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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No.: FAA-2011-0246; Amdt. No. 91-321E]**

**RIN 2120-AL47**

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

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

**ACTION:** Final rule.

**SUMMARY:** This action amends, with modifications to reflect changed conditions in Libya and the associated risks to U.S. civil aviation safety, the Special Federal Aviation Regulation (SFAR) prohibiting certain flight operations in the Tripoli Flight Information Region (FIR) (HLLL) by all: United States (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. This action incorporates the FAA's prohibition on U.S. civil flight operations in the territory and airspace of Libya at all altitudes contained in Notice to Airmen (NOTAM) KICZ A0026/19, into the SFAR. In addition, the FAA remains concerned about the safety of U.S. civil aviation operations at altitudes below Flight Level (FL) 300 in those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya because of the hazards described in the preamble to the FAA's March 2019 final rule. Accordingly, this final rule also prohibits U.S. civil flight operations below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya. This action

also extends the expiration date of the SFAR from March 20, 2021, to March 20, 2023. Finally, the FAA republishes the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs, and makes minor administrative revisions.

**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](mailto:dale.e.roberts@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

This action amends, with modifications to reflect changed conditions in Libya and the associated risks to U.S. civil aviation safety, the prohibition against certain U.S. civil flight operations in the Tripoli FIR (HLLL) 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. Specifically, this amendment prohibits all persons described in paragraph (a) of SFAR No. 112, § 91.1603 of title 14, Code of Federal Regulations (CFR), from conducting flight operations in the territory and airspace of Libya at all altitudes due to the geographic expansion and escalation of the ongoing conflict between the Tripoli-based Government of National Accord (GNA) and the Tobruk-based Libyan National Army (LNA) for control over Libya's government, territory,

and resources. This amendment incorporates the flight prohibition contained in NOTAM KICZ A0026/19, issued on October 23, 2019, into SFAR No. 112, § 91.1603. This amendment also continues the prohibition against all flights by U.S. civil operators and airmen at altitudes below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya. Cumulatively, the result is that U.S. civil operators and airmen may only operate in the Tripoli FIR (HLLL) if they remain outside the territory and airspace of Libya and at altitudes at or above FL300, unless they have received an exemption or approval from the FAA. Consequently, U.S. operators continue to have the option of using several airways connecting western Africa with the Middle East, provided that they operate at altitudes at or above FL300 while they are in the Tripoli FIR (HLLL).

This action also extends the expiration date of this SFAR from March 20, 2021, to March 20, 2023. The FAA also republishes the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs, and makes minor administrative revisions.

## **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. Sections 106(f) and (g) of title 49, U.S. Code, subtitle I establish the FAA Administrator's authority to issue rules on aviation safety. 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.

The FAA is promulgating this rulemaking 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 that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it prohibits the persons described in paragraph (a) of SFAR No. 112, § 91.1603, from conducting flight operations at all altitudes in the territory and airspace of Libya due to the geographic expansion and escalation of the ongoing conflict between the Tripoli-based GNA and the Tobruk-based LNA for control over Libya's government, territory, and resources, as described in the preamble to this final rule. Under the same authority, this action also continues the FAA's prohibition on U.S. civil flight operations at altitudes below FL300 in the remainder of the Tripoli FIR (HLLL), due to the hazards in that airspace, also 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 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 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 amendment.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid because of the 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. 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 that 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 issuing notice and seeking comments 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 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 a need to prohibit all persons described in paragraph (a) of SFAR No. 112, § 91.1603, from conducting flight operations at all altitudes in the territory and airspace of Libya due to the geographic expansion and escalation of the ongoing conflict between the Tripoli-based GNA and the Tobruk-based LNA for control over Libya's government, territory, and resources. The FAA has also identified a need to continue to prohibit U.S. civil flight operations at altitudes below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya due to the continuing hazards in that airspace described in the preamble of this final rule.

