



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

Issued by the Department of Transportation  
on the 14th day of October, 2004

Applications of

**OMEGA AIR HOLDINGS, LLC d/b/a FOCUS AIR**

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

**Dockets OST-2004-17311  
and  
OST-2004-17312**

**ORDER TO SHOW CAUSE  
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

**Summary**

By this order, we tentatively find that Omega Air Holdings, LLC d/b/a Focus Air (“Focus Air”) is a citizen of the United States, is fit, willing, and able to provide interstate and foreign charter air transportation of 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 whether companies proposing to engage in interstate and foreign charter air transportation are “fit, willing, and able” to perform such service, and to comply with 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 determine that the applicant is a U.S. citizen.

On March 10, 2004, Focus Air filed applications in Dockets OST-2004-17311 and OST-2004-17312 for authority to conduct interstate and foreign charter all-cargo air transportation pursuant to section 41102 of the Transportation Code. The fitness information required by 14 C.F.R. 204.3 of our regulations was provided with the application as well as in subsequent

submissions.<sup>1</sup> At the time of the initial application, Focus Air intended to operate using the trade name of “Omega Air Cargo.”

On March 31, Omega Air, Inc. (“OAI”), and affiliated companies, filed in opposition to the applicant’s use of the Omega Air name arguing that the name similarity of the two companies would likely cause confusion to consumers.<sup>2</sup> On July 16, the applicant updated its application to register the trade name “Focus Air” for use in the conduct of its operations. In light of this, change in circumstances, and consistent with our policy not to mediate such disputes absent a showing that consumer harm appears significantly likely in the future, we decline to act on OAI’s concerns. OAI has alternate avenues available to it to protect its interests should it still feel there is a name-similarity issue.

Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Focus Air is a U.S. citizen and has met the fitness test to conduct interstate and foreign charter all-cargo operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

## FITNESS

### **The Applicant**

Focus Air is a non-operating limited liability company established on February 12, 2004. The applicant is organized under the laws of the State of Delaware. Its principal place of business is Minnetonka, Minnesota, and its principal base of operations is Fort Lauderdale, Florida. Focus Air is a wholly-owned subsidiary of Merced Partners Limited Partnership (“Merced”). According to the applicant, all of the limited partners and the general partner, Global Capital Management, Inc. (“GCM”), in Merced are citizens of the United States.<sup>3</sup> If found fit, the applicant plans to provide interstate and foreign all-cargo air transportation services on an Aircraft, Crew, Maintenance, and Insurance (ACMI) charter basis using B-747 freighter aircraft.<sup>4</sup>

### **Managerial Competence**

Mr. David M. McElroy, Focus Air’s President and CEO, has held executive level positions in the passenger and cargo airline business for over twenty-five years. Prior to joining Focus Air, he held executive positions at Arrow Air, Inc. (2002 – 2003) as VP Development and as transition COO; Freighter Solutions Consulting, Denver, Colorado (1997 – 2002) as Managing Director; Atlas Air, Inc. (1993 – 1996) as Senior VP Operations/Director; Lucas

---

<sup>1</sup> Focus Air filed information supplementing its applications on April 14, April 29, May 28, July 16, August 4, August 25, and September 9, 2004.

<sup>2</sup> OAI and its affiliates lease commercial aircraft to U.S. and foreign air carriers as well as provide maintenance and support services.

<sup>3</sup> According to the applicant, no limited partner holds 10 percent or more of Merced. Mr. John D. Brandenburg and Mr. Michael J. Frey own GCM. Mr. Brandenburg serves as President, COO, and Treasurer of GCM; while Mr. Frey serves as Chairman, CEO, and Secretary. Each individual owns 50 percent of GCM, and both are U.S. citizens.

<sup>4</sup> Focus Air plans to begin its proposed operations on or about April 2005.

Aviation, Santa Barbara, California (1989 – 1992) as President; Cross Continent Aircraft Services, Smyrna, Tennessee (1987 – 1989) as President; and People Express Airline (1980 – 1986) as Managing Officer/Founder. Mr. McElroy has a B.S. in Aircraft Maintenance Engineering from Northrop Institute of Technology, has completed graduate courses in Business Administration at Loyola Marymount University, and attended the U.S. Air Force Maintenance Officer School. In addition to his management experience, he also holds an FAA-issued Commercial Pilot license and Airframe & Powerplant Mechanic certificate.

