

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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| _____) | |
| Application of) | |
| IBC Airways, Inc.) | |
| Pursuant to 49 U.S.C. § 40109 for an) | Docket No. OST-2020-0129 |
| Emergency Exemption from Order 2020-8-4) | |
| (Suspension of U.S. – Cuba Charter Authorizations)) | |
| U.S. – Cuba Humanitarian Aid Charters) | |
| _____) | |

**APPLICATION OF IBC AIRWAYS, INC.
FOR AN EMERGENCY EXEMPTION AND MOTION TO SHORTEN ANSWER
PERIOD**

Communications with respect to the
above should be addressed to:

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DATED: July 21, 2021

NOTICE: THE APPLICANT REQUESTS EXPEDITED TREATMENT OF THIS APPLICATION AND THAT THE ANSWER PERIOD BE SHORTENED, WITH ANSWERS FILED ON OR BEFORE JULY 23, 2021. THE APPLICANT WILL POLL THE CARRIER REPRESENTATIVES ON THE ATTACHED SERVICE LIST AND NOTIFY THE DEPARTMENT OF THE RESULTS. THIS APPLICATION IS ALSO FILED PURSUANT TO THE EMERGENCY EXEMPTION PROCEDURES OF 14 C.F.R. § 302.311, WHICH AUTHORIZES THE DEPARTMENT TO ACT ON EMERGENCY EXEMPTIONS IMMEDIATELY. ANY PERSON INTERESTED IN FILING AN ANSWER IS REQUESTED TO DO SO IN THE ABOVE DOCKET IMMEDIATELY.

Having the flexibility to operate to multiple points in Cuba will allow IBC Airways to maximize the positive impact of this service based on demand and the needs of the Cuban populace.

Order 2020-8-4 “preclude[s] the operation of charter flights between the United States and Cuba”⁴ unless an applicant is able to satisfy one of the Order’s exceptions. As has been explained thoroughly in prior applications by IBC Airways and other carriers, the situation in Cuba is dire, worsening, and the services proposed herein satisfy two of the Order’s exceptions. Namely, those permitting charter operations for “emergency medical purposes..., and other travel deemed to be in the interest of the United States.”⁵ The State Department continues to demonstrate a “... willingness to review future exemption requests to determine whether proposed flights fall within the scope of its specified exceptions...”⁶ and following discussions with the Department of State, IBC Airways understands that additional service to Cuba – both direct to Havana and also to other points across the island – is necessary to address and improve the ongoing crisis in Cuba.

The Departments of Transportation and State previously authorized IBC Airways to conduct twice-weekly all-cargo charters to Havana carrying humanitarian aid, medical supplies, and diplomatic mail, finding that the services being provided were within the Order’s specified exceptions and this request represents the continuation of that operation. IBC Airways’ proposal is also consistent with Departmental precedent, as IBC Airways is proposing an operation that is

emergency exemption authority, IBC Airways hereby requests such an amendment to authorize the service contemplated herein.

⁴ Order 2020-8-4 at 2.

⁵ *Id.* at 3.

⁶ *See, e.g.*, NOAT, Docket OST-2020-0129 (May 13, 2021) (Approving an application by Skyway Enterprises, Inc. to conduct eight all-cargo humanitarian operations to Havana because the proposed flights were in the interests of the United States and served emergency medical purpose); *see also* NOAT, Docket OST-2020-0129 (March 30, 2021) (Approving an application of Skyway Enterprises, Inc. to carry diplomatic cargo on behalf of the State Department because the proposed operation was in the interests of the United States); *see also*, NOAT, Docket DOT-OST-2020-0129 (Jul. 14, 2021) (finding Skyway Enterprise Inc.’s operation to carry humanitarian aid and diplomatic cargo meets the exceptions in Order 2020-8-4); *see also*, NOAT, Docket DOT-OST-2020-0129 (Jul. 14, 2021) (authorizing IBC Airways to conduct twice-weekly all-cargo service between Miami and Havana to transport humanitarian aid, medical supplies, and diplomatic mail).

virtually identical to others which have recently received favorable treatment from the Departments of State and Transportation.⁷

Like those approved before it, the proposed service will transport much needed humanitarian aid and critical medical supplies to Cuba in order to help combat the COVID-19 global pandemic's effects on the Cuban population, support U.S. citizens residing in Cuba, and allow Cuban-American families residing in the U.S. to send humanitarian aid and necessitous goods to family members in Cuba. It will also transport diplomatic mail between the U.S. and Cuba and serve to help foster improved relations between the United States and Cuba.

