



Order 97-8-1
Served 8-1-97

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

Issued by the Department of Transportation
on the 1st day of August, 1997

Application of

HEAVYLIFT-VOLGADNEPR LTD.

for an exemption under 49 U.S.C. section 40109(g)

Docket **OST-97-2756**

ORDER GRANTING EXEMPTION

Summary

This order grants Heavylift-VolgaDnepr Ltd. exemption authority to operate one cargo charter flight carrying emergency cabotage traffic, consisting of an outsized satellite and associated items, between Philadelphia, Pennsylvania, and Moffett Field (or Oakland International Airport), California, on or about August 5, 1997.

Application

By application filed July 22, 1997, as amended July 24, Heavylift-VolgaDnepr requests an exemption pursuant to 49 U.S.C. section 40109(g) to permit it to operate one one-way cargo charter flight between Philadelphia and Moffett Field (or alternatively, if necessary Oakland International Airport), on or about August 5, 1997, using its AN-124 aircraft. The flight is to transport one outsized satellite and associated items on behalf of Lockheed Martin Missiles & Space of Princeton, New Jersey.

In support of its application, Heavylift-VolgaDnepr states that Lockheed Martin is under contract to manufacture an Echostar IV satellite which is scheduled for shipment from Moffett Field to Kazakhstan, Russia, on January 20, 1998, in order to prepare for a February 20, 1998, launch. It states that the satellite is currently in production at Lockheed Martin's New Jersey plant, that production is behind schedule, and that Lockheed Martin plans to complete certain work on the satellite at its California plant which is adjacent to Moffett Field before shipment to Kazakhstan.

It states that, prior to transporting the partially completed satellite to California, Lockheed Martin has determined that the highly technical operation of completing the satellite's power system should be carried out at the New Jersey plant rather than in California as initially planned. It states that in order to eliminate further delays, and to complete production on time to meet scheduled shipment and launch dates, Lockheed Martin urgently requires delivery by air upon completion of work on the satellite in New Jersey. The applicant also states that the long haul involved in using surface transportation would compromise safety because of the delicacy of the satellite and its instrumentation, its high value, and unique nature. Heavylift-VolgaDnepr further states that, because of the size of the satellite, transportation on U.S.-carrier aircraft is not possible, and attached to its application statements from Lockheed Martin confirming its characterization of the situation and supporting its request.

Heavylift-VolgaDnepr 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 Heavylift-VolgaDnepr.

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, is not relevant here).¹

Decision

We have decided to approve Heavylift-VolgaDnepr's application. We find that the application meets 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 is required in the public interest.

We are persuaded that the unforeseen production delays encountered by Lockheed Martin Missiles & Space during the manufacture of the satellite, its need to move the satellite promptly in order to complete production in time to meet delivery and launch deadlines, the fact that the satellite cannot be transported by surface in time to meet those deadlines, and the potential negative impact of a delay constitute an emergency not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we conclude that no U.S. carrier has aircraft available which could be used to conduct the operation at issue here. We also find that grant of Heavylift-VolgaDnepr's request will prevent undue hardship to Lockheed Martin.

¹ For examples of earlier grants of authority of this type, see Orders 97-5-11 and 97-2-24.

In view of the above, we find that immediate action on this application is required; that our action meets the relevant criteria of 49 U.S.C. 40109(g) and is required in the public interest; and that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we grant Heavylift-VolgaDnepr Ltd., authority to operate one one-way emergency cabotage flight between Philadelphia, Pennsylvania, and Moffett Field (or Oakland International Airport), California, during the period August 5-9, 1997, to transport one outsized satellite and related equipment on behalf of Lockheed Martin Missiles & Space;
3. In the conduct of the authorized operations, we require Heavylift-VolgaDnepr to comply with the conditions of Appendix A, and with an FAA-approved flight routing;
4. We will serve this order on Heavylift-VolgaDnepr Ltd. and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)