



Order 97-7-19
Served July 29, 1997

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation
on the 23rd day of July, 1997

Applications of

VARIOUS FOREIGN AIR CARRIERS

for exemptions or authorities under 49 U.S.C.
section 40109 and the orders and regulations
of the Department of Transportation

Dockets	OST-95-309	OST-96-1055
	OST-95-324	OST-96-1072
	OST-95-911	OST-96-2014
	OST-96-999	OST-96-2021
	OST-96-1041	OST-97-2098

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its foreign air carrier permit, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in Appendix A, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(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).



**U.S. Department of
Transportation**
Office of the Secretary
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NOTICE OF ACTION TAKEN

DOCKET OST-95-309

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **GULF AIR COMPANY, G.S.C.**

Date Filed: February 7, 1997

Relief requested: RENEW exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between New York/Houston and Abu Dhabi/Bahrain/Oman/Qatar, via the intermediate points Cyprus and Geneva, and charters pursuant to 14 CFR 212.

If renewal, date and citation of last action: February 21 & October 2, 1996 (confirmed in Orders 96-3-33 and 96-12-28)

Applicant representative: Moffett B. Roller 202-822-9070

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 10, 1997**

Effective dates of authority granted: **MARCH 10, 1997, thru MARCH 10, 1998**

Basis for approval (bilateral agreement/reciprocity): Reciprocity

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- Standard exemption conditions (attached)
 Foreign air carrier permit conditions (Order - -)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-95-324

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **AIR U.K. LIMITED**

Date Filed: March 6, 1997

Relief requested: AMEND exemption from 49 U.S.C. 41301 and Statement of Authorization under 14 CFR 212, last granted July 24, 1996, to add authority to conduct code-share operations for Northwest Airlines, Inc., between Amsterdam and Inverness, Scotland.

Applicant representative: Cathleen Peterson 202-298-8660

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 24, 1997**

Effective dates of authority granted: **MARCH 24, 1997, thru JULY 24, 1998**

Basis for approval (bilateral agreement/reciprocity): U.S.-U.K. Air Services Agreement, as supplemented by the June 5, 1995 U.S.-U.K. Memorandum of Consultations

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Standard exemption conditions (attached)

Special conditions: Code-share operations must comply with the rules for airline designator code-sharing set forth in 14 CFR 399.88 of the Department's regulations, and the further condition that the foreign air transportation in question be sold in the name of the carrier holding out the service whether in computer reservations systems or elsewhere and that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger. The operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the FAA has issued a flight prohibition (Order 95-2-34).

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-95-911

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **KOREAN AIR LINES CO., LTD. (KAL)**

Date Filed: December 13, 1996

Relief requested: RENEW for one year exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between the Republic of Korea, and Saipan; and to integrate this authority with KAL's currently effective permit and exemption authorities.

If renewal, date and citation of last action: December 21, 1995 & May 28, 1996 (confirmed in Orders 96-8-46 and 96-3-32)

Applicant representative: James Devall 202-298-8660

Responsive Pleadings: World Airways, Inc., filed an answer in opposition citing the Government of Korea's refusal to allow World to institute new bilaterally-agreed scheduled service, and heretofore unsuccessful efforts to resolve this matter. KAL filed a reply.

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 5, 1997**

Effective dates of authority granted: **MARCH 5, 1997, thru MARCH 5, 1998**

Remarks: The authority is provided for in the U.S.-Korea Air Transport Agreement. Grant of this authority does not serve to indicate any lessening of our concern over unresolved bilateral issues involving World. However, in light of the Government of Korea's recent decision to meet in the second half of April to negotiate an open skies aviation agreement, we believe that a satisfactory resolution of these unresolved issues will be forthcoming. In the context of the anticipated open skies negotiations with Korea, we concluded that it was not in the public interest to withhold renewal of this existing KAL bilateral authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Foreign air carrier permit conditions (Order 95-4-36)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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NOTICE OF ACTION TAKEN

DOCKET OST-96-999 & Undocketed

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Joint Applications of:

Date Filed: December 10, 1996

D. OST-96-99: DELTA AIR LINES, INC.; MALEV HUNGARIAN AIRLINES

***Undocketed: DELTA AIR LINES &-AUSTRIAN AIRLINES, OSTERREICHISCHE
LUFTVERKEHRS AG; DELTA AIR LINES &-MALEV HUNGARIAN AIRLINES***

