

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26903; Special Federal Aviation Regulation (SFAR) No. 66-2]

RIN 2120-AF72

Prohibition Against Certain Flights Between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule replaces the flight prohibition implemented by the FAA in SFAR 66-1, which was made effective on August 26, 1993, and expired on August 26, 1994. 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 Federal Republic of Yugoslavia (Serbia and Montenegro). 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 Serbia and Montenegro. Exceptions are made for particular flights approved by the United States Government and for certain emergency operations. This action is necessary to implement Executive Order 12810 (1992) and UN Security Council Resolution 757 (1992) mandating an embargo of air traffic with Serbia and Montenegro.

DATES: *Effective date.* The removal of SFARs 66 and the addition of SFAR 66-2 are effective May 31, 1995. *Expiration date.* SFAR 66-2 expires June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., 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 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 the Advisory Circular

No. 11-2A, which describes the application procedure.

Background

The 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)(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 decision 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 May 30, 1992, acting under Chapter VII of the Charter, the Security Council adopted Resolution 757, mandating an embargo of certain air traffic with Serbia and Montenegro. Paragraph 7(a) of Resolution 757 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 the territory of Serbia and Montenegro. An exception to this prohibition is made for flights that have been approved on the grounds of urgent humanitarian need by the Security Council Committee established by Security Council Resolution 724 (1991).

The United States Government has taken several actions to restrict air transportation between the United States, Serbia and Montenegro in accordance with Security Council Resolution 757. Section 2(d) of Executive Order 12810, issued by the President on June 5, 1992, prohibits "[a]ny transaction by a United States person, or involving the use of U.S.-registered vessels and aircraft, relating to transportation to or from the Federal Republic of Yugoslavia (Serbia and Montenegro) * * * 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 the Federal Republic of Yugoslavia (Serbia and Montenegro)." Section 2(e) of the Executive Order further 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 the Federal Republic of Yugoslavia (Serbia and Montenegro).

Executive Order 12810 cites 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 Title 3, 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)). In particular, the United Nations Participation 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, and prohibit, in whole or in part, economic relations of rail, sea, [and] air * * * between any foreign country or to any nation thereof or any person therein and the United States or any person subject to the jurisdiction thereof. * * *

On June 12, 1992, the Office of the Secretary of Transportation issued Order 92-6-27, which implements Executive Order 12810 by amending all Department of Transportation (DOT) certificates issued under Section 401 of the Act, all permits issued under Section 402 of the Act, and all exemptions from Section 401 and 402 accordingly.

On June 23, 1992, the FAA published SFAR 66, prohibiting 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 the Serbia and Montenegro (57 FR 28031). SFAR 66 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 Serbia and Montenegro. After SFAR 66 expired on June 19, 1993, the FAA reinstated the prohibition against certain flights between the United States and the Serbia and Montenegro through

the issuance of SFAR 66-1 (58 FR 45220). SFAR No. 66-1 became effective on August 26, 1993, and expired on August 26, 1994.

Copies of Resolution 757 of the United National Security Council, Executive Order 12810, and DOT Order 92-6-27, all of which remain in effect, have been placed in the docket for this rulemaking.

Prohibition Against Certain Flights Between the United States, Serbia and Montenegro

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 Order 12810 and to meet the obligations of the United States under international law as evidenced by U.N. Security Council Resolution No. 757. 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 Serbia and Montenegro as its origin or ultimate destination. Operations approved by the United States Government for approved purposes and certain emergency operations shall be expected from this prohibition. For the reasons stated above, 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 publication. 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 June 2, 1997 but may be terminated sooner or extended through the publication of a corresponding document 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, Serbia and Montenegro and the cost of having to circumnavigate the territory by U.S.-registered aircraft. Revenue flights to Serbia and Montenegro are currently prohibited by DOT Order 92-6-27, and the FAA is unaware of any U.S.-registered private aircraft currently operating over Serbia and Montenegro. Accordingly, this action will impose no additional burden on commercial or private operators.

Paperwork Reduction Act

This 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 92-6-27 prohibits U.S. and foreign air carriers from engaging in the sale of air transportation to or from Serbia and Montenegro. 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 considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because revenue flights to Serbia and Montenegro are already prohibited by DOT Order 92-6-27, 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, Federal Republic of Yugoslavia, Freight, Montenegro, Serbia.

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. SFAR 66 which expired June 19, 1993, and SFAR 66 which expired August 26, 1994, are removed.

3. Special Federal Aviation Regulation (SFAR) No. 66-2 is added to read as follows:

Special Federal Aviation Regulation No. 66-2—Prohibition Against Certain Flights between the United States and the Federal Republic of Yugoslavia (Serbia and Montenegro)

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) 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 paragraphs 3 and 4 of this SFAR No. 66-2—

(a) No person shall operate an aircraft from any point in the United States to any point in the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter "Serbia and Montenegro"), a flight having any intermediate or ultimate destination in Serbia and Montenegro, or a flight that includes a landing at any point in Serbia and Montenegro in its intended itinerary;

(b) No person shall operate an aircraft to any point in the United States from any point in Serbia and Montenegro, or a flight from any intermediate point of departure where the origin of the flight is in Serbia and Montenegro, or a flight that includes a departure from any point in Serbia and Montenegro 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 Serbia and Montenegro.

3. *Permitted operations.* This SFAR shall not prohibit the flight operations between the United States, Serbia and Montenegro described in section 2 of this SFAR by an aircraft authorized to conduct such operations by the United States Government.

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 as soon as possible to the air traffic control facility having jurisdiction.

5. *Expiration.* This Special Federal Aviation Regulation expires June 2, 1997.

Issued in Washington, DC, on May 23, 1995.

David R. Hinson,

Administrator.

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