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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No.: FAA-2018-0927; Amdt. No. 91-353]**

**RIN 2120-AL06**

**Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR)**

**(ORBB)**

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

**ACTION:** Final rule.

**SUMMARY:** This action reissues, with modifications to reflect changed conditions in Iraq, the Special Federal Aviation Regulation (SFAR) that prohibits certain flights in the Baghdad Flight Information Region (FIR) (ORBB) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

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

**FOR FURTHER INFORMATION CONTACT:** Michael Filippell, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-8166; email [michael.e.filippell@faa.gov](mailto:michael.e.filippell@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

This action reissues, with modifications to address changed conditions in Iraq, Special Federal Aviation Regulation (SFAR) No. 77, § 91.1605, which prohibits certain flight operations in the Baghdad FIR (ORBB) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier. The reissued rule prohibits operations in the Baghdad FIR (ORBB) below Flight Level (FL) 260, except operations necessary to climb out of, or descend into, the Kuwait FIR (OKAC), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

Conditions in Iraq have improved since action was last taken on SFAR No. 77, § 91.1605 by the FAA in May 2015, which expired on May 11, 2017.<sup>1</sup> The coalition of Iraqi security forces, allied nations, and supporting militia elements has successfully reduced the area under Islamic State of Iraq and Ash-Sham (ISIS) control. In addition, the operational anti-aircraft-capable weapons possessed by ISIS or other anti-U.S. extremist/militant elements are altitude-limited and would not pose a risk to U.S. civil aviation overflights at or above FL 260, provided that the flights remain clear of areas where fighting is likely to occur or re-emerge. The appropriate authorities of Iraq have taken steps to prohibit civil aviation operations at or above

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<sup>1</sup> Due to continuing hazards and to avoid interruption of the flight prohibition, the FAA issued KICZ NOTAM A0010/17 under the Administrator's emergency authority (49 U.S.C. 46105(c)) to temporarily continue the SFAR flight prohibition until a final rule became effective.

FL 260 in such areas. Therefore, on December 9, 2017, the FAA issued KICZ NOTAM A0025/17, amending its prohibition on U.S. civil aviation operations in the Baghdad FIR (ORBB) to allow overflights at or above FL 260.

There continues to be an unacceptable level of risk to U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260, as described in this rule, resulting from the potential for fighting in certain areas of Iraq and ongoing concerns about the extremist/militant threat to U.S. civil aviation throughout Iraq. With limited exceptions described in this final rule, U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260 remain prohibited consistent with KICZ NOTAM A0025/17. Consequently, the FAA is reissuing the modified SFAR to remain in effect until October 26, 2018. The FAA finds this action necessary due to continued hazards to U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260.

## **II. Legal Authority and Good Cause**

### A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA Administrator's authority to issue rules on aviation safety is found in title 49, U.S. Code, Subtitle I, sections 106(f) and (g). Subtitle VII of title 49, 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 title 49, U.S. Code, 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 that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of FAA's authority, because it prohibits the persons described in paragraph (a) of SFAR No. 77, § 91.1605, from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260, with limited exceptions, due to the continued hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

#### **B. Good Cause for Immediate Adoption**

Section 553(b)(3)(B) of title 5 of the United States Code (5 U.S.C.) 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." Section 553(d) also authorizes agencies to forgo the delay in the effective date of the final rule for good cause found and published with the rule. In this instance, the FAA finds good cause to forgo notice and comment because notice and comment would be impracticable and contrary to

the public interest. The FAA has identified an immediate need to address the continued hazardous situation for U.S. civil aviation that exists in the Baghdad FIR (ORBB) at altitudes below FL 260 due to the potential for fighting in certain areas of Iraq and ongoing concerns about the extremist/militant threat to U.S. civil aviation throughout Iraq. These hazards are further described in the preamble to this rule. To the extent that the rule is based upon classified information, such information is not permitted to be shared with the general public. Also, threats to U.S. civil aviation and intelligence regarding these threats are fluid. As a result, the agency's original proposal could become unsuitable for minimizing the hazards to U.S. civil aviation in the affected airspace during or after the notice and comment process.

