



Order 97-2-24

Served: March 3, 1997

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

Issued by the Department of Transportation
on the 25th day of February, 1997

Application of

HEAVYLIFT CARGO AIRLINES, LTD.

for an exemption under 49 U.S.C. section 40109(g)

Docket **OST-97-2043**

ORDER CONFIRMING EXEMPTION

Summary

This order confirms our oral action of January 17, 1997, granting Heavylift Cargo Airlines, Ltd., exemption authority to operate one cargo charter flight carrying emergency cabotage traffic, consisting of an outsized satellite and related equipment between Los Angeles, California, and Cape Canaveral, Florida, on or about January 23, 1997.

Application

By application filed January 7, 1997, Heavylift Cargo Airlines, a foreign air carrier of the United Kingdom, requested an exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Los Angeles and Cape Canaveral on or about January 23, 1997, using Heavylift's U.K.-registered Shorts SH5 "Belfast" aircraft.¹ The flight was to transport one outsized telecommunications satellite and associated items on behalf of Hughes Space and Communications.

¹ Heavylift holds a foreign air carrier permit, issued by Order 81-8-119, which authorizes it to conduct charter foreign air transportation of property between the United States and the United Kingdom, and other charters subject to prior Department approval.

In support of its application, Heavylift stated that Hughes had contracted with a consortium of four Japanese companies to manufacture and launch a commercial HS601 telecommunications satellite from Cape Canaveral. It stated that the satellite was to be launched on an Atlas booster produced by Lockheed Martin, and that Hughes and Lockheed Martin, working in conjunction with the U.S. Air Force and the National Aeronautics and Space Administration, had set a date of February 15 for the launch. Heavylift stated that meeting that schedule required the delivery of the spacecraft at Cape Canaveral by January 23 in order to complete ten days of preparation, followed by mating with the Atlas booster on February 4. It stated that unanticipated scheduling problems in the final stages of manufacture of the spacecraft delayed production so that the time available was inadequate to use surface transportation, and that Hughes and Lockheed Martin required air transportation for timely arrival of the spacecraft at Cape Canaveral to meet scheduling requirements.

Heavylift attached to its application statements from Hughes confirming its characterization of the situation, and advising that all parties involved in this project were doing everything possible to meet the contractually-agreed launch date, and that delays in the delivery of the satellite would postpone its launch because of other commercial and government launches scheduled for the eastern range, and result in hardship to Hughes.

Answers

Heavylift served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Heavylift.

Statutory Standards

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points*(i.e., cabotage traffic)* under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here²).

Decision

On January 17, 1997, we orally granted Heavylift's request to conduct its proposed emergency cabotage flight. We confirm that action here. We found that the application

² For examples of earlier grants of authority of this type see Orders 95-7-3 and 94-8-23.

met all the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that the grant was required in the public interest.

We were persuaded that the unforeseen technical problems encountered by Hughes during the manufacture of the satellite, Hughes' need to move the satellite promptly in order to meet delivery and launch deadlines, the fact that the satellite could not be transported by surface in time to meet those deadlines, and the potential negative impact of a delay constituted an emergency not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of Heavylift's request would prevent undue hardship to Hughes.

In view of the above, we found that immediate action on this application was required; that our action met the relevant criteria of 49 U.S.C. 40109(g) and was required in the public interest; and that our action did not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of January 17, 1997, granting Heavylift Cargo Airlines, Ltd., authority to operate one one-way emergency cabotage flight, to transport one outsized satellite and related equipment, between Los Angeles, California, and Cape Canaveral, Florida, on or about January 23, 1997, on behalf of Hughes Space and Communications;
2. In the conduct of this operation, we required Heavylift to comply with all applicable terms and conditions of its foreign air carrier permit (Order 81-8-119);
3. We will serve this order on Heavylift Cargo Airlines, Ltd., and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)