Mr. Carsten Peterson, Focus Air's Senior VP of Marketing, has more than twenty-five years of experience in the aviation industry.<sup>5</sup> Prior to joining Focus Air, he owned and operated Air Support International, Inc., an ACMI brokerage company. Between 1986 and 1993, he owned and operated Avia Cargo Agencies, Inc., an air freight forwarder. From 1981 – 1986, he was President of Samson Transport, USA Inc., an air/sea freight forwarder. From 1980 – 1981, he held a management position with Samson Transport in Copenhagen. From 1974 – 1979, he worked as an operations manager for A. Hartrodt, a German freight forwarder.

Mr. George Milton Grindrod, the applicant's Chief Pilot, holds FAA-issued Airline Transport Pilot, Flight Instructor, and Flight Engineer certificates. He has worked for a number of U.S. commercial air carriers since 1981 including Fine Air/Arrow Air (Chief Pilot/Check Airman, DC-8), American International Airways (Captain, B-747/Chief Pilot of Miami Base), Rosenbalm Aviation/Flagship Express (Captain/Check Airman, DC-8), and Braniff International (Flight Engineer/Co-Pilot/Captain). He has almost 21,000 total flight hours of which 9,859 are as Captain.

Mr. Alexander Gregory Vanek is Focus Air's Director of Operations. His educational background includes independent studies at Embry-Riddle Aeronautical University. He has about thirteen years of experience in civil aviation. His employment history includes System Chief Pilot/flight engineer/check airman/simulator instructor for Express One International, Inc. (1991 – 2002); First Officer for Tradewinds Airlines, Inc. (2002 – 2002); and Chief Pilot/Director of Operations for Casino Express Airlines (2002 – 2004). Mr. Vanek holds FAA-issued Airline Transport Pilot, flight instructor, and flight engineer certificates, and he has 6,650 hours of total flight time.

Mr. David W. Hoffstetter, the applicant's Director of Maintenance, has an Associate Science Degree in Aeronautical Technology from Miami Dade Junior College, and he attended the Navy Aircraft Engine Schools (1967) and the Eastern Air Lines Apprentice Mechanic Program (1967 – 1971). During his years in the U.S. Navy (1967 – 1971), he was an Aviation Engine Mechanic and Crew Chief on P-2 and A-7 aircraft. He has over thirty years of experience in civil aviation. Before joining the U.S. Navy, he was an apprentice mechanic at Eastern Air Lines (1967). His employment history includes Director of Maintenance, Independent Air (1989 – 1990); Director of Maintenance, UltraAir, Inc. (1992 – 1994); Director of Maintenance, Prestige Airways (1994 – 1996); General Manager and Partner, Tennessee Technical Services, a FAR 145 Repair Station (1997 – 2002); and Director of Quality Control for JetIIIb Inc. (2002 – 2003). Before joining Focus Air, he was Senior VP of Technical Services, Aviation Leasing Group. He holds an FAA-issued Airframe & Powerplant Mechanic certificate.

---

<sup>5</sup> Mr. Peterson, a Danish national, became a U.S. citizen on March 24, 2004.

Mr. Richard Martin Strehse is Focus Air's Chief Inspector. Mr. Strehse spent four years in the U.S. Air Force (1963 – 1967) specializing in aircraft maintenance. He is a graduate of the Quaker City School of Aeronautics in Philadelphia. He has twenty years of experience in civil aviation. His employment history includes Director of Quality Assurance/Compliance Officer, Arrow Air (2000 – 2004); VP Technical Services, American Aviation Services, Inc. (1998 – 2000); VP Quality Control/Chief Inspector, Fine Airlines/Fine Air Repair Center (1993 – 1998); Director of Quality Control/Chief Inspector, Midway Airlines/Midway Aircraft Engineering (1987 – 1991); and VP Maintenance/Chief Inspector, Arrow Air, Inc. (1984 – 1987). He holds an FAA-issued Airframe & Powerplant Mechanic certificate.

Mr. Frank Joseph Esopi is the Director of Safety. Mr. Esopi spent five years in the U.S. Marine Corps (1977 – 1982) serving as an aviation structural mechanic. His educational background includes instruction/training at the Southern California Safety Institute (2003, Safety/Operational Risk Management, and in 2002, Aviation Safety Management), OSHA Training Institute (2002, General Industry Studies), FAA Academy (2002, System Safety), and Broward Community College (1982 – 1983). He has twenty years of experience in civil aviation. His employment history includes Corporate Compliance Officer/Director of Safety (2002 – 2003) and Chief Flight Engineer (2001 – 2002) at Arrow Air, Inc.; Check Engineer and Instructor, Fine Airlines (2000 – 2001); Flight Engineer, Kitty Hawk International Airways (1990 – 2000); Flight Engineer, TPI International Airways (1986 – 1990); and Flight Engineer and mechanic, Galaxy Airlines (1985 – 1986). Mr. Esopi holds an FAA-issued Airframe & Powerplant Mechanic certificate, a Flight Engineer certificate with turbojet/turboprop powered ratings, and a Private Pilot certificate with airplane single engine land/private pilot ratings. He has 10,000 hours of total flight time.

