders along with a \$1.5 million letter of credit from Deutsche Bank.<sup>7</sup> Together, these funds total \$3.49 million, or almost 99 percent of the \$3.53 million a strict interpretation of our financial fitness test would require. On balance, we find these funds to be sufficient. The operations proposed by Primaris are very limited. We also note that Primaris provided us with a letter from a potential customer verifying that company's intent to enter into a long-term ACMI charter contract with Primaris once the carrier is authorized to provide such services. We would expect such arrangements to provide Primaris a measure of cash flow which can be used to support its charter operations.<sup>8</sup>

Based on our review of the updated fitness information provided by Primaris, we concluded that the carrier remained a U.S. citizen and was fit to commence its limited charter service. Likewise, our review of the insurance and FAA documentation provided by Primaris was satisfactory. Under the circumstances, on June 10, we orally advised Primaris that we would make its authority effective on that date, limited to charter operations with the one aircraft initially proposed. Should Primaris wish to expand its charter services beyond this one aircraft, it will need to provide the Department with at least 45-days' advance notice and demonstrate its fitness for such expansion.<sup>9</sup> We also remind Primaris that the effectiveness of its authority to

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<sup>6</sup> 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 plus the expenses that are reasonably projected to be incurred during three months of operations. The \$3.53 million noted here is comprised of the approximately \$1.29 million in unpaid pre-operating expenses plus \$2.24 million, which is one-quarter of the \$8.97 million in estimated first-year expenses.

<sup>7</sup> The letter of credit is guaranteed by another of its shareholders.

<sup>8</sup> In addition, we note that the Department's rules require charter carriers to establish escrow accounts and/or take other actions designed to protect customer funds.

<sup>9</sup> Although, in Orders 2003-9-19 and 2003-11-21, we authorized Primaris to operate up to six aircraft before requiring Department approval for further expansion, that aircraft limit was based, in large part, on the much larger scheduled service proposal and anticipated funding that Primaris expected to have available to it. Given the limited charter proposal and initial funding presented by Primaris at this time, the carrier will need to provide the Department with advance notice of any expansion beyond the one aircraft authorized here. At such time as Primaris submits the information and documentation needed to

*(--footnote continued on next page--)*

conduct scheduled operations under its interstate and/or foreign certificates continues to be conditioned upon the carrier's providing the Department with updated information that demonstrates that Primaris remains a U.S. citizen and is fit for such services.<sup>10</sup>

By this order, we confirm our oral action of June 10 and reissue the carrier's interstate and foreign certificates to reflect their effectiveness for charter operations.

### **REQUEST FOR CONFIDENTIAL TREATMENT**

On June 1 and June 7, 2004, Primaris filed certain documents for which it seeks confidential treatment under section 302.12 of our rules.<sup>11</sup> Specifically, these documents include (1) a letter of intent from a prospective customer verifying that party's plan to enter into a contract for Primaris' air carrier services, and (2) copies of stock purchase agreements and share purchase agreements between Primaris and its shareholders at that date.

With respect to the letter of intent, Primaris states that the information is private, commercial information not usually disclosed to the public and that identifying the prospective charterer could cause Primaris competitive harm. Similarly, Primaris states that the shareholder agreements are also private, commercial agreements not usually disclosed to the public and are similar to documentation for which the Department has granted confidential treatment in the past.

Rule 12 instructs us to evaluate requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (5 U.S.C. 552). Information may be withheld from disclosure under 5 U.S.C. 552(b)(4) if it is (1) commercial or financial, (2) obtained from a person outside of government, and (3) privileged or confidential (*Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979)).

There is no question that the information for which Primaris seeks confidential treatment is financial or commercial in nature and that it was obtained from a person outside the government. The remaining question is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained" (*National Parks*

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have its scheduled authority made effective, we will re-evaluate what level of aircraft limits will be appropriate.

<sup>10</sup> This shall include, but not necessarily be limited to, information detailing the expenses incurred, or to be incurred, in connection with such services, evidence that the carrier has raised all required funding, and information as to any changes in its ownership, management personnel, or compliance posture.

<sup>11</sup> On May 5, Primaris also filed a motion for confidential treatment under section 302.12 for an April 29, 2004, letter from J.P. Morgan Private Bank relative to the pledge of additional investment in Primaris by one of its current shareholders. On May 11, North American Airlines, Inc., objected to grant of confidential treatment for this material. On May 12, Primaris withdrew its request for confidential treatment and filed the J.P. Morgan letter in the public record of Dockets OST-2003-14773 and OST-2003-14774. We will dismiss Primaris' May 5 motion for confidential treatment as moot.

