



Order 98-1-14

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

Issued by the Department of Transportation
on the 20th day of January, 1998

Served: January 26, 1998

Applications of

HEAVYLIFT CARGO AIRLINES, LTD.

HEAVYLIFT-VOLGADNEPR LTD.

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

Dockets **OST-97-2638**

OST-97-3041

ORDER CONFIRMING EXEMPTIONS

Summary

This order confirms our oral actions of July 3 and October 24, 1997, granting the applications of the above-referenced foreign air carriers for exemption authority pursuant to 49 U.S.C. section 40109(g) to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized satellites and related equipment.

Applications

On June 20, 1997, Heavylift Cargo Airlines, a foreign air carrier of the United Kingdom, requested authority to operate one one-way cargo charter flight between Los Angeles, CA, and Cape Canaveral, FL, on or about July 4, 1997, using its SH5 "Belfast" aircraft, to transport one outsized telecommunications satellite and associated items on behalf of Hughes Space and Communications. Heavylift Cargo stated that Hughes was under contract with Space Communications Corporation to manufacture a commercial HS601 telecommunications satellite which was to be launched on an Atlas booster produced by Lockheed Martin. It stated that Hughes and Lockheed Martin, working in conjunction with the U.S. Air Force and the National Aeronautics and Space Administration, among others, had reserved a launch date of July 25,

1997. It stated that meeting that schedule required delivery of the satellite at Cape Canaveral by July 7 in order to complete preparation for mating with the Atlas booster on July 18. Heavylift Cargo stated that because of major, unanticipated technical problems and delays in manufacturing and testing, the satellite would not be completed and ready for shipment until shortly before the proposed shipment date, and in order to eliminate additional delays and to meet scheduled shipment and reserved launch dates, Hughes urgently required delivery by air of the satellite.

On October 23, 1997, Heavylift-VolgaDnepr applied for authority to operate one one-way cargo charter flight between Philadelphia, PA, and Moffett Field, CA, on or about October 27, 1997, using its AN-124 aircraft, to transport one outsized telecommunications satellite and related equipment on behalf of Lockheed Martin Astro Space. The applicant stated that Lockheed Martin was under contract to manufacture a Satcom 1A satellite which was scheduled for shipment from Moffett Field to Kazakhstan, Russia, on December 27, in order to prepare for a February 10, 1998, launch. It stated that the satellite was in production at Lockheed Martin's New Jersey plant, that production was behind schedule because of unexpected production problems, and that Lockheed Martin planned to complete certain work on the satellite at its California plant before shipment to Kazakhstan. It stated that in order to complete production and to meet the scheduled launch date, the unfinished satellite had to be transported to the California plant by air.

The applicants stated that because of the size of the satellites transportation on U.S.-carrier aircraft was not possible. They stated that further delays in the delivery of the satellites would postpone scheduled launch dates and result in hardship to Hughes and Lockheed Martin.

They also attached to their applications statements from the shippers confirming their characterizations of the situations and supporting their requests.

Answers

Each applicant served its application on those U.S. carriers operating large all-cargo aircraft. Each U.S. 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.

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).¹

¹ For examples of earlier grants of authority of this type, *see* Orders 97-9-10 and 97-2-24.

Decision

On July 3 and October 24, 1997, we orally granted the applicants' requests to conduct their proposed emergency cabotage flights. We confirm those actions here. We found that the applications 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 grants were required in the public interest.

We were persuaded that the unforeseen technical and production problems encountered by Hughes and Lockheed Martin during the manufacture of the satellites; the need to move the satellites promptly in order to meet production, delivery and launch deadlines; the fact that the satellites could not be transported by surface in time to meet those deadlines; and the potential negative impact of further delays 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 operations at issue here. We also found that grant of the applicants' requests would prevent undue hardship to Hughes and Lockheed Martin.

In view of the above, we found that immediate action on these applications was required; that our actions met the relevant criteria of 49 U.S.C. 40109(g) and were required in the public interest; and that our actions 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 July 3, 1997, granting Heavylift Cargo Airlines, Ltd., authority to operate one one-way emergency cabotage flight between Los Angeles, California, and Cape Canaveral, Florida, on or about July 4, 1997, to transport one outsized telecommunications satellite and related equipment on behalf of Hughes Space and Communications;
2. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of October 24, 1997, granting Heavylift-VolgaDnepr Ltd., authority to operate one one-way emergency cabotage flight between Philadelphia, Pennsylvania, and Moffett Field, California, on or about October 24, 1997, to transport one outsized telecommunications satellite and related equipment on behalf of Lockheed Martin Astro Space;
3. In the conduct of these operations, we required Heavylift Cargo to comply with all applicable terms and conditions of its foreign air carrier permit (Order 81-8-119), and Heavylift-VolgaDnepr to comply with the conditions of Attachment A and with an FAA-approved flight routing; and

4. We will serve this order on Heavylift Cargo Airlines, Ltd., Heavylift-VolgaDnepr Ltd., and the Federal Aviation Administration (AFS-200).

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).