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

### **III. Background**

As a result of safety and national security concerns regarding flight operations in the Tripoli FIR (HLLL) during the Libyan Revolution and its aftermath, the FAA prohibited U.S. civil flight operations at all altitudes in the entire Tripoli FIR (HLLL) between March 2011 and March 2019.<sup>1</sup> In its March 2019 final rule (84 FR 9950), the FAA found security and safety conditions had sufficiently improved to allow U.S. civil flights to operate in the Tripoli FIR

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<sup>1</sup> For a more comprehensive history of SFAR No. 112, 14 CFR 91.1603, during this time period, see *Prohibition Against Certain Flights Within the Tripoli (HLLL) Flight Information Region (FIR)* final rule, 76 FR 16238, March 23, 2011; *Prohibition Against Certain Flights Within the Tripoli Flight Information Region (FIR); Extension of Expiration Date* final rule, 79 FR 15679, March 20, 2014, corrected at 79 FR 19288, April 8, 2014; *Prohibition Against Certain Flights Within the Tripoli (HLLL) Flight Information Region (FIR); Extension of Expiration Date* final rule, 80 FR 15503, March 24, 2015; and *Extension of the Prohibition Against Certain Flights in the Tripoli (HLLL) Flight Information Region (FIR)* final rule, 82 FR 14433, March 21, 2017.

(HLLL) at altitudes at or above FL300.<sup>2</sup> Extremist/militant elements operating in Libya were believed not to possess anti-aircraft weapons capable of threatening U.S. civil aviation operations at or above FL260, and there was a lower risk of civil-military de-confliction concerns at cruising altitudes at or above FL300. Additionally, while there were, and continue to be, two air navigation service providers (ANSPs) operating in the Tripoli FIR (HLLL)<sup>3</sup>, the FAA determined that this situation posed a minimal safety risk to U.S. civil overflight operations. The Tripoli-based ANSP, which is recognized by the International Civil Aviation Organization (ICAO), had publicized overflight instructions in the Aeronautical Information Publication and a NOTAM containing overflight procedures for civil aviation operations in the Tripoli FIR (HLLL). The FAA also had not received any reports of the two ANSPs providing conflicting guidance to civil aircraft or otherwise behaving in ways that would pose safety of flight concerns for international overflights. Based on this assessment, the FAA determined that overflights of the Tripoli FIR (HLLL) could be conducted safely at altitudes at or above FL300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Libya.

However, as described in the March 2019 final rule, the FAA found an extension of the flight prohibition was necessary for the Tripoli FIR (HLLL) at altitudes below FL300 to safeguard against continuing hazards to U.S. civil aviation. These hazards related to continued

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<sup>2</sup> *Amendment of the Prohibition Against Certain Flights in the Tripoli Flight Information Region (FIR) (HLLL)* final rule, 84 FR 9950, March 19, 2019.

<sup>3</sup> The Tripoli-based ANSP had issued an Aeronautical Information Publication and a NOTAM containing overflight procedures for civil aviation operations in the Tripoli FIR (HLLL). The ANSP in Benghazi provides air navigation services in the eastern part of the country.

instability in Libya; fighting involving various militia, extremist, and militant elements; the ready availability of anti-aircraft-capable weapons to extremists and militants; and aerial activity by foreign sponsors supporting various elements operating in Libya that might not be adequately de-conflicted with civil air traffic. The risks to U.S. civil aviation were greatest at airports in Libya and during low altitude operations near airports or in areas of actual or potential fighting.

The FAA also noted in its March 2019 final rule that Libya remained politically unstable, with a fragile security situation.<sup>4</sup> Since the fall of Muammar Gaddafi's regime, Libya had struggled with a power vacuum, a limited security apparatus, and limited territorial control. Multiple extremist and militant groups with footholds in Libya were armed with anti-aircraft-capable weapons. Various militia, extremist, and militant groups continued to vie for strategic influence and control of vital infrastructure, including airports, resulting in flight disruptions and damage to aircraft and airport facilities on various occasions in 2017 and 2018. Violent extremists and militants active in Libya possessed, or had access to, a wide array of anti-aircraft-capable weapons posing a risk to U.S. civil aviation operating at altitudes below FL260.

