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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

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

RIN 2120-AK75

Prohibition Against Certain Flights in the Territory and Airspace of Somalia

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

ACTION: Final rule.

SUMMARY: This action amends and expands a prohibition against certain flights in the territory and airspace of Somalia that applies to all United States (U.S.) air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The prohibition is expanded by raising the minimum Flight Level (FL) for flight operations by such persons from FL200 to FL260. The FAA is taking this action because it has determined that there is an unacceptable risk to U.S. civil aviation operating in the territory and airspace of Somalia at altitudes below FL260 resulting from terrorist and militant activity. The security situation in Somalia remains unstable. In response to this activity, the FAA published a Notice to Airmen (NOTAM) on May 12, 2015, prohibiting U.S. civil flight operations in the territory and airspace of Somalia at altitudes below FL260. The prohibition contained in the May 12, 2015 NOTAM was continued in a subsequent NOTAM issued on November 25, 2015 that used a new accountability code for NOTAMs that

announce FAA flight advisories or prohibitions for U.S. civil aviation operations in airspace for which the FAA is not the air navigation service provider. This amendment incorporates the flight prohibition set forth in the November 25, 2015 NOTAM into the rule; revises the approval process for proposed operations sponsored by other U.S. Government departments, agencies, and instrumentalities to align with the approval processes established for other recently published flight prohibition rules and clarifies the FAA's expectations regarding requests for approval; adds information about requests for exemption; reorganizes the placement of the rule within the General Operating and Flight Rules; and makes technical corrections to the regulatory text. This final rule will remain in effect for two years.

DATES: This final rule is effective on January 7, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Michael Filippell, Air Transportation Division, AFS-220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166; email michael.e.filippell@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The FAA has determined that there is an unacceptable risk to U.S. civil aviation operating in the territory and airspace of Somalia at altitudes below FL260 resulting from terrorist and militant activity, as described in the Background section of this rule. This action incorporates into Special Federal Aviation Regulation (SFAR) No. 107, § 91.1613, the expanded flight prohibition for U.S. civil aviation detailed in the November 25, 2015, 2015 NOTAM (KICZ A0031/15). The revised prohibition applies to flight operations in the territory and airspace of Somalia at altitudes below FL260 by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. Prior to this rulemaking action, SFAR No. 107

prohibited certain flight operations within the territory and airspace of Somalia below FL200 (former paragraph 2 of SFAR No. 107). However, it permitted flights departing from countries adjacent to Somalia whose climb performance would not permit them to operate above FL200 prior to entering Somali airspace, to operate at altitudes below FL200 while operating within Somalia to the extent necessary to permit them to climb above FL200, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia (former paragraph 2(b) of SFAR No. 107). This amendment no longer provides such exceptions for flights departing from adjacent countries and entering Somali airspace below FL260. This amendment also reformats the rule to meet current **Federal Register** requirements; moves the rule from the beginning of part 91 of title 14, Code of Federal Regulations (CFR) to subpart M of that part; and revises the approval process for this SFAR for other U.S. Government departments, agencies, and instrumentalities to align with the approval process established for other recently published flight prohibition SFARs and clarifies the FAA's expectations regarding requests for approvals. It also adds information about requests for exemptions and makes technical corrections to the regulatory text.

II. 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." In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the hazards to U.S. civil aviation that continue to exist in the territory and airspace of Somalia, as described in the Background section of this rule.

III. Authority for This Rulemaking

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated

airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority, because it prohibits the persons subject to paragraph (a) of Special Federal Aviation Regulation (SFAR) No. 107, § 91.1613, (formerly paragraph 1 of SFAR No. 107) from conducting flight operations at altitudes below FL 260 in the territory and airspace of Somalia due to the hazards to the safety of such persons' flight operations, as described in the Background section of this rule.

IV. Background

The FAA issued SFAR No. 107, effective March 30, 2007 (72 FR 16710, April 5, 2007), because it had aviation safety and national security concerns regarding the safety of U.S. civil flight operations in Somalia, as well as overflights of Somalia below FL200. On March 9, 2007, the fuselage of an IL-76 aircraft supporting the deployment of Ugandan peacekeeping forces to Somalia exploded and caught fire just above the landing gear while on final approach to Mogadishu International Airport (HCMM). There was evidence to support the possibility that the aircraft might have been struck by a rocket-propelled grenade (RPG) while 2.5–3 kilometers off the coast of Somalia at approximately 120 meters in altitude. The aircraft was able to land at Mogadishu, but was heavily damaged, although no serious injuries occurred to any crew or passengers. While there were conflicting accounts regarding the

