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Order 2001-4-5

Served: April 9, 2001



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

Issued by the Department of Transportation  
on the 4th day of April, 2001

Applications of

**ANTONOV DESIGN BUREAU**

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

Dockets	OST-98-3988-3	OST-99-5524-3
	OST-98-4150-3	OST-99-6395-3
	OST-99-5144-3	OST-2000-6983-4
	OST-99-5480-3	OST-2000-7667-3

**ORDER CONFIRMING EXEMPTIONS**

**Summary**

This order confirms our oral actions, as shown on the attached Notices of Action Taken, granting Antonov Design Bureau (Antonov) exemption authority to operate cargo charter flights carrying emergency cabotage traffic.

**Applications**

As described in attachments to this order, Antonov requested authority pursuant to 49 U.S.C. section 40109(g) to operate emergency cabotage charter flights using its Antonov 124 aircraft to transport oversized cargo for various shippers. In support of its applications, Antonov stated that, because of certain emergency situations and other unforeseen delays, air shipment of the cargo was essential in order to meet delivery, operational and/or production schedules. Antonov stated, in each case, that because of the size of the cargo, transportation on U.S.-carrier aircraft was not possible. Antonov also attached to its applications statements from the shippers confirming their characterizations of the situations and supporting its requests.

**Answers**

Antonov 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 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, was not relevant here).<sup>1</sup>

### **Decision**

We orally granted Antonov's requests for exemption authority to conduct its 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.<sup>2</sup> 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.

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. We confirm the actions, described in the attached Notices of Action Taken, which granted Antonov Design Bureau exemption authority pursuant to 49 U.S.C. section 40109(g) to perform its proposed emergency cabotage flights;
2. In the conduct of the authorized operations, we required Antonov to comply with the conditions of Attachment A and FAA-approved flight routings; and

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<sup>1</sup> For examples of earlier grants of authority of this type, *see* Orders 2000-1-13 and 98-3-9.

<sup>2</sup> We further found the applicant qualified to perform the operations at issue here (*see, e.g.*, Order 98-2-7).

3. We will serve this order on Antonov Design Bureau, the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

**Susan E. McDermott**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

**FOREIGN AIR CARRIER 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) Except as specifically exempted or otherwise provided for in a Department Order, 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 (except as otherwise provided in the applicable bilateral agreement) 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-98-3988**

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 25, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Palmdale, CA, and Seattle/Boeing Field, WA, during the period June 26-29, 1998, using its AN-124 aircraft, carrying one outsized Joint Strike Fighter (JFS) wing skin tooling plus ancillary equipment, on behalf of the Boeing Company. The applicant stated that Boeing is under contract with the Department of Defense to develop the JSF aircraft and required the specialized tooling in order to meet its contractual obligations. It stated that because of manufacturing problems, air shipment was essential in order to avoid further production delays, and that the cargo is too large for transportation on U.S. carrier aircraft.

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 26, 1998

Effective dates of authority granted: June 26-29, 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 and the Defense Department.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov 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-98-4150**

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: July 22, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight for National Air Cargo acting on behalf of the U.S. Navy, between Newport News, VA, and San Diego, CA, during the period July 23-25, 1998, using its AN-124 aircraft, carrying one outsized sonar dome plus ancillary equipment needed. The applicant stated that the U.S. Navy required immediate shipment by air to repair the hull of the USS John Young, a Navy ship currently in dry-dock in San Diego, in time to meet its operational commitments and to avoid severe disruption costs, that military aircraft is unavailable due to other worldwide commitments, that the cargo is too large for transportation on U.S. carrier aircraft, and that surface transportation is not feasible because of the time involved.

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: July 22, 1998

Effective dates of authority granted: July 23-25, 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 the U.S. Navy.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov 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-99-5144

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: February 24, 1999**

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to operate one one-way cargo charter flight from Bangor, Maine, to Waco, Texas, (or Dallas, TX, as an alternate) during the period February 24-28, 1999, using its AN-124 aircraft, to transport two oversized manufacturing oven units loaded on flatbed trailers, plus ancillary equipment. Antonov stated that the units are being manufactured by Valmet Inc. in Maine and are urgently needed by Elk Corp., a manufacturer of roofing materials, at its plant in Ennis, TX, no later than March 1, 1999, to replace equipment that was destroyed in an explosion. Antonov stated that Elk has made extensive arrangements so that the units can be installed during a three-week period starting March 1. It stated that air shipment was essential in order to meet delivery and installation timetables and to avoid further production delays.

