

Served: July 27, 2004



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

Issued by the Department of Transportation
on the 26th day of July, 2004

Applications of

CLAY LACY AVIATION, INC.

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

**Dockets OST-04-17451
and
OST-04-17452**

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATES**

Summary

By this order, we tentatively conclude that Clay Lacy Aviation, Inc. ("CLA") is a citizen of the United States, is fit, willing, and able to provide interstate and foreign charter air transportation of persons, property, and mail, and should be issued certificates of public convenience and necessity authorizing such operations, subject to conditions.

Background

Section 41102 of Title 49 of the United States Code ("the Transportation Code") directs us to determine that applicants for certificate authority to provide interstate and foreign charter air transportation of persons, property and mail are "fit, willing, and able" to perform such transportation and to ensure that all operations relating to this authority conform to the provisions of the Transportation Code and the regulations and requirements 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 29, 2004, CLA filed applications in Dockets OST-04-17451 and OST-04-17452 requesting certificates issued under 49 U.S.C. 41102 authorizing it to provide interstate and foreign charter air transportation of persons, property, and mail. CLA accompanied its

applications with information required by section 204.3 of our regulations for an examination of its fitness to hold such authority.¹

We have received no answers to the applications and no special issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of CLA's fitness on the basis of the written record. As discussed below, we tentatively conclude that CLA is a U.S. citizen and is fit, willing, and able to operate its proposed charter service, subject to conditions. However, we will give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

FITNESS

The Applicant

CLA, based in Van Nuys, California, was formed as a jet charter company in 1968 by Mr. Clay Lacy, who serves as the company's President and sole shareholder. The company, now in its 36th year of operation, has been registered to conduct air taxi operations under Part 298 of our rules since 1969. It currently holds an FAA operating certificate under Part 135 of the Federal Aviation Regulations ("FARs") and conducts jet charter operations for corporate clients as well as air taxi flights. Currently, it operates a fleet of 32 jet aircraft.² CLA also manages corporate aircraft under management agreements with various clients and has an FAA-issued repair station license which permits it to perform maintenance on small and large aircraft.

CLA plans to add a Boeing Business Jet ("BBJ") in executive configuration for 16 passengers to its Part 135 on-demand charter service.³ The aircraft that CLA will use for this service is owned by Kevin Air, LLC ("Kevin Air"), an unrelated U.S. company. CLA will lease the aircraft on an hourly basis from Kevin Air and will provide on-demand charter services with the aircraft to Kevin Air's owners as well as third-party customers. Kevin Air will pay for the storage of the aircraft leased to CLA and, as a result, the vast majority of CLA's expenses will be incurred only when it is operating revenue flights for customers. Although CLA does not currently have specific plans to add additional aircraft to its proposed operations, it requests that the Department grant it authority to operate two additional aircraft to permit growth as justified by the market and subject to similar agreements between CLA and Kevin Air.

¹ CLA supplemented its applications with additional information on April 23 and June 1, 2004.

² CLA's fleet of jet aircraft consists of 13 Learjets, 14 Gulfstreams, one Westwind, two Hawkers, one Bombardier Challenger 604, and one Boeing Business Jet. Of the 32 aircraft operated by CLA, 25 are authorized for use in its air taxi operations.

³ The BBJ is a modified B-737 aircraft. Notwithstanding that the aircraft will be configured for 16 seats and the applicant's operations will be conducted under its current Part 135 FAA authority, CLA cannot operate the BBJ under its Part 298 air taxi authority because the Department considers this aircraft to be a "large" aircraft to which the Part 298 exemption does not apply. Specifically, a "large" aircraft is any aircraft, including the B-737, originally designed to have a maximum passenger capacity of more than 60 seats or a payload of more than 18,000 pounds.

Managerial Competence

Mr. Clay Lacy is the founder, President, a Board Member, and sole owner of CLA. He began his career in aviation in 1945 as a student pilot and later was employed as a Flight Instructor in Wichita, Kansas. In addition to operating CLA, Mr. Lacy was a pilot for United Airlines from 1952 until he retired in 1992. He holds an FAA-issued Airline Transport Pilot license and has over 50,000 hours of total flight time.

Mr. Brian Kirkdoffer is a CLA Board Member and has served as CLA's Vice President and General Manager since June 1998. He joined CLA in April 1990 as a pilot and has served the company in such capacities as Gulfstream Captain, Director of Marketing, and Director of Managed Aircraft. He holds an FAA-issued Airline Transport Pilot license and has 10,000 hours of flight time.

Ms. Kristine Regina is a CLA Board Member and serves the company in the position of Secretary. She joined the company in 1980 and has served in such capacities as Office Manager, Executive Assistant to the President, Charter Dispatcher, and Front Desk Manager.

