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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

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

**RIN 2120-AL56**

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

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

**ACTION:** Final rule.

**SUMMARY:** This action amends and extends, with modifications to reflect conditions in Iraq and the risks to U.S. civil aviation, the Special Federal Aviation Regulation (SFAR) prohibiting certain flight operations in the Baghdad Flight Information Region (FIR) (ORBB) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address the risks to the safety of persons and aircraft engaged in such flight operations. Specifically, this action amends the SFAR to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below Flight Level (FL) 320. This rule amends the SFAR prohibition from altitudes below FL260 to altitudes below FL320, based on an assessment of the current aviation safety risks. This action also extends the expiration date of the SFAR from October 26, 2020, to October 26, 2022. Additionally, 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:** Stephen Moates, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, D.C. 20591; telephone 202-267-4147; email [stephen.moates@faa.gov](mailto:stephen.moates@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

This action amends, with modifications to reflect conditions in Iraq and the risks to U.S. civil aviation, the prohibition against certain U.S. civil flight operations in the Baghdad FIR (ORBB) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.- registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, this amendment prohibits all persons described in paragraph (a) of SFAR No. 77, § 91.1605 of title 14, Code of Federal Regulations (CFR), from conducting civil flight operations in the Baghdad FIR (ORBB) at altitudes below FL320. NOTAM KICZ A0036/20, which prohibits U.S. civil aviation operations in the entire Baghdad FIR (ORBB) at all altitudes, will remain in effect following publication of this final rule. This approach maintains flexibility for the FAA to revisit the all-altitude flight prohibition as necessary to determine whether U.S. civil aviation operations can occur safely in the Baghdad FIR (ORBB) at altitudes at or above FL320.

This action also makes several other amendments to the SFAR. This action extends the expiration date of this SFAR from October 26, 2020, to October 26, 2022; 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 (U.S.C.), 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. 77, § 91.1605, from conducting flight operations in the

Baghdad FIR (ORBB) at altitudes below FL320 due to the hazards to the safety of U.S. civil flight operations, 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 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 SFAR.

The risk environment for U.S. civil aviation in airspace other countries manage 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 or militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks make issuing notice and seeking comments 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 comment meaningfully on information to which they are not legally allowed access.

Under these conditions, public interest considerations favor not providing notice and seeking comment for this rule. 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 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 overrestricting U.S. operators' routing options.

Based on concerns for safety of the operations of persons described in paragraph (a) of SFAR No. 77, § 91.1605, in the Baghdad FIR (ORBB) at altitudes below FL320, this rule is necessary and its effective date should not be subject to delay. Good cause exists for not delaying the effective date, based on the current risk assessment of the environment in which this SFAR prohibits U.S. civil aviation operations. As such, public interest favors not subjecting this rule to public comment and not delaying the effective date. The FAA maintains NOTAM KICZ A0036/20's all-altitude prohibition on U.S. civil aviation operations in the Baghdad FIR (ORBB), but does not incorporate the portion of that prohibition that applies to U.S. civil aviation operations at altitudes at or above FL320 into the CFR. This course of action is consistent with the FAA's approach of making decisions based on risk and will provide flexibility.

Based on the foregoing, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

### **III. Background**

On October 26, 2018, the FAA reissued SFAR No. 77, § 91.1605. As reissued, SFAR No. 77, § 91.1605, prohibited U.S. civil flight operations in the Baghdad FIR (ORBB) at altitudes below FL260, subject to certain limited exceptions described in the 2018 final rule.<sup>1</sup> The reissued SFAR No. 77, § 91.1605, permitted the persons described in paragraph (a) of the rule to operate at altitudes below FL260 in the Baghdad FIR (ORBB) to the extent necessary to climb out of, or descend into, the Kuwait FIR (OKAC), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq. The 2018 final rule also included an expiration date of October 26, 2020.