*and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). Further, to be privileged or confidential, the information must not be of the type that is usually released to the public (*Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

We find that the information for which confidential treatment is requested is the type to which we have granted confidential treatment in the past. Therefore, we will grant Primaris' June 1 and June 7 motions for confidential treatment as requested.

**ACCORDINGLY**, Acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We (a) confirm our oral action of June 10, 2004, making the authority contained in the interstate and foreign certificates issued to Primaris Airlines, Inc., by Orders 2003-9-19 and 2003-11-21, respectively, effective for charter operations, and (b) reissue the certificates issued to Primaris Airlines, Inc., to reflect their effectiveness for charter operations.
2. We grant the Motions for Confidential Treatment filed by Primaris Airlines, Inc., on June 1 and June 7, 2004.
3. We dismiss as moot the Motion for Confidential Treatment filed by Primaris Airlines, Inc., on May 5, 2004.
4. We direct that, should Primaris Airlines, Inc., want to operate more than one aircraft, it must first provide the Department with at least 45-days' notice and demonstrate its fitness for such expansion.
5. We direct Primaris Airlines, Inc., to submit to the Air Carrier Fitness Division a first-year progress report within 45 days following the end of its first year of certificated operations.<sup>12</sup>
6. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

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<sup>12</sup> The report shall include a description of Primaris' 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 (including a balance sheet at the end of its first year of flight operations and a 12-month income statement ending that same date), and a listing of current senior management and key technical personnel.

The action confirmed in this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

**RANDALL D. BENNETT**  
Director  
Office of Aviation Analysis

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



# **Certificate of Public Convenience and Necessity for Interstate Air Transportation**

**This Certifies That**

**PRIMARIS AIRLINES, INC.**

**is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.**

**This Certificate is not transferable without the approval of the Department of Transportation.**

**By Direction of the Secretary**

**Issued by Order 2004-7-8  
On July 13, 2004  
Effective on (See Attached)**

**Randall D. Bennett  
Director  
Office of Aviation Analysis**



## Terms, Conditions, and Limitations

### PRIMARIS AIRLINES, 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)(a) The holder's authority to conduct charter air transportation of persons, property, and mail under this certificate became effective on June 10, 2004.

(b) The holder's authority to conduct scheduled air transportation of persons, property, and mail under this certificate shall become effective at such time as the Department has received updated fitness information from the holder and has determined that the holder remains a citizen of the United States and is fit to conduct such scheduled services.

(2) Pending receipt of effective scheduled authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card), or issue tickets for any scheduled operations proposed under this certificate, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

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

(4) The holder'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.\*\*

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\*\* To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service 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.

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

(6) 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.

(7) 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.

(8) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate 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.



**Certificate of Public Convenience and Necessity  
for  
Foreign Air Transportation  
Route 818**

**This Certifies That**

**PRIMARIS AIRLINES, INC.**

**is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.**

**This Certificate is not transferable without the approval of the Department of Transportation.**

**By Direction of the Secretary**

**Issued by Order 2004-7-8  
On July 13, 2004  
Effective on (See Attached)**

**Randall D. Bennett  
Director  
Office of Aviation Analysis**



## Terms, Conditions, and Limitations

### PRIMARIS AIRLINES, INC.

is authorized to engage in foreign air transportation of persons, property, and mail:

1. Between a point or points in the United States and a point or points in Canada;
2. Between a point or points in the United States and a point or points in France; and
3. Between a point or points in the United States and a point or points in Germany.

This authority is subject to the following provisions:

(1)(a) The holder's authority to conduct charter air transportation of persons, property, and mail under this certificate became effective on June 10, 2004.

(b) The holder's authority to conduct scheduled air transportation of persons, property, and mail under this certificate shall become effective at such time as the Department has received updated fitness information from the holder and has determined that the holder remains a citizen of the United States and is fit to conduct such scheduled services.

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

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\* This certificate is being reissued to reflect the effective date of the charter authority contained herein.

the holder must prominently state: "This service is subject to receipt of government operating authority."

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

(4) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.

(5) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.

(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.\*\*

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\*\* To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service 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.

(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.

(9) 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.

(10) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate 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.

**SERVICE LIST FOR PRIMARIS AIRLINES, INC.**

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