Mr. William Staunton has served as CLA's Chief Financial Officer since January 2001. He holds a B.S. in Business Administration from the University of California at Los Angeles and has been employed in the accounting field since 1988. His previous positions include serving as a Senior Staff Accountant for Sobul, Primes & Schenkel in Los Angeles, and as an Accounting Manager for Good, Swartz & Berns, also in Los Angeles.

Mr. Alex Kvassay has served as CLA's Director of Operations since May 1990. He holds a B.S. in Aeronautical Engineering from Wichita State University and a Juris Doctor from Southern Methodist University. Before joining CLA, Mr. Kvassay worked as a pilot for various Part 135 operators⁴ and later as an attorney for the law firm of Kern & Wooley in Dallas, Texas and Mooney Aircraft in Kerrville, Texas. He holds an FAA-issued Airline Transport Pilot license.

Mr. David Anderson has served as CLA's Director of Maintenance since 1987. He began his career in aviation with the U.S. Army in 1977 as a Crew Chief on OH-58 Helicopter. Mr. Anderson holds an FAA-issued Airframe & Powerplant Inspection Certificate and a Repairman Certificate for Radio & Instrument.

Mr. Earl Soderstrom has served as CLA's Chief Pilot since February 2002. He holds an FAA-issued Airline Transport Pilot license and has 18,900 total flight hours, including approximately 15,750 hours as pilot in command. Mr. Soderstrom has been employed in the aviation industry since 1968. Before joining CLA, he served as a Flight Instructor, Chief Pilot, and Captain for various aviation companies both domestically and internationally, including Genesis Aviation, Westmount Investment, Ltd., and Flight Safety, Inc. He was also an employee of Adnan M. Khashoggi for 23 years flying and managing a fleet containing DC-9's, DC-8's, B-727's and a staff of 50 employees.

⁴ These companies include Duncan Aviation in Wichita Kansas, and Northrop Aircraft Corporation in Dahhran, Saudi Arabia.

In view of the experience and background of the applicant's key personnel, we tentatively find that CLA has the management skills and technical ability to conduct its proposed interstate and foreign charter air transportation operations.⁵

Operating Plan and Financial Position

CLA states that it has identified a demand for charter services with BBJ aircraft in executive configuration as a result of the services it currently provides with smaller jets. The applicant's proposed operations are somewhat different from that of a typical charter applicant: it intends to use a 16-seat executive-configured Boeing Business Jet which it will lease from Kevin Air on an hourly basis. CLA estimates that its first year of operations with the BBJ will total only about 480 hours. Under its arrangement with Kevin Air, CLA will only incur most expenses when it is operating revenue flights with this aircraft.⁶

CLA has provided the Department with audited financial statements for the company's fiscal years 2001 through 2003 and unaudited financial statements for the nine months ending December 31, 2003. The income statements for the three consecutive fiscal years ending March 31, 2003, show that CLA had net profits of \$2,851,643, \$1,848,360, and \$2,943,144, respectively. For the nine-month period ending December 31, 2003, CLA posted a net profit of \$2,341,839 on \$35.6 million in revenue. The company's December 31, 2003, balance sheet shows positive working capital of \$4,753,298, a current assets to current liabilities ratio of 1.51 to 1, retained earnings and net stockholders' equity of \$11,377,141.

CLA expects that it will incur minimal (approximately \$43,396) pre-operating expenses,⁷ and that its expenses during the first year of operations with the BBJ will total approximately \$4,496,298.

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 the expenses that are reasonably projected to be incurred during three months of operations. 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, in determining available resources, projected revenues may not be used.

⁵ In addition, before authorizing a carrier to conduct air transportation operations, the FAA evaluates the qualifications of persons holding certain positions 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.

⁶ At other times, it will also be managing the aircraft for Kevin Air.

⁷ Under its arrangements with Kevin Air, the applicant does not expect to incur many of the pre-operating expenses typical of a new start-up carrier. The company already has the required personnel and facilities and will not incur any aircraft expenses except for fuel to conduct training or other flights involved in the FAA certification process.

Therefore, to meet the Department's financial fitness test, CLA would need approximately \$1,167,471.⁸ CLA plans to finance its expanded BBJ operations with internal resources.⁹

In light of the above, we tentatively find that CLA will have access to sufficient financial resources to commence the limited charter services it proposes without posing an undue risk to consumers or their funds.¹⁰

Compliance Disposition

CLA states that there are no actions or outstanding judgments against it, its owner, or its key personnel. However, on January 29, 2004, Classic Limited Air, Inc. (another company owned by Mr. Lacy), entered into a consent agreement with the Department related to Classic Limited's provision of common carriage operations in violation of 49 U.S.C. 41101.¹¹ In that Order, the Department found that Classic Limited had performed significant operations as a common carrier without the requisite economic authority from the Department which constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. 41712. The Order assessed a compromise civil penalty of \$150,000 and directed Classic Limited to cease and desist from further violations of 49 U.S.C. 41101 and 41712.¹²