Mr. John Paul Steffen, Focus Air's General Manager, holds a B.S. in Aeronautical Engineering from Parks College of Aeronautical Technology. He has over forty years of experience in aviation. He completed a twenty year career in the U.S. Air Force, retiring in 1984 with the rank of Lieutenant Colonel. He began his civil aviation career with Eastern Air Lines (1984 – 1995), serving in various capacities (Senior Powerplant Engineer, Manager Aircraft Programs/Chief Fleet Technical Manager, Director, Aircraft Services Planning and Aircraft Programs Planning). From 1995 to April 2003, he worked for Atlas Air, Inc., serving as Director of Planning and General Maintenance Manager, among other positions. He holds an FAA-issued Commercial Pilot certificate (Multi/Single Engine and Instrument) and has 3,500 hours of total flight time.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Focus Air has demonstrated that it possesses the managerial skills and technical ability to conduct its proposed charter operations.<sup>6</sup>

---

<sup>6</sup> In addition, before authorizing a carrier to conduct air transportation operations, the FAA evaluates certain of the carrier'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 their skills and technical ability. In this case, the FAA has advised us that the above identified individuals are acceptable to that agency in their respective positions.

## Operating Plan and Financial Condition

If granted the certificates it seeks, Focus Air intends to provide interstate and foreign all-cargo charter service using two B-747 aircraft during its first year of operations.<sup>7</sup> The applicant maintains that there is untapped potential and unsatisfied demand in the ACMI charter market and that its business plan will include air carriers seeking to outsource their wide-body air freighter requirements by wet-leasing aircraft. The applicant expects to operate its aircraft over long-haul intercontinental routes with average flight segments of six hours flying time or more.<sup>8</sup>

The applicant furnished data on its proposed flight operations, including forecast monthly block hour usage and rates, revenue, and operating costs, and a schedule of projected pre-operating expenses. Focus Air also provided a detailed narrative explanation of how its projections were derived based on aviation management experience, historical operating data, supplier quotations, and maintenance reserve cost estimates based on discussions with various Maintenance Repair Operations. Focus Air is a newly established company; as such, it has not commenced operations. The company submitted a pro forma balance sheet dated May 14, 2004, showing total assets of \$471,693, total liabilities of \$20,605, positive working capital of \$451,088, a current assets to current liabilities ratio of about 23 to 1, and net shareholders' equity of \$451,088. The applicant has projected first-year total operating expenses of \$26.94 million, based on 5,880 block-hours of operation.<sup>9</sup> Focus Air also estimated that \$4,209,428 will be required to cover pre-operating expenses. We have examined the applicant's estimated expenses and find them to be reasonable.<sup>10</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 and the expenses that are reasonably projected to be incurred during three months of operations. Because forecast 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.

Therefore, to meet the Department's financial fitness criteria, Focus Air would need approximately \$10,945,428.<sup>11</sup> Focus Air has provided information in support of its ability to obtain these funds. First, the applicant submitted verification that on May 14, 2004, it had \$389,630.65 on deposit with Bank of America. Second, Merced, the applicant's parent company, submitted a letter confirming its commitment to provide approximately \$15 million

<sup>7</sup> On July 29, 2004, Merced established another wholly-owned subsidiary, Cargo Aircraft, LLC ("Cargo Aircraft") for the purpose of acquiring the B-747 aircraft that Focus Air intends to use for its proposed operations. The aircraft then will be leased and/or sold to Focus Air for its use.

<sup>8</sup> The applicant identified Asia and the Pacific Rim as key markets for its proposed operations.

<sup>9</sup> These estimates are based on the applicant's plan to commence revenue operations in April 2005, and to add a second B-747 freighter to its fleet in the third quarter of 2005.

<sup>10</sup> As noted earlier, the applicant's operations will be offered on an ACMI basis; thus the costs of fuel, ground handling, etc. are expected to be borne by the charterer and are not included in the applicant's projections.

<sup>11</sup> The \$10,945,428 is comprised of the applicant's forecast of approximately \$4,209,428 in pre-operating expenses plus about \$6,736,000, which is one-quarter of the applicant's estimated first-year expenses.

in funding for commercially reasonable start-up and initial operational costs incurred by Focus Air. Third, the record also shows that Merced has sufficient resources available to it to satisfy this commitment.<sup>12</sup>

We tentatively conclude, therefore, that Focus Air will have sufficient financial resources available to it to enable it to commence its proposed charter all-cargo operations without posing an undue risk to consumers or their funds.

