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

Issued by the Department of Transportation
on the 2nd day of December, 2002

Application of **Aloha Island Air, Inc.** **(d/b/a Island Air, Inc.)** **Emergency Exemption from** **the Requirements of 14 CFR 382.40a**	**OST Dkt. 2002-13687** **Served December 4, 2002**

ORDER GRANTING EMERGENCY EXEMPTION

By this order, we grant Aloha Island Air, Inc., d/b/a Island Air, Inc., ("Island"), a commuter air carrier, a limited emergency exemption from the requirements of 14 CFR 382.40a from December 4, 2002, through February 1, 2003. The cited provision requires that air carriers have in place mechanical lifts for assisting in the embarkation of disabled passengers at airports which lack level-entry loading bridges or mobile lounges. The provision applies to points enplaning at least 10,000 passengers a year which are served by aircraft of more than 30 seats and affects a number of points served by Island.

Although not specifically requested, we are also granting an exemption to the State of Hawaii from the requirements of 49 CFR 27.72. The State, as the operator of the airports which are the subject of the carrier's request, has joint responsibility with the carrier for implementing the boarding assistance requirement at issue here. Since the State of Hawaii's Department of Transportation filed comments in support of the carrier's application, we will consider the carrier's and State's filings as a joint request for relief from 14 CFR 382.40a and 49 CFR 27.72.

Background

In an application filed October 25, 2002, Island requested that the mechanical lift requirement, which currently becomes effective December 4, be deferred with respect to the carrier's operations at five airports in Hawaii for a period of approximately two

months. In support of its application, the carrier states that additional time to implement the rule is needed in order to transport the lifts to Honolulu, Kahului, Kapalua, Lanai, and Molokai, the five airports subject to the request. The mechanical lifts, the carrier states, have been ordered and were scheduled for transportation by ocean freight in early October 2002. The recent extended labor dispute affecting West Coast ports, however, caused delays in the shipping date. Further, increasing the shipping time, the mechanical lifts must travel via barge from Honolulu, Oahu to reach the Kahului, Kapalua, Lanai, and Molokai airports. Given the size of the mechanical lifts, Island cannot transport them on its aircraft.

Island also asserts that the number of estimated passenger enplanements at the affected airports during December 2002 and January 2003 should be small. Specifically, during December 2002 and January 2003 the number of enplanements at Honolulu, Kahului, Kapalua, Lanai, and Molokai airports are expected to be 26,719, 3,538, 7,315, 8,027, and 14,612, respectively. The percentage of these passengers requesting mechanical lifts should be very small. Island also states that until it receives the mechanical lifts it will ensure that any disabled travelers at the five airports affected will be accommodated in a dignified, safe manner otherwise consistent with the requirements of 14 CFR Part 382.

The State of Hawaii has filed comments in support of the carrier's application. According to the State of Hawaii's Department of Transportation, it has negotiated and entered into an agreement with Island allocating the responsibility of regulatory compliance on this issue. As such, it urges the granting of the temporary exemption.

Decision

Upon review of the carrier's application, we have decided to grant Island's request for an emergency exemption from 14 CFR 382.40a. In reaching this decision, we note that the carrier already had taken steps that would have resulted in compliance with the lift requirement, and only due to circumstances that were unforeseeable and beyond its control is this exemption necessary. We further note that the number of passengers affected by the delayed compliance appears to be small. This small number of enplanements by disabled air travelers will limit the number of assistance requests made during the two months in which the exemption will be effective. Moreover, the carrier has assured us that it will provide dignified, safe boarding of all such passengers. On these bases, we find that granting the requested emergency exemption from the provision requiring the availability of mechanical lifts at the Honolulu, Kahului, Kapalua, Lanai, and Molokai airports is consistent with the public interest.

As the operator of the airports involved, the State of Hawaii is subject to the requirements of 49 CFR Part 27, which applies the mandate of non-discrimination toward disabled persons to recipients of federal funds under section 504 of the

Rehabilitation Act of 1973 (29 U.S.C. 794). Pursuant to 49 CFR 27.72 and 14 CFR 382.40a, air carriers and airport operators are jointly responsible for compliance with the boarding assistance requirements, including the provision of mechanical lifts. In view of the State of Hawaii's support of the carrier's application, we will consider the carrier's application as requesting similar relief for the airport operator and will grant the State of Hawaii an exemption from the requirements of 49 CFR 27.72, to the extent that it obligates the State to provide mechanical lifts at the Honolulu, Kahului, Kapalua, Lanai, and Molokai airports, for the same period stated in the carrier's application.

ACCORDINGLY, acting under the authority of 49 CFR 5.13,

1. Aloha Island Air, Inc., d/b/a Island Air, Inc., is granted an exemption from the requirement of 14 CFR 382.40a that it have in place mechanical lifts to assist in boarding disabled passengers at the Honolulu, Kahului, Kapalua, Lanai, and Molokai airports for the period from December 4, 2002, to February 1, 2003;

2. The Hawaii Department of Transportation, as the operator of airports at Honolulu, Kahului, Kapalua, Lanai, and Molokai, is granted an exemption from 49 CFR 27.72 to the extent that it requires that the airport operator have in place mechanical lifts to assist in boarding disabled passengers at those locations for the period from December 4, 2002, through February 1, 2003; and

3. A copy of this order will be served on Aloha Island Air, Inc., and the Hawaii Department of Transportation.

The action in this order is effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

NORMAN Y. MINETA
SECRETARY

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