Relief requested: **RENEW FOR TWO YEARS:**

--Exemption under 49 U.S.C. 40109 to permit **DELTA** to engage in scheduled foreign air transportation of persons, property and mail between Atlanta, GA, and Vienna, Austria, and Budapest, Hungary, on an Atlanta-Vienna-Budapest routing;

--Exemption from 49 U.S.C. 41301 to permit **MALEV** to engage in scheduled foreign air transportation of persons, property and mail between Atlanta and Budapest (Malev proposes to conduct these operations pursuant to a code-share/blocked-space arrangement with Delta);

--Statement of Authorization under 14 CFR 207 of the Department's Regulations to enable **DELTA** to block space to Austrian Airlines and to permit Austrian Airlines to place its designator code on flights operated by Delta between Atlanta and Vienna; and

--Statement of Authorization under 14 CFR 207 of the Department's Regulations to enable **DELTA** to block space to Malev and to permit Malev to place its designator code on flights operated by Delta between Atlanta and Budapest, via Vienna.

If renewal, date and citation of last action: February 8, 1996 (confirmed in Order 96-3-17)

Applicant representatives: Robert Cohn (Delta) 202-663-8060, Ronald Cohen (Malev) 212-586-3594,
J. E. Murdock (Austrian) 202-663-8007

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 12, 1997**

Effective dates of authority granted: **MARCH 12, 1997, thru MARCH 12, 1999**

Basis for approval (bilateral agreement/reciprocity): Grant of the authority is consistent with the U.S.-Austria and U.S.-Hungary aviation agreements, and supported by adequate comity and reciprocity.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- Delta's certificate of public convenience and necessity.
- Malev's and Austrian Airlines' foreign air carrier permit conditions
- Standard exemption conditions (attached)

Special conditions: The code-sharing operations authorized herein must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservations systems and elsewhere, that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket).

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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NOTICE OF ACTION TAKEN

DOCKET OST-96-1041

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **TURKISH AIRLINES (TURK HAVA YOLLARI A.O.)** Date Filed: January 30, 1996

Relief requested: RENEW exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between Istanbul and New York via the intermediate points Brussels and/or Amsterdam; and to conduct charters pursuant to 14 CFR 212 of the Department's regulations.

If renewal, date and citation of last action: February 21, 1996 (confirmed in Order 96-3-33)

Applicant representative: Charles Simpson 202-298-8660

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 17, 1997**

Effective dates of authority granted: **MARCH 17, 1997, thru MARCH 17, 1998**

Basis for approval (bilateral agreement/reciprocity): U.S.-Turkey Air Transport Agreement

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- Standard exemption conditions (attached)
 Foreign air carrier permit conditions (Order - -)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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NOTICE OF ACTION TAKEN

DOCKET OST-96-1055

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **GULF AIR COMPANY, G.S.C.**

Date Filed: February 7, 1997

Relief requested: RENEW exemption from 49 U.S.C. 41301 and statement of authorization under 14 CFR 212 to hold out American Airlines, Inc., designator code on flights operated by Gulf Air between London and Abu Dhabi /Bahrain/ Oman/Qatar, pursuant to a code-share arrangement between the two carriers.

If renewal, date and citation of last action: February 21, 1996 (confirmed in Order 96-3-33)

Applicant representative: Moffett B. Roller 202-822-9070

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 10, 1997**

Effective dates of authority granted: **MARCH 10, 1997, thru MARCH 10, 1998**

Basis for approval (bilateral agreement/reciprocity): Reciprocity

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Standard exemption conditions (attached)

Special conditions: Code-share operations must comply with the rules for airline designator code-sharing set forth in 14 CFR 399.88 of the Department's regulations, and the further condition that the foreign air transportation in question be sold in the name of the carrier holding out the service whether in computer reservations systems or elsewhere and that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger. The operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the FAA has issued a flight prohibition (Order 95-2-34).

