



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

Issued by the Department of Transportation on January 6, 2004

**NOTICE OF ACTION TAKEN -- DOCKET OST 2003-16839**

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: December 31, 2003, as supplemented January 5, 2004.

Relief requested: Exemption from 49 U.S.C. section 40109(g) to permit the applicant to operate one, one-way, cargo charter flight from San Juan, Puerto Rico, to Grand Rapids, Michigan, on or about January 6, 2004, using its AN-124-100 aircraft to transport oversized refrigeration units, on behalf of the shipper, Service By Air, Inc. The applicant stated that these refrigeration units are being taken from Pfizer Pharmaceutical's Puerto Rican facility to be installed at Pfizer's Michigan plant on January 8, 2004, and that an unanticipated delay in the preparation of the installation site at the Michigan facility made it impossible for Pfizer to schedule the transfer of the units in a more timely manner, thus necessitating transportation by air. Volga-Dnepr asserted that both Service By Air and Pfizer Pharmaceutical will suffer losses if the shipment does not occur on time. In addition, the applicant stated that the size and nature of the shipment foreclosed the possibility of carriage by surface or sea transportation and that these large units cannot be transported on U.S. carrier aircraft.

Applicant representative: Glenn P. Wicks, 202-457-7790      DOT analyst: Allen F. Brown, 202-366-2405

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 operations 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, i.e.*, Order 2001-5-23.

**DISPOSITION**

Action: Approved

Action date: January 6, 2004

Effective dates of authority granted: January 6, 2004, through January 9, 2004.

Basis for approval: We are granting Volga-Dnepr's request to operate its proposed flight from San Juan to Grand Rapids, through January 9, 2004. 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 unique, oversized nature of the cargo, coupled with the urgent need to move the cargo quickly due to an unanticipated construction delay, and the potentially serious negative consequences of any delivery delay on

Pfizer's pharmaceutical operations, 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. We also found that grant of this authority was necessary to prevent unreasonable hardship to the shipper and to Pfizer. Finally, we found that the applicant was qualified to perform its proposed operation.

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

**Action taken by:**      **Karan K. Bhatia**  
                                 Assistant Secretary  
                                 for Aviation and International Affairs

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