cause of the incident, the FAA believed at the time that the attack on the IL-76 was probably caused by an RPG. The FAA could not rule out the possibility that some individuals also had access to man-portable air defense systems (MANPADS) that could be used against those persons covered by SFAR No. 107. In addition, on March 23, 2007, an IL-76 aircraft crashed after taking off from Mogadishu airport, killing all the passengers and crew. The aircraft brought engineers and parts to the IL-76 crippled in the March 9, 2007, incident. Although the cause of the crash was under investigation at the time SFAR No. 107 was issued, there was a possibility the IL-76 was downed by a MANPAD or RPG. These incidents occurred days after unknown individuals attacked the airport at Mogadishu with mortars, causing minimal damage. Consequently, the FAA determined that it was not safe for persons subject to SFAR No. 107 to overfly Somali territory below FL200 and that it was not in the United States' national security interests for such persons to engage in flight operations within the territory and airspace of Somalia below that altitude. Subsequent review of the IL-76 incidents later assessed that both attacks likely involved MANPADS.

The security situation in Somalia remains unstable. The FAA has continued to monitor hazards to U.S. civil aviation in the territory and airspace of Somalia and has determined that the risk from terrorist and militant activity now makes it unsafe for U.S. civil flights to operate in the territory and airspace of Somalia at altitudes below FL260. On May 12, 2015, the FAA published NOTAM FDC 5/0120, which prohibited all U.S. civil flight operations in the territory and airspace of Somalia at altitudes below FL260, due to an unacceptable risk to U.S. civil aviation operations at altitudes below FL260 from terrorist and militant activity. This NOTAM increased restrictions on U.S. civil aviation operations in the territory and airspace of Somalia beyond the restrictions contained in SFAR No. 107, which remained in effect.

On November 25, 2015, KICZ NOTAM A0031/15 replaced FDC NOTAM 5/0120 (A0018/15). The new NOTAM was published as the FAA transitioned from using Flight Data Center NOTAMs to the new KICZ accountability code for NOTAMS that announce FAA flight advisories or prohibitions for U.S. civil aviation operations in airspace for which the FAA is not the air navigation service provider. The details of the FAA's flight

prohibition remained unchanged. This rule incorporates the expanded restrictions contained in the NOTAM into SFAR No. 107.

International civil air routes that transit Somali airspace and aircraft operating to and from Somali airports remain at risk from terrorist and militant groups potentially employing anti-aircraft weapons, including MANPADS, small-arms fire and indirect fire from mortars and rockets targeting airports. Some of these weapons have the capability to target aircraft upon approach and departure and at higher altitudes. The terrorist group al-Shabaab is active in Somalia and has demonstrated the capability and intent to target U.S. and Western interests. Al-Shabaab has conducted multiple attacks against civil aviation, including the previously mentioned attacks on two IL-76 aircraft in March 2007, likely using MANPADS. These attacks were part of the basis for the original SFAR. Al-Shabaab has also conducted ground assaults against Mogadishu International Airport (HCMM), the most recent of which occurred in December 2014. Attacks against aircraft in-flight or Somali airports can occur with little or no warning.

Given the uncertainty about when the above-described hazards to U.S. civil aviation will abate sufficiently to allow for safe U.S. civil aviation operations in the territory and airspace of Somalia below FL260, this amendment follows up on the November 25, 2015, NOTAM (KICZ A0031/15) by incorporating the flight prohibition contained in the NOTAM into the CFR. This amendment also places SFAR No. 107 in subpart M of part 91 in the new 14 CFR 91.1613.

The FAA will continue to actively evaluate the area to determine to what extent U.S. civil aviation may be able to safely operate therein. Adjustments to this SFAR may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind this SFAR, as necessary, prior to its expiration date.

Additionally, the FAA is amending the approval process and approval conditions for SFAR No. 107, § 91.1613. The FAA believes that it has provided more streamlined approval processes for other U.S. government departments, agencies, and instrumentalities in more recent flight prohibition SFARs than the current SFAR No. 107 approval process would allow, and that an approval process similar to those adopted for recent SFARs may be instituted for SFAR No. 107, § 91.1613, while still addressing the risks to U.S. civil aviation in the territory and airspace of Somalia below FL260. The FAA is also

clarifying its expectations regarding requests for approval and revising the approval conditions that will apply to operations authorized by other U.S. Government departments, agencies, and instrumentalities and approved by the FAA to streamline the approval conditions along the lines of the approval conditions contained in recent flight prohibition SFARs and to reflect the termination of statutory authorization for the FAA premium war risk insurance program. Section 102 of Division L of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235, December 16, 2014, *inter alia*, amended 49 U.S.C. 44302(f) and 44310(a) to specify the termination dates in those sections as December 11, 2014. The effect was to terminate coverage under FAA's premium war risk insurance program as of December 11, 2014. The FAA is also specifying special requirements for petitions for exemption from SFAR No. 107, § 91.1613.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