The enforcement action against CLA's affiliated company is, of course, of concern to us, particularly in view of the fact that the companies are closely held. However, Classic Limited cooperated fully in the investigation of its conduct and the company acted quickly to correct the situation. The carrier states that neither it nor its owner or key personnel have been the subject of any further 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. We have reviewed the information available to us and have found nothing further negative about the compliance disposition of CLA, Mr. Lacy, or CLA's key personnel. In addition, the FAA advises us that CLA has notified the agency of its intent to add the BBJ to its FAA Part 135 Operations Specifications once the company receives appropriate DOT authority, and that the FAA knows of no reason why we should not find CLA fit.

Based on the above, we tentatively find that CLA will have the proper regard for the laws and regulations governing its service to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

⁸ The \$1,167,471 is comprised of the applicant's forecast of approximately \$43,396 in pre-operating expenses plus \$1,124,075, which is one-quarter of CLA's estimated first-year expenses.

⁹ CLA provided a statement from First Bank & Trust, Beverly Hills, California, stating that, as of March 17, 2004, CLA had \$3,085,549 on deposit.

¹⁰ As is our practice, prior to making any authority awarded to CLA effective, we will require the company to demonstrate that it continues to have the financial resources needed to meet our financial test.

¹¹ See Order 2004-1-23 issued January 29, 2004.

¹² Of the \$150,000 Classic Limited was assessed, \$75,000 was due and payable within 30 days of the issuance of the Order and the remaining \$75,000 was suspended for one year and will be forgiven unless Classic Limited violates the order's cease and desist or payment provisions.

CITIZENSHIP

49 U.S.C. 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 specifies 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 be controlled by U.S. citizens.

CLA is incorporated in the State of California. Clay Lacy, the President and sole shareholder of CLA, is a U.S. citizen, as are the other key managers of the applicant. CLA has submitted an affidavit attesting that it is a U.S. citizen. Finally, there is no other information before us that would lead us to conclude that CLA is not controlled by U.S. citizens.

In view of the foregoing, we tentatively conclude that CLA is a U.S. citizen and that it is fit, willing, and able to provide air transportation services as a certificated air carrier, subject to conditions.

PUBLIC CONVENIENCE AND NECESSITY

No finding of consistency with the public convenience and necessity is required for the award of authority for interstate charter air transportation of persons, property, and mail under section 41102, although such a finding is required for authority to engage in foreign charter air transportation.

We tentatively find that the foreign charter air transportation proposed by CLA is consistent with the public convenience and necessity. By Order 78-7-106, which instituted the *Former Large Irregular Air Service Investigation*, the Civil Aeronautics Board found that there was a continuing demand and need for additional charter air carriers. These findings remain valid and apply to the authority sought by CLA. Therefore, if CLA meets the fitness requirements of the Transportation Code, it will receive certificates authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail under section 41102.¹³

REQUEST FOR CONFIDENTIAL TREATMENT

On March 29, 2004, CLA filed a request for confidential treatment under section 302.12 of our rules for one document--the Aircraft Lease and Management Agreement with Kevin Air, LLC. On June 1, 2004, CLA submitted a revised Aircraft Lease and Management Agreement with Kevin Air, LLC, and again requested that the Department grant that revised document confidential treatment under section 302.12.

In support of its requests, CLA states that the subject agreements incorporate private, commercial, financial and competitively sensitive information of a type that is not usually disclosed to the public and that merits confidential treatment under the Freedom of Information Act. Moreover, the applicant states that these documents are the type of information for which the Department has granted confidential treatment in the past.

¹³ Pursuant to 49 U.S.C. 41307, issuance of foreign authority to the applicant is subject to Presidential review.

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. section 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 CLA 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 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 will grant CLA’s requests for confidential treatment. We agree that the information for which CLA seeks confidential treatment is competitively sensitive and is similar to that for which we have granted confidential treatment in the past, and we see no reason not to do so here.

OBJECTIONS

We will give interested persons 14 calendar 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 calendar days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses.¹⁴ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue orders that will make final our tentative findings and conclusions with respect to certification and fitness and will issue CLA certificates that will contain exact copies of the attached Terms, Conditions, and Limitations.

¹⁴ 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 through 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, reasons supporting this position should be provided.

