



Order 99-7-13

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

Issued by the Department of Transportation
on the 22nd day of July, 1999

Served: July 26, 1999

Applications of

HEAVYLIFT-VOLGADNEPR LTD.

ANTONOV DESIGN BUREAU

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

Dockets **OST-98-3455**
OST-98-4389
OST-98-4619

OST-98-3723 **OST-98-4318**
OST-98-3956 **OST-98-4554**
OST-98-4143

ORDER CONFIRMING EXEMPTIONS

Summary

This order confirms our oral actions granting Heavylift-VolgaDnepr Ltd. and Antonov Design Bureau exemption authority to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized aircraft engines and related components on behalf of General Electric Aircraft Engines (GEAE).

Applications

Heavylift-VolgaDnepr filed applications during the period February 10 - October 21, 1998, as shown in the attached Notices of Action Taken, requesting exemption authority pursuant to 49 U.S.C. section 40109(g) to permit it to operate cargo charter flights between Wilmington, OH, and Seattle, WA, using Russian-registered Antonov 124 aircraft, to transport outsized GE90

engines for installation on Boeing's B-777 aircraft. Heavylift-VolgaDnepr stated that GEAE and Boeing urgently required delivery to meet aircraft delivery deadlines which were seriously overdue because of delays in the manufacturing process due to severe material shortages and the unanticipated need to correct deficiencies revealed in pre-delivery testing of completed engines.

Antonov requested exemption authority pursuant to 49 U.S.C. section 40109(g), during the period April 7 - October 7, 1998 (*see* attached Notices of Action Taken), to permit it to operate cargo charter flights on behalf of GEAE, using its Antonov 124 aircraft, to transport outsized GE90 engines and related components in support of Boeing's 777 program. Antonov stated that immediate delivery was urgently required in order to compensate for ongoing material shortages and unanticipated production delays, the need to replace suspect aircraft parts, and the allocation of several engines from its production line to support airlines that operate B-777 aircraft.

Both applicants further stated that delivery by air was imperative in order to prevent further delays in production and delivery schedules and undue hardship to Boeing, and that because of the size of the cargo transportation on U.S.-carrier aircraft was not possible. They also attached statements from GEAE confirming their characterization of the situations and supporting their requests.

Answers

Heavylift-VolgaDnepr and Antonov served their applications 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 authority.

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, is not relevant here).¹

Disposition

As shown in the attached Notices of Action Taken, we orally granted the requests of Heavylift-

¹ For examples of earlier grants of authority of this type, *see* Orders 98-2-31 and 98-2-18.

VolgaDnepr and Antonov for exemption authority to conduct their proposed emergency cabotage flights. We confirm our actions here. We found that each application met all of the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that grant of this authority was required in the public interest.²

We were persuaded that the unforeseen material shortages and production delays, the unanticipated need to replace deficient and suspect parts, the need to move the cargo promptly to support production and aircraft delivery deadlines, and the fact that the cargo could not be transported by surface to meet these deadlines, 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 and Antonov's requests would prevent unreasonable hardship to Boeing.

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 major regulatory actions under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken which granted Heavylift-VolgaDnepr Ltd. and Antonov Design Bureau exemption authority pursuant to 49 U.S.C. section 40109(g) to perform the operations described in those Notices;
2. In the conduct of the authorized operations, we required Heavylift-VolgaDnepr and Antonov to comply with the conditions of Attachment A and FAA-approved flight routings; and
3. We will serve this order on Heavylift-VolgaDnepr Ltd., Antonov Design Bureau, the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

² We further found the applicants qualified to perform the operations at issue here (*see, e.g.*, Orders 93-10-19 and 98-2-7).

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).



**U.S. Department of
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NOTICE OF ACTION TAKEN

Docket OST-98-3455

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **HEAVYLIFT-VOLGADNEPR LTD.**

Date Filed: February 10, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate four one-way, emergency cabotage cargo charter flights between Wilmington, OH, and Seattle, WA; during the period February 12-March 12, 1998, using Russian-registered Antonov 124 aircraft, carrying a total of five outsized GE90 engines and related components for production of Boeing 777 aircraft, on behalf of General Electric Aircraft Engines (GEAE).

