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

Issued by the Department of Transportation August 23, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7513 - 43

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 Gemini Air Cargo, Inc. filed 7/20/01 and supplemented 8/20/01 for:

XX Exemption from Order 2000-10-19; startup deadline:

By Order 2000-10-19, the Department granted Gemini Air Cargo, Inc. (a) an exemption to engage in scheduled foreign air transportation of property and mail between Miami, Florida, on the one hand, and Quito and Guayaquil, Ecuador, on the other, (b) an exemption to integrate such authority with Gemini's existing certificate and exemption authority, and (c) an allocation of three weekly frequencies (narrow-body aircraft or wide-body equivalent) for services in the United States-Ecuador market. Gemini's frequency award was subject to a 90-day startup condition as well as our standard 90-day dormancy condition. Under the award Gemini was required to begin service before January 21, 2001. On January 19, 2001, the Department granted Gemini an extension of the startup requirement through April 23, 2001 because Gemini had yet to receive an operating permit from the Ecuadorian government. On April 23, 2001, the Department granted Gemini a further extension of the startup requirement through July 22, 2001. On July 20, 2001 Gemini sought a further extension of the startup requirement through October 19, 2001, and the Department granted a limited extension through August 20, 2001, deferring on the balance of the application, pending a hearing on Gemini's application for authority from the Ecuadorian government.

In its current supplement to its application, Gemini requests a further extension beyond August 20, 2001. Gemini states that a hearing was held August 15, 2001, on its application with the Ecuador government and that Gemini received an official communique after close of business on August 17, 2001, that notified Gemini's representative in Ecuador that the National Civil Aviation Council had resolved to approve Gemini's application to operate a scheduled international air cargo service between Miami, Quito, Guayaquil and vice versa, two weekly frequencies, with wide cabin DC-10 and MD-11 aircraft, subject to submission of other documents, after the receipt of which a further notification to the company would be made. In these circumstances, Gemini requests that the Department approve the balance of the 90-day waiver (i.e. through October 19, 2001) that Gemini had requested in its July 20 application or, in the alternative, extend the existing waiver through September 20, 2001. Gemini maintains that it plans to operate the first flight to Ecuador on or about September 1, 2001. Gemini stated that it will poll the parties served with the application concerning the request in this supplement.

On August 20, 2001, the Department granted Gemini a temporary extension through August 24, 2001, to provide parties the opportunity to comment on the supplemental application and Gemini an opportunity to reply.

(See Reverse Side)

On August 21, 2001, Atlas Air, Inc. and Evergreen International Airlines, Inc. filed separate answers. Atlas argues that given Gemini's reported progress in the Ecuador licensing process, Gemini should be granted a limited waiver but states that the waiver should be no longer than necessary to provide Gemini adequate time to clarify its status in the Ecuadorian licensing process, report its findings to the Department and, assuming a positive Ecuadorian response, start service promptly thereafter. In this regard, Atlas states that a waiver through September 20, as requested by Gemini as an alternative form of relief, is the maximum time period that the waiver should be extended. Evergreen argues that the waiver should be extended only through September 4, 2001, and argues that if Gemini has not, by that date, fulfilled what it needs to gain final Ecuadorian approval, or has not begun service by that date following the prior issuance of Ecuadorian approval, the Department should require Gemini to provide in a timely manner a complete and viable explanation or face the loss of its authorization.

On August 22, 2001, Gemini filed a consolidated reply, urging the Department to extend the startup deadline to October 19, 2001, or, in the alternative, September 20, 2001. Gemini states that it is amenable to the imposition of a condition that Gemini must start service within two weeks of receiving authority from Ecuador and argues that it is continuing its efforts to clarify the status of the licensing process in Ecuador and that the aviation authorities in Ecuador, and not Gemini, are in charge of the manner in which Gemini's application is processed. In this connection, Gemini notes that it is now obtaining authenticated corporate bylaws and all other documents requested by Ecuadorian authorities.

Applicant rep.: Moffett B. Roller (202) 331-3300 DOT analyst: Linda Senese (202) 366-2367

#### DISPOSITION

**XX Granted, in part, subject to conditions** (see remarks below)

**XX Balance deferred.**

The above action was effective when taken: August 23, 2001, through September 7, 2001

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

**Remarks:** The communique issued to Gemini by Ecuador's National Civil Aviation Council and attached to Gemini's August 20, 2001, "Supplement No. 2 of Gemini Air Cargo, Inc. to Application for Renewal of Exemption from Startup Deadline," (August 20 Supplement) enumerates various items that Gemini must submit to the Ecuador government before a permit to operate will be issued. Although Gemini states in its August 22 consolidated reply that it is "obtaining" certain documents, Gemini has not provided evidence that it has in fact submitted the requested items to the Ecuadorian government. Similarly, Gemini states that it is "continuing its efforts to clarify the status of the licensing process." (Gemini consolidated reply at 1) However, Gemini provides nothing in the record to indicate what concrete steps it has taken to secure such clarification or what response it has obtained from the Ecuadorian authorities. In these circumstances, we are not in a position to resolve this matter at this time and will only grant Gemini a further limited extension through September 7, 2001. Moreover, we will require Gemini (**no later than August 29, 2001**), to file in the docket and serve on all parties to this proceeding by facsimile, specific information of precisely what steps Gemini has taken since receipt of the communique to clarify its status with the Ecuador government, identifying the date(s) of any inquiries, the questions posed and the responses received to such questions. Furthermore, we expect Gemini to state that it has fully complied, as it has said it would do (August 20 Supplement at 2), with the requirements of the Ecuadorian government as set forth in the August 17, 2001 official communique of the National Civil Aviation Council. With this information, we expect to be in a better position to decide whether any further extension of the startup exemption beyond September 7, 2001, is warranted. Gemini should understand that our disposition to entertain a request for an extension beyond that granted here is dependent upon full compliance by Gemini with the terms of this notice, including the date and procedures specified in this notice for the filing of additional information.

Should the parties to this case wish to comment on any documents filed by Gemini, they must do so no later than August 31, 2001, and Gemini must file any response thereto no later than September 4, 2001.

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Under the authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the exemption was consistent with the public interest. To the extent not granted or deferred, we denied all requests in the referenced Docket. We may amend, modify, or revoke the action taken 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 ten (10) 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.

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