The COVID-19 pandemic has caused a worsening crisis in Cuba for which humanitarian aid and medical supplies are critically needed. Last week, Cubans took to the streets (for the first time in more than 50 years) “to protest against deteriorating living conditions and the lack of basic goods and services, including medical attention amid increasing numbers of coronavirus infections.”⁸ Cubans are generally unable to purchase the most basic medical and humanitarian products, which is exacerbating the current humanitarian crisis and leading to additional spikes in COVID-19 infections. There have been 281,887 infections and 1,905 coronavirus-related deaths since the pandemic began, and COVID-19 infections in Cuba continue to be at their peak – the highest daily average reported – now at 6,199 new infections per day, and rising.⁹ These hardships are not limited to Havana; cities such as Santa Clara, Camagüey, and Santiago de Cuba are facing similar humanitarian crises, and due to provincial restrictions and lack of fuel, it is difficult for

⁷ *Id.*

⁸ Anthony Harrup and Santiago Perez, *What is Happening in Cuba? The Protests Against the Communist Regime*, The Wall Street Journal (July 16, 2021), <https://www.wsj.com/articles/cuba-protests-whats-happening-11626112390> (Last visited July 19, 2021).

⁹ See Reuters COVID-19 tracker (July 19, 2021), <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/cuba/> (last visited July 19, 2021). Contrast these latest figures with those from IBC Airways' prior filing, when just 12 days ago the infection and death totals were 210,913 and 1,387, respectively, and the daily average of cases being reported was at 3,270.

humanitarian aid and medical supplies transported to Havana to reach outlying cities in Cuba. To help alleviate these logistical issues, IBC Airways is requesting authority to transport aid, by air, directly to certain non-Havana points.

The situation in Cuba remains serious. For the reasons stated herein the transport of critical humanitarian aid, medical supplies and diplomatic mail is essential to the Cuban population and falls squarely within the stated exceptions of Order 2020-8-4. Prompt approval of this application is warranted under the circumstances and is clearly within the public interest and consistent with Departmental precedent.

In further support of its request for an emergency exemption, IBC Airways states as follows:

1. IBC Airways is a U.S. company, headquartered and licensed to do business in Florida. It is 100% owned and controlled by Mr. Joseph F. Costigan, who serves as President of the airline and is a U.S. citizen. The airline's address is:

500 S.W. 34th Street
Fort Lauderdale, Florida 33315

2. IBC Airways holds a Part 135 Operator Certificate, OZCA 578T, issued on October 28, 1991, and currently provides on-demand all-cargo and passenger service throughout the U.S. and Canada, the Caribbean, Central and South America. IBC Airways has extensive familiarity with the Cuban market, having conducted all-cargo charter service to the island since 1995. IBC Airways is also a longstanding approved vendor for the State Department, having for many years transported diplomatic mail to destinations throughout the Caribbean basin – including Cuba – as well as operating dedicated charter flights to the Caribbean and the Americas on an on-demand basis. IBC's fleet consists of fifteen aircraft (eleven (11) SAAB 340s, two Embraer ERJs, one Hawker 800XP, and one Boeing 737-300F (ACMI)).

3. Each operation will transport up to 7,500 lbs. of critical humanitarian aid and medical supplies, including but not limited to personal parcels containing food, medicine, hygiene, and medical supplies which are not readily available or nonexistent in Cuba. The transport of these goods will serve to address urgent needs of the Cuban population. Consular traffic, such as diplomatic mail, will also be transported.

4. The humanitarian aid shipments at issue will be transported on behalf of a number of U.S. companies that support humanitarian emergencies, aid organizations, medical emergency response groups, the Catholic Church and other affiliated religious organizations, and/or governmental and diplomatic entities.

5. Grant of this application is in the public interest and is necessary to avoid an unusual hardship. Grant of this application is also consistent with Department precedent.¹⁰

6. IBC Airways respectfully requests expeditious processing and the immediate grant of this emergency exemption application and grant of IBC Airways' motion to shorten the answer period. DOT's Procedural Regulations provide that the Department can act on an emergency exemption application immediately pursuant to 14 CFR § 302.311.

* * *

¹⁰ See note 6, *supra*.

WHEREFORE, IBC Airways respectfully requests that the Department issue an emergency exemption permitting it to operate humanitarian aid flights between the U.S. and Cuba, as described herein, and grant such further relief as the Department deems to be consistent with the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D M Derco', written in a cursive style.

Drew M. Derco
Alexander T. Marriott

Dated: July 21, 2021

Attorneys for IBC Airways, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail this 21st day of July 2021 on the following:

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