



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

Issued by the Department of Transportation on October 19, 1999
NOTICE OF ACTION TAKEN -- DOCKET OST-99-6264

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: **Sterling European Kommanditaktielskab d/b/a Sterling Cargo** Date Filed: September 24, 1999

Relief requested:

Exemption from 49 U.S.C. § 41301 to engage in (1) scheduled foreign air transportation of property and mail from points behind Denmark, Norway and Sweden and intermediate points to a point or points in the United States and beyond; (2) charter foreign air transportation of property and mail between any point or points in Denmark, Norway or Sweden and any point or points in the United States; and (3) other all-cargo charters in accordance with 14 CFR Part 212 of our rules. Sterling Cargo proposes to conduct these services pursuant to a long-term wet lease arrangement with Atlas Air, Inc., a U.S. certificated air carrier.

Statement of authorization under 14 CFR Part 222 to conduct intermodal cargo services between any U.S. point and any other U.S. point.

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

Applicant representative: William C. Evans (202) 371-6000

Responsive pleadings: None filed

DISPOSITION

Action: Approved

Action date: October 19, 1999

Effective dates of authority granted:

Exemption authority: October 19, 1999-October 19, 2000

Statement of authorization under 14 CFR Part 222: October 19, 1999-Indefinite

Basis for approval (bilateral agreement/reciprocity): Air Transport Agreement between the United States and Denmark ¹

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

X Standard exemption conditions (attached) and the provisions of 14 CFR Part 222

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that Sterling Cargo is financially and operationally qualified to perform the proposed services. However, we are unable to find that Sterling Cargo is substantially owned and effectively controlled by Danish nationals. Specifically, Sterling Cargo is owned by two Norwegian companies (Bonheur ASA and Ganger Rolf ASA), and three of Sterling Cargo's six directors, including its chairman, are citizens of Norway.² In spite of the fact that we are unable to find that Sterling Cargo is substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and control requirements. Sterling Cargo is properly licensed and designated (Diplomatic note No. 93, dated July 8, 1999) by the Government of Denmark to perform the proposed services, and there is no evidence on the record which would suggest that the ownership of the carrier would be inimical to U.S. aviation policy or interests. By memorandum dated October 19, 1999, the FAA advised us that it knew of no reason why we should act unfavorably on Sterling Cargo's application.

¹ For the purpose of this exemption authority, Denmark, Norway and Sweden are deemed to be the holder's homeland. See Order 98-6-23.

² Sterling Cargo's president is Swedish.

In the conduct of the charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves Denmark, Norway or Sweden for purposes of carrying traffic between the United States and Denmark, Norway or Sweden.

**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) immediate action was required and 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 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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http://dms.dot.gov/reports/reports_aviation.asp

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder 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;
- (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, comply (except as otherwise provided in the applicable bilateral agreement) 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 (formerly the Federal Aviation Act of 1958, as amended).



