

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 91****[Docket No. 26380; Special Federal Aviation Regulation (SFAR) No. 61-2]****RIN 2120-AF87****Prohibition Against Certain Flights Between the United States and Iraq****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule replaces the flight prohibition implemented by the FAA in SFAR 61, which was made effective on November 9, 1990, and expired on November 9, 1991. This action prohibits 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 Iraq. This action further 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 Iraq. Exceptions are made for particular flights approved by the United States Government in consultation with the UN Security Council committee established under Security Council Resolutions 661, 666 and 670 (1990) and for certain emergency operations. This action is necessary to implement Executive Orders 12722 (1990) and 12724 (1990) and Security Council Resolutions 661, 666, and 670 mandating an embargo of air traffic with Iraq.

**DATES:** SFAR 61-2 is effective on September 21, 1995. SFAR 61-2 shall remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey A. Klang, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; telephone: 202-267-3515.

**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, Public Inquiry Center, APA-230, 800 Independence Avenue S.W., 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 the 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 and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. In addition, 49 U.S.C. 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under an international agreement.

One such international agreement is the Charter of the United Nations (the Charter) (59 Stat. 1031; 3 Bevans 1153 (1945)). Under Article 25 of the Charter, "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Article 48(1) of the Charter further provides, in pertinent part, that "[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 September 25, 1990, acting under Chapter VII of the Charter, the Security Council adopted Resolution 670, mandating an embargo of certain air traffic with Iraq. Paragraph 3 of Resolution 670 requires all states to deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq other than food provided under humanitarian circumstances, or supplies intended strictly for medical purposes, or solely for the UN Iran-Iraq Military Observer Group (UNIMOG). Paragraph 4 imposes an obligation on all States to deny permission to any aircraft destined to land in Iraq to overfly its territory unless:

(a) The aircraft lands at an airfield designated by that State outside of Iraq in order to permit its inspection to ensure that there is no cargo aboard in violation of Resolution 661 or 670;

(b) The particular flight has been approved by the sanctions committee established by Resolution 661; or

(c) The flight is certified by the UN as solely for the purposes of UNIMOG.

The United States Government has taken several actions to restrict air transportation between the United States and Iraq. On August 2, 1990, the President issued Executive Order 12722

(55 FR 31803, August 3, 1990), which prohibits "any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel of Iraqi registration; or the sale in the United States . . . of any transportation by air which includes any stop in Iraq;" and defines "United States person" so as to include any person within the United States.

On August 6, 1990, the Secretary of Transportation implemented Executive Order 12722 by issuing Order 90-8-16, which amended 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 to prohibit the holder from selling or engaging in transportation by air to Iraq, or engaging in any transportation to or from Iraq.

On August 8, 1990, the President, exercising his authority under the United Nations Participation Act of 1945, as amended, issued Executive Order No. 12724 (55 FR 33089, August 13, 1990), pertaining to Iraq. This order contains additional prohibitions on air transportation to Iraq.

In support of Executive Orders 12722 and 12724, the FAA adopted SFAR 61 on November 9, 1990. SFAR 61 prohibited 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 Iraq. SFAR 61 also prohibited the landing in, takeoff from, or overflight of the territory of the United States by an aircraft on a flight from or to any intermediate destination, if the flight is destined to land in or take off from Iraq. SFAR 61 expired on November 9, 1991.

Copies of UN Security Council Resolutions 660, 661 and 670, Executive Orders 12722 and 12724, and DOT Order 90-8-16, all of which remain in effect, have been placed in the docket for this rulemaking.

**Prohibition Against Certain Flights Between the United States and Iraq**

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 Executive Orders 12722 and 12724 and to meet the obligations of the United States under international law as evidenced by U.N. Security Council Resolutions No. 660, 661 and 670. Accordingly, I am ordering a prohibition on the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a

flight that has Iraq as its origin or ultimate destination. Operations approved by the United States Government in consultation with the UN Security Council Committee established under Resolution 661 and certain emergency operations shall be excepted from this prohibition. For the reasons stated above, I also find that notice and public comment under 5 U.S.C. 533(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication. I also find that this action is fully consistent with my obligations under section 49 U.S.C. 40105(b)(1)(A) to act consistently with the obligations of the United States under international agreements.

The rule contains no expiration date, and will be terminated as soon as the underlying legal requirements leading to its adoption are removed.

#### Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and Iraq. However, revenue flights to Iraq are currently prohibited by DOT Order 90-8-16. Accordingly, this action will impose no additional burden on those operators.

#### Paperwork Reduction Act

The rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

#### International Trade Impact Assessment

DOT Order 90-8-16 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Iraq. 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 (52 FR 4168; October 30, 1987), 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 "significant regulatory action" under Executive Order 12866. This action is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Iraq are already prohibited by DOT Order 90-8-16, 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 Regulatory Flexibility Act.

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

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Freight, Iraq.

#### 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. 61-2 is added to read as follows:

Special Federal Aviation Regulation No. 61-2—Prohibition Against Certain Flights Between the United States and Iraq

1. Applicability. This Special Federal Aviation Regulation (SFAR) No. 61-2 applies to all aircraft operations originating from,

landing in, or overflying the territory of the United States.

2. Special flight restrictions. Except as provided in paragraphs 3 and 4 of this SFAR No. 61-2—

(a) No person shall operate an aircraft on a flight to any point in Iraq, or to any intermediate point on a flight where the ultimate destination is any point in Iraq or that includes a landing at any point in Iraq in its intended itinerary, from any point in the United States;

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

(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 Iraq.

3. Permitted operations. This SFAR shall not prohibit the flight operations between the United States and Iraq described in section 2 of this SFAR by an aircraft authorized to conduct such operations by the United States Government in consultation with the committee established by UN Security Council Resolution 661 (1990), and in accordance with UN Security Council Resolution 666 (1990).

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. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations or the aircraft involved in the deviation, including a description of the deviation and the reasons therefore.

5. Duration. This SFAR No. 61-2 shall remain in effect until further notice.

Issued in Washington, DC, on September 13, 1995.

David R. Hinson,  
*Administrator.*

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