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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2000-7360; Amdt. No.91-335]

RIN 2120-AK59

Removal of Special Federal Aviation Regulation No. 87 - Prohibition Against Certain Flights within the Territory and Airspace of Ethiopia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Immediately adopted final rule.

SUMMARY: This action removes the prohibition against certain flights within the territory and airspace of Ethiopia contained in Special Federal Aviation Regulation (SFAR) No. 87 from the Code of Federal Regulations (CFR). The prohibition only applied to flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude conducted by United States (U.S.) air carriers or commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, unless that person was engaged in the operation of a U.S.-registered aircraft for a foreign air carrier; and operators using an aircraft registered in the United States, except where the operator of such aircraft was a foreign air carrier. The FAA has now determined that the safety and security situation that prompted the above flight prohibition has significantly improved, and that it is safe for U.S. civil flights to be operated within the entire territory and airspace of Ethiopia, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Will Gonzalez, Air Transportation Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202-267-8166; e-mail will.gonzalez@faa.gov.

For legal questions concerning this action, contact Robert Frenzel, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7638; email robert.frenzel@faa.gov.

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Title 5, United States Code (U.S.C.) § 553(b)(3)(B) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are unnecessary and contrary to the public interest. This is a relieving rule; with publication of this final rule, persons described in paragraph 1 of SFAR No. 87,¹ who have been prohibited from flying within the territory and airspace of Ethiopia north of 12 degrees north latitude, will no longer be subject to that prohibition. The removal of this

¹ Paragraph 1 of SFAR No. 87 states:

“1. Applicability. This Special Federal Aviation Regulation (SFAR) No. 87 applies to all U.S. air carriers or commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.”

prohibition will allow such persons to operate anywhere in the territory and airspace of Ethiopia, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia. The FAA has determined that the safety and security situation which prompted the FAA to issue SFAR No. 87 has significantly improved, and that it is safe for flight operations by persons described in paragraph 1 of SFAR No. 87 to resume, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia. Delaying the effective date of this action, which the FAA expects to be non-controversial, would unnecessarily limit the activities and economic opportunities of persons described in paragraph 1 of SFAR No. 87, as well as persons to whom they provide service.

Authority for this Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, section 106(f) and (g), describe the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is

charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority, because it removes the prohibition on flight operations in the territory and airspace of Ethiopia north of 12 degrees north latitude by persons described in paragraph 1 of SFAR No. 87 on the basis of the changed safety and security situation, thereby allowing such persons to operate anywhere in the territory and airspace of Ethiopia, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia.

I. Overview of Immediately Adopted Final Rule

This action removes SFAR No. 87 from the CFR. SFAR No. 87 prohibited flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude by the persons described in paragraph 1 of the rule. SFAR No. 87 imposed no restrictions on operations in the territory and airspace of Ethiopia south of 12 degrees north latitude. The FAA has determined that the safety and security situation that prompted the FAA to issue SFAR No. 87 has significantly improved, and that it is safe for flights by persons described in paragraph 1 of the rule to resume, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia. The FAA finds this action necessary to allow persons described in paragraph 1 of SFAR No. 87 to perform flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude.

II. Background

The FAA issued SFAR No. 87 on May 12, 2000 (published May 16, 2000, at 65 FR 31214), due to concerns regarding potential hazards to U.S. civil flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude. In 1998, a military conflict had erupted between Ethiopia and Eritrea over the exact demarcation of the border between the two countries. On April 30, 2000, peace talks between Ethiopia and Eritrea failed, and the border dispute again escalated to the point where open hostilities began. Armed forces of both countries, which included modern surface-to-air missile systems and interceptor aircraft capable of engaging aircraft at cruising altitudes, were engaged in hostilities near their common border. The FAA was concerned that civil aircraft operating in the region could be threatened by the conflict.

Even in the event of a cease-fire, the FAA was concerned that the heightened state of readiness maintained by the military forces of Ethiopia posed an imminent threat to civil aircraft operations in the area. Prior to their May 2000 mobilization, Ethiopian air defense forces had maintained an already high state of readiness during a prior cease-fire that threatened civil aircraft operating in the northern portion of Ethiopia. The August 29, 1999, downing by Ethiopian military forces of a U.S.-registered Learjet operating in the area, which they had mistaken for an Eritrean reconnaissance aircraft, was evidence of the seriousness of the threat. When it issued SFAR No. 87, the FAA observed that Ethiopia had issued temporary Notices to Airmen (NOTAMs) closing certain routes in the Addis Ababa Flight Information Region. However, the FAA noted that neither the Ethiopian civil aviation authority nor the Ethiopian military had issued formal warnings by NOTAM, in the Ethiopian Aeronautical Information Publication (AIP), or in some

other forum, of the potentially catastrophic consequences of flying on routes temporarily removed from service. Further, the Government of Ethiopia had rejected the FAA's recommendation to establish a true “no fly” or “danger” zone. The FAA also could not assure that an adequate level of coordination existed between civil air traffic authorities and air defense commanders for civil aircraft overflight, including military rules of engagement, in the event an aircraft strayed from its assigned route of flight. Any lack of coordination could have put aircraft operating over northern Ethiopia at risk of being misidentified by military forces as a threat. Finally, there was no assurance that Ethiopia would follow international standards and recommended practices for the interception and identification of unidentified aircraft in its airspace.

