



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

Issued by the Department of Transportation on February 19, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5031

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).

Joint Application of **Delta Air Lines, Inc. and China Southern Airlines Limited,** filed **1/21/99** for:

XX Exemption under 49 U.S.C. 40109 for China Southern to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Guangzhou, China, on the one hand, and Anchorage, Atlanta, Boston, Chicago, Dallas/Ft. Worth, Detroit, Fairbanks, Honolulu, Las Vegas, Miami, Minneapolis/St. Paul, New York, Philadelphia, Portland, San Francisco, Seattle and Washington, D.C., on the other hand. China Southern intends to operate this service under a code-share/blocked space agreement with Delta Air Lines on flights operated by Delta. China Southern has requested the authority for a period of two years.

XX Statement of Authorization under 14 CFR Part 212 for Delta to:

Display China Southern's "CZ" designator code on flights operated by Delta between Los Angeles and all the U.S. cities mentioned above except Anchorage and Fairbanks.¹

The Port of Portland filed an answer stating that it supports the applications.

Applicant rep: **Robert E. Cohn (202) 663-8060** DOT Analyst: **Gerald Caolo (202) 366-2406**

DISPOSITION

XX Granted, in part, subject to conditions (see below)

XX Balance dismissed (i.e. request for longer term exemption authority)

The exemption authority granted was effective when taken: **February 19, 1999**, through **February 19, 2000**

The statement of authorization granted was effective when taken: **February 19, 1999**, and will remain in effect indefinitely, subject to the conditions listed below:

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX Authority granted is consistent with the aviation agreement between the United States and the People's Republic of China.

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

XX Holder's Certificate of Public Convenience and Necessity (Delta)

XX Standard Exemption Conditions (attached)

¹ The carriers intend to implement the Anchorage and Fairbanks services at a future date and will apply for the necessary statement of authorization at that time.

Remarks: In granting China Southern the requested exemption authority, we found the applicant qualified to perform the proposed services. Consistent with our standard practice for this type of application, we granted China Southern exemption authority for a period of one year, and dismissed its request for longer term authority.

Conditions: The statement of authorization granted here to Delta is subject to the following conditions:

- (1) The statement of authorization will remain in effect as long as (i) Delta and China Southern continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.²
- (2) Delta and/or China Southern must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.³
- (3) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.
- (4) The authority granted here is specifically conditioned so that neither Delta nor China Southern shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption was consistent with the public interest; and (3) 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, 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 ten (10) 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://dms.dot.gov/reports/reports_aviation.asp*

² We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement to include any provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder 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, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (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, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(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.

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 (formerly the Federal Aviation Act of 1958, as amended).

(41301/40109) 9/98