EFFECTIVE CERTIFICATE CONDITIONS AND LIMITATIONS

If CLA is found fit and issued the certificates it seeks, its authority will not become effective until the carrier has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificates. Among other things, this includes our receipt of evidence from the FAA demonstrating that CLA has received amended operations specifications to conduct passenger charter air transportation using large aircraft, evidence that CLA has obtained liability insurance coverage meeting the requirements of Part 205 of our rules, and a statement of any changes that CLA has undergone in its ownership, management, operations, finances, or compliance posture since the issuance of this order.¹⁵

Furthermore, we remind CLA of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a company is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

In this regard, we note that our finding of fitness is predicated on the modest proposal before us here. Were CLA to substantially expand its operations, including the operation of aircraft under Part 121 of the FARs, it is not clear that our findings would still be the same.¹⁶ Therefore, we propose to limit any authority granted to CLA to operations conducted under Part 135 of the FARs.

In addition, in keeping with our mandate to monitor the growth of new entrant carriers, we intend to limit the number of large aircraft that CLA can operate under Part 135 without a further fitness review. CLA's application proposed the use of one BBJ aircraft. However, it requested that the Department grant it authority to operate two additional aircraft to permit growth. While, under other circumstances, we might be hesitant to authorize such expansion for the applicant, the nature of CLA's operations leads us to conclude that some expansion capability is warranted here. CLA states that it expects to operate any additional aircraft under terms and conditions similar to those in this initial proposal.¹⁷ Thus, the costs of operating additional aircraft will be substantially related to whether the carrier actually operates a flight, and we would expect that any incremental expenses CLA may incur through the operation of additional aircraft would be largely offset by fees paid to it by its customers. Under these circumstances, we will allow CLA to operate up to three large aircraft.¹⁸ Should it wish to operate additional large aircraft, it must provide the Department with at least 45-days' notice of, and demonstrate its fitness for, any such expansion of operations.

¹⁵ As noted earlier, CLA is currently registered as an air taxi under Part 298 of our rules. If CLA is found fit and issued an effective certificate, we propose to cancel its air taxi authority since it would be duplicative of the carrier's certificate authority.

¹⁶ The institution of services under Part 121 would impose additional requirements on the company including, but not limited to, the hiring of additional management personnel.

¹⁷ That is, executive-configured aircraft that the company is managing under management agreements with the aircraft owners.

¹⁸ While we are limiting the company's large aircraft fleet to three, we will place no specific limit on the number of "small" Part 135 aircraft the company may operate.

Furthermore, should CLA propose other substantial changes in areas relating to its fitness, it must first comply with the requirements of section 204.5 of our rules.¹⁹ CLA's compliance with this requirement is essential if we are to carry out our responsibilities under 49 U.S.C. 41110(e).²⁰

Moreover, to aid the Department in monitoring the fitness of new air carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report to the Air Carrier Fitness Division within 45 days following the end of the first year of actual flight operations under the certificate authority. 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 in its current operations during its second year, current financial statements,²¹ 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.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue orders making final our tentative findings and conclusions stated above and award certificates to Clay Lacy Aviation, Inc., authorizing it to engage in interstate and foreign charter 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 orders making final any of the proposed findings, conclusions, or the certificate awards set forth here to file such objections with the Department of Transportation Dockets, 400 Seventh Street, S.W., Washington, D.C. 20590, in Dockets OST-04-17541 and OST-04-17542, 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.

¹⁹ CLA may contact our Air Carrier Fitness Division to report proposed substantial changes and determine what additional information, if any, will be required under section 204.5. If the company fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

²⁰ We also remind CLA 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 the operations for which it was found fit and subsequently ceases such operations for any reason, 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.

²¹ 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 12-month income statement ending that same date.

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.
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter orders making final our tentative findings and conclusions and will issue Clay Lacy Aviation, Inc., certificates that will contain exact copies of the attached specimen Terms, Conditions, and Limitations.²²
5. We grant the Motions for Confidential Treatment filed by Clay Lacy Aviation, Inc., on March 29, 2004, and June 1, 2004.
6. We will serve a copy of this order on the persons listed in Attachment A.
7. We will publish a notice 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>*

²² Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



Specimen

Terms, Conditions, and Limitations

CLAY LACY AVIATION, INC.

is authorized to engage in interstate charter 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), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder's authority to operate under this certificate is limited to operations conducted under Part 135 of the Federal Aviation Regulations.

(4) 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.

(5) 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.

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

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render 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.

(8) The holder is not authorized to engage in air transportation operations between points within the State of Alaska.

(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 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, unless the holder is conducting operations under another type of certificate authority. 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.

Specimen



Terms, Conditions, and Limitations

CLAY LACY AVIATION, INC.

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

Between any place in the United States and any place outside thereof.

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), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

- (3) The holder's authority to operate under this certificate is limited to operations conducted under Part 135 of the Federal Aviation Regulations.
- (4) 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.
- (5) 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 orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.
- (6) 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.
- (7) 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.*
- (8) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (9) 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.

(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 under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. 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.

SERVICE LIST FOR CLAY LACY AVIATION, INC.

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