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 **Alaska Airlines, Inc.** **Emergency Exemption from the Requirements of 14 CFR 382.40a**	**OST Dkt. 2002-13640** **Served December 4, 2002**

ORDER GRANTING EMERGENCY EXEMPTION

Summary

By this order, we grant Alaska Airlines, Inc., (Alaska), a certificated air carrier, a limited emergency exemption from the requirements of 14 CFR 382.40a from December 4, 2002, through June 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 Alaska.

Although not specifically requested, we are also granting an exemption to the State of Alaska 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 Alaska'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 21, 2002, pursuant to 14 CFR 382.311, Alaska requested that the mechanical lift requirement, which currently becomes effective December 4, be deferred with respect to the carrier's operations at three small airports in Alaska for a period of approximately six 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 Barrow, Dillingham, and King Salmon, the three airports subject to the request. The mechanical lifts, the carrier states, have been purchased and were scheduled to be transported by barge to the three airports in September 2002. The recent extended labor dispute affecting West Coast ports, however, caused delays in the shipping date. At this time the three airport locations are icebound and are no longer accessible by water. The only other feasible means of transporting the lifts is by air, which would require the chartering of large cargo aircraft at significant expense. Alaska estimates that, due to the seasonal nature of traffic at the airports at issue, monthly assistance requests will be quite small, ranging from one to 10 disabled passengers at each airport. Alaska states that until it receives the lifts it will ensure that any disabled travelers at the three airports affected are accommodated in a dignified, safe manner otherwise consistent with the requirements of Part 382.

The State of Alaska has filed comments in support of the carrier's application. Under an agreement between Alaska and the Alaska Department of Transportation, state funds were to defray the cost of acquiring and delivering the lifts. The State of Alaska points out that transporting the lifts by air to the three remote sites exceeds the budget allocated by the state for their transport to the airports. The State, therefore, urges grant of the temporary exemption.

Decision

Upon review of the carrier's application, we have decided to grant Alaska'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 the financial burden on the carrier and the state and agree that the cost of transporting the required lifts by air is exorbitant in view of the minimal traffic at the three locations involved and the limited duration of the requested deferral. On this basis, we find that granting the requested emergency exemption from the provision requiring the availability of mechanical lifts at the Barrow, Dillingham, and King Salmon airports is consistent with the public interest.

As the operator of the airports involved, the State of Alaska 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 Alaska'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 Alaska an exemption from the requirements 49 CFR 27.72, to the extent that it obligates the State to provide mechanical lifts at the Barrow, Dillingham and King Salmon airports, for the same period stated in the carrier's application.

ACCORDINGLY, acting under the authority of 49 CFR 5.13,

1. We grant Alaska Airlines, Inc., 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 Barrow, Dillingham and King Salmon, Alaska, airports for the period from December 4, 2002, through June 1, 2003; and

2. We grant the Department of Transportation of the State of Alaska, as the operator of the airports at Barrow, Dillingham and King Salmon, 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 June 1, 2003; and

3. We will serve a copy of this order on Alaska Airlines, Inc., and the Alaska State 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

(SEAL)

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