



Order 97-9-28  
Served: September 30, 1997

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

Issued by the Department of Transportation  
on the 24<sup>th</sup> day of September, 1997

Applications of

**ANTONOV DESIGN BUREAU**

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

Dockets **OST-97-2618**  
**OST-97-**

**2853**

**ORDER CONFIRMING EXEMPTIONS**

**Summary**

This order confirms our oral actions granting Antonov Design Bureau (Antonov) exemption authority to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized aircraft engines and aircraft parts.

**Applications**

By application filed June 13, 1997, as amended June 18, Antonov requested an emergency exemption under section 40109(g) of Title 49 of the U.S. Code to permit it to operate two one-way cargo charter flights using its AN-124 aircraft to transport two GE90 aircraft engines and related components from Wilmington, Ohio, to Seattle, Washington, on behalf of General Electric Aircraft Engines (GEAE) during the period June 18-July 6, 1997, to meet certification deadlines in connection with the Boeing 777 aircraft program. It stated that GEAE was in the process of manufacturing new design engines for the Boeing Commercial Airplane Company (Boeing), which had to be delivered immediately upon completion to enable Boeing to conduct ground and flight tests pursuant to predetermined certification schedules. Antonov stated that, because of unforeseen delays stemming from the results of testing by GEAE, delivery had been postponed,

and that air transportation was imperative to avoid serious delays in certification of the new design engine and production and delivery of Boeing's 777 aircraft, and to prevent undue hardship to GEAE and Boeing. Antonov stated that because of the size of the engines transportation on U.S.-carrier aircraft was not possible.

On August 25, 1997, Antonov requested emergency exemption authority under section 40109(g) of Title 49 of the U.S. Code to permit it to operate one one-way cargo charter flight using its AN-124 aircraft to transport five thrust reverser halves and related equipment from Wichita/McConnell Air Force Base, Kansas, to Seattle, Washington, on behalf of Boeing on or about August 28, 1997, to meet production, assembly and delivery deadlines of Boeing's 777 aircraft. It stated that, because of unanticipated material shortages and production delays, the parts would not be ready for shipment until August 28, leaving insufficient time to use surface transportation. Antonov stated that only certain types of aircraft operated by U.S. carriers were capable of handling this oversized cargo (*e.g.*, modified L-1011 freighters), none of which were available to meet Boeing's required delivery deadline, and that timely delivery using Antonov's AN-124 would avoid costly delays and unnecessary hardship to Boeing.

Antonov attached to its applications statements from GEAE and Boeing confirming their characterization of the situations and supporting its requests.

### **Answers**

Antonov served its applications 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.

### **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>

### **Disposition**

On June 17 and 20, and August 27, 1997, we orally granted Antonov's requests to conduct its proposed emergency cabotage flights. We confirm those actions here. We found that the

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<sup>1</sup> For examples of earlier grants of authority of this type, *see* Orders 97-5-8 and 97-2-25.

applications 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.<sup>2</sup>

We were persuaded that the unforeseen problems encountered by GEAE in producing the new design engines; the unanticipated delays faced by Boeing in manufacturing the aircraft components; GEAE's need to move the engines promptly to support testing, certification and production of the Boeing 777; Boeing's need to move the components promptly to support production, assembly and delivery deadlines of its aircraft; and the fact that the cargo could not be transported by surface to meet required schedules, constituted an emergency created by unusual circumstances 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 operations at issue here. We also found that grant of Antonov's requests would prevent undue hardship to GEAE and Boeing.

In view of the above, we found that immediate action on these applications was required; that our actions met the relevant criteria of 49 U.S.C. 40109(g) and were required in the public interest; and that our actions did not constitute major regulatory actions 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 confirm our oral actions of June 17 and 20, 1997, granting Antonov Design Bureau authority to operate two one-way emergency cabotage flights between Wilmington, OH, and Seattle, WA, carrying two GE90 aircraft engines and related equipment on behalf of General Electric Aircraft Engines during the period June 18-July 6, 1997;
2. Pursuant to section 40109(g) of Title 49 of the U.S. Code, we confirm our oral action of August 27, 1997, granting Antonov Design Bureau authority to operate one one-way emergency cabotage flight between Wichita/McConnell Air Force Base, KN, and Seattle, WA, carrying five thrust reverser halves and related equipment on behalf of the Boeing Commercial Airplane Company on or about August 28, 1997;
3. In the conduct of the authorized operations, we required Antonov to comply with the conditions of Appendix A, FAA-approved flight routings, and any requisite Department of Defense procedures; and
4. We will serve this order on Antonov Design Bureau and the Federal Aviation Administration (AFS-200).

By:

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<sup>2</sup> We also found the applicant qualified to perform the operations at issue here. We have previously found the carrier qualified to conduct charter operations using its AN-124 aircraft (*see, e.g.*, Order 93-5-37).

**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).