



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

Issued by the Department of Transportation on July 14, 2021

NOTICE OF ACTION TAKEN -- DOCKET 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 **Skyway Enterprises, Inc. (Skyway)** filed **July 2, 2021**, for:

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

Skyway requests an emergency exemption from Order 2020-8-4, in order to operate twenty (20) all-cargo charter flights to transport humanitarian aid and diplomatic cargo between Miami, Florida, and Havana, Cuba, using small aircraft, between July 22, 2021, and September 28, 2021.

In support of its request, Skyway states that the proposed operation is a continuation of its previously approved operation to carry humanitarian aid, and that U.S. officials in Cuba are requesting that Skyway transport diplomatic cargo to the U.S. Embassy in Cuba.¹ Skyway asserts that its proposed operation would satisfy two exceptions noted in Order 2020-8-4, that permit certain charter operations for “emergency medical purposes..., and other travel deemed to be in the interest of the United States.”²

Applicant rep: **Evelyn D. Sahr (202) 659-6622**

DOT Analyst: **Brett D. Kruger (202) 366-8025**

DISPOSITION

XX **Granted** (subject to conditions, see below; see Discussion below.)

The above action was effective when taken: **July 14, 2021**, through **September 28, 2021**.

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

¹ By Notice of Action Taken dated May 13, 2021, in this docket, the Department granted an emergency exemption to Skyway in order to operate eight all-cargo charter flights transporting humanitarian aid in the form of small 3.3 lb. parcels containing food, medicine, hygiene and medical supplies. By Notice of Action Taken dated March 30, 2021, the Department granted an exemption to Skyway in order to operate a single flight to Havana for the transport of cargo and personnel on behalf of the Department of State.

² By Order 2020-8-4, 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.

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

XX Applicant's air taxi authority (14 CFR Part 298)

XX DOT charter regulations (*e.g.*, 14 CFR Parts 212 and 380)

XX Standard exemption conditions (attached)

DISCUSSION

Background: 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 from then-Secretary of State Michael R. Pompeo to then-Secretary of Transportation Elaine L. 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.

Responsive Pleadings: On July 13, 2021, Swift Air, LLC d/b/a iAero Airways (iAero) filed comments stating that it is actively working with customers also seeking to provide humanitarian aid to Cuba. iAero asserts that if the Department grants the application of Skyway, and a separate application of IBC Airways,⁴ then a forthcoming iAero application for an emergency exemption should be granted as well.

Decision: We have decided to grant Skyway's application for an exemption from Order 2020-8-4 to operate the proposed charter flights. Our action in Order 2020-8-4 suspending carriers' U.S.-Cuba charter authority was taken at the request of the U.S. Department of State, and it incorporated the Department of State's language as to permitted exceptions.

We take note of the assertion made by Skyway that the flights should be permitted under the Order's exceptions. Those exceptions, as discussed above, were expressly derived from the Department of State letter upon which the DOT suspension action was predicated. Accordingly, we consulted with the Department of State to determine whether they regard the proposed Skyway flights as coming within the Order's specified exceptions.

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

⁴ See Application of IBC Airways, Inc., filed July 8, 2021, in Docket DOT-OST-2020-0129.

The Department of State provided its view that the application does fall within the Order's specified exceptions. The Department of State also noted its willingness to review future exemption requests to determine whether proposed flights fall within the scope of its specified exceptions as set forth in DOT's Order 2020-8-4, namely: emergency medical purposes, search and rescue, and other travel deemed to be in the interest of the United States.⁵ Against this background, we find that it would be in the public interest to grant the requested exemption from Order 2020-8-4 to operate the proposed all-cargo charter flights.

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>

⁵ On this basis we would be prepared to consider any subsequent application of iAero, or of any other carrier, at the time that such application may be filed.

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.