



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

Issued by the Department of Transportation on November 25, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-16316

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Hapag-Lloyd Express GmbH.**

Date Filed: October 10, 2003

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of persons, property and mail (1) between any point or points in Germany and any point or points in the United States; (2) between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Germany for the purpose of carrying local traffic between Germany and the United States; and (3) other charters in accordance with Part 212 of the Department's rules. Hapag-Lloyd states that its services will be provided with small aircraft.

If renewal, date and citation of last action: New authority

Applicant representative: Gary B. Garofalo (202) 776-3970

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: November 25, 2003

Effective dates of authority granted: November 25, 2003-November 25, 2005.

Basis for approval (bilateral agreement/reciprocity): Air Transport Agreement between the United States and Germany

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: X Standard exemption conditions (Attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Hapag-Lloyd is operationally qualified to perform the services authorized above. As to its financial qualifications, Hapag-Lloyd has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.¹ We also found that Hapag-Lloyd is substantially owned and effectively controlled by citizens of Germany.² In addition, all of Hapag-Lloyd's officers and key management personnel are citizens of Germany. By memorandum dated November 24, 2003, the FAA advised us that it knows of no reason why we should act unfavorably on Hapag-Lloyd's application.

In the conduct of the service authorized above, Hapag-Lloyd Express shall use only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

¹ Hapag-Lloyd's application was accompanied by a motion under Rule 12 (14 CFR § 302.12) to withhold certain financial information from public disclosure. Hapag-Lloyd states that it is a privately held German company, and as such, is not required by its government to disclose such information. Hapag-Lloyd states that disclosure of such information would adversely affect Hapag-Lloyd's competitive interest *vis a vis* its commercial competitors and is not required by the public interest. We have reviewed the documents under the disclosure guidelines of Rule 12 and have determined that they warrant confidential treatment. Because of the commercially sensitive nature of the information, we have determined that the documents fall within the Freedom of Information Act exemption for proprietary information and would adversely affect the competitive position of Hapag-Lloyd under 49 U.S.C. § 40115.

² Hapag-Lloyd is a wholly owned subsidiary of TUI AG, a German corporation.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable 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) from a foreign airport that would be the holder's last point of departure for the United States, 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.