Applicant representative: Sheryl 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.

### DISPOSITION

**Action: Approved**

**Action date: February 24, 1999**

**Effective dates of authority granted: February 24 – 28, 1999**

Basis for approval: 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. 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 Antonov's request would prevent undue hardship on Elk's efforts to restore its services.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov 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-99-6395**

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 21, 1999

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to operate one one-way emergency cabotage charter flight from Norfolk Naval Air Station, VA, to San Juan/Roosevelt Roads Naval Air Station, Puerto Rico, on or about October 21, 1999, using its AN-124 aircraft, on behalf AIT Freight Systems, to transport oversized cargo consisting of oil spill recovery equipment plus ancillary equipment, urgently required by Global Phillips Cartner, a U.S. Navy contractor, for the timely clean up of an oil spill that occurred in Puerto Rico. Antonov also stated that the cargo is too large for transportation on U.S. carrier commercial aircraft.

Applicant representative: Sheryl 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.

### **DISPOSITION**

Action: Approved

Action date: October 21, 1999

Effective dates of authority granted: October 21-25, 1999

Basis for approval: 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. 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 Antonov's request would avoid imposing unreasonable hardship on the Navy's emergency oil spill recovery efforts.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov comply with an FAA-approved flight routing for the authorized flight and obtain any requisite DOD authorizations.

Action taken by: A. Bradley Mims  
Deputy Secretary for Aviation  
and International Affairs



**U.S. Department of  
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of Transportation

## **NOTICE OF ACTION TAKEN**

### **Docket OST-2000-6983**

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: 2/25/00, as supplemented 2/26/00

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Newport News, VA, and Long Beach, CA, on or about February 29, 2000, carrying one outsized sonar dome plus ancillary equipment, for National Air Cargo acting on behalf of the U.S. Navy. The applicant stated that the U.S. Navy required immediate shipment by air to repair the hull of the USS Kinkaid, a Navy destroyer currently in dry-dock in San Diego, in time to meet its operational commitments and to avoid severe disruption costs, that military aircraft is unavailable due to other worldwide commitments, that the cargo is too large for transportation on U.S. carrier aircraft, and that surface transportation is not feasible because of the time involved.

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: February 28, 2000

Effective dates of authority granted: February 29 - March 3, 2000

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 the U.S. Navy.

Except to the extent exempted/waived, this authority is subject to standard exemption conditions, and to the condition that Antonov comply with an FAA-approved flight routing for the authorized flight and obtain any requisite DOD authorizations.

Action taken by: **A. BRADLEY MIMS**  
Deputy Assistant Secretary for Aviation  
and International Affairs



**U.S. Department of  
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Office of the Secretary  
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## NOTICE OF ACTION TAKEN

### DOCKET OST 2000-7667

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: July 19, 2000

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo flight between Houston, Texas, and Newark or McGuire AFB, New Jersey, during the period July 19-21, 2000, using AN-124 aircraft, to transport an outsized General Electric power generator and ancillary equipment on behalf of Stewart & Stevenson Services, Inc. The applicant stated that the transportation is necessary to enable the replacement of a failed peak power electrical generator operated by Public Service Electric and Gas Company, and that prompt delivery of the replacement unit is critical to ensure that electric power services provided by PSE&G are not disrupted.

Applicant representative: Sheryl 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.

### DISPOSITION

Action: Approved

Action date: July 19, 2000

Effective dates of authority granted: July 19-21, 2000

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 the charterer.

Except to the extent exempted/waived, this authority is subject to the attached terms, conditions, and limitations, and to the condition that the applicant shall comply with an FAA-approved flight routing for the authorized flight and obtain any requisite DOD authorizations.

Action taken by: **A. Bradley Mims**  
Acting Assistant Secretary for  
Aviation and International Affairs