Additionally, foreign sponsor aerial activities, including a variety of unmanned aircraft systems (UAS), other military aircraft operations, and the potential for electronic interference from counter-UAS measures, presented a civil-military de-confliction challenge for civil aircraft operating at altitudes below FL300. While the FAA recognized that aircraft overflying the Tripoli FIR (HLLL) at altitudes at or above FL300 could potentially encounter electronic interference from counter-UAS measures, such interference would not present a significant flight

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<sup>4</sup> *Amendment of the Prohibition Against Certain Flights in the Tripoli Flight Information Region (FIR) (HLLL)* final rule, 84 FR at 9952-9953, March 19, 2019.

safety hazard. At cruising altitudes at or above FL300, the FAA expects pilots would have sufficient time to recognize the interference and respond to it by using other instruments or navigation aids.

Accordingly, in the March 2019 final rule, based on the improved safety and security conditions in the Tripoli FIR (HLLL) at altitudes at or above FL300, the FAA modified its flight prohibition for U.S. civil aviation to permit overflights of the Tripoli FIR (HLLL) at altitudes at and above FL300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Libya. However, as a result of the significant continuing risk to the safety of U.S. civil aviation operating at altitudes below FL300 in the Tripoli FIR (HLLL), the FAA maintained its prohibition on U.S. civil flight operations in the Tripoli FIR (HLLL) at those altitudes and extended the expiration date of SFAR No. 112, § 91.1603, from March 20, 2019, to March 20, 2021.

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

Following the publication of the March 20, 2019, final rule, the FAA became concerned about increased hazards to U.S. civil overflights of northwestern Libya at or above FL300 related to the ongoing conflict for control of the capital, Tripoli. LNA forces had begun operations aimed at seizing control of Tripoli, including Tripoli International Airport (HLLT). The GNA, with support of militias, had conducted counterattacks, including tactical airstrikes on LNA forces. The LNA had declared a military zone and was threatening to shoot down aircraft operating in portions of northwestern Libya.

Both GNA and advancing LNA forces had access to advanced man-portable air defense systems (MANPADS) and likely had access to anti-aircraft artillery. These ground-based anti-aircraft weapon systems presented a risk to U.S. civil aviation at altitudes below FL300. However, LNA forces had fighter aircraft capable of intercepting civil aircraft operating at altitudes at and above FL300 in the self-declared military zone in northwestern Libya. While the LNA fighter aircraft threat was likely intended for GNA-associated military aircraft, an inadvertent risk remained for U.S. civil aviation operations at all altitudes in northwestern Libya due to potential miscalculation or misidentification. As a result of this evolving threat, on April 6, 2019, the FAA issued NOTAM KICZ A0012/19, prohibiting U.S. civil flight operations at all altitudes in the territory and airspace of Libya from west of 17 degrees east longitude and north of 29 degrees north latitude.

Subsequently, on October 23, 2019, the FAA issued KICZ NOTAM A0026/19, which prohibited U.S. civil aviation operations in the entire territory and airspace of Libya at all altitudes. The FAA assessed the area of unacceptable inadvertent risk to U.S. civil aviation operations at all altitudes had spread to the entire territory and airspace of Libya due to the geographic expansion of the ongoing conflict between the GNA and the LNA for control over Libya's government, territory, and resources. The conflict featured increased foreign intervention and the employment of advanced weapons systems. Foreign state actors continued to provide material and technical assistance to rival factions, including surface-to-air missile (SAM) systems, UAS, and jamming equipment.