In issuing the 2018 final rule, the FAA stated it had determined the situation in the Baghdad FIR (ORBB) remained hazardous for U.S. civil aviation at altitudes below FL260, subject to limited exceptions.<sup>2</sup> A continuing risk to U.S. civil aviation existed from the potential for fighting in certain areas of northern and western Iraq between the Islamic State of Iraq and ash-Sham (ISIS), other extremist or militant elements, Iraqi security forces, and other elements. ISIS and other extremist or militant elements possessed a variety of anti-aircraft-capable weapons, including man-portable air defense systems (MANPADS), and had fired on military aircraft during combat operations in Iraq. This presented a continued risk of anti-aircraft fire against civil aircraft, particularly in areas where fighting might occur. A risk of potential hostile activity by ISIS elements or other anti-U.S. militants or extremists elsewhere in Iraq also existed.

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<sup>1</sup> Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB) final rule, 83 FR 53985, October 26, 2018.

<sup>2</sup> Id.

Following the 2018 final rule, the FAA continued to monitor the risks to U.S. civil aviation in the Baghdad FIR (ORBB). After the United States withdrew from the Joint Comprehensive Plan for Action (the “Iran Nuclear Agreement”) in May 2018 and designated Iran’s Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization in April 2019, Iran took a series of steps that heightened regional tensions. Specifically, Iran began posturing military capabilities on its southern coast to project strength and influence in the Persian Gulf and Gulf of Oman region. Additionally, the United States assessed Iran to have been responsible for sabotage attacks on multiple merchant vessels in the region in May 2019. On June 19, 2019, Universal Coordinated Time (UTC), IRGC elements shot down a U.S. military Global Hawk unmanned aircraft operating in airspace over the Gulf of Oman with a surface-to-air missile (SAM) system. The successful intercept of the unmanned aircraft followed a June 13, 2019, UTC, failed intercept attempt of a U.S. unmanned aircraft conducting observation of damaged oil tankers in the Gulf of Oman. In mid-September 2019, the United States assessed Iranian forces to have been responsible for conducting a complex attack using unmanned aircraft systems (UAS) and missiles to target Saudi Aramco’s energy infrastructure. In late-December 2019, IRGC-aligned militia groups conducted a rocket attack targeting U.S. forces located at a coalition base near Kirkuk, Iraq, resulting in casualties and precipitating U.S. retaliatory airstrikes on IRGC-aligned militia-associated facilities in Iraq and Syria.

On January 2, 2020, UTC, U.S. forces conducted an airstrike near Baghdad International Airport (ORBI) in Iraq, which killed IRGC Quds Force Commander Qassem Soleimani. In a televised address, Iranian Supreme Leader Ali Khamenei stated Iran would engage in “harsh retaliation” for Soleimani’s death.

On January 7, 2020, UTC, Iran conducted retaliatory ballistic missile strikes targeting U.S. air bases in Iraq. To address immediate safety-of-flight hazards following this event, the FAA issued NOTAMs KICZ A0001/20, A0002/20, and A0003/20, which prohibited U.S. civil flight operations in the Baghdad FIR (ORBB), the Tehran FIR (OIIX), and the overwater airspace above the Persian Gulf and the Gulf of Oman, respectively.<sup>3</sup>

By February 2020, regional military activity had de-escalated, and regional political tensions, although still elevated, had diminished. As a result, the FAA assessed U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes at or above FL320 and determined such operations could resume safely. However, the FAA determined there remained an unacceptable level of risk to U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320, due to heightened IRGC-aligned militia activities and continued elevated tensions in the region. As a result, on February 27, 2020, UTC, the FAA issued NOTAM KICZ A0032/20, which replaced NOTAM KICZ A0001/20 and allowed U.S. civil aviation operations in the Baghdad FIR (ORBB) to resume at altitudes at or above FL320. NOTAM KICZ A0032/20 continued to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320, including descents into and departures from the Kuwait FIR (OKAC).

Following the issuance of NOTAM KICZ A0032/20, the FAA continued to monitor the situation closely, given the fluid and tense security environment in Iraq. On March 11, 2020, UTC, likely IRGC-aligned militia elements conducted a rocket attack against Taji Military Complex, resulting in the death of two U.S. soldiers and one British soldier. Following this

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<sup>3</sup> To be clear, the scope of the rulemaking action taken here is limited to the Baghdad FIR (ORBB).

event, on March 12, 2020, UTC, the FAA issued NOTAM KICZ A0036/20, prohibiting U.S. civil aviation operations in the Baghdad FIR (ORBB) at all altitudes once again due to heightened militia activities and increased tensions in Iraq, which presented an inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification.