Additionally, it is contrary to the public interest to delay the effective date of this SFAR. This action reissues SFAR No. 77, § 91.1605, with appropriate modifications, to codify the provisions of the FAA's December 9, 2017, NOTAM, which will reduce the potential for confusion over whether certain overflights of Iraq by U.S. operators and airmen are permitted.

For these reasons, the FAA finds good cause to forgo notice and comment and any delay in the effective date for this rule.

### **III. Background**

On October 9, 1996, the FAA issued SFAR No. 77 to prohibit flight operations over or within the territory of Iraq by any U.S. air carrier or commercial operator; by any person exercising the privileges of an airman certificate issued by the FAA, except persons operating U.S.-registered aircraft for a foreign air carrier; or by any person operating an aircraft registered in the U.S., unless the operator of such aircraft was a foreign air carrier. The FAA extended and amended SFAR No. 77 several times to respond to evolving circumstances and their

corresponding hazards to U.S. civil operations.<sup>2</sup> Most recently, on May 11, 2015, the FAA published a final rule amending SFAR No. 77, § 91.1605, to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at all altitudes due to the hazardous situation created by armed conflict, which formalized a flight prohibition NOTAM issued under the Administrator's emergency authority. 80 FR 26822. SFAR No. 77, § 91.1605, expired on May 11, 2017. On May 10, 2017, the FAA issued KICZ NOTAM A0010/17 under the Administrator's safety and emergency authority (49 U.S.C. 40113(a) and 46105(c), respectively) to continue the prohibition of certain flight operations in the Baghdad FIR (ORBB) without interruption due to the continuing hazards to U.S. civil aviation operations.

The FAA continued to monitor developments in Iraq relevant to the safety of U.S. civil aviation after issuing its May 10, 2017, NOTAM. The FAA assessed that conditions in Iraq had improved, as the coalition of Iraqi security forces, allied nations, and supporting militia elements had successfully reduced the area under ISIS control. In addition, the FAA assessed that the operational anti-aircraft-capable weapons possessed by ISIS or other anti-U.S. extremist/militant elements did not pose a risk to U.S. civil aviation overflights at or above FL 260, provided that the flights remain clear of areas where fighting is likely to occur or re-emerge. The appropriate authorities of Iraq had taken steps to prohibit civil aviation operations at or above FL 260 in such areas. As a result, the FAA determined that the risk to U.S. civil aviation at or above FL 260 in the Baghdad FIR (ORBB) had been sufficiently reduced to allow U.S. civil aviation overflights

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<sup>2</sup> 61 FR 54020. For a more comprehensive history of SFAR 77, § 91.1605, see the final rule published on May 11, 2015. 80 FR 26822, 26823-26824.

at or above FL 260 to resume. The FAA also determined that it was safe to allow limited operations below FL 260 when necessary due to climb performance.

On December 9, 2017, the FAA issued a revised flight prohibition NOTAM prohibiting U.S. civil operations within the Baghdad FIR (ORBB) below FL 260 and thus permitting overflights above FL 260. The NOTAM permitted, by exception, U.S. civil operations departing from countries adjacent to Iraq to operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit a climb to or above FL 260, if the climb performance of the aircraft does not permit it to attain FL 260 prior to entering the Baghdad FIR (ORBB), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq. This change permitted U.S. operators to conduct limited overflights of Iraq, potentially saving travel time and operational costs associated with alternate, less direct routes in a region constrained by multiple SFARs prohibiting operations.

#### **IV. Discussion of the Final Rule**

The FAA continues to assess the situation in the Baghdad FIR (ORBB) as being hazardous for U.S. civil aviation at altitudes below FL 260, subject to the limited exceptions described in this final rule. The risk to U.S. civil aviation originates from the potential for fighting in certain areas of northern and western Iraq between the Islamic State of Iraq and ash-Sham (ISIS), other extremist/militant elements, Iraqi security forces and other elements. ISIS and other extremist/militant elements are known to possess a variety of anti-aircraft-capable weapons, including man-portable air defense systems, and have fired on military aircraft during combat operations in Iraq. This presents a continued risk of anti-aircraft fire to civil aircraft,

particularly in areas where fighting may occur. There is also a risk of potential hostile activity by ISIS elements or other anti-U.S. militants/extremists elsewhere in Iraq.

