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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2007-27602; Amdt. No. 91-339B]

RIN 2120-AL46

**Extension of the Prohibition Against Certain Flights in the Territory and Airspace of
Somalia**

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

ACTION: Final rule.

SUMMARY: This action extends the prohibition against certain flight operations in the territory and airspace of Somalia at altitudes below Flight Level (FL) 260 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 when the operator of such aircraft is a foreign air carrier. The FAA is taking this action because it has determined there continues to be an unacceptable risk to U.S. civil aviation operating in the territory and airspace of Somalia at altitudes below FL260 from terrorist and militant activity. The FAA also republishes, with minor revisions, the approval process and exemption information for this flight prohibition Special Federal Aviation Regulation (SFAR) and makes minor editorial changes to this SFAR to clarify prohibited and permitted operations, consistent with other recently published flight prohibition SFARs.

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

FOR FURTHER INFORMATION CONTACT: Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202-267-8166; email dale.e.roberts@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of SFAR No. 107, title 14 Code of Federal Regulations (CFR) 91.1613, from January 7, 2020 until January 7, 2023. SFAR No. 107 prohibits certain flight operations in the territory and airspace of Somalia at altitudes below FL260 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 when the operator of such aircraft is a foreign air carrier. Consistent with other recently published flight prohibition SFARS, this action also republishes, with minor revisions, the approval process and exemption information for this SFAR and makes minor editorial changes to clarify prohibited and permitted operations.

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 49 U.S.C. 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 this authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in 49 U.S.C. 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 FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 107, § 91.1613, from conducting flight operations in the territory and airspace of Somalia at altitudes below FL260 due to the continuing hazards to the safety of U.S. civil flight operations at those altitudes, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds 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 exists to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to delay the effective date of this flight prohibition SFAR.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight risks posed by weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist/militant activity, or heightened tensions, is fluid. This fluidity and the need for the FAA to rely upon classified information in assessing these risks make seeking notice and comment impracticable and contrary to the public interest. With respect to the impracticability of notice and comment procedures, the potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent these rules and any amendments to them are based upon classified information, the FAA is not legally permitted to share such information with the general public, who cannot meaningfully comment on information to which they are not legally allowed access.

Under these conditions, public interest considerations also favor not seeking notice and comment for these rules and any amendments to them. While there is a public interest in having an opportunity for the public to comment on agency action, there is a greater public interest in having the FAA's flight prohibitions, and any amendments thereto, reflect the agency's most current understanding of the risk environment for U.S. civil aviation. This allows the FAA to appropriately protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options. The FAA has identified an ongoing need to maintain the flight prohibition for U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260 due to continued safety-of-flight hazards associated with terrorist and militant activity. These hazards, which are further described in the preamble to this final rule, require that the FAA's flight prohibition for U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260 continue without interruption.

Because the final rule makes no changes to the boundaries of an existing FAA flight prohibition for U.S. civil aviation operations, it is also contrary to the public interest to delay the effective date of the rule. Delaying the effective date would not change the compliance obligations of U.S. operators and airmen up to January 7, 2020, and, depending upon the date on which the final rule is published in the *Federal Register*, could result in a gap in the regulation's effectiveness of as many as 30 days between January 7, 2020 and the new effective date. Such an outcome would be contrary to the interests of U.S. civil aviation safety due to the hazards to U.S. civil flight operations in the territory and airspace of Somalia at altitudes below FL260.

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

III. Background

The FAA first issued SFAR No. 107 in 2007, based on aviation safety and national security concerns regarding U.S. civil flight operations in Somalia, as well as overflights of Somalia below FL200.¹ The terrorist group Al-Shabaab had conducted multiple attacks against civil aviation, including attacks on two IL-76 aircraft near Aden Adde International Airport (then known as Mogadishu International Airport) (HCMM) in March 2007 that likely used man-portable air defense systems (MANPADS). These incidents occurred days after unknown individuals attacked the airport with mortars, causing minimal damage. Consequently, the FAA determined it was neither safe nor in the national security interests of the United States for persons subject to SFAR No. 107 to overfly Somali territory at altitudes below FL200.

On January 7, 2016, the FAA expanded its existing prohibition of U.S. civil aviation operations in the territory and airspace of Somalia, after determining the risk from terrorist and militant activity made it unsafe for U.S. civil flights to operate in the territory and airspace of Somalia at altitudes below FL260.² The FAA determined international civil air routes transiting Somali airspace and aircraft operating to and from Somali airports remained at risk due to terrorist and militant groups potentially employing anti-aircraft-capable weapons, including MANPADS, small-arms fire and indirect fire from mortars and rockets targeting airports. Some

¹ *Prohibition Against Certain Flights Within the Territory and Airspace of Somalia* final rule, 72 FR 16710 (Apr. 5, 2007). The final rule was effective March 30, 2007.

