



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

Issued by the Department of Transportation on April 2, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST 2003-14823 - 2

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

Applicant: **Volga-Dnepr J.S. Cargo Airline**

Date Filed: March 27, 2003

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate three one-way emergency cabotage cargo flights from: (1) Denver, CO, to Cape Canaveral, FL; (2) Denver to North Island NAS, CA; and (3) North Island NAS to Denver; to transport outsized cargo consisting of one Centaur III Launch Vehicle and associated equipment on each flight, during the period April 3-10, 2003, using AN-124 aircraft, on behalf of Lockheed Martin Astronautics. The applicant stated that Lockheed Martin needed urgent delivery of the equipment in order to meet aggressive mission integration schedules, and fabrication and launch integration deadlines; that the cargo is too large for transportation on U.S.-carrier aircraft; and that surface transportation was not feasible because of the time involved, the delicate nature and high value of the cargo, and conditions unsuitable to maintaining system integrity compliance.

Applicant representative: Glenn Wicks 202-457-7790

DOT Analyst: Barbara Schools 202-366-2401

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 operations, and that it had no comment or did not oppose grant of the requested authority.

Statutory Standards: Under 49 U.S.C. §40109(g), we may authorize a foreign air carrier to transport commercial traffic between U.S. points (*i.e.*, cabotage traffic) only under limited circumstances. Specifically, we must find that the authority is in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business, U.S. air carriers holding certificates under 49 U.S.C. §41102 cannot accommodate the traffic involved; that all possible efforts have been made to accommodate the traffic by using the resources of U.S. carriers; and that the authority 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: April 2, 2003

Effective dates of authority granted: April 3-12, 2003

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. Specifically, we were persuaded that the need to move the cargo promptly in order to meet integration and launch deadlines, the fact that the cargo could not be transported by surface in time to meet that schedule or without risk of damage, 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 operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to the cargo and Lockheed Martin. 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 VolgaDnepr comply with an FAA-approved flight routing for the authorized flights, and with any requisite Department of Defense authorizations.

Action taken by: **Read C. Van de Water**
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, and with all applicable U.S. Government requirements concerning security;¹
- (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 aviation 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).

¹ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, inform its Principal Security Inspector of its plans.

