



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

Issued by the Department of Transportation
on the 21st day of February, 2006

Application of

Aloha Airlines, Inc.

**Exemption from
the Requirements of 14 CFR 382.21(a)(2)**

OST Dkt. 2004 - 19190

Served: February 21, 2006

ORDER DENYING EXEMPTION

This matter is before the Department of Transportation (DOT) on a petition for an exemption from 14 CFR 382.21(a)(2) filed by Aloha Airlines, Inc., (Aloha). Additionally, Hawaiian Airlines, Inc. (Hawaiian) has filed comments on this petition and requests similar exemptions from 14 CFR 382.21(a)(2) be granted to all other carriers to the extent that DOT grants any exemption from its regulatory requirements to Aloha. For the reasons discussed below, Aloha's petition is denied.

Background

On September 9, 2004, Aloha filed a petition for an exemption from section 382.21(a)(2) for its Boeing 737-700 aircraft used in 180 minute ETOPS¹ airline service between the mainland of the United States and the Hawaiian Islands and international destinations in the Western Pacific. Section 382.21(a)(2) requires that "[a]ircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair."² The term "wheelchair" refers to a standard-size wheelchair.³

¹ ETOPS refers to extended-range overwater operations with twin engine aircraft.

² Section 382.21(a) explains that this requirement applies to "new aircraft operated under 14 CFR Part 121 and ordered by the carrier after April 5, 1990 or delivered to the carrier after April 5, 1992" (hereinafter referred to as "new" aircraft).

³ The minimum dimensions for a standard-size wheelchair, when folded, are as follows: 13 inches wide by 36 inches high by 42 inches long. *See, e.g., Southwest Airlines*, Order No. 2003-8-30 (OST Docket 2003-14194), 2003 WL 23097390 (D.O.T.), *AirTran Airways*, Order No. 2003-10-11 (OST Docket 2003-14194), 2003 WL 23097396 (D.O.T.).

In support of its petition, Aloha states that the cost of accommodating a “standard” size wheelchair in the cabin of its aircraft, as required by DOT,⁴ would pose an undue burden and fundamentally alter the nature of Aloha’s commercial aviation service, due to the size and nature of the current interior arrangement of Aloha’s aircraft. Primarily, the carrier requests an exemption from 14 CFR 382.21(a)(2) based on its belief that the “standard” dimensions for a folding wheelchair used by DOT are outdated. Aloha asserts that DOT should adopt wheelchair specifications provided to Aloha by the American National Standards Institute (ANSI) and the Rehabilitation Engineering Society of North America (RESNA) as the dimensions for a standard size wheelchair. The ANSI/RESNA dimensions for a wheelchair appear to be based on the wheelchair’s foot rests and riggings being removed. According to Aloha, using the dimensions provided by ANSI/RESNA would allow the carrier to store a passenger’s folding wheelchair in its modified closet space, while at the same time meeting the requirement of 14 CFR 382.21(a)(2). As further support for its position that the dimensions required by DOT for a standard-size wheelchair are outdated, Aloha asserts that ANSI/RESNA standards are being adopted by both industry and certain Federal organizations, such as the Veterans Administration (VA) and the Food and Drug Administration (FDA).

Additionally, according to Aloha, there are many benefits that could be derived from DOT granting its exemption request including: (1) increasing its ability to accommodate a greater range of “folding” wheelchairs; (2) relieving the constraints imposed by certain FAA regulations regarding in-cabin equipment required of Boeing 737-700 carriers operating between mainland and off shore destinations; (3) minimizing crew training requirements for complying with section 382.21(a)(2) because training on securing a passenger’s standard-size folding wheelchair across two or three seats would no longer be needed; (4) reducing air fares by allowing seats “blocked” for wheelchair stowage to be used for additional passengers; and (5) allowing quick retrieval of the wheelchair as it would be stored in a closet near the aircraft door instead of in the last row of seats.

On October 7, 2004, Hawaiian provided comments to DOT pointing out that, in spite of the economic cost to its inter-island and trans-Pacific operations, Hawaiian has taken the necessary steps to ensure that its entire fleet of “new” aircraft has the capability of storing at least one passenger’s folding wheelchair in the cabin as required by section 382.21(a)(2). Hawaiian states that, if Aloha is granted an exemption from the in-cabin stowage requirements, other carriers should be granted similar exemptions, and DOT should take such a determination into consideration in all outstanding enforcement investigations as they relate to onboard stowage of a passenger’s folding wheelchair.