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

The FAA has determined the situation in the Baghdad FIR (ORBB) continues to present an unacceptable level of risk for U.S. civil aviation, especially for operations that occur below FL320. Shortly after the FAA issued NOTAM KICZ A0036/20, on March 14, 2020, UTC, a second rocket attack against Taji Military Complex occurred, resulting in at least five injuries. Additionally, on April 6, 2020, UTC, an indirect fire attack occurred in close proximity to a U.S. energy company facility in southern Iraq. Even though no reported damage or casualties occurred as a result of the April 6, 2020, UTC, attack, this event demonstrates the risk to U.S. interests in Iraq. Although the perpetrators of the recent attacks against the Taji Military Complex and the attack near the U.S. energy company facility in southern Iraq remain unidentified, Iranian-backed militia groups targeting U.S. interests in Iraq likely committed the attacks. In late May 2020, an IRGC-aligned militia group claimed to have fired MANPADS targeting a U.S. military helicopter operating south of Baghdad on April 17, 2020. IRGC-aligned militia groups continued to conduct harassing indirect fire attacks targeting U.S. forces and interests in Iraq, including multiple incidents directed at U.S. interests collocated at Baghdad International Airport (ORBI). The latest such incident took place on September 10, 2020, when three rockets impacted near Baghdad International Airport (ORBI), with one round hitting the airport parking garage.

During 2019 and 2020, the security environment in Iraq evolved such that the primary sources of risk to U.S. civil aviation operations below FL320 in the Baghdad FIR (ORBB) include not just the ISIS threat but also IRGC-aligned militia attacks on, and threats against, U.S. interests in Iraq. In addition to the previously described attacks on Taji Military Complex and the U.S. energy company facility in southern Iraq, IRGC-aligned militia groups continue to call for the expulsion of U.S. and other coalition armed forces from Iraq. IRGC-aligned militia groups are also likely responsible for multiple indirect fire attacks targeting U.S. and other coalition armed forces, as well as ongoing, intermittent rocket attacks targeting the U.S. Embassy and Baghdad International Airport (ORBI). Such attacks pose a risk to airports and airbases, aircraft on the ground, and aircraft operating at low altitudes, including during the arrival and departure phases of flight.

In addition, the FAA is concerned about risks to aviation safety that anti-U.S. IRGC-aligned militia groups might present. Such groups, armed with various anti-aircraft capabilities, including light anti-aircraft artillery and MANPADS, have publicly threatened to defend their locations, following a string of third party airstrikes in 2019. These groups might respond similarly in the event that U.S. or other coalition forces conduct retaliatory airstrikes.

The FAA considered several other factors in assessing risk to U.S. civil aviation safety in the Baghdad FIR (ORBB). For example, Iran has a history of proliferating advanced weapons capabilities, including advanced anti-aircraft weapons, to its proxy groups, and the FAA remains concerned Iran may provide IRGC-aligned militia groups with advanced anti-aircraft weapons capable of engaging aircraft at altitudes below FL320. Moreover, both Iran and Turkey recently conducted small-scale attacks along and across the northern and eastern borders of Iraq with little

or no warning. Finally, fielded GPS jammers pose a continuing potential inadvertent risk to U.S. civil aviation operations in the Baghdad FIR (ORBB). Taken as a whole, the complex security environment in Iraq makes it challenging to de-conflict military activities from civil air traffic, increasing the risk of an accidental shoot down of a civil aircraft due to miscalculation or misidentification.

The FAA's concerns for the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) include operations to descend into, or depart from, the Kuwait FIR (OKAC), given the evolution in the sources of risk to U.S. civil aviation to include IRGC-aligned militia attacks on, and threats against, U.S. interests. The FAA has determined potential IRGC-aligned militia activity in southern Iraq presents an unacceptable risk to U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320, including flights departing from, or descending into, the Kuwait FIR (OKAC).

