

DEPARTAMENTO DE ESTADO

Número: 7959

Fecha: 17 de diciembre de 2010

Aprobado: Hon. Kenneth D. McClintock
Secretario de Estado



Por: Eduardo Arosemena Muñoz
Secretario Auxiliar de Servicios

CHARTER FLIGHTS AIR INCENTIVE PROGRAM REGULATION

GOVERNMENT OF PUERTO RICO
PUERTO RICO TOURISM COMPANY
CHARTER FLIGHTS AIR INCENTIVE PROGRAM REGULATION

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GOVERNMENT OF PUERTO RICO
PUERTO RICO TOURISM COMPANY

CHARTER FLIGHTS AIR INCENTIVE PROGRAM REGULATION

CHAPTER 1 – GENERAL PROVISIONS

Section 1.1 – Legal Authority

This Regulation is promulgated by the Board of Directors of the Puerto Rico Tourism Company pursuant to the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act No. 67 of May 22, 2008; the Organic Act of the Puerto Rico Tourism Company, Act No. 10 of June 18, 1970, as amended; and pursuant to the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended.

Section 1.2- Short Title

This Regulation shall be known as the “Regulation for Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla.”

Section 1.3 – Definitions

The following terms shall have the meanings that are attributed to them below, except where expressly stated, or unless the context clearly indicates otherwise:

1. **Act** – shall refer to Act No. 67 of May 22, 2008 known as the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act.

2. **Charter Flights** – shall mean the commercial hiring of an aircraft for use outside its normal schedule for a particular customer or tourist between specified destinations and period of time with the Rafael Hernández Airport in Aguadilla as its origin or destination. The ticket sales for Charters Flights shall not be available through a general reservation system, nor shall there be published schedules in any official airline guide. Sales shall be arranged through holiday companies or wholesalers that lease or own the aircraft that is to be operated.
3. **Charter Operator** – shall mean a legally organized entity dedicated to Charter Flights in accordance with the terms of this Regulation.
4. **City Pair** – shall mean Aguadilla and one (1) other city established as departure (origin) and arrival (destination) cities for the vacation packages offered in each Charter Operator's Program.
5. **Company** – refers to the Puerto Rico Tourism Company, a public corporation organized and existing under the Government of Puerto Rico's Act No. 10 of June 18, 1970, as amended.
6. **Endorsed Lodging** – shall mean any building, part of it, or any group of buildings, approved by the Company, devoted mainly to provide lodging for pay to transient guests; it shall consist of not less than seven (7) guest rooms. Its facilities shall be operated under the sanitary and efficient conditions and standards acceptable to the Company.
7. **Guaranteed Period** – shall mean the period of time agreed by the Company and the Charter Operator within which the Charter Operator shall offer Charter Flights and with respect to which the Company shall provide Revenue Assurance to Charter Operator.

8. **Marketing Plan** – shall mean the plan proposed by the Charter Operator and approved by the Company for the marketing and publicity of the Charter Flights, which must include marketing and promotion of Puerto Rico and Porta del Sol.
9. **Material Cost Circumstance** – shall mean any event resulting in significant and unforeseen costs to the Charter Operator, such as major repairs to aircrafts, after which the specified Minimum Revenues are insufficient for the operation of the entity.
10. **Minimum Revenues** – shall mean the amount agreed by the Company and the Charter Operator as the minimum operating costs for the Charter Operator within a Guaranteed Period.
11. **Paradores** – shall mean any hostelry or inn operating under the program sponsored by the Company for the establishment of a network of lodging units throughout the Government of Puerto Rico, in coordination with, and under the supervision of Paradores Puertorriqueños, Inc., a subsidiary corporation of the Puerto Rico Tourist Company. Said hostelries shall comply with the provisions of the Minimum Requirements for Puerto Rican Paradores Regulation, promulgated, established and administered by the Company.
12. **Passenger Revenues** – shall mean the revenues generated by the Charter Operator exclusively from the sale of tickets for Charter Flights to passengers.
13. **Porta del Sol** – shall mean the tourism destination created under Act No. 158 of December 20, 2005, for the purpose of promoting the tourism industry on the west side of Puerto Rico. Porta del Sol - Puerto Rico, includes the following municipalities: Aguada, Aguadilla, Añasco, Cabo Rojo, Guánica, Isabela,

Hormigueros, Las Marías, Lajas, Maricao, Mayagüez, Moca, Rincón, Sabana Grande, San Germán, San Sebastián and Quebradillas.