On December 2, 2004, at Aloha’s request, DOT met with the carrier to discuss its petition for an exemption from the in-cabin stowage requirements in section 382.21(a)(2). At that meeting, and in a subsequent letter, Aloha provided DOT with additional reasons as to

⁴ DOT enforcement policy requires that carriers comply with section 382.21(a)(2) by: (1) establishing sufficient space (e.g. closet space) for the stowage of one passenger’s standard-size folding wheelchair; or (2) securing a passenger’s standard-size folding wheelchair across two or three seats using a strap kit or other similar technique as approved by the FAA. See, e.g., Frontier Airlines, Order No. 2003-11-5 (OST Docket 2003-14194), 2003 WL 23097398 (D.O.T.), America West Airlines, Order No. 2003-8-29 (OST Docket 2003-14194), 2003 WL 23097389 (D.O.T.).

why it believes DOT should grant its exemption request. Aloha contends that its situation is unique because Aloha is the only U.S. air carrier using Boeing 737-700 aircraft in a 180 minute ETOPS operation between Hawaii and North America, and the operation requires additional fuel and equipment to be loaded on the aircraft. Aloha also states that closets large enough for onboard stowage of a passenger's folding wheelchair of the size required by DOT are not available as an option on this aircraft.

Decision

After carefully taking into account all the information available to us at this time, we find that inadequate justification exists for granting Aloha's request for an exemption. There are two methods for obtaining relief from DOT regulations. Any person affected by a regulation may petition for an exemption from an existing rule or petition for a rulemaking to change an existing rule. Under both of these approaches, the petitioner must demonstrate that the proposed action would be in the public interest. At this juncture, we are not convinced that it would be in the public interest to grant Aloha an exemption from section 382.21(a)(2) on the basis that it is allegedly the only U.S. air carrier using Boeing 737-700 aircraft in a 180 minute ETOPS operation between Hawaii and North America. We are also not persuaded by Aloha's argument that it should be granted an exemption based on its assertion that closets designed for onboard stowage of a passenger's folding wheelchair are not available as an option on the Boeing 737-700 aircraft, since carriers can also comply with section 382.21(a)(2) by securing a passenger's standard-size folding wheelchair across two or three seats using a strap kit approved by the FAA.⁵

Moreover, the dimensions that Aloha would like for DOT to adopt as the dimensions for a standard size wheelchair are based on the wheelchair's footrests and riggings being removed. Under section 382.21(a)(2), which requires priority space in the cabin for stowage of at least one folding wheelchair, the term folding refers to the accordion-like movement of a wheelchair, where the two sides of the frame are brought together. We have, to date, not considered the term "folding" to involve disassembly of the wheelchair, including the removal of the large or small wheels of the wheelchair.⁶ Removing parts from wheelchairs in transit can result in their loss with attendant hardship for the disabled travelers.

Further, an exemption request is generally not appropriate where the petitioner is seeking a new or different standard to apply to it to situations that are being faced by the entire

⁵ On October 24, 2005, the Department issued a consent cease and desist order against Aloha for failing to provide a priority space to stow one passenger's standard-size folding wheelchair in the passenger cabin of its new Boeing 737-700 aircraft with at least 100 seats in violation of section 382.21(a)(2). Aloha has since come into compliance with section 382.21(a)(2) by implementing an FAA-approved cabin stowage method by which it stows one passenger's standard-size folding wheelchair on top of the last row of passenger seats when requested by a passenger with a disability. See, Aloha Airlines, Order No. 2005-10-25 (OST Docket 2005-20077).

⁶ See, e.g., AirTran Airways, Order No. 2003-10-11 (OST Docket 2003-14194), 2003 WL 23097396 (D.O.T.) (stating that the term folding does not anticipate disassembly).

industry. Here, Aloha is seeking an exemption from section 382.21(a)(2) primarily because it believes the “standard” dimensions for a folding wheelchair used by DOT are outdated. Granting Aloha’s exemption request would place Aloha in a preferred regulatory position vis-a-vis other carriers, which are required to have designated in-cabin priority space in new aircraft for the stowage of a standard-size folding wheelchair.⁷ We are also not persuaded by Aloha’s argument for granting relief for the industry as a whole. An exemption is not the appropriate vehicle to establish a new or different industry standard and the issues raised by Aloha and Hawaiian are better addressed by general rulemaking rather than by exemption.

Indeed, DOT recently issued a Notice of Proposed Rulemaking (NPRM) proposing to revise its rule requiring nondiscrimination on the basis of disability in air travel. *See*, 69 FR 64364. This NPRM, among other things, addresses the issues raised by Aloha in its exemption request by seeking comments as to whether the dimensions for a passenger’s folding wheelchair that have been used in DOT enforcement actions are appropriate. To the extent comments on the relevant provision were received, they will be considered in the rulemaking.

On this basis, we find that granting the requested exemption from the provision requiring the onboard stowage of wheelchairs is not in the public interest, and we deny Aloha’s request for an exemption from 14 CFR 382.21(a)(2).

ACCORDINGLY, acting under the authority of 49 CFR 5.13,

1. Aloha Airlines, Inc., is denied an exemption from the requirement of 14 CFR 382.21(a)(2) as discussed above; and
2. A copy of this order will be served on Aloha Airlines, Inc.

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)

An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov>

⁷ Other carriers have recently complied with section 382.21(a)(2), at considerable cost. *See, e.g., ATA Airlines*, Order No. 2004-4-22 (OST Docket 2004-16943), 2004 WL 963909 (D.O.T.), *AirTran Airways*, Order No. 2003-10-11 (OST Docket 2003-14194), 2003 WL 23097396 (D.O.T.).