

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

[Docket No. 26834; Special Federal Aviation Regulation (SFAR) No. 65]

RIN 2120-AE48

## Prohibition Against Certain Flights Between the United States and Libya

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

**ACTION:** Final rule.

**SUMMARY:** This action complies with the Order of the President of the United States to prohibit the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Libya, other than takeoffs, landings, or overflights expressly approved by a United Nations (UN) special committee. This action also prohibits the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Libya. This action is taken to prevent an undue hazard to the aircraft that would be engaged in such a flight, as well as to persons involved in the flight, arising from international adherence to or enforcement of UN Security Council Resolution 748 (1992) mandating, *inter alia*, an embargo of most air traffic with Libya. Issuance of this rule implements and is fully consistent with UN Security Council Resolution 748.

**DATES:** *Effective date:* April 16, 1992.  
*Expiration date:* April 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia R. Lane, 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 that best promotes safety and fulfills the requirements of national security. In addition, section 1102(a) of the Act requires that the FAA Administrator exercise his authority consistently with any treaty obligations of the United States. The United States is a party to the Charter of the United Nations (Charter) (59 Stat. 1031; 3 Bevans 1153). Articles 25 and 48 of that Charter require that Members of the United Nations carry out the decisions of the Security Council. Article 25 states: "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Additionally, Article 48(1) states, in pertinent part: "[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations \* \* \*"

On December 21, 1988, an explosion destroyed Pan American Airlines (Pan Am) Flight 103 over Lockerbie, Scotland, killing 270 persons. The cause of the explosion was determined to be the detonation of a deliberately placed explosive device in the cargo hold of the aircraft. Investigations to find the persons responsible for the bombing were initiated immediately by, among others, the governments of the United States and the United Kingdom of Great Britain and Northern Ireland. In 1991, on the basis of these investigations, the two governments implicated officials of the government of Libya in the planning and execution of the bombing of Pan Am Flight 103. Libya has refused to cooperate in the investigation of the bombing and has furthermore refused extradition requests by the United States and the United Kingdom for two Libyan intelligence agents suspected of carrying out the attack. As a result of Libya's refusal to cooperate in this investigation and the investigation of another attack against a French airliner, the UN Security Council, on January 21, 1992, adopted Resolution 731. Resolution 731 deplors the lack of cooperation on behalf of the Libyan Government and urges Libya to respond to the requests of the other governments.

On March 31, 1992, acting under chapter VII of the UN Charter, the Security Council adopted Resolution 748

mandating an embargo of certain air traffic with Libya. Paragraph 4 of Resolution 748 requires all states to deny permission to any aircraft to take off from, land in, or overfly their territory if the aircraft is destined to land in or has taken off from Libyan territory. An exception is made for flights that have been approved on the grounds of urgent humanitarian need by a special Security Council committee established by paragraph 9 of the Resolution.

The United States Government fully expects that member states of the UN will take action to comply with UN Security Council Resolution 748. Such action would have the effect of denying overflight rights to aircraft travelling to or from Libyan territory. As a practical matter, most aircraft in common use do not travel from United States territory to Libya without an intermediate stop in a UN member state or passage through the airspace of a member state. Because such a routing would be affected by national overflight restrictions adopted pursuant to Resolution 748, the crew of a flight leaving U.S. territory for Libya could not be certain of a safe intermediate stopover point within the range of the aircraft. Nor could the crew be certain of the availability of alternate airports if weather or other conditions require the diversion or unplanned landing of the aircraft. As a result, the FAA believes that a flight from the United States to Libya during the effective period of Resolution 748 could not be planned with assurances that the aircraft would have safe primary and alternate landing points within the fuel range of the aircraft. There is substantial risk, therefore, that such a flight could not be conducted safely.

The United States Government has taken several earlier actions to restrict air transportation between the United States and Libya. On January 7, 1986, the President issued Executive Order 12543, which prohibits "[a]ny transaction by a United States person relating to transportation to or from Libya \* \* \* or the sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Libya."

On January 30, 1986, the Secretary of Transportation issued Order 86-2-23, which implements Executive Order 12543 by amending all Department of Transportation (DOT) certificates issued under section 401 of the Federal Aviation Act, all permits issued under section 402 of the Act, and all exemptions from sections 401 and 402 accordingly.



