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

Issued by the Department of Transportation on January 5, 2000 ***CORRECTED COPY*** [1]

# NOTICE OF ACTION TAKEN -- DOCKET OST-99-6555-9 & OST-99-6556-9

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: **South African Airways** Date Filed: November 24, 1999

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between Johannesburg/Cape Town, via the intermediate point Ilha do Sal, and Atlanta, GA, on a coterminal basis with New York, Miami and Los Angeles; and to serve 25 named U.S. points beyond Atlanta on a code-share basis with Delta Air Lines, Inc. (OST-99-6555)

Joint Applicants: **Delta Air Lines, Inc., and South African Airways (SAA)** Date Filed: November 24, 1999

Relief requested: Statements of authorization pursuant to 14 CFR 212 of the Department's regulations to permit: (1) Delta to display SAA's designator code on flights operated by Delta between Atlanta and the 25 U.S. cities listed in Exhibit B of its application (copy of which is attached); and (2) SAA to display Delta's designator code on flights operated by SAA between Atlanta/New York, and Johannesburg/Cape Town, and beyond to the points in Africa listed in Exhibit B (attached) of its application. (OST-99-6656)

Applicant representative: Frank Costello 202-298-8660 (SAA); Scott Yohe 202-216-0700 (Delta)
Responsive pleadings: Continental Airlines and American Airlines stated that the Department should deny the requested authority unless Delta surrenders its third-country code-share designation to serve South Africa in conjunction with Air France, and the Department approves Continental's and American's respective South Africa third-country code-share applications. SAA and Delta filed responsive pleadings.

## DISPOSITION

Action: Approved Action date: January 5, 2000

Effective dates of exemption authority granted: January 5, 2000 - January 5, 2002

Effective dates of statements of authorization granted: Indefinite, subject to attached conditions

Remarks: The authority granted is consistent with the aviation agreement between the United States and South Africa. With respect to the issue raised by Continental and American regarding South Africa third-country code-share designations, we view that matter as more appropriately addressed in the context of their pending applications in Dockets OST-99-6595 and OST-99-6587, and we note that, in fact, both Continental and American have raised this issue in those dockets. Those applications will be handled in a separate Department action, and our action here is without prejudice to any decision the Department might make with respect to them.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:
X Standard exemption conditions (attached) X Code-share conditions (attached)

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

We found that the applicant was qualified to perform its proposed operations.

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 authority 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/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 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*

# 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).

**Delta Air Lines, Inc./South African Airways Statement of Authorization**
**Docket OST-99-6556**

The code-share operations authorized here are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) Delta and South African Airways 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;

(b) Delta and/or South African Airways must notify the Department immediately if the code-share agreement under which these code-share services are operated is no longer in effect or if the carriers decide to cease operating all or a portion of the code-share services under the agreement. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-99-6556;

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 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; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;

(d) The authority granted here is specifically conditioned so that neither Delta nor South African Airways shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

We may amend, modify, or revoke this authority at any time without hearing.

**EXHIBIT B of Delta Air Lines/South African Airways Application in Docket OST-99-6656 [footnotes omitted]**

**SAA's "SA" designator code on Delta flights:**

| Between U.S. Gateways: | and | Points Beyond U.S. Gateways: | |
|---|---|---|---|
| Atlanta | | Baltimore | Orlando |
| New York | | Boston | Philadelphia |
| | | Chicago | Phoenix |
| | | Cincinnati | Pittsburgh |
| | | Cleveland | Portland |
| | | Dallas/Fort Worth | Raleigh/Durham |
| | | Denver | St. Louis |
| | | Detroit | Salt Lake City |
| | | Houston | San Diego |
| | | Las Vegas | San Francisco |
| | | Los Angeles | Seattle |
| | | Miami | Tampa |
| | | Minneapolis/St. Paul | Washington |
| | | New Orleans | |

**Delta's "DL" designator code on SAA flights:**

| Between the U.S. | and | South Africa |
|---|---|---|
| Atlanta | | Johannesburg |
| New York | | Cape Town |

*And*

| Beyond South African Gateways: | to | Other South African Points: |
|---|---|---|
| Johannesburg | | Durban |
| | | Cape Town |
| | | East London |
| | | George |
| | | Port Elizabeth |

| Beyond South African Gateways: | to | Points in Third Countries Beyond South Africa: | |
|---|---|---|---|
| Johannesburg | | Blantyre, Malawi | Lusaka, Zambia |
| Cape Town | | Bulawayo, Zimbabwe | Maputo, Mozambique |
| | | Dar Es Salaam, Tanzania | Victoria Falls, Zimbabwe |
| | | Harare, Zimbabwe | Windhoek, Namibia |
| | | Lilongwe, Malawi | |