In addition, since mid-2019, each side had conducted air strikes targeting military airfields co-located with international civil airports. These attacks utilized both tactical combat

aircraft and, increasingly, long-range UAS. Foreign-operated armed UAS had conducted multiple strikes on competing airports or airbases, resulting in the destruction of multiple parked aircraft, including civil transport aircraft. The FAA was concerned these strikes could lead to an increased air defense posture, including advanced SAM capabilities, to protect airport or airbase operations or fielded forces, which would pose an inadvertent risk to U.S. civil aviation. During 2019, the increased air strikes prompted GNA- and LNA-aligned forces to increase force protection measures, such as jamming, air strikes, and the deployment of SAM systems capable of reaching as high as 49,000 feet. Each side had employed anti-aircraft weapons to defend against air strikes. In September 2019, the LNA reportedly shot down a foreign-operated UAS during an attempted attack on the airbase at Jufra. In addition to foreign-operated air defense capabilities, both GNA and LNA forces had, and continue to have, access to advanced MANPADS, some of which have a maximum altitude of 25,000 feet; anti-aircraft artillery; and possible training, technical, and material support from international partners.

In addition, more advanced, higher-altitude air defense systems were reportedly in Libya. As of mid-June 2019, a Pantsir S-1 (SA-22) SAM system was reportedly deployed to defend Jufra. The SA-22 has an effective range of 20 kilometers (10.8 nautical miles) and a maximum altitude of 15,000 meters (49,000 feet). The FAA was concerned the SA-22 could be relocated in response to the dynamic threat environment, and could be repositioned to defend the base at Al Khadim, Libya, with little or no warning. Al Khadim was located outside the area of northwestern Libya where the FAA had previously prohibited U.S. civil flight operations at all altitudes.

In addition, air strikes had prompted LNA-aligned forces to redeploy long-range UAS and SAMs to locations outside the area of northwestern Libya where they had previously been located. The relocation of these SAMs presented an inadvertent risk to U.S. civil aviation at altitudes above FL300 in the territory and airspace of Libya. The FAA also was concerned that GNA-and LNA-aligned forces might expand their use of UAS air strikes to attack opposition aircraft at airbases that are usually co-located with international civil airports, presenting a risk to civil aircraft operating at or near such airports.

While the anti-aircraft capabilities and jamming were likely intended to defend against military aircraft, an inadvertent risk remained for U.S. civil aviation operations at all altitudes in the territory and airspace of Libya due to potential miscalculation or misidentification and the mobility of some of the advanced weapons systems involved. Increased foreign involvement had resulted in an unacceptable inadvertent risk to U.S. civil aviation operations in the territory and airspace of Libya due to command and control and airspace de-confliction challenges, increased lethality of UAS operations, and the introduction of more advanced, higher-altitude anti-aircraft systems. Due to these hazards, NOTAM KICZ A0026/19 prohibited U.S. civil flight operations at all altitudes in the territory and airspace of Libya.

Since the issuance of NOTAM KICZ A0026/19, the risks to U.S. civil aviation operations in the territory and airspace of Libya have further increased due to increased foreign intervention. Clashes continue for control of the capital, Tripoli, which the LNA has attempted to capture since early 2019, and these attacks have increasingly targeted aviation. The escalation has resulted in further expansion of foreign sponsorship of, and intervention in support of, both the LNA and GNA. This support involves third party forces, as well as deployment of advanced

weapons, including advanced fighter aircraft, weaponized UAS, SAM systems, and, likely, jammers. Both sides have conducted air strikes, utilizing tactical combat aircraft and long-range, armed UAS to target airport infrastructure and aircraft on the ground at airports. In May 2020, Russia deployed multiple fighter aircraft to Libya to provide close air support to its private military contractors and the LNA and protect their operations from attacks by manned aircraft and weaponized UAS. The foreign states supporting the LNA and GNA also have deployed anti-aircraft weapons and self-protection jamming systems to mitigate the air threat. The combination of these activities poses airspace de-confliction concerns and an inadvertent risk of in-flight engagement of civil aircraft as a result of possible misidentification or miscalculation.