² *Prohibition Against Certain Flights in the Territory and Airspace of Somalia* final rule, 81 FR 721.

of the weapons about which the FAA was concerned have the capability to target aircraft upon approach and departure and aircraft at higher altitudes. Al-Shabaab had remained active in Somalia and had demonstrated the capability and intent to target U.S. and Western interests, including civil aviation. Al-Shabaab had also conducted ground assaults against Aden Adde International Airport (HCMM), including an attack in December 2014. As stated in the January 2016 final rule, in the FAA's view, attacks against aircraft in-flight or Somali airports could occur with little or no warning. The FAA extended the expiration date of SFAR No. 107, § 91.1613, until January 7, 2018.³

In December 2017, the FAA, again, extended the expiration date of SFAR No. 107, § 91.1613, until January 7, 2020, due to continuing hazards to U.S. civil flight operation in the territory and airspace of Somalia at altitudes below FL260. In the December 2017 final rule,⁴ the FAA found that al-Shabaab had continued to directly target civil aviation using additional tactics, including the use of concealed improvised explosive devices (IEDs) in an effort to bypass airport security screening at Aden Adde International Airport (HCMM) to detonate the device onboard an aircraft. This had been demonstrated when al-Shabaab claimed responsibility for the onboard detonation of a concealed IED on Daallo Airlines Flight 159, which originated from Aden Adde International Airport (HCMM) in February 2016. Al-Shabaab had also conducted frequent terror attacks in close proximity to the airport and had conducted indirect fire attacks targeting facilities within the perimeter of the airport. Al-Shabaab had also conducted ground assaults against Aden Adde International Airport (HCMM), including the use of a vehicle-borne IED in January 2017.

³ The January 7, 2016, final rule placed SFAR No. 107 in subpart M of part 91, at 14 CFR 91.1613.

⁴ *Extension of the Prohibition Against Certain Flights in the Territory and Airspace of Somalia* final rule, 82 FR 58546 (Dec. 13, 2017).

Other extremists, including elements of the Islamic State of Iraq and ash Sham (ISIS), also operated in Somalia and were capable of threatening civil aviation. Therefore, the FAA extended the SFAR's expiration date from January 7, 2018, until January 7, 2020.

IV. Discussion of the Final Rule

The FAA continues to assess the situation in the territory and airspace of Somalia at altitudes below FL260 as being hazardous for U.S. civil aviation operations due to the poor security environment and fragile governance structure in Somalia, as well as the threat posed by al-Shabaab, an al-Qa'ida-aligned extremist group, and other extremists/militants. Al-Shabaab has demonstrated an intent and capabilities to target civil aviation operations in the territory and airspace of Somalia through a variety of means, including the use of an insider to smuggle a concealed IED onto a civil aircraft, use of anti-aircraft-capable weapons, and direct and indirect attacks on Somali airports. Al-Shabaab has frequently targeted Aden Adde International Airport (HCMM) with attacks using indirect fire, small arms fire and vehicle-borne IEDs. Al-Shabaab has conducted multiple mortar attacks targeting the African Union Mission in Somalia (AMISOM) at Aden Adde International Airport (HCMM), and has done so as recently as January 1, 2019. Al-Shabaab frequently conducts vehicle-borne IED attacks targeting Western interests and public venues in Mogadishu, including detonating vehicle-borne IEDs near malls (February 2019), hotels (November 2018) and near a security check point close to Aden Adde International Airport (HCMM) (June 2019). In addition, al-Shabaab is assessed to have access to anti-aircraft-capable weapons presenting a risk to U.S. civil aviation operations at altitudes below FL260. Furthermore, ISIS has a cell trying to gain influence in Somalia, which presents another

extremist threat to Western interests, including civil aviation. ISIS elements in Somalia may have access to anti-aircraft-capable weapons.

In February 2019, AMISOM began to draw down its forces, as its mandate expires in 2020, and began transferring security responsibilities back to Somalia. During the AMISOM drawdown, al-Shabaab may attempt to exploit vulnerabilities in Somali security and increase attacks on remaining AMISOM bases and Western interests. For these reasons, the FAA is concerned the risk to U.S. civil aviation operations may increase as AMISOM continues its scheduled drawdown.

Therefore, as a result of the significant continuing risks to the safety of U.S. civil aviation in the territory and airspace of Somalia at altitudes below FL260, the FAA extends the expiration date of SFAR No. 107, § 91.1613, from January 7, 2020 until January 7, 2023. By this action, the FAA prohibits flight operations in the territory and airspace of Somalia at altitudes below FL260 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 when the operator of such aircraft is a foreign air carrier. 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 territory and airspace of Somalia at altitudes below FL260. Amendments to SFAR No. 107, § 91.1613, may be

appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 107, § 91.1613, as necessary, prior to its expiration date.

