

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. 26380; Special Federal Aviation Regulation (SFAR) No. 61-1]

Restriction on Certain Flights From the United States to Iraq or Kuwait

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; amendment.

SUMMARY: This action amends the Special Federal Aviation Regulation (SFAR), which restricts the operation of certain cargo flights from the United States to the Republic of Iraq or the State of Kuwait. This amendment removes the restrictions on operations to Kuwait. Issuance of this amendment implements and is fully consistent with United Nations (UN) Security Council Resolution 686 (1991), in that it permits commercial flights into Kuwait in support of the reconstruction of that country.

DATES: *Effective date:* April 9, 1991.
Expiration date: November 9, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Hughes Rodriguez, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:**Availability of Document**

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958 (Act), as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of national security.

On August 9, 1990, the President, exercising his authority under, *inter alia*, the United Nations Participation Act, issued Executive Order 12725, which, among other things, imposed a number of transportation-related sanctions on Kuwait, which was then occupied by the military forces of Iraq (55 FR 33091, August 13, 1990). Executive Order 12725 revoked Executive Order 12723, issued on August 2, 1990, to the extent it was inconsistent with the earlier order (55 FR 31805, August 2, 1990). On August 15, 1990, the Department of Transportation (DOT) implemented these sanctions in DOT Order 90-8-36. That Order amended all certificates issued under section 401 of the Federal Aviation Act (the Act), all permits issued under section 402, and all exemptions from sections 401 and 402 of the Act to prohibit holders from selling or engaging in transportation by air to Kuwait or engaging in any transaction relating to transportation to or from Iraq.

On November 9, 1990, in response to potentially hazardous circumstances in the Persian Gulf, and to meet obligations under international law, the FAA issued temporary restrictions on cargo-carrying flights from the United States to Iraq and Kuwait (SFAR 61, 55 FR 47298, November 9, 1990). As noted in the preamble to the final rule, SFAR 61 contains an expiration date of November 9, 1991, but can be terminated sooner or extended as circumstances warrant.

On March 2, 1991, following the conclusion of Operation Desert Storm and Iraq's withdrawal from Kuwait, the UN Security Council adopted resolution 686. Paragraph 6 of Resolution 686 requests UN member states to "take all appropriate action to cooperate with the government and people of Kuwait in the reconstruction of their country." On March 8, 1991, the President sent to Congress his notice of intent to terminate the sanctions imposed on Kuwait pursuant to Executive Orders 12723 and 12725. The notice provided for a comment period which closed on March 26, 1991.

On March 7, 1991, in response to Resolution 686 and in anticipation of the removal of prohibitions on certain financial transactions contained in Executive Order 12725, the Department of the Treasury issued an amendment to the Kuwaiti Assets Control Regulations to authorize certain transactions with respect to Kuwait (56 FR 10356, March 11, 1991).

On March 21, 1991, by Order 91-3-42, the Department issued a blanket exemption from the provisions of Order 90-8-36 affecting certificates, permits and exemptions issued under title IV of

the Act. That Order also removed the condition in Kuwait Airways Corporation's exemption regarding moving its aircraft into Kuwait.

Copies of UN Resolution 686 (1991), Exec. Order Nos. 12723 and 12725, and DOT Orders 90-8-36 and 91-3-42 have been placed in the docket for this rulemaking.

Removal of Restrictions on Flights Leaving the United States for Kuwait

On the basis of the above, and after consultation with the Department of State, I find that the circumstances which originally justified the adoption of temporary restrictions on flights leaving the United States for Kuwait have changed. Specifically, landing and overflight restrictions adopted by countries situated between the United States and the Gulf area, which formerly presented a hazard to flights and persons onboard such flights, have been removed following the conclusion of Operation Desert Storm and the issuance of Resolution 686.

Although this action removes the restrictions on flights leaving the United States for Kuwait established by SFAR 61, the FAA notes that as of this date, operating conditions at Kuwait International Airport are unclear. The operations specifications of U.S. air carriers currently place certain restrictions on operations at that airport, and the amendment of SFAR 61 has no effect on these restrictions. The FAA is currently monitoring conditions at Kuwait International Airport to determine whether such restrictions can be modified to permit resumption of service. As a result, the safety of operations by U.S. carriers into Kuwait International Airport is addressed through carrier operations specifications, and the removal of the restrictions in SFAR 61 will not affect safety by permitting an otherwise unsafe flight to occur.

Accordingly, in consideration of UN Resolution 686 and the anticipated lifting of sanctions imposed by Executive Order Nos. 12723 and 12725, the FAA is amending SFAR 61 to remove restrictions on flights to Kuwait, effective immediately. This action represents a return to the status quo for domestic and foreign air carrier certificate holders. For these reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Furthermore, because this action relieves a restriction, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully

consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

The expiration date of SFAR 61-1 is November 9, 1991.

Regulatory Evaluation

This action will impose no additional burden on domestic and foreign air carrier certificate holders. Because the removal of the restriction on flights leaving the United States for Kuwait represents a return to the status quo, the costs associated with the adoption of this amendment are negligible.

The benefits associated with the adoption of this amendment include the increased revenues to air carriers providing commercial service between the United States and Kuwait. This amendment implements DOT Order 91-3-42; therefore, a further regulatory evaluation will not be conducted.

Conclusion

The FAA has determined that this action (1) is not a "major rule" under Executive Order 12291; and (2) is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Republic of Iraq, State of Kuwait.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; P.L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By removing Special Federal Aviation Regulation (SFAR) No. 61 and adding new Special Federal Aviation Regulation (SFAR) No. 61-1 in its place to read as follows:

Special Federal Aviation Regulation No. 61-1.

Restriction on Certain Cargo Flights from the United States to the Republic of Iraq.

1. *Applicability.* This rule applies to all

cargo-carrying operations in the United States.

2. *Special flight restrictions.* Except as provided in paragraph 3 of this SFAR—

(a) No person may operate an aircraft or initiate a flight carrying cargo from any point in the United States to any point in Iraq, or to any intermediate destination on a flight the ultimate destination of which is the Republic of Iraq; and

(b) No person may operate an aircraft destined to land in Iraq over the territory of the United States.

3. *Permitted operations.* This SFAR shall not prohibit the takeoff of an aircraft, the initiation of a flight, or the overflight of United States territory by an aircraft—

(a) Carrying food in humanitarian circumstances, subject to authorization by the United Nations (UN) Security Council or the Committee established by UN Resolution 661 (1990) and in accordance with UN Resolution 666 (1990);

(b) Carrying supplies intended strictly for medical purposes or solely for the United Nations Iran-Iraq Military Observer Group; or

(c) If the operator agrees to land at an airport designated by the United States Government in order to permit inspection to ensure that there is no cargo on board in violation of Resolution 661 (1990) or Resolution 670 (1990).

4. *Expiration.* This special rule expires November 9, 1991.

Issued in Washington, DC on April 9, 1991.

James B. Busey,
Administrator.

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