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

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 107, § 91.1613, including a U.S. air carrier or a U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo or other operations in the territory and airspace of Somalia below FL260, that department, agency, or instrumentality may request that the FAA approve persons covered under SFAR No. 107, § 91.1613, to conduct such operations. An approval request must be made directly by the requesting department, agency or instrumentality of the U.S. Government to the FAA's Associate Administrator for Aviation Safety (AVS-1) in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality. Requests for approval submitted to the FAA by anyone other

than the requesting department, agency, or instrumentality will not be accepted and will not be processed. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently highly placed within his or her 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 operations, if approved by the FAA, to commence.

The letter must be sent by the requesting department, agency, or instrumentality to the Associate Administrator for Aviation Safety (AVS-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 107, § 91.1613, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the territory and airspace of Somalia below FL260 where the proposed operation(s) will be conducted, including, but not limited

to, the flight path and altitude of the aircraft while it is operating in the territory and airspace of Somalia at altitudes below FL260 and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and

- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*e.g.*, pre-mission planning and briefing, in-flight, and post-flight).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the territory and airspace of Somalia at altitudes below FL260. Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional operators must be identified to, and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, from, the FAA for operations in the territory and airspace of Somalia at altitudes below FL260 before such operators commence such operations. The revised approval conditions discussed below will apply to any such additional operators. Updated lists should be sent to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Michael Filippell for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 107, § 91.1613, does not relieve persons subject to this SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft must also comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must further comply with all rules and regulations of other U.S. Government departments and agencies that may apply to the proposed operations, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Revised Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety Organization (AVS) 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; and

(b) the operator's agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising from or related to the approved operations in the territory and airspace of Somalia below FL260.

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

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

If the proposed operation or operations are approved, the FAA will issue an OpSpec or an LOA, as applicable, to the operator authorizing the operation or operations, and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter. The requesting department, agency, or instrumentality must have a contract, grant, or cooperative agreement (or its prime contractor must have a subcontract) with the person(s) described in paragraph (a) of this SFAR No. 107, § 91.1613 (formerly paragraph 1 of SFAR No. 107), on whose behalf the department, agency, or instrumentality requests FAA approval.

VI. Requests for Exemption

Any operations not conducted under an approval issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 107, § 91.1613. A request by any person covered under SFAR No. 107, § 91.1613,

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

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations in the territory and airspace of Somalia below FL260 where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the territory and airspace of Somalia below FL260 and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- 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 (*e.g.*, the pre-mission planning and briefing, in-flight, and post-flight phases).

Additionally, the release and agreement to indemnify, as referred to above, will be required as a condition of any exemption that may be issued under SFAR No. 107, § 91.1613.

The FAA recognizes that operations that may be affected by SFAR No. 107, § 91.1613, including this amendment, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to any private exemption requests.

VII. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39), as amended, 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, FAA has determined that this final rule has benefits that justify its costs and is a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that Executive Order. The rule is also “significant” as defined in DOT's Regulatory Policies and Procedures. The final rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to the foreign commerce of the United States, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

Department of Transportation Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

Due to the significant hazards to U.S. civil aviation described in the Background section of this rule, this rule incorporates into SFAR No. 107, § 91.1613, the prohibition of U.S. civil flights in the territory and airspace of Somalia at altitudes below FL260 issued by the FAA in NOTAM FDC 5/0120 on May 12, 2015, and continued in KICZ NOTAM A0031/15, which was issued on November 25, 2015. Before the FAA issued the May 12, 2015, NOTAM, the FAA prohibited U.S. civil flights in the territory and airspace of Somalia below FL200, rather than below FL260. However, flights departing from countries adjacent to Somalia whose

climb performance would not permit operation above FL200 prior to entering Somali airspace were permitted to operate at altitudes below FL200 within Somalia to the extent necessary to permit a climb above FL200, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia.