Since November 2019, there have been several GNA UAS shot down near Tripoli's Mitiga International Airport (HLLM), and one LNA UAS and one LNA MiG-23 shot down near Tripoli. The most recent of those reported shoot downs occurred on January 28, 2020, when GNA forces claimed to have downed a UAS operating near Misrata. As a result of weapons activity posing a potential threat to civil aviation, the GNA closed Mitiga International Airport (HLLM) on multiple occasions during January and February 2020. In addition, LNA leader General Haftar announced on January 23, 2020, that LNA forces would engage any military or civil aircraft operating from Mitiga International Airport (HLLM).

The two sides' failure to reach a ceasefire agreement, combined with the recent spate of aircraft shoot downs and the potential for additional deployments of advanced weapons capabilities, present a further increasing risk to civil aviation operations in the territory and airspace of Libya at all altitudes. Additional airstrikes targeting Libyan airports, and the associated air defense reactions, could increase, posing a risk to civil aircraft on the ground and

in flight. The GNA and LNA possess anti-aircraft artillery and MANPADS, some of which have a maximum altitude of up to 25,000 feet (7,620 meters).

However, more advanced, higher-altitude air defense systems have been deployed to Libya. In addition to the SA-22 deployment previously described, a foreign sponsor associated with the GNA reportedly deployed multiple variants of anti-aircraft weapons to provide a layered air defense in Tripoli. This deployment included a medium range I-Hawk SAM and a Korkut 35mm air defense gun. In addition, both the GNA and LNA may augment their air defense operations with increased Global Positioning System (GPS) and radio frequency jamming. The FAA assesses that the escalating fighting, increased foreign intervention, and deployment of additional air defense capabilities present an increasing risk to U.S. civil aviation operations in the territory and airspace of Libya at all altitudes. For these reasons, this final rule incorporates the flight prohibition on U.S civil aviation operation in the territory and airspace of Libya at all altitudes, contained in NOTAM KICZ A0026/19, into SFAR No. 112, § 91.1603.

In addition, the FAA assesses that the hazards to the safety of U.S. civil aviation operations at altitudes below FL 300 described in the preamble to the March 2019 final rule remain of concern in those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya.<sup>5</sup> The FAA also notes that foreign military manned and unmanned tactical aircraft may operate or approach targets from off the northern coast, presenting airspace de-confliction challenges at altitudes below FL300. Additionally, there is the potential for GPS interference bleed over that may impact flights operating over the southern Mediterranean Sea in

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<sup>5</sup> *Id.*

the Tripoli FIR (HLLL). For these reasons, this rule also continues the prohibition against all flights by U.S. civil operators and airmen at altitudes below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya.

For all of the reasons described in this preamble, the FAA also extends the expiration date of SFAR No. 112, § 91.1603, until March 20, 2023. The FAA will continue to actively monitor the situation and evaluate the extent to which U.S. civil operators and airmen might be able to operate safely in the territory and airspace of Libya and the Tripoli FIR (HLLL). Amendments to SFAR No. 112, § 91.1603, could be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 112, § 91.1603, as necessary, prior to its expiration date.

By this action, the FAA also republishes the details concerning the approval and exemption processes in Sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 112, § 91.1603. The FAA also makes minor administrative revisions to the approval process and SFAR No. 112, § 91.1603, in this final rule.

## **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 Libya or in the rest of the Tripoli FIR (HLLL). If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in SFAR No. 112, § 91.1603, including a U.S. air carrier or commercial operator, to conduct a charter to transport civilian or military passengers or cargo or other operations, at all altitudes in the territory and airspace of Libya or at altitudes below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya, that department, agency, or instrumentality may request the FAA to approve persons described in SFAR No. 112, § 91.1603, 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 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 wishes the proposed operation(s) 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 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 described in SFAR No. 112, § 91.1603, 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 Libya at all altitudes, and in those portions of the Tripoli FIR (HLLL) outside the territory and

airspace of Libya at altitudes below FL300, 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 those areas 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 Libya at any altitude or in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300. The requestor may identify additional operators to the FAA at any time after the FAA approval is issued. Both the operators listed in the original request and any operators that the requestor subsequently seeks to add to the approval must be identified to the FAA and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA) from the FAA, as appropriate, for operations in the territory and airspace of Libya at any altitude or in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300, as applicable, before such operators commence operations. The approval conditions discussed below apply to all operators, whether included in the original list or subsequently

added to the approval. 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. 112, § 91.1603, 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 Libya at all altitudes and in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300; 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 at all altitudes in the territory and airspace of Libya and in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300.

