



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

Issued by the Department of Transportation on February 11, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST 2004-17089

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 10, 2004, as supplemented February 11, 2004.

Relief requested: Exemption from 49 U.S.C. section 40109(g) to permit the applicant to operate, on behalf of Space Systems Loral, one, one-way cargo charter flight from Cape Canaveral, Florida, to Moffet Field, California, on about February 12, 2004, using its AN-124-100 aircraft. The cargo to be carried is one Space Systems Loral empty satellite container and associated equipment. The applicant stated that Space Systems Loral needs prompt shipment of this particular container to Moffet Field, because of an unanticipated satellite-production delay suffered by the shipper Space Systems Loral, and, thus, that the company now urgently needs the container back by February 12, 2004, to use for packaging a satellite scheduled for prompt delivery to a customer, that the cargo is too large for transportation on U.S.-carrier aircraft; and that surface transportation is not feasible because of the cargo's large size and delicate nature and need for prompt delivery.

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

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).

DISPOSITION

Action: Approved

Action date: February 11, 2004

Effective dates of authority granted: February 11, 2004, through February 12, 2004

Basis for approval: We are granting Volga-Dnepr's request to operate its proposed one-way flight from Cape Canaveral to Moffet Field, through February 12, 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 need to move the container promptly, following an unanticipated production delay, in order to meet the urgent delivery schedule for the unpackaged satellite, the fact that the cargo could not be transported by surface transportation because of its large size and need for prompt carriage, the potential negative impact of delivery delay; and the unique, oversized 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 that could be used to conduct the operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to Space Systems Loral. 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 operation.

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

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