Went on public display
October 5, 2004 at 2:57 pm
Will publish in part 3
of the Federal Register
on Oct 8, 2004.

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2004-19316; Special Federal Aviation Regulation (SFAR) No. 65-1]

RIN 2120-AI46

Prohibition Against Certain Flights Between the United States and Libya

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 65-1. SFAR 65-1 prohibits, with certain exceptions, 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. In addition, SFAR 65-1 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. The FAA is removing SFAR 65-1 in response to the decision by the President of the United States to revoke Executive Order 12801, which serves as the basis for SFAR 65-1. This final rule informs the public that the restrictions on flights between the United States and Libya, which are contained in SFAR 65-1, are removed.

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267-3732 or 267-8166.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity

and you have a question regarding this document, you may contact your local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at http://www.faa.gov/avr/arm/sbrefa.htm, or by e-mailing us at -AWA-SBREFA@faa.gov.

Background

The United States Government has taken several 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 implemented Executive Order 12543 by issuing Order 86-2-23, which amended all Department of Transportation (DOT) certificates issued under section 401 of the former Federal Aviation Act, all permits issued under section 402 of the Act, and all exemptions from sections 401 and 402 accordingly.

The President later issued Executive Order 12801 on April 15, 1992. Section 1 of Executive Order 12801 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 (formerly

codified at 49 U.S.C. app. 1514, now recodified at 49 U.S.C. 40106), and section 301 of Title 3, United States Code (3 U.S.C. 301).

Pursuant to Executive Order 12801, the FAA adopted SFAR 65 on April 16, 1992. SFAR 65 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 Libya. SFAR 65 also prohibited 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 is destined to land in or take off from the territory of Libya. After SFAR 65 expired on April 16, 1993, the FAA reinstated the prohibition against certain flights between the United States and Libya by issuing SFAR 65-1 (60 FR 48644). SFAR 65-1 became effective on September 20, 1995.

On September 20, 2004, the President revoked Executive Orders 12543 and 12801. With this action, the basis for the prohibitions in SFAR 65-1 no longer exists. Accordingly, the FAA is taking this action to remove the prohibitions imposed under SFAR 65-1. This action by the FAA has no effect on any other requirement or restriction concerning Libya that may have been imposed by another agency of the United States Government under that other agency's authority.

Justification for Immediate Adoption

On the basis of the above, I am ordering the removal of SFAR 65-1. Because this action lifts a prohibition on certain flight operations between the United States and Libya, I find that notice and public comment under 5 U.S.C. 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 533(d) for making this rule effective immediately upon issuance.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

If it is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it be included in the preamble and full regulatory evaluation cost benefit evaluation not be prepared.

Removing this SFAR is the result of the President's decision to withdraw the Executive Orders that served as its basis, but does not immediately allow for flight operations between the United States and Libya. Certain restrictions on these operations remain effective through other government agencies, particularly the Department of Commerce. Removal of this SFAR may eventually lead to an environment where operations could be resumed, but the removal by itself does not enable these operations. For that reason, the FAA certifies that this action will not have a significant economic impact, and the costs and benefits of the rule are considered minimal under DOT Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements into the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Removal of this SFAR is only a single step that may eventually lead to flight operations between the United States and Libya, but does not by itself provide for such operations. Consequently, the FAA certifies that the rule will not have a significant impact on a substantial number of small entities.

Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have no impact on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation)

in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This final rule does not contain such a mandate. The requirements of Title II do not apply.

List of Subjects in 14 CFR Part 91

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

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends part 91 of Title 14 of the Code of Federal Regulations 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. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

Special Federal Aviation Regulation No. 65-1 – [Removed]

2. Remove Special Federal Aviation Regulation No. 65-1 – Prohibition Against Certain Flights Between the United States and Libya from part 91.

Issued in Washington, DC, on SEP 27 2004

Marion C. Blakey

Marion C. Blakey
Administrator

Certified to be a True Copy