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

Issued by the Department of Transportation on February 13, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-11600- 2

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: Volga-Dnepr J.S. Cargo Airline

Date Filed: February 13, 2002

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to operate one cargo charter flight from Mirimar, CA, to Agana, Guam, and returning to North Island, CA, on or about February 13/14, 2002, using its AN-124 aircraft, to transport outsized cargo consisting of U.S. Navy Seal speed boats on trailers, and ancillary equipment, on behalf of the United States military. It stated that the military required urgent delivery to replace certain boats in the Pacific, that military aircraft are not available to carry this cargo, and that the cargo is too large for transportation on U.S.-carrier civil aircraft.

Applicant representative: Glenn Wicks 202-457-7790

Responsive pleadings: Volga-Dnepr 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 Volga-Dnepr.

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). For examples of earlier grants of authority of this type, *see, e.g.*, Order 2001-5-23.

DISPOSITION

Action: Approved

Action date: February 13, 2002

Effective dates of authority granted: February 13-18, 2002

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. Specifically, we were persuaded that the need to move the cargo promptly in order to meet the U.S. military's replacement schedule; the fact that the cargo could not be transported by other modes in time to meet that schedule; the potential negative impact of delivery delays; and the unique, outsized nature of the cargo, 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 operation at issue here. Finally, we found that the applicant was qualified to perform its proposed operation (*see, e.g.*, Order 94-10-13).

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions (attached) and to the condition that Volga-Dnepr comply with an FAA-approved flight routing for the authorized flight, and with any requisite Department of Defense authorizations.

Action taken by: Read C. Van de Water
Assistant Secretary for Aviation
and International Affairs

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