



Order 97-9-10  
Served: September 10, 1997

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

Issued by the Department of Transportation  
on the 10<sup>th</sup> day of September, 1997

Application of

**HEAVYLIFT-VOLGADNEPR LTD.**

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

Docket **OST-97-2883**

**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 related equipment, between Moffett Field, California, and Cape Canaveral, Florida, on September 13 or 14, 1997.

**Application**

By application filed September 5, 1997, 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 Moffett Field and Cape Canaveral, on September 13 or 14, 1997, using its AN-124 aircraft. The flight is to transport one outsized satellite and associated items on behalf of Lockheed Martin AstroSpace.

In support of its application, Heavylift-VolgaDnepr states that Lockheed Martin is under contract to manufacture an Echostar III satellite which is scheduled for mating with an Atlas launch vehicle in preparation for a reserved launch date of October 6, 1997. The applicant states that the satellite must be delivered to Cape Canaveral no later than September 14 in order to meet the scheduled launch date. It also states that production of the satellite has been behind schedule and delivery has already been delayed, and that potential anomalies identified on inspection in the final stages of production have further delayed shipment. It states that surface transportation is not feasible because of the time involved and the adverse effect a long road trip could have on the delicate instrumentation of the satellite. Heavylift-VolgaDnepr states that in order to eliminate additional delays and to meet scheduled shipment and launch dates, Lockheed Martin urgently requires delivery by air of the satellite, and that because of the size of the satellite transportation on U.S.-carrier aircraft is not possible. It states that further delays in the delivery of the satellite would postpone its launch and result in hardship to Lockheed Martin.

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).<sup>1</sup>

### **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 delays encountered by Lockheed Martin during production of the satellite, its need to move the satellite promptly in order 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

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<sup>1</sup> For examples of earlier grants of authority of this type, see Orders 97-8-1 and 97-5-11.

at issue here. We also find that grant of Heavylift-VolgaDnepr's request will prevent undue hardship to Lockheed Martin.

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 Moffett Field, California, and Cape Canaveral, Florida, on September 13 or 14, 1997, to transport one outsized satellite and related equipment on behalf of Lockheed Martin AstroSpace;
3. In the conduct of the authorized operation, 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)

**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;
- (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) 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, 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).