The FAA assesses that the risk to U.S. civil aviation operating in the Baghdad FIR (ORBB) over southeastern Iraq has been sufficiently reduced to allow flights to operate at altitudes below FL 260 to the extent necessary to climb-out from or descend into the Kuwait FIR (OKAC). Southeastern Iraq has a lower concentration of ISIS-affiliated and other anti-U.S. extremists/militants, and is at lower risk for fighting to occur, than other parts of Iraq. The terrain in southeastern Iraq is of very low elevation, low enough to provide a reasonable buffer against the remaining risk from anti-aircraft-capable weapons fired from the surface. Additionally, aircraft climbing out of Kuwait are only exposed to any of the remaining risks to operations in the Baghdad FIR (ORBB) at altitudes below FL 260 for the limited time necessary to climb to FL 260, in accordance with Iraqi air traffic control instructions. Similarly, aircraft descending toward Kuwait below FL 260, in accordance with Iraqi air traffic control instructions, are also exposed to such risks for only a limited period of time.

Finally, the routine and expected procedures for hand-offs between Iraqi air traffic control and Kuwaiti air traffic control require operators to cross the Iraq-Kuwait border below FL 260. The FAA has determined that the safety risks of potential traffic conflicts associated with continuing to require U.S. operators and airmen to fly different profiles than those normally flown by civil air traffic in this very busy airspace outweigh the previously described residual risks to U.S. civil aviation operating over southeastern Iraq from potential fighting and anti-U.S. militant/extremist activity.

Upon further examination of the risks to U.S. civil aviation in other areas of Iraq, the FAA has determined that the remaining risks to U.S. civil aviation climbing out of or descending into the other countries that border Iraq have not been sufficiently reduced to permit operations below FL 260. Therefore, while KICZ NOTAM A0025/17 had permitted flights departing from countries adjacent to Iraq to operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit a climb to or above FL 260, under certain circumstances, this rule does not permit such climbouts. The reasons for not extending climbout relief from the other bordering FIRs are discussed in the following paragraphs. Nevertheless, the FAA has determined there are no operational impacts caused by this change. Available information indicates U.S. operators have not relied upon the NOTAM's exception to transition from neighboring FIRs, other than Kuwait, at altitudes below FL 260.

Iraq shares most of its western border with Syria. The FAA currently prohibits U.S. civil aviation operations in the Damascus FIR (OSTT) at all altitudes, including the entire country of Syria, due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by extremist groups, de-confliction concerns, and ongoing fighting. In addition, the Iraqi border region adjacent to Syria is susceptible to extremist/militant cross-border activity that poses a risk to U.S. civil aviation operating below FL 260 within the Baghdad FIR (ORBB). Areas of western and southwestern Iraq near its borders with Jordan and Saudi Arabia have a higher concentration of ISIS-affiliated and other anti-U.S. extremists/militants than southeastern Iraq. The presence of, or potential for, extremist/militant activity within Iraq near its borders with Jordan and Saudi Arabia poses a greater risk to U.S. civil aviation operating below FL 260 inside the Baghdad FIR (ORBB) than that which exists for U.S. civil aviation operating below FL 260 in the Baghdad FIR (ORBB) near Iraq's border with Kuwait.

Iraq shares most of its eastern border with Iran. In the region of Iraq bordering Iran, there is a risk to U.S. civil aviation operating in the Baghdad FIR (ORBB) below FL 260 from potential cross-border extremist/militant activity and inadequate de-confliction of civil and military flights. The Iraq-Iran border region also has areas of high elevation terrain, in comparison to Iraq's border region with Kuwait, which could expose U.S. civil aviation operating below FL 260 over such terrain to greater risk from possible ground-based anti-aircraft weapons in comparison to Iraq's border region with Kuwait.