### **Compliance Disposition**

We also tentatively conclude that Focus Air has the proper regard for the laws, rules, 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.

The record reflects that Focus Air has no actions or outstanding judgments against it, its owner, 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. Focus Air further stated 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. We have reviewed the information available to us and have found nothing negative about the compliance disposition of Focus Air, Merced, or the applicant's key personnel. Further, the FAA has advised us that the company has applied for certification under Part 121 of the Federal Aviation Regulations and the certification process is proceeding normally.

### **CITIZENSHIP**

49 U.S.C. 41102 requires that authority to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens, that at least 75 percent of the outstanding voting stock must be owned by U.S. citizens, and that the carrier must actually be controlled by U.S. citizens.

As previously discussed, Focus Air is a limited liability company organized under the laws of Delaware. The company is a wholly-owned subsidiary of Merced, a limited partnership also organized under the laws of Delaware. All of the limited partners and the general partner -- GCMI -- in Merced are citizens of the United States (individuals or entities). The record has further established that all of Focus Air's key personnel are U.S. citizens. Finally, Focus Air has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Transportation Code, and we have no other information demonstrating that Focus Air is controlled by non-U.S. citizens.

---

<sup>12</sup> The applicant notes in its application that Merced has approximately \$750 million in assets, and financial statements provided for Merced for calendar years 2002 and 2003 show net partners' capital in the mid nine figures. In addition, Focus Air provided a letter dated May 18, 2004, showing that Merced had approximately \$100 million in unencumbered funds on deposit with BNP Paribas.

Based on the above, we tentatively conclude that Focus Air is a citizen of the United States and is fit, willing, and able to provide the interstate and foreign all-cargo charter service it proposes as a certificated air carrier.

### **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 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 all-cargo air transportation proposed by Focus Air 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. Therefore, if Focus Air meets the fitness requirements of the Transportation Code, it will receive certificates authorizing it to engage in interstate and foreign charter air transportation of property and mail under section 41102.<sup>13</sup>

### **REQUEST FOR CONFIDENTIAL TREATMENT**

On March 10, 2004, Focus Air filed a request under § 302.12 of our rules to withhold from public disclosure (1) financial statements for Merced, (2) resumes and completed compliance questionnaires from key personnel, and (3) a redacted letter of intent to purchase a B-747-200F aircraft. On May 28, 2004, Focus Air submitted (1) revised resumes for key personnel, and (2) an updated, unredacted letter of intent to purchase a B-747-200F aircraft, and again requested that the Department grant the revised documents confidential treatment under 14 C.F.R. 302.12.

On July 16, 2004, the applicant updated its application and submitted into the public record of this case the resumes and compliance questionnaires for each of its key personnel, for which it had previously requested confidential treatment. Therefore, the only remaining items for our consideration in this matter are the financial statements submitted on behalf of Merced, and the letters of intent to purchase a freighter aircraft.

In support of its request, Focus Air states that the subject materials 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.

Rule 12 instructs us to evaluate requests for confidential treatment in accordance with 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 the government, and (3) privileged or confidential (*Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979)).

---

<sup>13</sup> Pursuant to 49 U.S.C. 41307, issuance of foreign authority to Focus Air is subject to Presidential review.

There is no question that the information for which Focus Air 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 the applicant’s requests for confidential treatment. While we do not routinely afford confidential treatment to the financial statements of a parent company providing financial resources to an applicant for certificate authority, the documents provided by Merced are unusually detailed in certain respects and we agree that the release of this information could have a negative competitive impact on Merced. Moreover, as noted in the **FINANCIAL** section above, Merced has filed in the public record sufficient information to establish its ability to meet its financial commitment to Focus Air. Under the circumstances, we have decided to grant confidential treatment to Merced’s financial statements as requested.

As to the aircraft purchase agreement, such agreements are the type of documents for which we have granted confidential treatment in the past and we see no reason not to grant such treatment here.

## **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 that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts.<sup>14</sup> 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 Focus Air certificates that will contain an exact copy of the attached Terms, Conditions and Limitations.

