



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2017-0768; Amdt. No. 91-348D]

RIN 2120-AL91

Extension of the Prohibition Against Certain Flights in the Damascus Flight Information Region (FIR) (OSTT)

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

ACTION: Final rule.

SUMMARY: This action extends the prohibition against certain flight operations in the Damascus Flight Information Region (FIR) (OSTT) 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, for an additional five years, from December 30, 2023, until December 30, 2028. The FAA finds this action necessary to address significant safety-of-flight risks to U.S. civil aviation associated with the enduring complex conflict in Syria. The FAA also republishes the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

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

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, through the Washington Operations Center, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-3203; email 9-FAA-OverseasFlightProhibitions@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of SFAR No. 114, § 91.1609 of title 14, Code of Federal Regulations (CFR), from December 30, 2023, to December 30, 2028. SFAR No. 114, § 91.1609, prohibits certain flight operations in the Damascus FIR (OSTT) 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 significant safety-of-flight risks to U.S. civil aviation in the Damascus FIR (OSTT) associated with the enduring complex conflict in Syria. The FAA also republishes the approval process and exemption information for this flight prohibition SFAR, consistent with other recently published flight prohibition SFARs.

II. Authority and Good Cause

A. 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 rule 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 continues to prohibit the persons described in paragraph (a) of SFAR No. 114, § 91.1609, from conducting flight operations in the Damascus FIR (OSTT) due to the significant safety-of-flight risks to U.S. civil flight operations in that airspace, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(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." Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable and contrary to the public interest.

Providing notice and the opportunity for the public to comment here would be impracticable.

The FAA's flight prohibitions, and any amendments thereto, need to include appropriate boundaries that 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 over-restricting or under-restricting U.S. operators' routing options. However, the risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving fighting, violent extremist and militant activity, or periods of heightened tensions, particularly where weapons capable of targeting or otherwise negatively affecting U.S. civil aviation are or may be present.

This fluidity, and 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. The delay that would be occasioned by providing an opportunity to comment

on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; violent extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-aircraft weapon systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and operations-related costs, as well as potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Damascus FIR (OSTT).

Alternatively, if the FAA made changes to the area in which U.S. civil aviation operations would be prohibited between a notice of proposed rulemaking and a final rule due to changed conditions, the version of the rule the public commented on would no longer reflect the FAA's current assessment of the risk environment for U.S. civil aviation.

In addition, seeking comment would be contrary to the public interest because some of the rational basis for the rulemaking is based upon classified information and controlled unclassified information not authorized for public release. In order to meaningfully provide comment on a proposal, the public would need access to the basis for the agency's decision-making, which the

FAA cannot provide. Disclosing classified or controlled unclassified information in order to seek meaningful comment on the proposal would harm the public interest. Accordingly, the FAA meaningfully seeking comment on the proposal is contrary to the public interest.

Therefore, providing notice and the opportunity for comment would be impracticable as it would hinder the FAA's ability to maintain appropriate flight prohibitions based on up-to-date risk assessments of the risks to the safety of U.S. civil aviation operations in airspace managed by other countries, and contrary to the public interest, as the FAA cannot protect classified and controlled unclassified information and meaningfully seek public comment.

For the same reasons discussed above, the potential safety impacts and the need for prompt action on up-to-date information that is not public would make delaying the effective date impracticable and contrary to the public interest.

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

III. Background

On December 30, 2020, the FAA amended SFAR No. 114, § 91.1609, to extend the expiration date of the flight prohibition for U.S. operators and airmen in the Damascus FIR (OSTT) from December 30, 2020, to December 30, 2023.¹ In issuing the 2020 final rule, the FAA determined the situation in the Damascus FIR (OSTT) remained hazardous for U.S. civil aviation due to a variety of aviation safety risks associated with the ongoing conflict in Syria.²

In 2020, the FAA determined the presence of third parties conducting independent military operations in Syria against pro-Assad regime forces, opposition groups, and violent extremist elements presented an unacceptable level of risk to U.S. civil aviation operations. Third-party airstrikes in Syria often resulted in Syrian military air defense responses. Syrian authorities did

¹ Extension of the Prohibition Against Certain Flights in the Damascus Flight Information Region (FIR)(OSTT) final rule, 85 FR 75840, (Nov. 27, 2020).

² Id. at 75841.

not adequately de-conflict these air defense activities, which included indiscriminate surface-to-air missile (SAM) fire, with civil aviation operations in the Damascus FIR (OSTT), including, but not limited to, civil flight operations in close proximity to international airports in Syria. In late February 2020, Syrian air defense activities forced a commercial Cham Wings Airbus 320 passenger flight on final approach to Damascus International Airport (ICAO code: OSDI) to divert to an alternate airfield in Syria.