In response to UN Resolution 748, the President issued Executive Order 12801 on April 15, 1992, which prohibits:

the granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or a continuation of that flight, is destined to land in or has taken off from the territory of Libya.

Executive Order 12801 cited the President's authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, section 1114 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. app. 1514, section 301 of the United States Code, 3 U.S.C. 301, and section 5 of the United Nations Participation Act of 1945, as amended, 22 U.S.C. 287(c). This Act provides that:

Notwithstanding the provisions of any other law, whenever the United States is called upon by the [UN] Security Council to apply measures which said Council has decided . . . to be employed to give effect to its decisions under [the United Nations] Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, or regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations of rail, sea, [and] air . . . between any foreign country or to any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof. . . .

Copies of the January 21 and March 31 UN Resolutions, Executive Orders 12543 and 12801, and DOT Order 86-2-23 have been placed in the docket for this rulemaking.

#### Temporary Restrictions on Flights Between the United States and Libya

On the basis of the above, and in support of the Executive Order of the President of the United States, I find that immediate action by the FAA is required to implement the Executive Order. Furthermore, after consultation with the Department of State, I find that the current circumstances, including the closure of airspace and landing sites in countries situated between the United States and Libya to aircraft destined to land in, or having taken off from, Libya, represent a hazard to any aircraft used for that purpose as well as to persons on board that aircraft. Accordingly, these circumstances further warrant immediate action by the FAA to maintain the safety of flight and meet obligations under international law. For these reasons, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, 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 rule contains an expiration date of April 16, 1993, but may be terminated sooner or extended if circumstances so warrant.

#### Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and Libya. However, revenue flights to Libya are currently prohibited by DOT Order 86-2-23. Accordingly, this action will impose no additional burden on those operators.

Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and most likely would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory Policies and Procedures are minimal, and a further regulatory evaluation will not be conducted.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96511), there are no requirements for information collection associated with this rule.

#### International Trade Impact Assessment

DOT Order 82-2-23 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Libya. This SFAR does not impose any restrictions on commercial carriers beyond those imposed by the DOT Order. Therefore, the SFAR will not create a competitive advantage or disadvantage for foreign companies in the sale of aviation products or services in the United States, nor for domestic firms in the sale of aviation products or services in foreign countries.

#### Federalism Determination

The amendment set forth herein will 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.

#### Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Libya are already prohibited by DOT Order 86-2-23, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulation Flexibility Act.

#### List of Subjects in 14 CFR Part 91

Aircraft, Aviation safety, Libya.

#### 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. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 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, 35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Special Federal Aviation Regulation (SFAR) No. 65 is added to read as follows:

#### Special Federal Aviation Regulation No. 65—Prohibition Against Certain Flights Between the United States and Libya

1. *Applicability.* Except as provided in paragraphs 3 and 4 of this Special Federal Aviation Regulation, this rule applies to all aircraft operations originating from, destined to land in, or overflying the territory of the United States.

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

(a) no person shall operate an aircraft or initiate a flight from any point in the United States to any point in Libya, or to any intermediate destination on a flight the ultimate destination of which is in Libya or which includes a landing at any point in Libya in its intended itinerary;

(b) no person shall operate an aircraft to any point in the United States from any point in Libya, or from any intermediate point of departure on a flight the origin of which is in Libya, or which includes a departure from any point in Libya in its intended itinerary; and

(c) no person shall operate an aircraft over the territory of the United States if that aircraft's flight itinerary includes any landing at or departure from any point in Libya.



**3. Permitted operations.** This SFAR shall not prohibit the takeoff or landing of an aircraft, the initiation of a flight, or the overflight of United States territory by an aircraft authorized to conduct such operations by the United States Government in consultation with the United Nations Security Council Committee established by UN Resolution 748 (1992).

**4. Emergency situations.** In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Any deviation required by an emergency shall be reported to the Air Traffic Control Facility having jurisdiction as soon as possible.

**5. Expiration.** This Special Federal Aviation Regulation expires April 16, 1993 Issued in Washington, DC, on April 16, 1992.

**Barry Lambert Harris,**  
*Acting Administrator.*

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