

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of)
)
TALOFA AIRWAYS LIMITED)
)
for renewal of exemption pursuant to)
49 U.S.C. § 40109(g))
(Pago Pago – Manu'a Islands))
)

Docket No. DOT-OST-2020-0177

APPLICATION FOR RENEWAL OF EXEMPTION

Communications with respect to this document should be addressed to:

Jonathon H. Foglia
Barbara M. Marrin
KMA Zuckert LLC
888 17th Street, NW, Suite 700
Washington, D.C. 20006
Phone: +1-202-298-8660
Email: jfoglia@kmazuckert.com
bmarrin@kmazuckert.com

Counsel for Talofa Airways Limited

November 10, 2020

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of)	
)	
TALOFA AIRWAYS LIMITED)	
)	Docket No. DOT-OST-2020-0177
for renewal of exemption pursuant to)	
49 U.S.C. § 40109(g))	
(Pago Pago – Manu’a Islands))	
)	

APPLICATION FOR RENEWAL OF EXEMPTION

Talofa Airways Limited (“Talofa Airways”), a foreign air carrier of the Independent State of Samoa, hereby applies for a renewal of the exemption granted by the Department on October 19, 2020¹ permitting Talofa Airways to transport persons, property and mail between Pago Pago, American Samoa, and the Manu’a Islands. The initial exemption was granted under 49 U.S.C. § 40109(g) for a period of 30 days and expires on November 24, 2020. Talofa Airways requests that the exemption be renewed for a period of 180 days as provided for in the FAA Reauthorization Act of 2018 (P.L. 115-254), which amended 49 U.S.C. § 40109(g) to allow the Department to renew applications for emergency cabotage between the islands of Tutuila (where Pago Pago is located) and the Manu’a Islands for a period of not more than 180 days.² Grant of this renewed exemption authority continues to

¹ See Notice of Action Taken in Docket DOT-OST-2020-0177 (issued Oct. 19, 2020).

² As explained more fully herein, Talofa Airways has not yet initiated the service which is the subject of this application due to a delay in securing required local approvals from the American Samoa Government. To the extent the Department may interpret § 40109(g) as limiting 180-day extensions to service actually operated during the time period covered by the exemption for which the extension is sought, Talofa Airways does not object to the Department limiting the requested extension to another 30 days, with Talofa Airways thereafter applying to extend its exemption for a longer period (consistent with the statute) once it initiates air service in the subject market. Should Talofa Airways initiate service during the pendency of this application, it will promptly

be in the public interest, meets the applicable statutory criteria and is consistent with Department precedent.³

Safe, efficient travel between Pago Pago and the Manu'a Islands remains critical for the people of American Samoa. The people of the Manu'a Islands use the aviation link between Tutuila and the Manu'a Islands to access critical services including healthcare. Allowing Talofa Airways to supplement the service already provided by Samoa Airways will give residents of American Samoa continued options to access these critical services.

Although Talofa Airways had planned to initiate service at the end of October, it has not yet been able to base aircraft and crew in Pago Pago due to restrictions in place from the American Samoa Government related to the COVID-19 public health emergency. Basing aircraft and crew in Pago Pago is necessary for Talofa Airways to begin providing this important air service, and Talofa Airways is ready to do so promptly upon receipt of all necessary approvals from the American Samoa Government. By renewing this exemption for a period of 180 days, the Department will allow Talofa Airways to be in a position to rapidly initiate and maintain in place for the statutorily authorized period its planned service of up to two daily flights, Monday through Friday, utilizing its 9-seat Twin Commander 690B aircraft. The relief requested herein also will allow Talofa Airways to expand service to meet the needs of the shipping and traveling public, should conditions warrant.

The conditions in American Samoa that led the Department to determine that this exemption is in the public interest continue to exist. No U.S. air carrier provides service in the

notify the Department.

³ See Notice of Action Taken in Docket DOT-OST-2014-0144 (issued Aug. 4, 2020).

subject market. As noted by the Department, Inter-Island Airways, the last U.S. air carrier to provide this service, had its commuter authorization revoked in 2017. As described in Talofa Airways' initial application, the American Samoa Government is supportive of Talofa Airways' service.