The lack of de-confliction of Syrian air defense activity with civil air traffic was just one of the risks to U.S. civil aviation operations in the Damascus FIR (OSTT) emanating from third-party involvement in Syria. Russia, Iran, and the Lebanese terrorist organization, Hizballah, all of which are Syrian regime allies, continued to conduct military operations in Syria and had deployed significant air defense and electronic warfare capabilities, including Global Positioning System (GPS) jammers, which presented a risk to U.S. civil aviation operations in the Damascus FIR (OSTT). In March 2020, Russian, Turkish, and Syrian forces clashed in Idlib Province. During these clashes, fighter aircraft and possible SAMs shot down several manned and unmanned aircraft.

In addition to the hazards associated with third-party involvement in the Syrian conflict, violent extremist threats to civil aviation safety existed in Syria. Terrorist groups, including the Islamic State of Iraq and ash-Sham (ISIS) and al-Qaida-aligned entities, possessed or had access to a wide array of anti-aircraft weapons that posed a risk to civil aviation operations in the Damascus FIR (OSTT). Anti-regime forces, violent extremists, and militants had successfully shot down multiple military aircraft using man-portable air defense systems (MANPADS) during the Syrian conflict. Additionally, various elements had successfully targeted military aircraft using advanced anti-tank guided missiles (ATGMs). ATGMs primarily pose a risk to civil aircraft operating near, or parked at, an airport. Finally, various groups had employed unmanned aircraft systems (UAS) to surveil and attack Syrian and Syrian-allied fielded forces and airfields.

IV. Discussion of the Final Rule

The FAA has determined the enduring complex conflict in Syria continues to present an unacceptable level of risk for U.S. civil aviation safety in the entirety of the Damascus FIR (OSTT) at all altitudes. Various third parties, including but not limited to Russia, Iran, Turkey, and Israel, continue to conduct uncoordinated military operations in Syria, resulting in various risks to U.S. civil aviation operations in the Damascus FIR (OSTT). Such military operations include tactical crewed aircraft and UAS intelligence collection and strike operations, electronic warfare operations, indirect fire attacks, missiles, and potential anti-aircraft weapons use that may not be de-conflicted adequately with civil aviation operations in the Damascus FIR (OSTT). Recent third-party military operations have resulted in damage and operational disruptions at Damascus International Airport (ICAO code: OSDI) and Aleppo International Airport (ICAO code: OSAP). In mid October 2023, third party attacks resulted in cratering of the runways at both Damascus International Airport (OSDI) and at Aleppo International Airport (OSAP) resulting in operational disruptions and at least one civil aircraft changing its routing out of Syrian airspace. Previous attacks on Syrian airports had occurred in early January 2023, third-party attacks in Damascus caused damage and operational disruptions at Damascus International Airport (OSDI). Third-party airstrikes also had targeted Damascus International Airport (OSDI) in June and September 2022. In March 2023 and in early May 2023, third-party airstrikes on Aleppo International Airport (OSAP) occurred. The early May 2023 airstrikes against military targets at the airport resulted in a temporary shutdown of airport operations. Past Syrian air defense responses to third-party missile attacks and airstrikes in Syria have included indiscriminate surface-to-air missile (SAM) fire not adequately de-conflicted with civil aviation operations in the Damascus FIR (OSTT). Additionally, Russia, Iran, and the Lebanese terrorist organization Hizballah, have deployed significant air defense and electronic warfare capabilities in Syria, including GPS jammers, which also may not be de-conflicted adequately with civil aviation operations, further contributing to the inadvertent risks to the safety of U.S. civil aviation operations in the Damascus FIR (OSTT). The FAA remains concerned about the

potential for inadvertent damage to or destruction of civil aircraft operating in the Damascus FIR (OSTT) and while on the ground at or near targeted locations in Syria.

In addition to the continued hazards associated with third-party involvement in the Syrian conflict, violent extremist threats to civil aviation safety continue to exist in the Damascus FIR (OSTT). Anti-regime forces, violent extremists, and militants have successfully shot down multiple crewed military aircraft using man-portable air defense systems (MANPADS) during the Syrian conflict, as well as multiple UAS. In addition, in early 2023, Iranian-aligned militia groups (IAMGs) increased their targeting of U.S. forces in Syria with rockets and weaponized UAS, as demonstrated by a January 2023 UAS attack on U.S. interests at Al-Tanf and a March 2023 UAS attack on U.S. forces located in northeastern Syria. UAS attack operations present increased safety-of-flight risks to civil aircraft operating at low altitudes in the Damascus FIR (OSTT) and at targeted locations in Syria.

Open-source reporting also indicates that Iran has discussed deploying advanced air defense capabilities to Syria, and potentially proliferating these capabilities to IAMGs, to counter third-party airstrikes in Syria. If confirmed, the proliferation of advanced air defense capabilities to IAMGs would likely increase risk concerns for U.S. civil aviation in the Damascus FIR (OSTT) due to the potential for uncoordinated SAM launches by operators who would likely lack adequate training and a complete airspace picture.

