

Order 97-2-25

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 25<sup>th</sup> day of February, 1997

Application of

**HEAVYLIFT-VOLGADNEPR LTD.**

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

Docket **OST-96-1933**

**ORDER CONFIRMING EXEMPTION**

**Summary**

This order confirms our oral action of November 8, 1996, granting HeavyLift-VolgaDnepr Ltd. exemption authority to operate cargo charter flights carrying emergency cabotage traffic, consisting of aircraft engines and related parts, between Seattle, Washington, and Raleigh-Durham, North Carolina, and between Wilmington, Ohio, and Seattle.

**Application**

On November 7, 1996, HeavyLift-VolgaDnepr requested an exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate four one-way emergency cabotage cargo charter flights during the period November 9-December 8, 1996, using Russian-registered Antonov 124 aircraft on behalf of General Electric Aircraft Engines (GEAE) and The Boeing Company. The applicant proposed to operate one flight between Seattle and Raleigh-Durham and three between Wilmington and Seattle, carrying increased thrust GE90 engines and related parts for use in the certification and production of Boeing's 777-200 increased gross weight (IGW) aircraft

In support of its application, Heavylift-VolgaDnepr stated that the recent discovery of suspect engine hardware required two flight test engines in Seattle to be shipped to GEAE's Durham engine facility, where the engines would be torn down and reassembled with hardware meeting all inspection requirements, and then trucked to GEAE's test facility near Wilmington for ground acceptance testing and calibration. The carrier stated that the three Wilmington-Seattle flights, transporting a total of four engines, were required to replace the engines that had been removed from Boeing's flight test aircraft, and to deliver production engines which had been delayed at GEAE due to the disassembly, hardware inspection, reassembly, and retest of engines with suspect hardware. Heavylift-VolgaDnepr stated that delivery by air of the engines fully assembled was imperative in order to prevent further delays in flight test certification and production schedules and undue hardship to Boeing and its B-777 (IGW) program. It further stated that, because of the size of the engines, transportation on U.S.-carrier aircraft was not possible. Heavylift-VolgaDnepr attached to its application a statement from GEAE confirming its characterization of the situation and supporting its request.

### **Answers**

Heavylift-VolgaDnepr 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-VolgaDnepr.

### **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 here).

### **Decision**

On November 8, 1996, we orally granted Heavylift-VolgaDnepr's request to conduct its proposed emergency cabotage flights. We confirm that action here. We found that the application 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.<sup>2</sup>

The unanticipated delays faced by Boeing and GEAE due to the recently-identified manufacturing issue, the need to move the engines promptly to address this issue and to support testing,

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<sup>1</sup> For examples of earlier grants of authority of this type see Orders 96-9-34 and 96-7-12.

<sup>2</sup> We also found Heavylift-VolgaDnepr qualified to perform the operations at issue here. We have previously found the carrier qualified to conduct charter operations using its AN-124 aircraft (*e.g.*, Order 93-10-19).

certification and production of the Boeing 777-200 IGW aircraft, the necessity of shipping the engines fully assembled, and the fact that the engines could not be transported by surface to meet revised schedules, constituted an emergency created by unusual circumstances 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 operations at issue here. We also found that grant of Heavylift-VolgaDnepr's request would prevent undue hardship to Boeing and its B-777 (IGW) program.

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 November 8, 1996, granting Heavylift-VolgaDnepr Ltd. authority to operate one one-way emergency cabotage flight between Seattle, WA; and Raleigh-Durham, NC, and three one-way emergency cabotage flights between Wilmington, OH, and Seattle, WA; transporting GE90 engines and related parts, on behalf of General Electric Aircraft Engines and The Boeing Company, during the period November 9-December 8, 1996;
2. The grant of this authority was subject to the conditions of Appendix A, and to the condition that Heavylift-VolgaDnepr comply with FAA-approved flight routings for the authorized flights;
3. We shall serve this order on Heavylift-VolgaDnepr Ltd., and the Federal Aviation Administration (AFS-200; AIA-101).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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) 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 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).

