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

Issued by the Department of Transportation on January 18, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7513 - 80

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 1/17/02 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. Gemini has sought various extensions of the startup condition, stating that it had yet to receive an operating license from the Ecuadorian authorities. The latest extension is through January 19, 2002.<sup>1</sup> In the instant request, Gemini seeks an extension through February 2, 2002.

In support of its request, Gemini states that on January 11, 2002, it received a permit from the National Aviation Council of Ecuador, and Gemini plans to commence twice weekly scheduled flights in Ecuador during the week of January 21, 2002. Gemini further states that within the next several days, it expects to receive from the General Directorate of Civil Aviation (DGAC) the authorization required under Part 129 of Ecuadorian aviation regulations (or under a waiver from Part 129) for Gemini to start its scheduled flights. Although Gemini expects that it will commence its scheduled all-cargo service to Ecuador during the week of January 21, Gemini requests a two-week extension in the event there is any unanticipated delay in the issuance of the necessary authorization. Gemini states that it will advise the Department as soon as it operates the first scheduled flight to Ecuador.

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

DISPOSITION

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

The above action was effective when taken: January 18, 2002, through February 2, 2002

<sup>1</sup> See Notices of Action Taken, dated January 19, 2001, April 23, 2001, July 20, 2001, August 23, 2001, September 6, 2001, October 19, 2001, November 1, 2001, November 19, 2001, and December 18, 2001, in the present docket, for the history of Gemini's requests for extension of the startup condition and our actions in response to these requests. In the September 6 action granting Gemini a further extension through October 19, and in the October 19, November 1, November 19, and December 18 extension notices, the Department required that Gemini submit on a weekly basis, specific information of precisely what steps Gemini had undertaken to meet the requirements of the Ecuador government in order to receive an Ecuadorian license. Gemini has done so, filing the most recent reports on January 8 and 15, 2002.

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

**Remarks:** In view of the circumstances presented, we have decided to grant Gemini's latest request for an extension of the startup deadline. We continue to believe that the record supports a finding that Gemini is continuing its good faith effort to commence its scheduled operations from Ecuador. In these circumstances, we believe that extension of the startup deadline is warranted. We expect Gemini to continue to report to the Department on a weekly basis on its progress.<sup>2</sup>

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.<sup>3</sup>

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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, 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.

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

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<sup>2</sup> As we have previously noted (Notice of Action Taken September 6, 2001), Gemini's authority to serve Ecuador is for the operation of scheduled flights, and the frequencies allocated for operation of scheduled service are subject to a dormancy condition whereby failure to operate any frequency for a period of 90 days will result in such frequency reverting automatically to the Department for reallocation. We note that Gemini in this latest request notes that the DGAC has granted Gemini immediate authority to operate two charter flights, which Gemini states that it will operate between January 17 and 21, 2002. While Gemini has operated a number of Ecuador charters since receipt of its scheduled authority from the Department and now states that it will imminently operate further charter flights, the operation of charter flights does not negate the dormancy provision nor does it satisfy the startup condition for scheduled service. We continue to believe that, taking into account Gemini's charter operations, it is well positioned to begin scheduled services immediately upon final authorization from the DGAC for scheduled operations, and we expect it to do so.

<sup>3</sup> By letter dated January 17, 2002, counsel for Gemini advised the Department that it polled the interested parties and had received no objections to its instant request.