



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

Issued by the Department of Transportation on August 20, 2020

**NOTICE OF ACTION TAKEN – DOCKET DOT-OST-2020-0011**

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).

1. Application of **Swift Air, LLC d/b/a iAero Airways (iAero)**, filed **7/23/20**, for:

**XX** Allocation of charters from the U.S.-Havana public charter pool established in Order 2020-5-7, as follows:

**iAero requests allocation of 68 round-trip charter flights to be operated between Miami and Havana, on behalf of the public charter operator, INVICTA Group Services, Inc. d/b/a Invicta Air (Invicta), as reflected in the application.**

2. Application of **Caribbean Sun Airlines, Inc. d/b/a World Atlantic Airlines (WAA)**, filed **7/28/20**, for:

**XX** Allocation of charters from the U.S.-Havana public charter pool established in Order 2020-5-7, as follows:

**WAA requests allocation of 102 round-trip charter flights to be operated between Miami and Havana, and between Tampa and Havana, on behalf of the public charter operator, Havana Air, as reflected in the application.**

3. Application of **iAero**, filed **8/4/20**, for:

**XX** Allocation of charters from the U.S.-Havana public charter pool established in Order 2020-5-7, as follows:

**iAero requests allocation of 52 round-trip charter flights to be operated between Miami and Havana, on behalf of the public charter operators, Cuba Charter Services, LLC d/b/a Aerocuba (Aerocuba) (20 flights), Cubazul Travel Services, Inc. (Cubazul) (14 flights), and Invicta (18 flights), according to the schedules attached to the application.**

4. Application of **Allegiant Air, LLC (Allegiant)**, filed **8/11/20**, for:

**XX** Allocation of charters from the U.S.-Havana public charter pool established in Order 2020-5-7, as follows:

**Allegiant requests allocation of 205 round-trip charter flights to be operated between Fort Lauderdale and Havana, on behalf of the public charter operator, Anmart Superior Travel LLC d/b/a Anmart Air (Anmart Air), according to the schedule depicted in the application.**

5. Application of iAero, filed 8/12/20, for:

XX Allocation of charters from the U.S.-Havana public charter pool established in Order 2020-5-7, as follows:

**iAero requests allocation of 131 round-trip charter flights to be operated between Miami and Havana, on behalf of the public charter operators, Aerocuba (23 flights) and Invicta (108 flights), according to the schedules attached to the application.**

6. Application of WAA, filed 8/12/20, for:

XX Allocation of charters from the U.S.-Havana public charter pool established in Order 2020-5-7, as follows:

**WAA requests allocation of 88 round-trip charter flights to be operated between Miami and Havana on behalf of the public charter operator, Havana Air, as reflected in the schedule attached to the application.**

Applicant reps: Laura Overton 702-830-8717 (Allegiant);  
J. Parker Erkmann 202-842-7800 (iAero); and  
John R. Mietus, Jr. 202-747-5212 (WAA)

DOT Analyst: Brett Kruger 202-366-8025

#### DISPOSITION

XX Granted, on a pro rata basis as follows; remainder dismissed (see Discussion below):<sup>1</sup>

Carrier	Public Charter Operator	Pro Rata Allocation of Round-Trip Charters
Allegiant	Anmart Air	80
iAero	Aerocuba	17
iAero	Cubazul	5
iAero	Invicta	75
WAA	Havana Air	74
Total Round Trip Charters Allocated:		251

XX Granted, motions for confidential treatment of charter contracts.<sup>2</sup>

The above action granting pro rata charter allocations was effective when taken: August 20, 2020, subject to conditions.

The above action dismissing the remainder of the applications filed was effective when taken: August 20, 2020.

---

<sup>1</sup> The applications seek a combined 646 round-trip charters, while only 251 round-trip charters are available for allocation (see Discussion below). Dividing 251 by 646 equals (rounded) .389. We are therefore able to allocate 38.9% of the total requests and, consistent with the charter pool procedures described in Order 2020-5-7, we are allocating each application's 38.9% pro rata share rounded to the nearest whole number.

<sup>2</sup> Allegiant and WAA each submitted motions for confidential treatment of their charter contracts with their respective public charter operators. Good cause having been shown, we have decided to grant the motions.

The above action granting motions for confidential treatment was effective when taken: **August 20, 2020**.

**Action taken by: Esta Rosenberg**  
**Acting Director, Office of International Aviation**

This authority is subject to the terms, conditions, and limitations indicated:

**XX Applicants' certificates of public convenience and necessity**  
**XX Order 2020-5-7**  
**XX DOT charter regulations (e.g., 14 CFR Parts 212 and 380)**

## **DISCUSSION**

**Background:** By Notice dated January 10, 2020, in response to a foreign policy request of the U.S. Department of State, the U.S. Department of Transportation (the Department) established a limit of 3,600 round-trip public charter flights between the United States and José Martí International Airport in Havana, Cuba.<sup>3</sup>

On May 28, 2020, the Department issued a final order (Order 2020-5-7) establishing procedures and a regulatory framework to distribute the available round-trip public charter flights. The order specifically established that any charters that might be returned as the charter year proceeds will be placed in a charter pool for distribution on a first-come, first-served basis under procedures established in the order. Among other requirements, charter pool applications must be served on interested parties, filed in the docket, and are subject to a seven calendar-day answer period. The procedures in the order also state that mutually exclusive requests that would result in exceeding the cap will be reduced on a pro rata basis to remain within the annual cap on Havana public charters, and the remaining portion of each carrier's request will be dismissed.<sup>4</sup>

The Department has allocated 3,600 charter flights by Order 2020-5-7 and a subsequent Notice of Action Taken dated July 2, 2020, reaching the annual cap for the 2020/2021 charter year. Since that time, iAero and World Atlantic have cancelled a number of charter flights and returned charter allocations to the charter pool.<sup>5</sup>

This Notice of Action Taken addresses applications of Allegiant, iAero, and WAA for allocations from the charter pool. Combined, the carriers seek a total of 646 round-trip charters, exceeding the 251 charters that have been returned to the pool and are available for allocation under the cap. This Notice also addresses certain questions raised on the record regarding our policy on administering the charter pool.

