

161718



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

Issued by the Department of Transportation on April 1, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST 00-7294 - 5

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **EVERGREEN INTERNATIONAL AIRLINES, INC.**, filed 3/8/02 for:

XX Renewal of exemption under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of property and mail from points behind the United States, via the United States and intermediate points, to a point or points in Argentina and beyond; and between Argentina and any point or points. Evergreen also requests approval to integrate this authority with Evergreen's other all-cargo certificate and exemption authority and to commingle traffic on services conducted pursuant to such authority, consistent with applicable agreements between the United States and foreign countries.

Applicant rep: **Thomas V. Lydon (202) 466-2929** DOT Analyst: **Linda Senese (202) 366-2367**

DISPOSITION

XX Granted U.S.-intermediate points-Argentina and beyond exemption authority, subject to conditions (see below)

XX Balance dismissed (see below)

The above action was effective when taken: April 1, 2002, through April 1, 2004, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

XX The authority granted is consistent with the U.S.-Argentina Air Transport Services Agreement.

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

XX Holder's certificates of public convenience and necessity

XX Standard Exemption Conditions (attached)

Conditions: The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Evergreen rights (including fifth-freedom intermediate and/or beyond rights), to serve markets where U.S. carrier entry is limited unless Evergreen notifies the Department of Evergreen's 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 Evergreen's authority by virtue of the route integration exemption granted here, but that are not then being used by Evergreen, the holding of such authority by route integration will not be considered as providing any preference for Evergreen in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The authority granted to serve intermediate and beyond points 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.

(See Reverse Side)

Dismissal: By Notice of Action Taken dated May 11, 2000, we dismissed the previous request by Evergreen for authority for operations behind the United States and Evergreen's request to operate between Argentina and any point or points. As we stated then, the authority to conduct operations from points behind the United States is inherent in the authority that we award U.S. carriers to perform foreign air transportation, and the authority to operate between Argentina and any point or points, while new rights available under the 1999 *ad referendum* amended agreement, is not in foreign air transportation and Evergreen requires no additional Departmental authorization to conduct those services, as long as there is not more than a *de minimus* amount of traffic that would be in foreign air transportation, having an origin or destination in the United States.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp.*

APPENDIX A

U.S. CARRIER **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations and with all U.S. Government requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.