The operational environment for U.S. civil aviation in the area of Ethiopia to which SFAR No. 87 applied has changed significantly since May 2000, which is when the last major military conflict between Ethiopia and Eritrea took place. The following month, the two countries signed a cessation of hostilities agreement. While there are continuing tensions which have led to periodic exchanges of military weapons fire across the Ethiopia-Eritrea border, there have been no further air defense engagements against aircraft. In addition, the Ethiopian government closed certain air routes that cross the border between Ethiopia and Eritrea, and restricted other routes from use by overflying international flights. Ethiopia also closed a portion of an air route running near the border within Ethiopian airspace.

On September 20, 2013, the FAA received a petition for exemption from SFAR No. 87 from Mente, LLC (FAA Docket No. FAA-2013-0839). The FAA requested additional information, and Mente submitted it on November 25, 2013. Mente

voluntarily submitted further information on May 20, 2014. The petition requested that the FAA allow Mente to operate flights within the territory and airspace of Ethiopia north of 12 degrees north latitude in support of the philanthropic activities of a U.S. charitable foundation. In part due to the FAA's recognition of the changed operational environment for U.S. civil aviation in northern Ethiopia, on July 8, 2014, the FAA granted Mente's petition for exemption.

On the basis of the above information, the FAA believes that the persons described in paragraph 1 of SFAR No. 87 may now operate safely in the territory and airspace of Ethiopia north of 12 degrees north latitude, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia. By this final rule, SFAR No. 87 is removed from title 14 of the Code of Federal Regulations, part 91.

III. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall 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 (Public Law 96-354), as codified in 5 U.S.C. § 601 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Public Law 96-39)(19 U.S.C. Chapter 13), prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the

United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order (DOT) 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Flight operations in the territory and airspace of Ethiopia north of 12 degrees north latitude by persons described in paragraph 1 of SFAR No. 87 were prohibited because of the threat posed to U.S. civil aviation by the conflict between Ethiopia and Eritrea, as well as the heightened state of readiness maintained by the military forces of Ethiopia and the lack of adequate public warnings to civil aviation by the Government of Ethiopia. As described in the Background section of this final rule, the operational environment for U.S. civil aviation in Ethiopia north of 12 degrees north latitude has changed significantly

since May 2000, and the FAA believes that persons previously prohibited from operating in that area may now operate safely there, subject to the approval of and in accordance with the conditions established by the appropriate authorities of Ethiopia. The removal of SFAR No. 87 will eliminate the need to fly around the entire area of northern Ethiopia to which the rule applied and to avoid operations in that area even where such operations are permitted by the appropriate authorities of Ethiopia. Accordingly, this rule is cost relieving and, therefore, cost beneficial.

In conducting these analyses, FAA has determined that this final rule is not a "significant regulatory action," as defined in section 3(f) of Executive Order 12866. The rule is also not "significant" as defined in DOT's Regulatory Policies and Procedures. The final rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade and will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Public Law 96-354, "RFA"), 5 U.S.C. § 601 *et seq.*, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." 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 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 rule is not expected to have a significant economic impact on a substantial number of small entities, § 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.

This rule is cost relieving because it allows more direct flights, which reduces fuel costs. Therefore, as provided in § 605(b), the head of the FAA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

B. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39, 19 U.S.C. Chapter 13), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 remove a prohibition on flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude. This action does not impose any new regulatory requirements. Therefore, the rule creates no obstacles to the foreign commerce of the United States and is in compliance with the Trade Agreements Act.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) 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 (in 1995 dollars) 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 \$151.0 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. § 3501 *et seq.*) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

E. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation (the “Chicago Convention”), it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

F. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (“NEPA”) (Public Law 91-190, 42 U.S.C. Chapter 55) in the absence of extraordinary circumstances. The FAA has reviewed the removal of SFAR No. 87 and determined that this action is categorically excluded from further environmental review according to FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” paragraph 312(f). The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the proposed action, the FAA finds that the proposed Federal action does not require preparation of an EA or EIS in accordance with the requirements of NEPA, Council on Environmental Quality regulations, and FAA Order 1050.1E.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this

action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that this rule is not a “significant energy action” under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

V. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal Document Management System (FDMS) Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or
3. Access the Government Printing Office's Web page at: <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104-121)(set forth as a note to 5 U.S.C. § 601), as amended, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the For Further Information Contact section at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

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

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is amended to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

Special Federal Aviation Regulation No. 87— [Removed]

2. Remove SFAR No. 87 from part 91.

Issued under authority provided by 49 U.S.C. §§ 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on January 27, 2015.

Michael P. Huerta

Administrator

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