



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

Issued by the Department of Transportation on March 4, 2020

NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2019-0129

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).

Applicant: **PERFORMANCE AIR, S.A.P.I. de C.V.**

Date Filed: September 11, 2019

Relief requested: Exemption under 49 USC §40109 to permit the applicant to conduct passenger charter operations between Mexico and the United States, and other passenger charters in accordance with 14 CFR Part 212, using small aircraft. The applicant also requests stopover privileges and relief from the requirement to provide advance notice of each flight, or series of flights, between Mexico and the United States. The applicant further requests that its exemption authority be granted for a period of at least two years.

Applicant representative: Mr. Santiago Christian Perez Cirera Santa Cruz

DOT analyst: David R. Christofano, 202-366-0584

Responsive pleadings: None.

DISPOSITION

Action: Approved, as discussed below, including as specified in Special conditions/Remarks.

Action date: March 4, 2020

Effective dates of authority granted: March 4, 2020, through March 4, 2022.

Basis for approval (bilateral agreement/reciprocity): The Air Transport Agreement between the United States and Mexico signed on December 18, 2015 (the Agreement), and the exchange of letters between the United States and Mexico on May 28, 2015.¹

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached).

Special conditions/Remarks: Based on the record in this case, we found that the applicant is operationally and financially qualified to conduct its proposed operations and is substantially owned and effectively controlled by citizens of its homeland.² We also note that the applicant is properly licensed by its homeland to perform the proposed services. In addition, the FAA has advised us that it knows of no reason to withhold this authority.

In the conduct of these operations, the carrier must adhere to all applicable provisions of the Agreement and may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds (small aircraft).

On December 18, 2015, the United States and Mexico signed a new aviation Agreement that broadened the scope of air service rights available to carriers of both countries. Consistent with that liberalized Agreement, we are granting the applicant, *sua sponte*, the full scope of passenger charter rights now available to Mexican air carriers. Specifically, we grant the applicant exemption authority to authorize it to conduct passenger charter operations in foreign air

¹ The Agreement entered into force on August 21, 2016.

² The record indicates that the applicant is wholly-owned by citizens of Mexico. The record further indicates that the applicant's Director General and key management personnel are also citizens of Mexico.

transportation between any point or points in Mexico and any point or points in the United States; and from a point or points in Mexico, via an intermediate point or points, to any point or points in the United States, and beyond, as mutually agreed in writing by the aeronautical authorities of the Parties, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Mexico for the purpose of carrying local traffic between Mexico and the United States. These bilaterally authorized passenger charters may be operated without prior approval or submission of advance notice.³ We will also grant the applicant authority to conduct other passenger charter operations to/from the United States, such as seventh-freedom passenger charter operations, subject to the additional prior approval requirements of 14 CFR Part 212. We are also continuing to allow Mexican carriers conducting charters to make stopovers in the United States in the conduct of such operations.

Action taken by: Brian J. Hedberg, Director, Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. 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/>

³ We note, however, that the applicant must meet any reporting requirements set forth in its FAA Operations Specifications.

Foreign Air Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) 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, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.