By this action, the FAA also makes minor editorial changes to clarify the operations that are prohibited and those that are permitted and clarify the procedure for considering approval and exemption requests. These changes are consistent with other recently published flight prohibition SFARs. The FAA also republishes the approval and exemption processes in Sections V and VI of this preamble, so interested persons will be able to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 107, § 91.1613.

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

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the territory and airspace of Somalia at altitudes below FL260. The FAA is clarifying the approval process for SFAR No. 107, § 91.1613, consistent with other recently published flight prohibition SFARs, as previously indicated. If a department, agency, or instrumentality of the U.S. Government determines it has a critical need to engage any person described in SFAR No. 107, § 91.1613, 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 territory and airspace of Somalia at

altitudes below FL260, that department, agency, or instrumentality may request the FAA to approve persons described in SFAR No. 107, § 91.1613, 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 from 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 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 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 wishes the proposed operations to commence.

The letter must be sent 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 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 described in SFAR No. 107, § 91.1613, or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be 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 territory and airspace of Somalia at altitudes below FL260 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 territory and airspace of Somalia at altitudes below FL260 and the airports, airfields 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 its prime contractor has a subcontract(s)) for specific flight operations in the territory and airspace of Somalia at altitudes below FL260.

The requestor may identify additional operators 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) from, the FAA, as appropriate, for operations in the territory and airspace of Somalia at altitudes below FL260, 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 Dale E. Roberts 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. 107, § 91.1613, 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 comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. 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 territory and airspace of Somalia at altitudes below FL260; and

(b) The operator's written 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 from or related to the approved operations in the territory and airspace of Somalia at altitudes below FL260.

(3) Other conditions 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 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. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously must be conducted under an exemption from SFAR No. 107, § 91.1613. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those contemplated by the approval process described 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 territory and airspace of Somalia at altitudes below FL260 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 territory and airspace of Somalia at altitudes below FL260 and the airports, airfields 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 the operator will use to minimize the risks, identified in this preamble, to the proposed operations, to establish 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. 107, § 91.1613.

The FAA recognizes that the operations that SFAR No. 107, § 91.1613, might affect could include operations planned for the governments of other countries with the support of the U.S. Government. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and prior to any private exemption requests.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Dale E. Roberts for instructions on submitting it to the FAA. His contact information is listed in the For Further Information Contact section of this final rule.

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), as codified in 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. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as 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. This rule 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 the significant hazards to U.S. civil aviation described in the preamble of this rule, this rule continues to prohibit U.S. civil flights in the territory and airspace of Somalia at altitudes below FL260. The FAA believes there are very few U.S. operators who wish to overfly Somalia at altitudes below FL260 or operate to, from, or within Somalia due to the hazards to

U.S. civil aviation described in the preamble to this final rule. The FAA receives few requests for approval or petitions for exemption to conduct flight operations in airspace managed by other countries in which the FAA has prohibited U.S. civil aviation from flying and expects that this pattern will hold true for this rule.

Consequently, the FAA estimates the costs of this rule to be minimal. These minimal costs are exceeded by the benefits of avoided deaths, injuries, and property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged) while operating in the territory and airspace of Somalia at altitudes below FL260.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 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 similarly not required.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 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 potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from hazards to their operations in the territory and airspace of Somalia 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 (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 \$155 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 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 regulation. The FAA 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.

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. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition.

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 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 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 Executive Order 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 a rulemaking document may be obtained from the Internet by—

- Searching the docket for this rulemaking at <https://www.regulations.gov>;
- Visiting the FAA’s Regulations and Policies web page at https://www.faa.gov/regulations_policies; or
- Accessing the Government Publishing Office’s website at <https://www.govinfo.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, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

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 docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) 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 persons 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/.

List of Subjects in 14 CFR Part 91

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

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 revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 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 § 91.1613, revise paragraphs (a)(3), (b), (c), and (e) to read as follows:

§ 91.1613 Special Federal Aviation Regulation No. 107—Prohibition Against Certain Flights in the Territory and Airspace of Somalia.

(a) * * *

(3) All operators of U.S.-registered civil aircraft, except when 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 described in paragraph (a) of this section may conduct flight operations in the territory and airspace of Somalia at altitudes below Flight Level (FL) 260.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the territory and airspace of Somalia under the following circumstances:

(1) Overflights of Somalia may be conducted at or above FL260 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia.

(2) Flight operations may be conducted in the territory and airspace of Somalia at altitudes below FL260 if such flight operations 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 U.S. Government 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.

* * * * *

(e) *Expiration.* This SFAR will remain in effect until January 7, 2023. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on December 4, 2019.

Steve Dickson,

Administrator.

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