The FAA is cognizant of the fact that, in May 2020, Iraq formed a new government, led by Prime Minister Mustafa al-Kadhimi. The newly formed Government of Iraq has worked with the U.S. Government to reduce risks to civil aviation operations in the Baghdad FIR (ORBB). The newly formed Government of Iraq has publicly declared its intent to rein in non-state actors and has already initiated steps toward eliminating the influence of IRGC-aligned militia groups at Baghdad International Airport (ORBI). If successful in curbing harassing attacks on U.S. interests in Iraq, these efforts may reduce the risk of further escalation, thereby reducing the inadvertent risk to U.S. civil aviation overflights from anti-aircraft weapons activity.

The FAA appreciates the Government of Iraq's expressed intent to improve the safety of civil aviation in the Baghdad FIR (ORBB), as well as the continuing diplomatic and technical engagements between the Government of the United States and the Government of Iraq on this

matter. While the FAA welcomes the Government of Iraq's efforts to reduce aviation safety risks, the Government of Iraq currently has not sufficiently abated risks to the safety in the Baghdad FIR (ORBB) at altitudes below FL320 for U.S. civil flights to resume at those altitudes, given the complex security environment in Iraq. Amending SFAR No. 77, § 91.1605, to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 is necessary to protect U.S. civil aviation. Therefore, based on the foregoing discussion, the final rule prohibits U.S. civil flight operations in the Baghdad FIR (ORBB) at altitudes below FL320. Additionally, given that the security environment in Iraq currently remains fluid and tense, the FAA remains concerned about the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB). As a result, NOTAM KICZ A0036/20 will remain in effect following publication of this SFAR. This approach maintains flexibility for the FAA to revisit the all-altitude flight prohibition as necessary to determine whether U.S. civil aviation operations can occur safely in the Baghdad FIR (ORBB) at altitudes at or above FL320.

Further, the FAA extends the expiration date of SFAR No. 77, § 91.1605, from October 26, 2020, until October 26, 2022. 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. 77, § 91.1605.

Amendments to SFAR No. 77, § 91.1605 might be appropriate if the risk to aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the Baghdad FIR (ORBB).

Lastly, the FAA makes minor administrative revisions to SFAR No. 77, § 91.1605, including updating the applicability paragraph of the regulatory text to make it consistent with other recently published flight prohibition SFARs.

## **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<sup>4</sup>

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Baghdad FIR (ORBB) at altitudes below FL320. 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. 77, § 91.1605, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Baghdad FIR (ORBB), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 77, § 91.1605, to conduct such operations.

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<sup>4</sup> U.S. civil aviation overflights of the Baghdad FIR (ORBB) at or above FL320 only require relief from NOTAM KICZ A0036/2020. The FAA generally would need the same categories of information, addressing the altitudes at which the proposed operation would take place, to consider a request for relief from the NOTAM as it would a request for relief from the SFAR. If the proposed operations would involve U.S. civil flights in the Baghdad FIR (ORBB) at altitudes below FL320, then the operator would require relief from both the NOTAM and the SFAR. In the interests of efficiency, the U.S. Government department, agency, or instrumentality may make a single request for approval to the FAA, which the FAA will construe as a request for both forms of relief, if both forms of relief would be necessary to conduct the proposed operations.

The requesting department, agency, or instrumentality of the U.S. Government must submit the request for approval 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.<sup>5</sup> 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 requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, D.C. 20591. Electronic submissions are acceptable and the requesting entity may request that the FAA notify

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<sup>5</sup> This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate within the area in which this SFAR prohibits their operations.

it electronically as to whether the FAA grants the approval request. 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. 77, § 91.1605, 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 seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service that the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Baghdad FIR (ORBB) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL320, 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 Baghdad FIR (ORBB) at altitudes below FL320. The

requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the Baghdad FIR (ORBB) at altitudes below FL320.<sup>6</sup> The approval conditions discussed below apply to all operators, whether included in the original list or subsequently added to the approval. Requestors should send updated lists 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 Stephen Moates for instructions on submitting it to the FAA. His contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

FAA approval of an operation under SFAR No. 77, § 91.1605, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules, regulations, and orders, including flight prohibition NOTAMs. Operators of civil aircraft must comply with the conditions of their certificates, 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.