14. **Program** – shall mean the Marketing Plan and vacation packages prepared in connection with the Endorsed Lodgings at Porta del Sol.
15. **Puerto Rico Ports Authority** – refers to a public corporation organized and existing under the Puerto Rico Ports Authority Act, Act No. 125 of May 7, 1942, as amended, which owns and operates the Port of San Juan.
16. **Revenue Assurance** – shall refer to the guaranty provided by the Company to a Charter Operator during a Guaranteed Period wherein which the Company agrees to disburse ten percent (10%) of the Minimum Revenues or the difference between Minimum Revenues and Passenger Revenues, whichever is less, to Charter Operator.
17. **Scheduled Flights** – comprise those flights which are sold commercially by certified air carriers to the travelling public, are published on the carrier's website and/or through other industry mediums such as global distribution systems and internet portals, and operate on a regular basis and sold to the general public as scheduled flights.

Section 1.4 – General Purposes

This Regulation is promulgated with the purpose of establishing all the rules and norms related to the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act.

This Regulation should be construed and interpreted within the framework and scope of powers, goals and objectives of the Company in order to develop, promote and increase

the visit of charter flights to Porta del Sol. Is also for the purpose of fixing an incentives plan directed to stimulating the arrival of charter flights to said airport, to increase the number of visitors, to promote the stay of visitors in the Paradores and endorsed lodgings located at the Porta del Sol, a Puerto Rico Tourist Destination, and to provide an economic boost to this important tourism sector of Puerto Rico.

The main purposes pursued by the Government of Puerto through the adoption of incentives for the charter flights industry in the Rafael Hernández Airport are the following:

- a. To increase the hotel occupancy in the Paradores and lodgings located at the Porta del Sol-Puerto Rico Tourist Destinations endorsed by the Company;
- b. To increase the number of passengers in the Rafael Hernández Airport in Aguadilla;
- c. To promote consumption and investment in the region's economy;
- d. Generate and increase benefits to be received by the different economic sectors of Puerto Rico; and
- e. Offer equal incentives to all operators of charter flights in order to maximize the promotion of Puerto Rico as the Porta del Sol, Puerto Rico Tourist Destination.

Section 1.5 – Scope and Applicability

This regulation shall apply to all the procedures for requesting and granting incentives under the Act to Charter Operators.

Section 1.6 – Rules of Interpretation

The provisions of this Regulation shall be liberally interpreted in order to allow the Company to carry out its duties and to ensure that all the objectives of the Charter Flights Air Incentive Program at the Rafael Hernández Airport in Aguadilla Act and this Regulation are achieved.

Section 1.7 – Terms of effectiveness and applicability

This Regulation shall enter into effect once it has been filed at the Department of State of Puerto Rico and authorized by the Governor of Puerto Rico, pursuant to Section 2.13 of the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended.

CHAPTER 2 – REQUIREMENTS AND CONDITIONS FOR THE INCENTIVES GRANT

Section 2.1 – Minimum Requirements

Any Charter Operator interested in obtaining an incentive pursuant to the Act and this Regulation must comply with the following requirements:

- a. seventy five (75%) percent of the passengers in the Charter Flights must have reservations of not less than a three (3)-night stay in any of the Paradores or Endorsed Lodgings located at Porta del Sol;

- b. operate Charter Flights for a minimum of six consecutive months and shall offer at least one (1) round trip Charter Flight per week;
- c. establish a Program which must include at least four (4) Paradores and Endorsed Lodgings; and
- d. service shall be non-stop between and Rafael Hernández Airport in Aguadilla and any point on a route not being served at the time of effectiveness of this Regulation.

Section 2.2 – Request for incentives grants

- a. Any Charter Operator interested in obtaining an incentive pursuant to the Act and this Regulation shall designate an authorized official that will act on behalf of the Charter Operator to request, coordinate and foresee the faithful performance of this Regulation.
- b. The eligible Charter Operator shall file an initial application with the Company through the aforementioned authorized official. The form of such initial application will be submitted to the Company at least ninety (90) days before the first day of the proposed Guaranteed Period. The Company shall reply within thirty (30) calendar days of the receipt of the application proposal.
- c. The application must include the following information:
 - 1. Name under which the entity is commercially known and name under which the entity is legally organized;
 - 2. Required permit evidence from Federal Aviation Administration and the Ports Authority;

3. Feasibility analysis of proposed service including operational costs, estimated load factors and break even estimates;
4. Details on the route to be served, type of aircraft, number of seats, proposed frequency and schedule.
5. Proposed Guaranteed Period, which must not be less than six (6) consecutive months;
6. Draft of the Program including cost estimates and allocated share of total costs;
7. List of Paradores and Endorsed Lodgings included in the Program;
8. Legal document, such as a corporate resolution, authorizing the official to act on behalf of the Charter Operator;

The Executive Director of the Company or designated official shall evaluate all applications submitted by Charter Operators under this Section 2.2 and shall approve or deny the same in accordance with the terms of this Regulation. The approval will apply exclusively to the proposed Guaranteed Period.