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

Docket OST-96-1072

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Date Filed: February 27, 1997

Applicant: **AFRICAN INTL. AIRWAYS PROPRIETARY LTD. (AIA)**

Relief requested: **RENEW** exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of property and mail between the Kingdom of Swaziland and the United States, and other charters pursuant to 14 CFR 212, subject to the condition that AIA use only aircraft wet-leased from a duly authorized and properly supervised U.S. or foreign air carrier that receives requisite authority under the provisions of 14 CFR 207, 208 or 212 of the Department's regulations.

If renewal, date and citation of last action: February 29, 1996 (confirmed in Order 96-6-14)

Applicant representative: Moffett Roller 202-822-9070

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 31, 1997**

Effective dates of authority granted: **MARCH 31, 1997, thru MARCH 31, 1998**

Basis for approval (bilateral agreement/reciprocity): Reciprocity

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Standard exemption conditions (attached)

Foreign air carrier permit conditions

Special conditions: SEE ABOVE

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
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NOTICE OF ACTION TAKEN

DOCKET OST-96-2014

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Date Filed: December 10, 1996

Applicant: **SOCIETE CARIBEENNE DE TRANSPORT AERIEN d/b/a AIR ST. MARTIN**

Relief requested: Exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of passengers and their property between points in the French West Indies and the United States, and other charters pursuant to 14 CFR 212 of the Department's regulations.

Applicant representative: William Evans 202-371-6030

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **MARCH 13, 1997**

Effective dates of authority granted: **MARCH 13, 1997, thru MARCH 13, 1998**

Basis for approval (bilateral agreement/reciprocity): We found that reciprocity with France supported grant of this authority. We also found, based on the record, that the carrier is substantially owned and controlled by citizens of France, properly licensed, and operationally and financially qualified to undertake the proposed operations. Finally, the FAA has advised us that it knows of no reason to withhold this authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- Standard exemption conditions (attached)
 Foreign air carrier permit conditions (Order - -)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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NOTICE OF ACTION TAKEN

DOCKET OST-96-2021

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **ASIANA AIRLINES, INC.**

Date Filed: December 13, 1996

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled service of property and mail between Korea and Chicago, IL; and to serve Chicago as a coterminal point on its authorized Korea-New York all-cargo service, for a period of two years.

Applicant representative: Joseph Schmitz 202-457-6086

DISPOSITION

Action: **REMAINDER APPROVED**

Action date: **MARCH 5, 1997**

Effective dates of authority granted: **MAY 20, 1997, thru FEBRUARY 19, 1999**

Remarks: By Notice of Action Taken dated February 19, 1997, we granted the requested authority through May 20, 1997, and deferred action on the remainder. In taking this action, we noted that the authority was provided for in the U.S.-Korea Air Transport Agreement, but that we were limiting the term in anticipation of near-term negotiations with the Government of Korea to reach a fully liberalized aviation relationship. The Government of Korea has now agreed to meet in the second half of April to negotiate an open-skies agreement. In light of this development, we are granting the remainder of Asiana's request.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Foreign air carrier permit conditions (Order 95-11-17)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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NOTICE OF ACTION TAKEN

DOCKET OST-97-2098

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **FLYING COLOURS AIRLINES LIMITED**

Date Filed: January 24, 1997

Relief requested: Exemption from 49 U.S.C. 41301 to conduct charter foreign air transportation of persons and property between the United Kingdom and the United States pursuant to the U.S.-U.K. Agreement; and other charters pursuant to 14 CFR 212 of the Department's regulations.

Applicant representative: James Devall 202-298-8660

Responsive pleadings: None

DISPOSITION

Action: **APPROVED**

Action date: **APRIL 7, 1997**

Effective dates of authority granted: **APRIL 7, 1997, thru APRIL 7, 1998**

Basis for approval (bilateral agreement/reciprocity): The authority is provided for in the Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland, and Flying Colours has been properly designated and licensed by the United Kingdom to operate the requested services. We found that Flying Colours is operationally and financially qualified to conduct the proposed services, and substantially owned and effectively controlled by citizens of the United Kingdom. We made this finding based on the May 25, 1989, U.S.-U.K. Exchange of Notes under which the aviation authorities of each country will normally accept, on a reciprocal basis, the other's fitness and citizenship determinations in regard to carriers seeking authority to conduct certain bilateral services, including the requested authority.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- Standard exemption conditions (attached)
 Foreign air carrier permit conditions (Order - -)

Action taken by: Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

