



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

Issued by the Department of Transportation
on the **12th day of January, 2004**

Application of

DELTA AIR LINES, INC.

for an exemption from 14 CFR 212.8,
permitting use of letter of credit in lieu of
surety bond, and from 14 CFR 212.3,
permitting limited waiver of advance charter
payment

Served: January 12, 2004

Docket OST-2003-15944-05

ORDER AMENDING EXEMPTION

By Order 2003-11-16, issued November 19, 2003, we granted Delta Air Lines, Inc. (Delta), a U.S. direct air carrier holding a certificate issued under 49 U.S.C. 41102, a one-year exemption from the requirements of 14 CFR 212.8(c), subject to a variety of stated conditions, to permit Delta's use of a standby letter of credit in lieu of a bond to protect charter customer payments and to guarantee the performance of charter flights it undertakes.

After consulting with the Department on December 4, 2003, Delta submitted a revised letter of credit and revised drawing certificate for our consideration. *See* OST-2003-15944-04. We are persuaded that, together with the exemption conditions being imposed, Delta's revised letter of credit (coupled with the revised drawing certificate) offers at least as much protection as provided by a bond under section 212.8(c), and, accordingly, we amend Order 2003-11-16 in three respects, none of which substantively affects our analysis provided therein.

First, we amend ordering paragraph 1.b. of Order 2003-11-16 to eliminate the requirement that the letter of credit itself include a statement that, in the event that the agreement does not otherwise provide protection comparable to that provided under a bond, the bank shall assume for the benefit of customers and participants all liabilities it would have if it entered into such a bond. Instead, we substitute a simpler explicit requirement that the letter of credit used by Delta must provide protections comparable to the protections provided by a bond.

Second, we amend ordering paragraph 1.d. of Order 2003-11-16 to eliminate as unnecessary the requirement that a copy of the letter of credit be provided to customers upon request. We believe that providing notice to each charter customer that a letter of credit is being used in

lieu of a bond to provide financial protection is sufficient to inform charter customers of the nature and consequences of Delta's substitution. We therefore retain the notice requirement.

Third, we amend Order 2003-11-16 to eliminate ordering paragraph 1.e. in view of the inherent protections afforded by a letter of credit and the language of new ordering paragraph 1.b. herein.

As stated in Order 2003-11-16, the exemption granted by this order does not relieve Delta of its regulatory duty, under 14 CFR 212.3(f), to return to his or her point of origin any round-trip charter passenger who received the outbound portion of such transportation under this exemption.

ACCORDINGLY:

1. We amend ordering paragraph 1 of Order 2003-11-16 to read as follows:
 1. We grant Delta an exemption from 14 CFR 212.8(c) for one year, to allow it to use a standby letter of credit ("Letter of Credit"), in lieu of a surety bond, to secure the advance payments of charter customers' funds and the performance of return carriage for round-trip charter operations where the outbound portion has been completed, provided that:
 - a. The Letter of Credit shall provide recourse to charter customers for all monies paid to the air carrier for charter services provided under 14 CFR Part 212 and/or 14 CFR Part 380;
 - b. The Letter of Credit must provide protection to charter customers and/or participants comparable to that provided under a surety bond as provided in Appendix A to 14 CFR Part 212;
 - c. Delta may not collect advance payments from charter customers such that the total of such payments would exceed the face amount of the Letter of Credit;
 - d. Each charter customer must receive notice that a Letter of Credit is being used to provide financial protection;
 - e. Delta must submit to the Department's Special Authorities Division copies of any Letter of Credit it wishes to use under this exemption to confirm that their terms meet the requirements set forth by this order; and
 - f. Semi-annually, beginning six months after the effective date of this order and continuing to and including twelve months after the effective date, Delta must provide the Department with monthly information for each of the preceding six months listing (i) the amount of any advance payments Delta is holding for charter flights to be performed by Delta under Part 212, and (ii) the amount of any advance payments Delta is holding for any charters to be performed by Delta under Part 380 (including Public Charters where Delta has agreed to substitute its own security arrangement to provide financial protection for any

charter participant advance payments for such Public Charters pursuant to 14 CFR 380.34a). Each of the two semi-annual submissions shall be accompanied by a certificate signed by a Delta financial officer verifying the accuracy of the report.

2. The exemption granted by Order 2003-11-16, as amended above, is effective on the date of service of this order and shall remain in effect for a period of one year.
3. We may amend, modify, or revoke the authority granted here at any time at our discretion without notice or hearing.
4. We will serve a copy of this order on Delta Air Lines, Inc., and Kenneth A. Moninski.

By:

KARAN K. BHATIA
Assistant Secretary
for Aviation and International Affairs

(SEAL)

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