Section 2.3 – Revenue Assurance Parameters

Revenue Assurance shall be available for Charter Flights up to 10% of airlines break-even revenues based on standard industry costs of flight operations applicable to the route of operation and excluding any aircraft positioning costs (dead leg, ferry flights). The actual operating costs will depend on the aircraft type being utilized and the Charter Operator's costs of operation. The standard industry cost per available seat mile will be in the range of 9-12 cents.

Section 2.4 – Entity Obligations under the Marketing Efforts

The Company may provide an additional incentive of up to \$10 per inbound seat operated by Charter Operator, to cooperate with the Program, and to raise awareness of Puerto Rico as a tourism destination in the Caribbean by promoting direct flights to Aguadilla, Puerto Rico, provided, however, that one hundred percent (100%) of the Program's marketing efforts established in the Program are targeted tourists outside Puerto Rico.

Under this Regulation, Charter Operator agrees to the following:

- a. Utilize funds received under this Section 2.4 for the purposes established in the approved Program.
- b. Must include the Company's logo in all Program campaigns. The Company logo must not be altered in any way.
- c. The ads published as part of the Program must mention Puerto Rico and Porta del Sol. The Puerto Rico destination shall always be emphasized.
- d. Submit all promotional materials, advertising, and media schedules to the Company for approval in a format that includes the name of the activity and/or the publication, a brief description (i.e., size and color), dates scheduled, including both week and month, frequency or number of insertions and cost of each.
- e. Pay for all production expenses incurred in connection with the Program including but not limited to costs for printing, photography, typesetting, and engravings.

- f. Allow Company representatives to verify at any time the use given to the funds disbursed. The Company shall have the right to examine CHARTER OPERATOR billing and records related to the use of the funds for up to one (1) year after disbursement.
- g. Submit a written final report to the Company, within forty-five (45) days after completion of the Marketing Plan, which details the achievements, the expenses incurred, and the use given to the funds, accompanied with supporting documents which corroborate the expenses and evidence that the funds were used in accordance with the terms and conditions of the Act and this Regulation. If Charter Operator requires additional time to provide the report or documentation, Charter Operator shall notify and request in writing and extension disclosing justifiable reasons for the tardiness. The Company reserves the right to deny such request if the reasons are not justifiable.

CHAPTER 3 – INVOICING AND REPORTING

In order to properly produce all the disbursements provided for in this Regulation, the request for any incentive payment shall be submitted by the Charter Operator to the Company by an original invoice requesting the payment with the supporting documentation required by this Regulation. Such invoices shall be certified and signed in original by the authorized official of the Charter Operator.

Section 3.1 – Revenue Assurance and Cost Abatements

- a. Charter Operators shall be eligible to receive the Revenue Assurance at the end of the Guaranteed Period upon compliance with the agreed service schedule.
- b. Following the approval of the application for incentives, on a monthly basis beginning no later than sixty (60) days prior to the start of the Guaranteed Period, CHARTER OPERATORS shall provide Company with a report on the status of passenger bookings on each flight scheduled for the Guaranteed Period.
- c. On or before the last calendar day of each month during the Guaranteed Period, Charter Operator shall provide the Company with a statement setting forth, for each Scheduled Flight during the immediately preceding month, the following data for Rafael Hernández Airport:
 - Number of revenue passengers flown;
 - Passenger Revenues received by the Charter Operator for each Scheduled Flight;
 - The difference between Minimum Revenues and Passenger Revenues, if any;
 - Summary of passengers and Passenger Revenues carried, broken down by actual origin and destination market, including both local as well as connecting passengers, where applicable; and
 - Paradores and Endorsed Lodging booking reports.
- d. These figures shall be provided for the prior month and, on an aggregate basis, for all Charter Flights operated to date.

