

September 10, 2008

VIA ELECTRONIC FILING

Assistant General Counsel for  
Aviation Enforcement and Proceedings, C-70  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Room W96-322  
Washington, DC 20590

Re: Docket No. DOT-OST02008-0272; Part 382 Conflict Waiver Requests

Dear Mr. Podberesky:

Pursuant to 14 C.F.R. § 382.9 of the Department's May 13, 2008 amended rule concerning Nondiscrimination on the Basis of Disability in Air Travel (Part 382), South African Airways (SAA) respectfully requests that the Department grant the following requests for waivers in connection with direct conflicts between Part 382 and provisions of the South African Civil Aviation Regulations (SACAR) and related requirements.

**1. Limitation on Number of Passengers with Disabilities**

Provision of Part 382 involved: 14 C.F.R. § 382.17

Copy of the foreign law involved: SACAR 121.07.16(1) —

The maximum number of passengers with a disability, unaccompanied minors, or a combination of such passengers and minors, which may be carried by the operator of a large commercial air transport aeroplane, is limited to one per unit of 20 passenger capacity or part thereof to a maximum of 10 such passengers or minors (emphasis added).

Description of how the foreign law applies and how it precludes compliance with Part 382: Under Part 382, air carriers "must not limit the number of passengers with a disability who travel on a flight." 14 C.F.R. § 382.17. However, because of the nondiscretionary obligation set forth in SACAR 121.07.16(1), SAA must not carry more than 10 passengers with disabilities on a flight. SAA cannot comply with § 382.17 without running afoul of the mandatory limit imposed by SACAR 121.07.16(1).

**2. Service Animals**

Provision of Part 382 involved: 14 C.F.R. § 382.117

Copy of the foreign law involved: SAA Operations Manual 9.2.2.7.4 —

**Cabin**

Live animals (other than guide dogs) are not permitted to be carried in the Cabin or Flight Deck on any SAA revenue flight, due to health and safety regulations.

Description of how the foreign law applies and how it precludes compliance with Part 382:  
Under Part 382, an air carrier must permit service animals, including emotional support or psychiatric service animals, to accompany a passenger with a disability. See 14 C.F.R. § 382.117. However, pursuant to South African health and safety regulations, SAA is prohibited from carrying live animals, other than guide dogs for blind or deaf passengers, in the passenger cabin. Because of the legal prohibition set forth in these South African regulations and implemented through SAA's Operations Manual, SAA cannot comply with § 382.117(a) with respect to service animals other than guide dogs that accompany blind or deaf passengers.

### **3. Safety Assistants**

Provision of Part 382 involved: 14 C.F.R. § 382.29(a)

Copy of the foreign law involved: SACAR 121.07.16(2)-(3) —

- (2) At least one able-bodied assistant shall be carried for every group of five passengers with a disability or unaccompanied minors, or a part or combination thereof, and such assistant shall be assigned with the responsibility of the safety of such passengers or minors: Provided that the passengers with a disability can assist themselves.
- (3) In addition to the provisions of sub-regulation (2), for each one passenger with a disability who cannot assist himself or herself, an able-bodied assistant shall be assigned to solely assist such passenger.

Description of how the foreign law applies and how it precludes compliance with Part 382:  
Under Part 382, air carriers "must not require that a passenger with a disability travel with another person as a condition of being provided air transportation," 14 C.F.R. § 382.29(a), except in the limited circumstances set forth in 14 C.F.R. § 382.29(b)(1)-(4). Because of the nondiscretionary obligation set forth in SACAR 121.07.16(2)-(3), SAA must carry one or more safety assistants whenever it carries passengers with disabilities (which includes circumstances beyond those set forth in § 382.29(b)(1)-(4)). As a result, SAA cannot comply with the requirements of both § 382.29(a) and SACAR 121.07.16(2)-(3).

### **4. Exit Seating**

Provision of Part 382 involved: 14 C.F.R. § 382.87

Copy of the foreign law involved: SACAR 121.07.15(2)(b) —

- (2) The operator shall ensure that –
  - \* \* \*
  - (b) a passenger with a disability is not seated in the same row or a row directly forward or aft of an emergency exit.

Description of how the foreign law applies and how it precludes compliance with Part 382: SAA requests a waiver to the extent necessary to permit it to exclude a passenger with a disability from a seat in the same row as, or in a row directly forward or aft of, an emergency exit, as required by SACAR 121.07.15(2)(b).

**5. Carriage of Passengers with Disabilities/Medical Certificates**

Provision of Part 382 involved: 14 C.F.R. § 382.29(a) and § 382.23(a)

Copy of the foreign law involved: SACAR 121.07.15(4) —

A mentally disturbed person shall not be carried in the aeroplane unless –

- (a) accompanied by an able-bodied assistant; and
- (b) a medical certificate has been issued by a medical practitioner certifying such mentally disturbed person's suitability for carriage by air, and confirming that there is no risk of violence from such person.

Description of how the foreign law applies and how it precludes compliance with Part 382: Under Part 382, an air carrier may require a passenger with a disability to travel with a safety assistant as a condition of being provided air transportation only in four, limited circumstances. *See* 14 C.F.R. § 382.29(b)(1)-(4). Because of the nondiscretionary obligation set forth in SACAR 121.07.15(4)(a), SAA must also require a passenger with a mental disability as described above to travel with a safety assistant. SAA cannot comply with the prohibition in § 382.29(a) in cases where SACAR 121.07.15(4) requires a safety assistant.

Also, Part 382 prohibits an air carrier from requiring a passenger with a disability to have a medical certificate as a condition of being provided transportation, *see* 14 C.F.R. § 382.23, except as permitted in the circumstances set forth in § 382.23(b)(1). SACAR 121.07.15(4)(b), however, prohibits SAA from carrying a passenger with a mental disability as described therein unless the passenger has a medical certificate that meets the requirements of that section. In order to comply with the requirement of SACAR 121.07.15(4)(b), SAA must require a medical certificate in certain circumstances beyond those set forth in § 382.23(b)(1).

**6. Individual Safety Briefings**

Provision of Part 382 involved: 14 C.F.R. § 382.115(b)

Copy of the foreign law involved: SACAR 121.07.15(2)(c) —

(2) The operator shall ensure that –

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- (c) individual briefings on emergency procedures are given to a passenger with a disability and his or her able-bodied assistant; appropriate to the needs of such passenger.

Description of how the foreign law applies and how it precludes compliance with Part 382:  
Under Part 382, an air carrier may offer an individual briefing to any passenger, but it may not require an individual to have such a briefing. *See* 14 C.F.R. § 382.115(b). SACAR 121.07.15(2)(c), however, imposes a nondiscretionary obligation on SAA to give all passengers with a disability (and safety assistants) individual briefings on emergency procedures. SAA cannot comply simultaneously with both § 382.115(b) and SACAR 121.07.15(2)(c).

Respectfully submitted,

SOUTH AFRICAN AIRWAYS

cc: Anita M. Mosner/Holland & Knight LLP  
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