In support of this application, Talofa Airways submits the following information:

1. Talofa Airways currently holds exemption authority to engage in (i) scheduled and charter foreign air transportation of persons, property and mail from points behind the Independent State of Samoa via the Independent State of Samoa and intermediate points to a point or points in the United States and beyond; and (ii) scheduled and charter foreign all-cargo air transportation between a point or points in the United States and any other point or points. The exemption authority was issued by the Department pursuant to a Notice of Action Taken in Docket DOT-OST-2019-0037 (issued Nov. 6, 2020).

2. Talofa Airways continues to be fit, willing and able to operate the service requested in this application. Despite the public health emergency, Talofa Airways serves destinations throughout the South Pacific, including Pago Pago, with scheduled flights from Apia, Independent State of Samoa, using its Twin Commander 690B aircraft.

3. Talofa Airways' proposed service schedule between Pago Pago and the Manu'a Islands will fulfill an important air transportation need and prevent undue hardship to the people of American Samoa, particularly the residents of the Manu'a Islands. Talofa Airways plans to initiate the service as proposed in its initial application - Monday through Friday service from Pago Pago to the island of Ta'u, in the Manu'a Islands, with up to two

flights on each such day using its 9-seat Twin Commander 690B aircraft and possibly adding service should conditions warrant.

4. The request for an exemption continues to meet the statutory factors for determining when an exemption is in the public interest:

- a. Because of an emergency created by unusual circumstances not arising in the normal course of business, U.S. air carriers cannot accommodate traffic in the market;
- b. All possible efforts have been made to accommodate the traffic by using the resources of U.S. air carriers;
- c. The exemption is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by U.S. air carriers; and
- d. The exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in the market is a result of the dispute.

5. The people of American Samoa are dependent on inter-island air transportation to access crucial services, including medical care. Ferry service continues to be an unreliable alternative to air transportation for residents of American Samoa for travel to or from the Manu'a Islands.

6. No U.S. air carrier operates inter-island scheduled flights between Pago Pago and the Manu'a Islands. There is no immediate prospect of any U.S. air carrier carrying such traffic on its flights.

7. The exemption is necessary to avoid unreasonable hardship for the people of American Samoa. As thoroughly established in the initial application for this exemption, the people of American Samoa are highly dependent upon reliable air transportation between Tutuila and the Manu'a Islands. In addition, the Government of American Samoa, which supports the initiation of Talofa Airways' service, uses air transportation to deliver its services to all of American Samoa.

8. The inability of U.S. air carriers to accommodate the traffic which is the subject of this application is not due to any labor dispute, and thus the grant of Talofa Airways' requested exemption will not unreasonably advantage any party to a labor dispute.

9. Talofa Airways requests this exemption for a period of 180 days beginning on the expiration of its initial exemption, November 24, 2020. Talofa Airways will accept the standard conditions which the Department has previously placed on exemptions of the type sought herein.⁴

⁴ See Notice of Action Taken in Docket DOT-OST-2014-0144 (issued August 4, 2020).

WHEREFORE, based upon the foregoing, Talofa Airways respectfully requests that it be granted (i) renewed exemption authority to transport persons, property and mail between Pago Pago and the Manu'a Islands, American Samoa, as more fully described herein, and (ii) such other or additional relief as the Department considers consistent with this application and the public interest.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Foglia", is positioned above the printed name and contact information.

Jonathon H. Foglia
Barbara M. Marrin
KMA Zuckert LLC
888 17th Street, NW, Suite 700
Washington, D.C. 20006
(202) 298-8660
jfoglia@kmazuckert.com
bmarrin@kmazuckert.com

Counsel for Talofa Airways Limited

November 10, 2020

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing application to be served this the 10th day of November, 2020, upon each of the parties below via electronic mail.

americansamoagovernment@gmail.com (Office of the Governor, American Samoa)

fiu.saelua@go.as.gov (Chief of Staff, Office of the Governor, American Samoa)

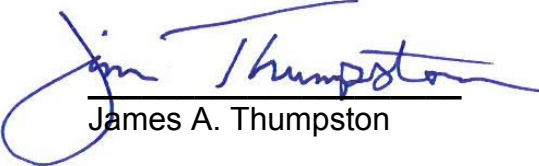
perkmann@cooley.com (Counsel to Hawaiian Airlines)

amna.arshad@freshfields.com (Counsel to United)

steve.morrissey@united.com

dan.weiss@united.com

pdoell@naca.cc



James A. Thumpston