



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

Issued by the Department of Transportation on October 13, 2021

NOTICE OF ACTION TAKEN -- DOCKETS DOT-OST-2020-0011 and DOT-OST-2020-0129

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 Swift Air, L.L.C. d/b/a iAero Airways (iAero) filed August 6, 2021, for:¹

XX Emergency exemption under 14 C.F.R. §302.311 to provide the following service:

iAero requests an emergency exemption from Order 2020-5-7 and Order 2020-8-4, to permit it to operate thirteen (13) total combination passenger and cargo charter flights between Miami, Florida, and Santa Clara and Holguin, Cuba, on behalf of its customer, Cuba Charter Services, LLC d/b/a Aerocuba (Aerocuba). iAero states that it intends to begin these operations on August 13, 2021, or as soon as possible, and that it intends to operate a single rotation every Friday, alternating between Santa Clara and Holguin, through October 29, 2021.

iAero asserts that grant of the exemption is consistent with the foreign and aviation policies of the United States articulated in Orders 2020-5-7 and Order 2020-8-4. In this regard, iAero states that the proposed flights are a humanitarian response to an unfolding crisis in communities outside of Havana, and that the services will allow Cuban-American families residing in the United States to send humanitarian and necessitous goods to family members in Cuba. iAero also states that the proposed service will transport much needed humanitarian aid and critical medical supplies to Cuba from charitable organizations.

Applicant rep: J. Parker Erkmann (202) 776-2036 DOT Analyst: Brett D. Kruger (202) 366-8025

DISPOSITION

XX **Granted in part (exemption for cargo-only charters), subject to conditions, see below.**

XX **Balance denied (exemption for passenger charters) see Discussion below.**

The above action granting a cargo-only exemption was effective when taken: **October 13, 2021**, through **October 29, 2021**.

The above action denying the exemption for passenger charters was effective: **October 13, 2021**.

Action taken by: **Carol A. (Annie) Petsonk**
Deputy Assistant Secretary for
Aviation and International Affairs

¹ iAero included in its application a motion to shorten the answer period for its application, which we granted by Notice dated August 10, 2021. Answers to the iAero application were due August 11, 2021, and replies to answers were due by 12:00 noon on August 12, 2021.

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 DOT charter regulations (*e.g.*, 14 CFR Parts 212)

XX Standard exemption conditions (attached)

DISCUSSION

Background: By Notice dated January 10, 2020, the Department suspended the authority of all public charter operators to arrange public charter flights between any point in the United States and any point in Cuba, except José Martí International Airport in Havana. The Department took this action at the request of the U.S. Department of State, following receipt of a letter dated January 7, 2020, from then-Secretary of State Michael R. Pompeo to then-Secretary of Transportation Elaine L. Chao, stating that:

To strengthen the impact of the Administration's policy of applying economic pressure on the Cuban regime to respect human rights and fundamental freedoms for all in Cuba and to cease its unconscionable support for the illegitimate and totalitarian regime of former President Maduro in Venezuela, and in the foreign-policy interests of the United States, I respectfully request that the Department of Transportation suspend until further notice all public charter flights between the United States and all airports in Cuba except José Martí International Airport (HAV) in Havana.²

By Order 2020-8-4, issued August 13, 2020, the Department suspended the authority of all U.S. air carriers and foreign air carriers to provide charter flights between the United States and all airports in Cuba, except for authorized public charters to and from Havana and other authorized charter flights for emergency medical purposes, search and rescue, and other travel deemed to be in the interest of the United States.

The Department issued Order 2020-8-4 at the request of the U.S. Department of State, following the receipt of a letter dated August 13, 2020, from then-Secretary Pompeo to then-Secretary Chao, stating that:

To advance the Administration's policy to strengthen the economic pressure on the Cuban regime as a means to restrict the regime's ability to repress its people and support the illegitimate Maduro regime in Venezuela, and in the foreign-policy interests of the United States, I respectfully request that the Department of Transportation suspend until further notice all charter flights between the United States and all airports in Cuba over which the Department of Transportation exercises jurisdiction, except for authorized public charters to and from Havana, and other authorized charter flights for emergency medical purposes, search and rescue, and other travel deemed to be in the interest of the United States.³

Accordingly, the Department found that it was in the public interest to suspend the charter authority of all U.S. and foreign carriers to the extent necessary to prohibit charter operations between the United States and Cuba as set forth in the Order.

² The full text of the State Department's January 7, 2020 letter is attached as an Appendix to our January 10 Notice (Docket DOT-OST-1998-20). The January 7 letter also requested that the Department of Transportation, in the foreign-policy interest of the United States, cap public charter flights to José Martí International Airport at an appropriate level. Our January 10, 2020 Notice established a cap of 3,600 annual round-trip public charter flights between the United States and Havana, and by Order 2020-5-7, issued May 28, 2020, the Department established allocation procedures for the available public charter flights.

³ The full text of the State Department's August 13, 2020 letter is attached as an Appendix to Order 2020-8-4.

Responsive Pleadings: On August 11, 2021, Viajehoy LLC, d/b/a Havana Air (Havana Air) filed a response to iAero's application. Havana Air states that it does not object to the application and that if iAero's application is approved, Havana Air shall also seek flying weekly rotating flights to serve Santiago de Cuba and Camagüey with one of its DOT approved carriers.

Decision: We have decided to grant iAero's application in part, for an exemption to operate cargo-only charter flights, and to deny the application to the extent iAero seeks to provide passenger charters. Our actions in the January 10, 2020 Notice suspending the authority of public charter operators to serve points in Cuba other than Havana, and in Order 2020-8-4 suspending carriers' U.S.-Cuba charter authority were taken at the request of the U.S. Department of State, which expressly cited the foreign policy interests of the United States in its January 7, 2020 letter and its August 13, 2020 letter requesting the suspensions.

We consulted with the Department of State to determine whether it regards the proposed iAero flights to be in the foreign policy interests of the United States and to be consistent with the exceptions to the suspension of charters between the United States and Cuba set forth in Order 2020-8-4.

On October 12, 2021, after considering the specific circumstances presented, the Department of State provided its view that only the cargo portion of the proposed humanitarian operation would be in the foreign policy interests of the United States, and would be consistent with the Department of State's specified exceptions to the suspension of charter flights between the United States and Cuba. Against this background, we find that it would be in the public interest to grant the requested exemption in part, to operate the proposed flights as cargo only, and to deny the application to the extent the applicant seeks to provide passenger services.

As a final matter, we remind the applicant that a number of significant limitations and requirements remain in place concerning air transportation between Cuba and the United States. Nothing in the Department's award of authority will relieve any party from complying with all applicable regulations and requirements of other U.S. agencies and with all applicable laws of the United States.

To the extent not granted, we denied all requests in the referenced application. 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 reconsideration of the action set forth in this Notice under the Department's regulations, 14 CFR §302.14, 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 reconsideration will not alter such effectiveness.

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<http://www.regulations.gov>

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier 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) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; 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.