



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

Issued by the Department of Transportation on March 11, 1999

**NOTICE OF ACTION TAKEN -- DOCKET OST 99-5167**

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: LUXAIR, S.A.

Date Filed: March 1, 1999

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct, for a period of one year: A) scheduled combination services from points behind Luxembourg via Luxembourg and intermediate points to a point or points in the United States and beyond; and scheduled all-cargo services between the United States and any point or points; and B) charter operations, carrying persons, property and mail, between any point or points in Luxembourg and any point or points in the United States; and 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 Luxembourg for the purpose of carrying local traffic between Luxembourg and the United States. (The applicant proposes to conduct its U.S. operations using equipment wet leased from City Bird, a carrier of Belgium.)

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

Applicant representative(s): Stephen H, Lachter, 202-862-4321

Responsive pleadings: None.

**DISPOSITION**

Action: Approved.

Action date: March 11, 1999

Effective dates of authority granted: March 11, 1999, through March 11, 2000.

Basis for approval (bilateral agreement/reciprocity): The authority is encompassed by the United States-Luxembourg Air Transport Agreement, as amended. (The most recent amendments to this Agreement became provisionally effective on July 21, 1998.)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Standard exemption conditions                       Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: The authority granted is subject to the terms, conditions and limitations of the Department's regulations governing charters; however, we determined, taking into account the terms of the U.S.-Luxembourg Agreement (under which LUXAIR is designated), that it is in the public interest to grant (sua sponte) LUXAIR a waiver under 14 CFR 212.12 from the requirement of 14 CFR 212.9(b)(1) that the carrier obtain our prior approval before operating Fifth-Freedom cargo charters that are encompassed under the Agreement, for the duration of this exemption authority. (In this regard, see Application of Translux International Airlines, Docket OST-98-4329, Notice of Action Taken issued November 25, 1998.) Also, we noted that LUXAIR proposes to conduct its U.S. services by wet lease. In this connection, we conditioned the carrier's authority as follows: LUXAIR shall conduct the subject U.S. operations only by wet leasing equipment from a properly supervised and authorized U.S. or foreign air carrier. Further, we found, based on the record of this case and the companion application for a foreign air carrier permit filed in Docket OST-99-5168, that LUXAIR is operationally and financially qualified to conduct the operations it proposes and that the carrier is substantially owned and effectively controlled by citizens of Luxembourg.

**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) immediate action was required and was consistent with Department policy; (2) the applicant was qualified to perform its proposed

operations; (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 ten (10) 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.

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