(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 a 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 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. 112, § 91.1603. 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 Libya at all altitudes, and in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300, 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 those areas 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 that 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. Note: The FAA has found comprehensive, organized plans and procedures 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. 112, § 91.1603.

The FAA recognizes that the operations SFAR No. 112, § 91.1603, 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 other 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

This action amends, with modifications to reflect changed security conditions in Libya and the associated risks to U.S. civil aviation safety, the SFAR prohibiting certain flight operations in the Tripoli FIR (HLLL). This action prohibits U.S. civil flight operations in the territory and airspace of Libya at all altitudes, incorporating the flight prohibition contained in

NOTAM KICZ A0026/19 into the SFAR, as a result of the significant hazards to U.S. civil aviation detailed in the preamble of this final rule. This action also extends the expiration date of the SFAR for an additional two years and continues the prohibition against all U.S. civil flights at altitudes below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya. As a result of this rule, U.S. civil operators and airmen may only operate in the Tripoli FIR (HLLL) if they remain outside the territory and airspace of Libya and at altitudes at or above FL300, unless they have received an exemption or approval from the FAA.

Consequently, U.S. operators have the option to continue using several airways connecting western Africa with the Middle East, provided that they operate at altitudes at or above FL300 in the Tripoli FIR (HLLL) and remain outside of Libyan territorial airspace. In addition, U.S. Government departments, agencies, and instrumentalities may take advantage of the approval process on behalf of U.S. operators and airmen with whom they have a contract, grant, or cooperative agreement, or with whom their prime contractor has a subcontract. U.S. operators and airmen who do not have any of the foregoing types of arrangements with the U.S. Government may petition for exemption from this rule.

The FAA acknowledges the expanded flight prohibition in NOTAM KICZ A0026/19, which this final rule incorporates into SFAR No. 112, § 91.1603, may result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the costs of this action are exceeded by the benefits of avoided risks of fatalities, 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 Libya at all altitudes or in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of

Libya at altitudes below FL300. The FAA will continue to monitor and evaluate the risks to U.S. civil operators and airmen as a result of security conditions in the territory and airspace of Libya, as well as in the rest of the Tripoli FIR (HLLL).

#### 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 exists 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 risks to aircraft operations in the Tripoli FIR (HLLL), a location outside the U.S. Therefore, this final rule complies 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 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, the FAA’s policy is to conform to ICAO Standards and Recommended Practices to the

maximum extent practicable. The FAA has determined 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 for U.S. civil aviation. 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 for U.S. civil aviation.

#### G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 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 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 and has placed it 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 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. 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, 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 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 Federal Document Management System (FDMS) Portal at <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 website at <http://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 Federal Document Management System Portal referenced previously.

#### 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/](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, Libya.

#### **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), 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. Revise § 91.1603 to read as follows:

**§ 91.1603 Special Federal Aviation Regulation No. 112—Prohibition Against Certain Flights in the Tripoli Flight Information Region (FIR) (HLLL).**

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) 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 when such persons are operating U.S.-registered aircraft for a foreign air carrier; and

(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 following specified areas:

(1) The territory and airspace of Libya.

(2) Any portion of the Tripoli FIR (HLLL) that is outside the territory and airspace of Libya at altitudes below Flight Level (FL) 300.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting the following flight operations in the Tripoli FIR (HLLL):

(1) Overflights of those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya that occur at altitudes at or above Flight Level (FL) 300; or

(2) Flight operations in the Tripoli FIR (HLLL) that 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 14 CFR part 119, 121, 125, or 135, 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 Special Federal Aviation Regulation (SFAR) will remain in effect until March 20, 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 July 1, 2020.

Daniel K. Elwell,

Deputy Administrator.

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