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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 April 15, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-14889 - 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: **Antonov Design Bureau**

Date Filed: April 7, 2003

Relief requested: Exemption pursuant to 49 U.S.C. section 40109(g) to operate: (1) one one-way cargo charter flight from Bismark, ND, to Richmond, VA, on/about April 19-30, 2003; and (2) one one-way cargo charter flight from Richmond, VA, to Bismark, ND, on/about June 1-30, 2003, using its AN-124 aircraft to transport an outsized turbine rotor/trailer unit and ancillary equipment, on behalf of CAP Logistics, Inc., acting on behalf of Basin Electric Power Cooperative (Basin Electric). The applicant stated that Basin Electric urgently needed to move the turbine to Richmond for reconditioning, and to return it to Bismark as quickly as possible in order to restore a power plant to full service. It stated that the size and weight of the rotor, coupled with the distance involved, foreclosed the possibility of transporting the unit on a timely and reasonably safe basis by surface transportation. It further stated that in order to avoid undue delays to the rotor's reconditioning and return to service, and possible service disruptions for Basin Electric's customers, the rotor needed to be shipped by air, and that the unit is too large for transportation on U.S. carrier aircraft.

Applicant representative: Sheryl Israel 202-663-8060

DOT analyst: Barbara Schools 202-366-2401

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.

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 in part; Remainder deferred¹

Action date: April 15, 2003

Effective dates of authority granted: April 19 - May 2, 2003

Basis for approval: We are granting Antonov request to operate its proposed Bismark-Richmond flight scheduled for April 19-30. We found that its request 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 Basin Electric's schedule to restore an electrical power plant to full service as soon as possible; 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

¹ Because 49 U.S.C. section 40109(g) limits to 30 days the period for which we may grant emergency cabotage authority to a foreign air carrier, we are deferring action on Antonov's request to conduct the additional operation it proposes for June 1-30, 2003. 49 U.S.C. section 40109(g) provides that we may renew emergency cabotage authority for successive 30-day periods, provided that the authority remains warranted under that section. We will, therefore, act on the remainder of Antonov's request at a later date.

the applicant was qualified to perform its proposed operations (*see, e.g.*, Notice of Action Taken dated August 26, 2002, in Docket OST-96-1454).

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions (attached) and to the condition that Antonov comply with an FAA-approved flight routing for the authorized flight.

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

*An electronic version of this document is available on the World Wide Web at:
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, 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.