Iraq borders Turkey to the north. There is a potential for a residual ISIS presence, other extremist/militant activity, and associated counter-terrorism operations in the Iraq-Turkey border region. This activity poses a risk to U.S. civil aviation operating below FL 260 in the Baghdad FIR (ORBB), particularly due to the higher elevation terrain in this region, which could expose U.S. civil aviation, operating below FL 260 over such terrain, to greater risk from ground-based anti-aircraft weapons in comparison to Iraq's border region with Kuwait. The FAA does not believe that there are countervailing aviation safety considerations, such as the air traffic control considerations relative to Kuwait, of sufficient magnitude to outweigh these risks.

Therefore, as a result of the significant continuing risk to the safety of U.S. civil aviation in the Baghdad FIR (ORBB) at altitudes below FL 260, the FAA reissues SFAR No. 77, § 91.1605, with an expiration date of October 26, 2020, to maintain the prohibition on flight operations at altitudes below FL 260, with certain limited exceptions described in the rule. This prohibition applies to all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft,

except where the operator of such aircraft is a foreign air carrier. The reissued SFAR No. 77, § 91.1605, permits those subject to the rule to operate at altitudes below FL 260 to the extent necessary to climb out of, or descend into, the Kuwait FIR (OKAC), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq. While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition.

The FAA will continue to actively monitor the situation and evaluate the extent to which U.S. civil operators and airmen may be able to operate safely in the Baghdad FIR (ORBB) at altitudes below FL 260 in the future. Further amendments to SFAR No. 77, § 91.1605, may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 77, § 91.1605, as necessary, prior to its expiration date.

#### **V. Approval Process Based on a Request from a Department, Agency, or Instrumentality of the United States Government**

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 77, § 91.1605, including a U.S. air carrier or commercial operator, to conduct a charter to transport civilian or military passengers or cargo, or other operations, in the Baghdad FIR (ORBB) at altitudes below FL 260, that department, agency, or instrumentality may request that the FAA approve persons covered under SFAR No. 77, § 91.1605(a), to conduct such operations.

An approval request must be made directly by the requesting department, agency, or instrumentality of the U.S. Government to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality. The FAA will not accept or consider requests for approval submitted by anyone other than the requesting department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently positioned within the organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request for approval and is committed to taking all necessary steps to minimize operational risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requests for approval must be submitted to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality intends to commence the proposed operations.

The letter must be sent by the requesting department, agency, or instrumentality to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval

from the FAA for multiple persons covered under SFAR No. 77, § 91.1605, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the Baghdad FIR (ORBB) at altitudes below FL 260 where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL 260 and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260. Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional operators must be identified to, and obtain an Operations

Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, from the FAA for operations in the Baghdad FIR (ORBB) at altitudes below FL 260, before such operators commence such operations. The approval conditions discussed below apply to any such additional operators. Updated lists should be sent to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Michael Filippell for instructions on submitting it to the FAA. His contact information is listed in the For Further Information Contact section of this final rule.

FAA approval of an operation under SFAR No. 77, § 91.1605, does not relieve persons subject to this SFAR of their responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must also comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must further comply with all rules and regulations of other U.S. Government departments and agencies that may apply to the proposed operations, including, but not limited to, the regulations issued by the Transportation Security Administration.

#### *Approval Conditions*

If the FAA approves the request, the FAA's Aviation Safety Organization will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL 260; and

(b) The operator's agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL 260.

(3) Other conditions that the FAA may specify, including those that may be imposed in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or an LOA, as applicable, to the operator(s) identified in the original request authorizing them to conduct the approved operation(s), and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter.

## **VI. Requests for Exemption**

Any operations not conducted under an approval issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 77,

§ 91.1605. A petition for an exemption must comply with 14 CFR part 11 and requires exceptional circumstances beyond those contemplated by the approval process set forth in the previous section. In addition to the information required by 14 CFR 11.81, at a minimum, the requestor must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations in the Baghdad FIR (ORBB) at altitudes below FL 260 where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL 260 and the airports, airfields and/or landing zones at which the aircraft will take-off and land;
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures that the operator will use to minimize the risks, identified in the preamble, to the proposed operations, so that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

Additionally, the release and agreement to indemnify, as referred to previously, are required as a condition of any exemption that may be issued under SFAR No. 77, § 91.1605.