As a result of the significant, continuing, unacceptable risks to the safety of U.S. civil aviation operations in the Damascus FIR (OSTT), the FAA extends the expiration date of SFAR No. 114, § 91.1609, from December 30, 2023, until December 30, 2028.

Further amendments to SFAR No. 114, § 91.1609, might be appropriate if the risk to U.S. civil 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 Damascus FIR (OSTT).

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. 114, § 91.1609.

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 Damascus FIR (OSTT). 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. 114, § 91.1609, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Damascus FIR (OSTT), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 114, § 91.1609, to conduct such 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.³ 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

³ 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 would prohibit their operations in the absence of specific FAA authorization.

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 aviation safety and security 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 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 Washington Operations Center by telephone at (202) 267-3203 or by email at 9-FAA-OverseasFlightProhibitions@faa.gov for submission instructions. The requestor must not submit its letter requesting FAA approval or related supporting documentation to the Washington Operations Center. Rather, the Washington Operation Center will refer the requestor to an appropriate staff member of the Air Transportation Division, Flight Standards Service, for further assistance.

A single letter may request approval from the FAA for multiple persons described in SFAR No. 114, § 91.1609, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover 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 Damascus FIR (OSTT) 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 Damascus FIR (OSTT) 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 Damascus FIR (OSTT). 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 to the approval, 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 Damascus FIR (OSTT). The approval conditions discussed below apply to all operators, whether included in the original list or subsequently added to the approval. Requestors should contact the Washington Operations Center by telephone at (202) 267-3203 or by email at 9-FAA-OverseasFlightProhibitions@faa.gov for instructions on how to submit the names of additional operators it wishes to add to an existing approval to the FAA. The requestor must not submit the names of additional operators it wishes to add to an existing approval to the Washington Operations Center. Rather, the Washington Operation Center will refer the requestor to an appropriate staff member of the Air Transportation Division, Flight Standards Service, for further assistance.

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact the Washington Operations Center for instructions on submitting it to the FAA. The Washington Operations Center's contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 114, § 91.1609, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. 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.

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 Damascus FIR (OSTT); 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 Damascus FIR (OSTT).

(3) Other conditions the FAA may specify, including those the FAA might impose 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 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, and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 114, § 91.1609. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those 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:

The proposed operation(s), including the nature of the operation(s);

The service the person(s) covered by the SFAR will provide;

The specific locations in the Damascus FIR (OSTT) 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 Damascus FIR (OSTT) 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.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 114, § 91.1609. 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. 114, § 91.1609.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact the Washington Operations Center for instructions on submitting it to the FAA. The Washington Operations Center's contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. Requestors must not submit their petitions for exemption or related supporting documentation to the Washington Operations Center. Rather, the Washington Operation Center

will refer the requestor to the appropriate staff member of the Air Transportation Division, Flight Standards Service, or the Office of Rulemaking for further assistance.

VII. Severability

Congress authorized the FAA by statute to promote safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. 49 U.S.C. 44701. Consistent with that mandate, the FAA is prohibiting certain persons from conducting flight operations in the Damascus FIR (OSTT) due to the continuing hazards to the safety of U.S. civil flight operations. The purpose of this rule is to operate holistically in addressing a range of hazards and needs in the Damascus FIR (OSTT). However, the FAA recognizes that certain provisions focus on unique factors. Therefore, the FAA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule's unique provisions, the remaining provisions should stand, thus allowing the FAA to continue to fulfill its Congressionally authorized role of promoting safe flight of civil aircraft in air commerce.

VIII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 ("Modernizing Regulatory Review"), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include

a Federal mandate likely to result in the expenditure by State, local, or Tribal Governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$177 million using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. 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 as amended by Executive Order 14094. 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 action extends the expiration date of the SFAR prohibiting certain flight operations in the Damascus FIR (OSTT) for an additional five years due to the significant, continuing risks to U.S. civil aviation detailed in the preamble of this final 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 to 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 Damascus FIR (OSTT).

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 (Pub. L. 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the 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 Damascus FIR (OSTT), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and Tribal Governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$177 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 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), 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.

IX. 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. 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 will 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.

X. Additional Information

A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, 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.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found at the FAA's Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR part 91

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

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. Amend § 91.1609 by revising paragraph (e) to read as follows:

§ 91.1609 Special Federal Aviation Regulation No. 114—Prohibition Against Certain Flights in the Damascus Flight Information Region (FIR) (OSTT).

* * * * *

(e) Expiration. This SFAR will remain in effect until December 30, 2028. 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).

Michael Gordon Whitaker,
Administrator.

[FR Doc. 2023-28502 Filed: 12/26/2023 8:45 am; Publication Date: 12/27/2023]