## **EFFECTIVE CERTIFICATE CONDITIONS AND LIMITATIONS**

If Focus Air 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, conditions and limitations attached to its certificates. Among other things, this includes our receipt of evidence that Focus Air has been certified by the FAA to engage in

---

<sup>14</sup> If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such 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.

charter operations and a fully-executed OST Form 6410 evidencing liability insurance coverage for its all-cargo charter operations.<sup>15</sup>

Our tentative findings stated above are based on the operating plan described in Focus Air's applications, *i.e.*, using two aircraft through the company's first-operational year. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of additional aircraft. Therefore, once the applicant's certificates become effective, should Focus Air propose to acquire additional aircraft beyond the two initially proposed, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with those additional aircraft.

Furthermore, we remind Focus Air 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. 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.<sup>16</sup> The compliance of the company with this requirement is essential if we are to carry out our responsibilities under 49 U.S.C. 41110(e).<sup>17</sup>

Finally, to aid the Department in monitoring the fitness of new carriers, we require that all newly certificated carriers 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,<sup>18</sup> 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.

---

<sup>15</sup> Focus Air has filed its Family Assistance Plan with both the Department and the National Transportation Safety Board, a copy of which was provided to Docket OST-96-1960 on August 25, 2004.

<sup>16</sup> Focus Air 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. If the carrier 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 operational authority.

<sup>17</sup> We also remind Focus Air 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.

<sup>18</sup> 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.

**ACCORDINGLY:**

1. We direct all interested persons to show cause why we should not issue orders making final the tentative findings and conclusions stated above and award certificates to Omega Air Holdings, LLC d/b/a Focus Air, authorizing it to engage in interstate and foreign charter air transportation of 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 Docket Operations, Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Dockets OST-2004-2004-17311 and OST 2004-17312, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar 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.<sup>19</sup>
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 Omega Air Holdings, LLC d/b/a Focus Air, certificates that will contain exact copies of the attached specimen Terms, Conditions, and Limitations.
5. We grant the Motions for Confidential Treatment filed by Omega Air Holdings, LLC d/b/a Focus Air on March 10, 2004, and May 28, 2004, to the extent discussed herein.
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>*

---

<sup>19</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



**SPECIMEN**  
Terms, Conditions, and  
Limitations

**OMEGA AIR HOLDINGS, LLC**  
**d/b/a FOCUS AIR**

is authorized to engage in interstate charter air transportation of 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 enter into contracts for the 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 is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).

(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(1)), 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

**OMEGA AIR HOLDINGS, LLC**  
**d/b/a FOCUS AIR**

is authorized to engage in foreign charter air transportation of 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), or enter into contracts for the 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 is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).

(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.\*

---

\* 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.

(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.

(10) 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.

(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.

**ATTACHMENT A**

**SERVICE LIST FOR OMEGA AIR HOLDINGS, LLC D/B/A FOCUS AIR**

MR DAVID McELROY  
PRESIDENT & CEO  
OMEGA AIR HOLDINGS, LLC  
7330 OCEAN TERRACE  
SUITE 2202  
MIAMI, FL 33141

MR PATRICK R RIZZI  
COUNSEL FOR OMEGA AIR  
HOLDINGS, LLC  
O'MELVENY & MYERS LLP  
1625 EYE STREET, NW  
WASHINGTON DC 20006

MR LADD LEWIS  
POI FOR OMEGA AIR HOLDINGS,  
LLC  
FEDERAL AVIATION ADMIN  
1050 LEE WAGENER BLVD  
SUITE 201  
FORT LAUDERDALE, FL 33315

MR PETER J LYNCH  
ASST CHIEF COUNSEL FOR  
ENFORCEMENT, AGC-300  
FEDERAL AVIATION ADMIN  
800 INDEPENDENCE AVE SW  
WASHINGTON DC 20591

MR EDDIE L THOMAS  
REGIONAL COUNSEL  
FAA ASO-7  
SOUTHERN REGION HDQ  
1701 COLUMBIA AVE  
COLLEGE PARK, GA 30337

MR BILL WEAVER  
MGR FSDO  
FSDO-FLL-SO17  
FEDERAL AVIATION ADMIN  
1050 LEE WAGENER BLVD  
SUITE 201  
FORT LAUDERDALE, FL 33315

MS EILEEN M GLEIMER  
COUNSEL FOR OMEGA AIR, INC  
CROWELL & MORING LLP  
1001 PENNSYLVANIA AVE, NW  
WASHINGTON, DC 20004-2595

MS LORI AQUILINO  
CSET ASSISTANT MANAGER  
FAA SFO-IFO  
831 MITTEN ROAD  
SUITE 105  
BURLINGAME, CA 94010

MR DON BRIGHT K-14  
OFFICE OF AIRLINE INFO  
DEPT OF TRANSPORTATION  
400 7TH STREET SW  
ROOM 4125  
WASHINGTON DC 20590