The FAA recognizes that operations that may be affected by SFAR No. 77, § 91.1605, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and prior to any private exemption requests.

## **VII. Regulatory Notices and Analyses**

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 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 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 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 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, 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.

In conducting these analyses, the FAA has determined that this final rule has benefits that justify its costs and is a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that Executive Order. As notice and comment under 5 U.S.C. 553 are not required for this final rule, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 regarding impacts on small entities are not required. This rule will not create unnecessary obstacles to the foreign commerce of the United States, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

#### A. Regulatory Evaluation

Due to a reduction in the level of risk to U.S. civil aviation operations in the Baghdad FIR (ORBB) at or above FL 260, the FAA’s December 9, 2017, NOTAM prohibited U.S. civil aviation operations below FL 260, thus permitting overflights above FL 260. Due to the continued significant hazards to U.S. civil aviation in the Baghdad FIR (ORBB) at altitudes below FL 260 described in the preamble, the December 9, 2017, NOTAM continued the prohibition on U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL 260, with limited exceptions. The reissued SFAR No. 77, § 91.1605, permits persons to climb out of, or descend into, the Kuwait FIR (OKAC) at altitudes below FL 260, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

The FAA believes there are very few U.S. operators who wish to operate in the Baghdad FIR (ORBB) at altitudes below FL 260, where U.S. civil aviation operations will continue to be prohibited. The FAA has received three requests for approval or exemption to conduct flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260 since May 11, 2015. Consequently, the FAA estimates the costs of this rule to be minimal. These minimal costs are exceeded by the benefits of avoided risks of deaths, injuries, and property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged) due to the hazards described in the preamble. Consequently, the FAA estimates that the benefits of this rule will exceed the costs.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after being required by that section, or any other law, to publish a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment and any delay in the effective date for this rule. As notice and comment under 5 U.S.C. 553 are not required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) 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 effect of this final rule. The purpose of this rule is to protect the safety of U.S. civil aviation from hazards to their operations in the Baghdad FIR (ORBB) at altitudes below FL 260, a location outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act of 1979.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 \$155.0 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.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) 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 final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to conform to 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 regulation.

#### G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined that this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 8-6(c), FAA has prepared a memorandum for the record stating the

reason(s) for this determination; this memorandum has been placed in the docket for this rulemaking.

## **VIII. Executive Order Determinations**

### A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would 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, would not have Federalism implications.

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

The FAA analyzed this 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 it would not be a “significant energy action” under the executive order and would not be 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.

#### D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, Feb. 3, 2017) because it is issued with respect to a national security function of the United States.

### **IX. Additional Information**

#### A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA’s Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies); or
- Accessing the Government Publishing Office’s web page at <http://www.fdsys.gov>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267-9677. Please identify the docket or amendment number of this rulemaking in your request.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

## B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires 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 heading 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/](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, Iraq.

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, 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. 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, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. In subpart M, add § 91.1605 to read as follows:

### **§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB).**

(a) *Applicability.* This section applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of civil aircraft registered in the United States, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person may conduct flight operations in the Baghdad Flight Information Region (FIR) (ORBB) at altitudes below FL 260.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260 in the following circumstances:

(1) Aircraft departing from the Kuwait Flight Information Region (FIR) (OKAC) may operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit a climb during takeoff to or above FL 260, subject to the approval of and in accordance with the conditions established by, the appropriate authorities of Iraq; or

(2) Aircraft descending into the Kuwait FIR (OKAC) may operate at altitudes below FL 260 in the Baghdad FIR (ORBB) to the extent necessary to permit descent for landing within the Kuwait FIR (OKAC), subject to the approval of and in accordance with the conditions established by, the appropriate authorities of Iraq; or

(3) The flight operations in the Baghdad FIR (ORBB) at altitudes below FL 260 are conducted under a contract, grant, or cooperative agreement with a department, agency, or

instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person described in paragraph (a) of this section), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

(d) *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 section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of part 119, 121, 125, or 135 of this chapter, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the responsible Flight Standards office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until October 26, 2020. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued under the authority provided by 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on October 18, 2018.

Daniel K. Elwell,

Acting Administrator.

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