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<sup>6</sup> If the FAA also approves operations under NOTAM KICZ A0036/20, then the OpSpec or LOA, as appropriate, will apply to operations in the Baghdad FIR (ORBB) at all altitudes.

## 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 Baghdad FIR (ORBB) at altitudes below FL320; 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 Baghdad FIR (ORBB) at altitudes below FL320.<sup>7</sup>

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

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<sup>7</sup> If the FAA approves operations under NOTAM KICZ A0036/20, alone or in addition to the SFAR, then the release and agreement to indemnify must cover all altitudes.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues 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). In addition, the FAA 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 may occur only in accordance with an exemption from SFAR No. 77, § 91.1605.<sup>8</sup> A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those that the approval process described in the previous section contemplates. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

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<sup>8</sup> U.S. civil aviation overflights of the Baghdad FIR (ORBB) at altitudes at or above FL320 only require relief from NOTAM KICZ A0036/20. The FAA generally would need the same categories of information, addressing the altitudes at which the proposed operation will be conducted, to consider a request for relief from the NOTAM as it would a petition for exemption from the SFAR. If the proposed operations would involve U.S. civil flights in the Baghdad FIR (ORBB) at altitudes below FL320, then the operator would require relief from both the NOTAM and the SFAR. In the interests of efficiency, the operator may make a single request to the FAA for both forms of relief, which the FAA will construe as a request for relief from the NOTAM and a petition for exemption from the SFAR, if both forms of relief would be necessary to conduct the proposed operations.

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the Baghdad FIR (ORBB) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL320 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.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.<sup>9</sup>

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<sup>9</sup> If the FAA grants a petition for exemption for an operation under NOTAM KICZ A0036/20, alone or in addition to the SFAR, then the release and agreement to indemnify will cover all altitudes.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that SFAR No. 77, § 91.1605, affects. 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 in accordance with the order of preference set forth in paragraph (c) of SFAR No. 77, § 91.1605.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information appears 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. In addition, DOT rulemaking procedures in subpart B of 49 CFR part 5 instruct DOT agencies to issue a regulation upon a reasoned determination that benefits exceed 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 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 and DOT rulemaking procedures, as it raises novel policy issues. This rule also complies with the requirements of the Department of Transportation's administrative rule on rulemaking at 49 CFR part 5. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. 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 rule prohibits U.S. civil flights in the Baghdad FIR (ORBB) at altitudes below FL320, due to the significant, continuing hazards to U.S. civil aviation detailed in the preamble of this final rule.<sup>10</sup> This action also extends the expiration date of this rule for an additional two years. U.S. Government departments, agencies and instrumentalities may take advantage of the

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<sup>10</sup> As described previously, the FAA also maintains the all-altitude flight prohibition contained in NOTAM KICZ A0036/20 due to continued safety hazards that extend well above FL320.

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 seek to conduct operations in the Baghdad FIR (ORBB) at altitudes below FL320 without any of the foregoing types of arrangements with the U.S. Government may petition for exemption from this rule.

The FAA acknowledges this flight prohibition might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Baghdad FIR (ORBB) at altitudes below FL320. 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 Baghdad FIR (ORBB).

#### 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 5 U.S.C. 553 or any other law requires an agency 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 that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

### 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 their operations in the Baghdad FIR (ORBB), 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 the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is 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 International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA also finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure 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), the 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 will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will 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 it is not 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 will 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, Reducing Regulation and Controlling Regulatory Costs, because the FAA is issuing it 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](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 S.W., Washington, D.C. 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/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

#### **List of Subjects in 14 CFR Part 91**

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

#### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, 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 § 91.1605 to read as follows:

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

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

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

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

(3) All operators of civil aircraft registered in the United States, 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 Baghdad Flight Information Region (FIR) (ORBB) at altitudes below Flight Level (FL) 320.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL320, provided that such flight operations occur under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the

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

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

(e) *Expiration.* This SFAR will remain in effect until October 26, 2022. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, D.C., under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on October 8, 2020.

Steve Dickson,  
Administrator.

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