



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

Issued by the Department of Transportation  
on the 29<sup>th</sup> day of September, 1998

Served: September 29, 1998

Applications of

**HELICO SERVICE INC.**  
**CANADIAN HELICOPTERS WESTERN**

for foreign aircraft permits under 14 CFR Part 375  
of the Department's regulations

Undocketed  
Undocketed

**ORDER DENYING FOREIGN AIRCRAFT PERMITS**

**Summary**

In this order we are denying requests by two Canadian specialty air service operators, Helico Service Inc. and Canadian Helicopters Western, for foreign aircraft permits under 14 CFR Part 375 to conduct aerial spraying operations in the United States.

**Applications**

**1. Helico Service Inc.**

By application filed July 7, 1998, Helico Service Inc. requests a foreign aircraft permit under Part 375 in order to conduct aerial spraying in Vermont and New York, through December, 1998. Helico Service Inc. would conduct these services using Piper Pa 25-235 or Bell BH-47 aircraft, under a contract with Childstock Farms, Inc.

On July 10, 1998, Summit Helicopters, a U.S. specialty air service operator, filed an answer in opposition to the application, stating that there are numerous U.S. operators which could provide the service proposed by Helico Service Inc.

**2. Canadian Helicopters Western**

By application filed September 9, 1998, Canadian Helicopters Western requests a foreign aircraft permit under Part 375 in order to conduct aerial fertilizing and hydroseeding at the Bunker Hill Mine Site near Kellog Idaho, during the period September 21 - October 30, 1998. Canadian Helicopters Western would conduct these services using Bell 212 aircraft, under a contract with TriState Hydroseeding, which has been contracted by the U.S. Army Corps of Engineers to do reclamation work at the site.

On September 10, 1998, as supplemented September 14, 1998, Heli-Jet Corporation, a U.S. specialty air service operator, filed an answer in opposition to the application. Heli-Jet states that the service proposed by Canadian Helicopters Western is not yet encompassed by the North American Free Trade Agreement, and thus there is no right for an operator of Canada to provide the service. Heli-Jet further states that reciprocity with Canada does not support grant of the request. Finally, Heli-Jet states that it has the capability to conduct the services at issue here, and has been negotiating with TriState Hydroseeding for the contract to do so.

### **Decision**

We have decided to deny the requests of Helico Service Inc. and Canadian Helicopters Western, because of a lack of reciprocity on the part of the Government of Canada towards U.S. operators. We are taking this action under assigned authority (*see* 14 CFR Part 385).

Part 375 sets forth the terms and conditions applicable to the navigation of foreign civil aircraft in the United States, and provides for the filing of applications for foreign aircraft permits to authorize the conduct of industrial/specialty air service operations of the type at issue here. Under Part 375, we will issue a foreign aircraft permit if the operations proposed meet the requirements of that part and are in the public interest. The primary criterion we consider in assessing the public interest is the state of reciprocity on the part of the applicant's homeland.

The operation of a range of specialty air services by operators of Canada is covered by the North American Free Trade Agreement (NAFTA).<sup>1</sup> Annex I of NAFTA delayed coverage for some types of services under a so-called "Phase-Out" schedule. At present, the only NAFTA-defined specialty air service which is not yet covered is aerial spraying, for which coverage does not become effective until January 1, 2000.<sup>2</sup> Thus, approval of any application by a

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<sup>1</sup> North American Free Trade Agreement between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States, signed December 17, 1992, entered into force January 1, 1994. The operation of specialty air services is provided for in Chapter 12, Cross-Border Trade in Services, Article 1201, paragraph 2(b)(ii).

<sup>2</sup> *See* NAFTA Annex I, I-U-17.

Canadian operator to conduct aerial spraying services is discretionary on our part, and requires a finding that Canadian reciprocity is adequate to support such approval.<sup>3</sup>

We find that Canadian reciprocity does not support grant of the requests of Helico Service Inc. and Canadian Helicopters Western to conduct their proposed aerial spraying services.<sup>4</sup> We recently asked Transport Canada to provide us with a statement concerning Canadian policy with respect to aerial spraying operations in Canada by U.S. specialty air service operators. By letter dated August 25, 1998, the Acting Director General, Air Policy, of Transport Canada advised us that:

Until January 1, 2000, Canadian authorities will continue to treat applications for authority to conduct aerial spraying operations by U.S. operators on a case-by-case basis, consistent with our current policies where a discretionary decision is to be made. This means that the onus remains on the Canadian entity wishing to use the services of a U.S. based operator to demonstrate that the service cannot be provided by a Canadian operator. There is, however, no automatic right of first refusal *per se* by Canadian operators. In making its decision, Canadian authorities take into account both the technical and practical considerations of the case. This means that in some cases approval will be granted and in others it will be denied.

We find, based on the policy enunciated in this letter, that inadequate reciprocity exists for U.S. operators in the Canadian aerial spraying market. We have had previous experience with this type of Canadian Government policy, with its requirement for a demonstration that service by Canadian operators not be available. For many years prior to the entry into force of NAFTA, the Canadian Government applied similar measures to all requests by U.S. operators to conduct specialty air services in Canada. In response to that policy, we adopted at that time a practice of denying a Canadian operator's request, on the basis of lack of reciprocity, unless the applicant could demonstrate that no U.S. operator was available to conduct the operation.<sup>5</sup> We believe that the public interest requires that we follow the same course in this instance.

In view of the above, and acting under assigned authority (14 CFR Part 385), we find that Canadian reciprocity does not support the requests of Helico Service Inc. and Canadian Helicopters Western, and that those requests should therefore be denied.

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<sup>3</sup> NAFTA Annex I, I-U-16 notes that operations not yet covered by NAFTA "may not be authorized [by the Department of Transportation]...if there is inadequate reciprocity or if approval would otherwise not be in the public interest."

<sup>4</sup> With respect to the application of Canadian Helicopters Western, it is our view that the aerial fertilizing and hydroseeding operations proposed by that operator constitute a form of aerial spraying services under NAFTA, and that their operation is therefore not currently a right for operators of Canada. See Final Report of the Trilateral Working Group on NAFTA Specialty Air Services, July 26, 1995, page 21.

<sup>5</sup> See Orders 89-8-37 and 87-8-43.

**ACCORDINGLY,**

1. We deny the requests of Helico Service Inc. and Canadian Helicopters Western for foreign aircraft permits under 14 CFR Part 375, to conduct the specialty air service operations described above; and
2. We shall serve this order on Helico Service Inc., Canadian Helicopters Western, Summit Helicopters, Inc., Heli-Jet Corporation, the Embassy of Canada in Washington, D.C., and Transport Canada.

Persons entitled to petition the Department for review of this action under the Department's regulations, 14 CFR section 385.50, may file their petitions within ten days of the service date of this order. This action is effective immediately, and the filing of a petition for review will not alter its effectiveness.

By:

PAUL L. GRETCH  
Director  
Office of International Aviation

(SEAL)

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