



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

Issued by the Department of Transportation on August 10, 2004

NOTICE OF ACTION TAKEN – DOCKET OST 2004-17618

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: PALAU ROCK ISLAND AIR, INC. d/b/a PALAU MICRONESIA AIR Date Filed: April 23, 2004

Relief requested: Exemption from 49 USC section 41301 to permit the applicant, by wet lease of equipment, to conduct for a period of one year, carrying persons, property and mail: 1) scheduled services between the Republic of Palau, on the one hand, via intermediate points in the Federated States of Micronesia, to and/or from Guam and the Commonwealth of the Northern Mariana Islands, on the other hand, and beyond to points in the Federated States of Micronesia; and 2) charter operations between the Republic of Palau, on the one hand, and Guam and/or the Commonwealth of the Northern Mariana Islands, on the other hand, and other charters pursuant to 14 CFR Part 212. Together with its application, Palau Rock Island Air filed a motion for confidential treatment of certain of its financial submissions (balance sheet and forecast of operations). 1/

If renewal, date and citation of last action: New authority.

Applicant representative: John R. Mietus, Jr., 202-861-6466 DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: None.

DISPOSITION

Action: Approved.

Action date: August 10, 2004

Effective dates of authority granted: August 10, 2004, through August 10, 2005

Basis for approval: Reciprocity with the Republic of Palau.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Standard exemption conditions (attached).

Special conditions/Remarks: Palau Rock Island Air is a new carrier of Palau, proposing to initiate its U.S. operations by wet lease. We found, based on the record in this case, that the applicant is properly licensed by its homeland government, and operationally and financially qualified to undertake its proposed operations (as conditioned). The record indicates that a majority (about 74%) of the carrier's equity investment is from the Palauan Government and Palauan nationals, about 25 percent is from the Government of Yap, and about one percent is from Aloha Airlines. Further, the applicant states that it has a total of 14 directors, officers and key management personnel. Half of these individuals are citizens of Palau, three are citizens of the United States, two are citizens of the Federated States of Micronesia, one is an Australian national, and one is a citizen of Fiji. Despite the presence of certain non-Palauan interests, we found, given the highly limited nature of the operations contemplated, that there was nothing in the applicant's ownership and control that would be inimical to U.S. aviation policy or interests. Therefore, we concluded that waiver, to the extent necessary, of our standard requirement that substantial ownership and effective control of a foreign carrier rest in the hands of citizens of its homeland was warranted. 2/

1/ In our view the applicant has demonstrated good cause for favorable action on its motion and we grant it.

2/ In its application Palau Rock Island Air indicates that it plans, at a later date, to file an application for a foreign air carrier permit as a Freely Associated State Air Carrier under Subpart D of Part 211 of the Department's regulations. We will be prepared to make a determination based on the record in that to-be-filed case, of the carrier's status under that Subpart.

In the conduct of the services authorized, Palau Rock Island Air may only use aircraft wet leased from a duly authorized and properly supervised U.S. or foreign air carrier that receives requisite authority under the provisions of 14 CFR Part 212 of the Department's regulations. Also, under this order the applicant is authorized, among other things, to conduct charter operations between Palau, on the one hand, and Guam and/or the Commonwealth of the Northern Mariana Islands, on the other hand. Other U.S. charters, however, are subject to prior approval under the provisions of 14 CFR Part 212.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp*

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- 1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- 2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- 3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- 4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- 5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- 6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- 7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- 8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- 9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- 10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- 11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.