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: 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.

DISPOSITION

Action: Approved

Action date: February 11, 1998

Effective dates of authority granted: February 12 - March 12, 1998

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. 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 this authority would prevent unreasonable hardship to Boeing.

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

Standard exemption conditions (attached)

The applicant shall comply with an FAA-approved flight routing for the authorized flights.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation and
International Affairs



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NOTICE OF ACTION TAKEN

Docket OST-98-4389

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Heavylift-VolgaDnepr Ltd.**

Date Filed: August 27, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Wilmington, OH, and Seattle, WA; on August 31, 1998, using Russian-registered Antonov 124 aircraft carrying GE90 engines and related parts for installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines (GEAE).

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: 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.

DISPOSITION

Action: Approved

Action date: August 28, 1998

Effective dates of authority granted: August 31 - September 3, 1998

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. 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 this authority would prevent unreasonable hardship to Boeing.

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

Standard exemption conditions (attached)

Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

Docket OST-98-4619

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Heavylift-VolgaDnepr Ltd.**

Date Filed: October 21, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Wilmington, OH, and Seattle, WA; on or about October 22, 1998, using Russian-registered Antonov 124 aircraft carrying GE90 engines and related parts for installation on Boeing 777 aircraft.

Applicant representative: Lester Bridgeman (334) 432-1414

Responsive pleadings: 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.

DISPOSITION

Action: Approved

Action date: October 21, 1998

Effective dates of authority granted: October 21 - 23, 1998

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. 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 this authority would prevent unreasonable hardship to Boeing.

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

- Standard exemption conditions (attached)
- Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

Docket OST-98-3956

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: June 15, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Seattle/Boeing Field, WA, and Wilmington, OH; and two one-way emergency cabotage cargo charter flights between Wilmington and Seattle/Boeing Field, during the period November 21-December 8, 1997, using AN-124 aircraft, carrying a total of six outsized GE90 engines plus ancillary equipment for installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov 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 Antonov.

DISPOSITION

Action: Approved

Action date: June 15, 1998

Effective dates of authority granted: June 16 - July 3, 1998

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. 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 this authority would prevent unreasonable hardship to Boeing.

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

Standard exemption conditions

Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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of Transportation

NOTICE OF ACTION TAKEN

Docket OST-98-4318

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: August 12, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate two one-way emergency cabotage cargo charter flights between Wilmington, OH, and Seattle/Boeing Field, WA, during the period August 14-28, 1998, using AN-124 aircraft, on behalf of General Electric Aircraft Engines to transport a total of five oversized GE90 engines and related components to Boeing's B-777 assembly plant.

Applicant representative: Robert E. Cohn 202-663-8312

Responsive pleadings: Antonov 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 Antonov.

DISPOSITION

Action: Approved in part, remainder approved

Action date: August 13, 1998

Effective dates of authority granted: August 13 - 16, 1998

Basis for approval: On August 13, we granted Antonov authority to conduct the first of its proposed flights (on or about August 14, 1998), and deferred action on its request to operate the second flight, pending receipt from the FAA of an approved flight routing for this operation. We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. 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 this authority would prevent unreasonable hardship to Boeing.

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

Standard exemption conditions

Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

Docket OST-98-4554

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: October 7, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Wilmington, Ohio, and Seattle/Boeing Field, Washington, on or about October 9, 1998, using AN-124 aircraft, carrying one outsized GE90 engine plus ancillary equipment for installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel (202) 663-8312

Responsive pleadings: Antonov 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 operation, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: Approved

Action date: October 9, 1998

Effective dates of authority granted: October 9-12, 1998

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. 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 this authority would prevent unreasonable hardship to Boeing.

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

Standard exemption conditions

Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: **Charles A. Hunnicutt**
Assistant Secretary for Aviation
and International Affairs