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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26027; SFAR No. 57]

Restriction on Certain Flights From the United States To the Republic of the Philippines

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

ACTION: Final rule.

SUMMARY: This action prohibits the transportation by aircraft of the remains of Ferdinand Marcos from the territory of the United States to the Republic of the Philippines or to any intermediate destination on a trip whose ultimate destination is the Republic of the Philippines. This action is taken to prevent an undue hazard to the aircraft that would be engaged in such transportation, as well as to persons involved in the flight, in consideration of measures taken by the Government of the Republic of the Philippines to prevent the landing of the aircraft in the Republic of the Philippines.

DATE: Effective date: September 28, 1989.

Expiration date: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:

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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, as amended, the FAA is charged with the regulation of air commerce in a manner to best

promote safety and fulfill the requirements of the national security.

On June 3, 1989, Robert M. Kimmitt, Undersecretary of State for Political Affairs, U.S. Department of State (DOS), sent a letter to Robert E. Whittington, Acting Administrator, Federal Aviation Administration, requesting that the FAA act to prohibit the return by transportation of the remains of former Philippine President Ferdinand Marcos to the Republic of the Philippines. The DOS letter noted that in a May 20, 1989, diplomatic note to the U.S. Embassy in Manila, the Government of the Republic of the Philippines stated its policy of opposition of the return of Mr. Marcos to the Philippines and stated that this policy applied in the event of Mr. Marcos' death. In a May 22 note to the U.S. Embassy in Manila, the Government of the Philippines stated that it has taken action to prevent the return of the Marcos remains, by instructing all Philippine ports and aeronautical authorities not to give entry or landing clearance to vessels or aircraft bearing those remains. In a Memorandum Circular to commercial airlines and private aircraft operators dated May 26, the Philippine Government served notice of its prohibition on the entry of the Marcos remains into the Philippines. The contents of the May 22 note and the May 26 Memorandum Circular were consolidated in a revised Memorandum Circular issued by the Philippine Government on June 8. Copies of these documents have been placed in the docket for this rulemaking.

Ferdinand Marcos lived in exile in the United States from 1986 to 1989. At all times during that period, the Philippine Government refused Marcos' request to return to the Philippines, in consideration of the potential for political unrest and destabilization of the current democratic government. That concern extends to the remains of Ferdinand Marcos after his death, in that the return of his remains to the Philippines could lead to civil unrest and potentially to violence given the respective support and opposition to his former rule by various political factions in the Philippines. It is the conclusion of DOS, as stated in its letter of June 3, that return of the Marcos remains to the Philippines would be contrary to U.S. strategic and foreign policy interests and would create a danger to the aircraft and persons involved in the flight.

It is the State Department's own assessment that the concerns of the Philippine Government are well-founded. However, the DOS is also concerned for the safety of any aircraft and crew involved in the return of the

Marcos remains, as well as others who might be present at the actual or expected destination. The safety of these persons, who might include U.S. citizens, in the Philippines could be threatened by civil unrest in that country if the remains of Ferdinand Marcos were returned to the Philippines.

The safety of the aircraft that carried the Marcos remains could be jeopardized as a result of the reaction to carriage of the remains. The aircraft, crew, and any passengers could be directly threatened by any civil unrest attendant on arrival of the aircraft in the Philippines, if the time and place of arrival were known in advance. Also, an aircraft on a flight to the Philippines that was prevented from landing in the Republic of the Philippines could have insufficient fuel to reach an alternate airport after a trans-Pacific flight, in that the closest suitable alternate landing field is approximately 500 to 600 nautical miles away. Fuel exhaustion would result in crash landing or ditching of the aircraft in the open ocean. For both reasons, a flight to the Philippines carrying the remains of Ferdinand Marcos, at this time, could present serious hazards to the aircraft crew and passengers, including hazards that may not be apparent to the aircraft owner or the aircrew at the time the aircraft departed the United States.

Temporary Restrictions on Flights Leaving the United States

On the basis of the above, I find that the circumstances existing in the Republic of the Philippines, including the possibility of civil unrest if the remains of former President Ferdinand Marcos are returned to that country, represent a hazard to any aircraft used for that purpose, and, accordingly, that these circumstances require immediate action by the FAA in order to maintain the safety of flight and promote the national security interests of the United States. In order to prevent operation of an aircraft for the purpose of returning the Marcos remains to the Philippines, it is necessary for the FAA to issue a special regulation prohibiting the carriage of the remains from points in U.S. territory, where the remains are now located, to the Republic of the Philippines.

Effective Date of Final Rule

Because the potential hazard to flight currently exists, immediate action is required to maintain safety of flight by prohibiting any flight which would expose the flight crew, passengers, and aircraft to that hazard. For this reason, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable

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and contrary to the public interest. For the same reason, I find that good cause exists for making this rule effective immediately upon issuance.

The rule contains an expiration date of October 1, 1990, but may be extended if circumstances in effect at that time warrant.

Regulatory Evaluation

The cost of this regulation is limited to the net revenue of a single flight between the United States—specifically Hawaii—and the Republic of the Philippines. However, such a flight would not necessarily be conducted for compensation by a commercial operator, or by an operator certificated by the United States. Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and 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.

Conclusion

The FAA has determined that this action is not a "major rule" under

Executive Order 12291 and is not 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 73

Aviation safety, Republic of the Philippines.

The Special Federal Aviation Regulation

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 Pub. 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; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 57 to read as follows:

SFAR No. 57—Restriction on Certain Flights From the United States To the Republic of the Philippines

1. *Applicability.* This rule applies to all operations in the United States.

2. *Special flight restrictions.* No person may operate an aircraft or initiate a flight carrying the remains of Ferdinand Marcos from the Hawaiian Islands or any other point in the United States to any point in the Republic of the Philippines or to any intermediate destination on a flight the ultimate destination of which is the Republic of the Philippines.

3. *Expiration.* This special rule expires October 1, 1990.

Issued in Washington, DC on September 28, 1989.

James B. Busey,
Administrator.

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