

4-27

NEW



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

## NOTICE OF ACTION TAKEN

March 5, 1998

*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.*

Application of **Polar Air Cargo, Inc.** filed 2/17/98 in Docket OST-98-3492 for:

**XX** Exemption under 49 U.S.C. 40109 to provide the following service:

**Scheduled foreign air transportation of property and mail between any point or points in the United States and two points in Japan and beyond each of those points to one third country point. Polar further requests authority to integrate this exemption with its existing certificate and exemption authority.**

Applicant rep: Jeffrey A. Manley 202-637-9057 DOT analyst: Gerald Caolo 202-366-2406

### DISPOSITION

**XX** *Granted (subject to conditions, see below)*

*The above action was effective when taken: March 5, 1998, through March 5, 2000, (or until 90 days after final Department action on Polar's certificate application in Docket 98-3491, whichever occurs earlier)*

**XX** *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director  
Office of International Aviation  
(Petitions for review may be filed from now until  
10 days after the confirming order/letter issues.  
Filing of a petition shall not stay the effectiveness of  
this action.)*

**XX** **Authority granted is consistent with the 1998 U. S.-Japan Memorandum of Consultations.**<sup>1</sup>

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

**XX** **Holder's certificate of public convenience and necessity**

**XX** **Standard Exemption Conditions (attached)**

(See Reverse Side)

<sup>1</sup> On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The delegations also agreed that the provisions of those understandings would be in effect provisionally upon signing of the MOC, pending conclusion of an interim agreement.

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**Conditions:** We made the authority granted subject to the following conditions:

- (1) Before the carrier conducts its initial operations under this authority, and before the carrier subsequently changes any of the foreign points under this authority, the carrier shall notify the Department (Director, Office of International Aviation) of the points in Japan and points beyond Japan that it proposes to serve, so that the Department can notify the Japanese Government of the point selections as required by the 1998 MOC;
- (2) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved, and further (a) nothing in our award of the route integration authority granted should be construed as conferring upon Polar rights (including fifth freedom, intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Polar notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights, and (b) should there be a request by any carrier to use the limited entry route rights that are included in Polar's authority by virtue of the route integration exemption granted here, but that are not then being used by Polar, the holding of such authority by route integration will not be considered as providing Polar a preference in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue; and
- (3) The authority granted to serve third countries beyond Japan is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.