- e. For each city pair of the Charter Operator, if Passenger Revenues exceed Minimum Revenues in the Guaranteed Period, then no payment by the Company will be due to Charter Operator for such city pair's Charter Service.
- f. If Minimum Revenues exceed Passenger Revenues in the Guaranteed Period for one or more of the City Pairs included in the Program, then Company shall disburse the Revenue Assurance within forty-five (45) days of receipt of Charter Operator's operational report. Upon reasonable written notice, the Company, at its expense, shall have the right to audit, at Charter Operator offices during normal business hours, Charter Operator books and records as they are related to the determination of Passenger Revenue for the Charter Operator for the sole purpose of ensuring determining the amount of Passenger Revenue. Charter Operator's calculation of Charter Flights operated, Passenger Revenues and Minimum Revenues in the operational report may be reviewed by the Company within thirty (30) days of its receipt, after which such report shall be binding and conclusive on Company, absent manifest error.
- g. The Company and the Charter Operator do not have the right to cancel any individual services based on advance bookings or for any other reason. In the event a Charter Flight does not operate due to a force majeure event (e.g. strike, war, act of terrorism or act of God), the number of Charter Flights, and thus the Minimum Revenue requirement for the Guaranteed Period of such Charter Flight, shall be reduced proportionally.
- h. In the event that the Charter Operator notifies the Company of a Material Cost Circumstance within a Guaranteed Period, Charter Operator may request a

renegotiation of the amounts of Minimum Revenues; provided, however, that revised Minimum Revenues shall not in any event exceed ten percent (10%) of the then-current Minimum Revenues.

Section 3.2 – Marketing and Promotion

- a. The Charter Operator shall supply original receipts and evidence of expenses made with the corresponding backups or tear sheets. If receipts are related to promotional marketing materials, such as transmissions, newspapers, magazines, e-marketing, the Charter Operator shall also submit copies of the originals media invoices and copies of corresponding promotions. Dates on tear sheets, backups, screenshots or any type of proof of performance must match the dates these efforts were scheduled on the media schedule.
- b. If the Program is cancelled for any reason, Charter Operator will reimburse the Company all contributions made pursuant to this Section 3.2, deducting the costs, if any, already incurred by Charter Operator up to the date of the cancellation. In this event, Charter Operator must provide the Company with a reasonably sufficient accounting of the costs incurred by Charter Operator, including copies of books and records related thereto. The Company shall have the right to the reimbursement of the total contribution made if within 30 days from the date of the cancellation, Charter Operator has not presented reasonable evidence of the costs or if the cancellation of the marketing campaign is due to Charter Operator's gross negligence.

Section 3.3 – Airport Fees

- a. The Company shall reimburse Charter Operator for 50% of landing fees applicable for the duration of the Guaranteed Period.
- b. On a monthly basis during the Guaranteed Period, Charter Operator shall submit to the Company an invoice in request for reimbursement with certified evidence of payment of the applicable fees from the Ports Authority.

CHAPTER 4 – RENEWAL OF GUARANTEED PERIOD

The Guaranteed Period for each Charter Operator shall be approved for a period of no less than six (6) months and not to exceed one (1) year. The Guaranteed Period may be extended for subsequent periods with duration to be established by the Company in its sole discretion if requested by the Charter Operator at least thirty (30) days prior to the termination of each Guaranteed Period. The Guaranteed Period shall not be deemed to be extended without the prior written consent of the Company.

CHAPTER 5 – RECONSIDERATION**Section 5.1 – Reconsideration Process**

- a. Any Charter Operator adversely affected by a determination of the Company pursuant to this Regulation, may file a petition for reconsideration before the Executive Director of the Company within a period of twenty (20) calendar days from the date of the notice of the determination. Said petition should be signed by the Charter Operator's

authorized officer or by its legal representation and shall, if applicable, request a hearing.

- b. The Company shall, within fifteen (15) calendar days of the filing of said petition, consider any motion filed in accordance with the above paragraph. If the Company rejects said petition or if it does not act with respect to the same within fifteen (15) calendar days of its filing, the statute of limitation to request judicial review pursuant to Chapter IV of the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended, shall commence from the date when said denial is notified or from the expiration of the fifteen (15) calendar days, as the case may be.
- c. If the Company makes any determination with respect to the petition for reconsideration, the period for requesting a judicial review pursuant to Chapter IV of the Uniform Administrative Proceedings Act, Act No. 170 of August 12, 1988, as amended, shall commence on the date in which a copy of the notice of the resolution of the Company definitively resolving the motion for reconsideration is filed in the records.
- d. Said resolution shall be issued and filed in the records within ninety (90) calendar days following the filing of the petition for reconsideration. If the Company accepts the motion for reconsideration but fails to take any action with respect to the motion within the ninety (90) calendar days from its filing, it shall lose jurisdiction over the same and the period to request judicial review shall commence on the expiration of said ninety-day period, unless the Company, for just cause and within those ninety (90) calendar

days, extends the period to resolve to a period that shall not exceed thirty (30) additional calendar days.

