



U.S. Department of
Transportation
Office of the Secretary
of Transportation

127920

NOTICE OF ACTION TAKEN

DOCKET OST 2001-9582 - 2

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: April 30, 2001

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate two one-way emergency cabotage cargo flights between Point Mugu, CA (or Long Beach, as an alternative), and Everett, WA, during the period April 30-May 7, 2001, using AN-124 aircraft, on behalf of Podd & Associates, Inc., to transport two oversized power generators and ancillary equipment. The applicant stated that the generators are urgently required by the Fredonia Combustion Turbine Generating Station in Mt. Vernon, WA, and that prompt delivery of the units are critical to meet the scheduled startup of the station and to ensure that services provided by the station are not jeopardized during the period of peak electrical usage. It also stated that surface transportation is not feasible because of the time involved, and that the cargo is too large for transportation on U.S. carrier aircraft.

Applicant representative: Sheryl Israel, (202) 663-8312

Responsive pleadings: The applicant 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: April 30, 2001

Effective dates of authority granted: April 30-May 7, 2001

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 cargo and the Fredonia Station's efforts to supply service to its customers.

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

Action taken by: Susan E. McDermott
Assistant Secretary for Aviation
and International Affairs

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, except as otherwise provided in the applicable bilateral agreement, 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).