The fuel and time costs associated with increasing altitude from FL200 to FL260 before overflying Somalia are minimal per flight. Also minimal per flight are the fuel and time costs for persons subject to SFAR No. 107, § 91.1613, departing from countries adjacent to Somalia (Kenya, Ethiopia, Djibouti, and Yemen), who are now required to be at altitudes at or above FL260 when entering Somali airspace. In addition, given the current hazards to U.S. civil aviation outlined in the Background section of this rule, the FAA believes there are very few U.S. operators who wish to overfly Somalia at altitudes below FL260. Consequently, the FAA estimates the costs of this rule to be minimal. These minimal costs are exceeded by the significant benefits of avoided deaths or property damage that would result from a U.S. operator's aircraft being shot down (or otherwise damaged) due to the hazards (described in the Background section of this final rule) to U.S. civil aviation in the territory and airspace of Somalia below FL260.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities,

section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While there are a substantial number of United States operators who are small entities, the number of affected flights is expected to be few, and the required change in flight path and altitude would result in minimal additional time and operating expense. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of this SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States,

or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

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

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VII. Additional Information

A. Availability of Rulemaking Documents

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

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

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9677. Please identify the docket or amendment number of this rulemaking in your request.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical

reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 91

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

The Amendment

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

PART 91—GENERAL OPERATING AND FLIGHT RULES

- 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

Special Federal Aviation Regulation No. 107—[Removed]

- 2. Remove Special Federal Aviation Regulation No. 107 from part 91.
- 3. Add § 91.1613 to subpart M to read as follows:

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

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

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

(3) All operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the territory and airspace of Somalia at altitudes below Flight Level (FL) 260. Overflights of Somalia may be conducted at or above FL260 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the territory and airspace of Somalia at altitudes below FL260, provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the 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 process requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) 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 January 7, 2018. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1),

40105(b)(1)(A), and 44701(a)(5), on December 23, 2015.

Michael P. Huerta,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2015-8672; Amdt. No. 91-340]

RIN 2120-AK72

Prohibition Against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight Information Region (FIR)

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

ACTION: Final rule.

SUMMARY: On May 22, 2015, the FAA issued a Notice to Airmen (NOTAM) prohibiting certain flight operations in specified areas of the Sanaa (OYSC) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA found this action necessary to address the hazardous situation created by the risks to U.S. civil aviation from ongoing military operations, political instability, violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen. The prohibition contained in the May 22, 2015 NOTAM was continued in a subsequent NOTAM issued on November 25, 2015 that used a new accountability code for NOTAMs that announce FAA flight advisories or prohibitions for U.S. civil aviation operations in airspace for which the FAA is not the air navigation service provider. This action incorporates the flight prohibition contained in the November 25, 2015, NOTAM into the Code of Federal Regulations.

DATES: This final rule is effective on January 7, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Michael Filippell, Air Transportation Division, AFS-220, Flight Standards Service, Federal Aviation Administration, 800

Independence Avenue SW., Washington, DC 20591; telephone 202-267-8166; email *michael.e.filippell@faa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action prohibits flight operations in the Sanaa (OYSC) FIR, excluding that airspace east and southeast of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from NODMA to PAKER (115500N 0463500E), by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a hazard to persons and aircraft engaged in such flight operations.

II. 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.” In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the hazard to U.S. civil aviation that now exists in specified areas of the Sanaa (OYSC) FIR, as described in the Background section of this rule.

III. Authority for This Rulemaking

The FAA is responsible for the safety of flight in the U.S. and the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA’s authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. 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 an security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce an national security. This regulation is within the scope of that authority, because it prohibits the persons subject to paragraph (a) of Special Federal Aviation Regulation (SFAR) No. 115, § 91.1611, from conducting flight operations in the Sanaa (OYSC) FIR due to the hazard to the safety of such persons’ flight operations, as described in the Background section of this rule.

IV. Background

On March 26, 2015 (FDC 5/8051), the FAA issued a NOTAM prohibiting flight operations in the entire Sanaa (OYSC) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons were operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators were foreign air carriers. The FAA took this action because it had determined that there was an unacceptable risk to U.S. civil aviation operating in the Sanaa (OYSC) FIR due to the hazardous situation faced by U.S. civil aviation from ongoing military operations, political instability, violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen.

After issuing the March 26, 2015, NOTAM, the FAA continued to monitor the risks to U.S. civil aviation in the Sanaa (OYSC) FIR. On May 22, 2015, after evaluating available information regarding the safety of certain air traffic routes over the high seas in the Sanaa (OYSC) FIR, including B400, B403 and B404, given current military operations and other threats to U.S. civil aviation in the region, the FAA determined that U.S. civil aviation operations could operate safely in part of the Sanaa (OYSC) FIR. The FAA issued a new NOTAM (FDC 5/5575), which allowed U.S. civil aviation operations to resume in specified areas of the Sanaa (OYSC) FIR. Specifically, the May 22, 2015, NOTAM permitted U.S. civil aviation operations to resume in the Sanaa (OYSC) FIR in that airspace east and southeast of a line drawn direct from