CHAPTER 6 – MISCELLANEOUS PROVISIONS

Section 6.1 – Transfer of Incentives

The incentives granted under the Act and this Regulation may only be transferred or assigned upon written consent from the Board of Directors of the Company and subject to the terms and conditions the Board of Directors may deem convenient and appropriate.

Section 6.2 – Notices

All notices pertaining to this Regulation shall be in writing and shall be transmitted either by personal hand delivery or through the United States Postal Service.

Section 6.3 – Civil Actions

The Company will be entitled to demand the return of any incentive grant obtained or disbursed in violation of the provisions of this Regulation. Any amount recovered under this Section will be returned to the fund created by the Act.

Section 6.4 – Severability

If any provision of this Regulation is declared unconstitutional or illegal by a court of competent jurisdiction, said determination shall not affect nor invalidate the rest of the Regulation, but its effect shall be limited to the part, section, paragraph, subsection.

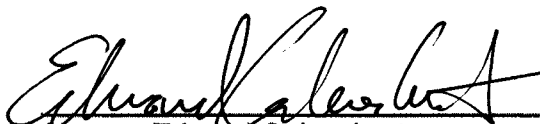
Section 6.5 – Previous Versions

Charter Flights Air Incentive Program Regulation, Regulation 7660 of December 30, 2008, is repealed as of the effective date of this Regulation.

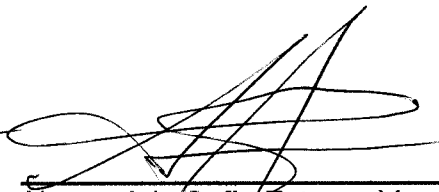
Section 6.6 – Effective Date

This Regulation shall become effective immediately after the approval by the Board of Directors and the Executive Director of the Puerto Rico Tourism Company, and after their approval by the Governor pursuant to Act No. 10 of June 18, 1970, as amended, the Act for the Puerto Rico Tourism Company, and upon compliance with the proceedings established in Chapter II of Act No. 170 of August 12, 1988, as amended, the Puerto Rico Uniform Proceedings Act.

APPROVED BY THE BOARD OF DIRECTORS AND THE EXECUTIVE DIRECTOR OF THE PUERTO RICO TOURISM COMPANY IN SAN JUAN, PUERTO RICO, ON NOVEMBER 12, 2010.



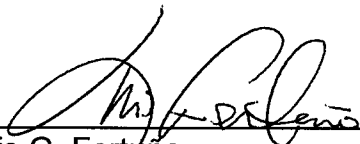
Name: Edward Calvesbert
Interim Secretary, DDEC
Authorized representative
President, Board of Directors
Puerto Rico Tourism Company
Date: December 3, 2010



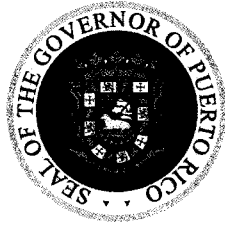
Name: Ada Sofia Esteves Vergne
Acting Executive Director
Puerto Rico Tourism Company
Date: December 3, 2010

APPROVED BY THE GOVERNOR OF PUERTO RICO IN SAN JUAN, PUERTO RICO,

ON December 8th, 2010.

A handwritten signature in black ink, appearing to read "Luis G. Fortuño", written over a horizontal line.

Luis G. Fortuño
Governor



CERTIFICATION

In compliance with the provisions of Section 2.13 of Act No. 170 of August 12, 1988, Uniform Administrative Proceedings Act, as amended, I hereby certify that the public interest requires that the Charter Flights Air Incentive Program Regulation, adopted by the Board of Directors of the Puerto Rico Tourism Company on November 12, 2010, become effective immediately. This Regulation is necessary in order to stimulate the market for charter flights in and to the Rafael Hernandez Airport in Aguadilla and the overall tourism industry in the western region of Puerto Rico, which is denominated as Porta del Sol.

In San Juan, Puerto Rico this 8th day of December, 2010.

A handwritten signature in black ink, appearing to read "Luis G. Fortuño".

Luis G. Fortuño
Governor