**Responsive Pleadings:** On July 22, 2020, WAA submitted a notice of cancellation for 12 flights that had been allocated to WAA for Havana Air public charter flights during the period August 1-14, 2020. WAA asserts that the interim cancellation does not require WAA to return the 12 charter allocations, noting that WAA expects to use the allocations at issue to operate other Havana Air flights during this charter year.

iAero filed a response in opposition to WAA's interim cancellation, arguing that WAA's purported action has no support in the language of Order 2020-5-7, is contrary to guidance given by the Department, and is contrary to the Department's policy against warehousing limited charter authorities. In subsequent filings,

---

<sup>3</sup> See January 10, 2020 Notice in Docket DOT-OST-1998-20, attaching a January 7, 2020, letter of Secretary of State Michael R. Pompeo to Secretary of Transportation Elaine L. Chao.

<sup>4</sup> Order 2020-5-7, ordering paragraph 9(g).

<sup>5</sup> See iAero Notifications of Cancellation dated July 22, 2020 (102 flights), July 31, 2020 (6 flights), and August 7, 2020 (117 flights); and WAA Interim Cancellation dated July 22, 2020 (12 flights), and Cancellation #2 dated August 10, 2020 (14 flights).

WAA states that it was unaware of informal Department guidance, that it would appreciate the Department's public clarification as to how carriers should address cancellations which the affected charter operator could pick up later in the charter year, and that WAA would also appreciate a determination as to whether the 12 charters at issue were returned to the pool.<sup>6</sup>

Separately, on August 18, 2020, WAA filed an answer objecting to the application of Allegiant. WAA states that its concern is not with Allegiant, but rather with the proposed charter operator Anmart Superior Travel, which WAA asserts stumbled badly in attempting its first Cuba charter program.<sup>7</sup> WAA also states that the charters available today were returned because Cuba continues to prohibit Havana charters during the COVID-19 crisis, and only now does Anmart Air reappear with a speculative proposal to re-attempt Cuba service. WAA asserts that in the unusual circumstances posed by this year's "COVID return pool,"<sup>8</sup> the Department's priority should be to maintain access to charters for the carriers and operators it has already selected for the first charter year.

On August 18, 2020, Invicta filed a request to expedite the Department's ruling on iAero's July 23<sup>rd</sup> and August 4<sup>th</sup> applications for allocations from the U.S.-Havana charter pool.

**Decision:** As an initial matter, we regard the 12 cancelled charters identified in WAA's July 22, 2020 submission as having been returned to the charter pool. Under the terms of Order 2020-5-7, a carrier must return an allocated charter in writing within two business days of the determination that an allocated flight will not operate, and the notification must be filed in the docket and served on interested parties.<sup>9</sup> In light of this decision, there are currently 251 charters available in the charter pool for allocation under our established procedures.

With respect to WAA's objection to the application of Allegiant, we structured our charter pool both to provide an opportunity for interested parties to participate (*see* Order 2020-5-7, at 13), and to ensure that charter pool allocations would either be used, or returned and made available for other interested parties to use. Against this background, we do not see a basis in WAA's objection that would warrant withholding allocation of charters to Allegiant under the charter pool allocation procedures.

Against that background, and consistent with the terms of Order 2020-5-7, the Department has decided to grant each carrier's request on a pro rata basis, as reflected above. The respective public charter operators are free to submit the necessary public charter prospectus for review under the Department's normal procedures.<sup>10</sup>

In taking this action, we remind carriers that the allocations made here are for the specific flights proposed in the respective applications, and are subject to the required reporting and use-or-lose conditions described in Order 2020-5-7. We further remind parties 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

---

<sup>6</sup> *See* WAA's July 28, 2020 U.S.-Havana Charter Pool Request; and WAA's August 10, 2020 Cancellation #2.

<sup>7</sup> WAA cites Havana Air's February 12, 2020 objections in this Docket.

<sup>8</sup> WAA Answer, at 2.

<sup>9</sup> Order 2020-5-7, ordering paragraph 10. We would be open to considering a change in flight dates of up to 48 hours on a case-by-case basis, without requiring the return of the flights to the charter pool. The Department has typically afforded flexibility to carriers in those limited instances, and we would expect to act consistently with that practice in the context of Havana public charters. A carrier could seek to facilitate a longer-term date change by returning an allocated frequency and applying for a new allocation under the procedures described in the order. We note that in all cases, the public charter operator would need to submit the necessary documents required by 14 CFR 380.25.

<sup>10</sup> Carriers will need to file in the docket revised schedules reflecting their pro rata allocations before the Department can accept a corresponding public charter prospectus.

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.

---

This action was taken under authority assigned in Order 2020-5-7. To the extent not granted or dismissed, we denied all requests in the referenced applications. 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://www.regulations.gov>