

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 91****[Docket No. 28691; Special Federal Aviation Regulation (SFAR) No. 77]****RIN 2120-AG25****Prohibition Against Certain Flights Within the Territory and Airspace of Iraq****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This action prohibits flight operations within the territory and airspace of Iraq by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. Recently heightened tensions and instability in Iraq resulting from the actions of the Iraqi government have increased the threat of harm to U.S. operators and civil aircraft operating in this area. Therefore, this action is taken to prevent an undue hazard as a result of the threat to persons and U.S.-registered aircraft overflying the area.

**DATES:** This SFAR is effective October 9, 1996, and shall remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Bury, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267-3515.

**SUPPLEMENTARY INFORMATION:****Availability of Document**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339), the Federal Register's electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202-267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov> or the Federal Register's web page at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs) for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the SFAR number or docket number of this action.

Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

**Background**

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. Section 44701(a) of Title 49, United States Code, provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce. In addition, 49 U.S.C. 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under an international agreement.

In the exercise of these statutory responsibilities, the FAA already has restricted certain flight operations to and from Iraq. SFAR 61-2 prohibits, with certain exceptions, the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Iraq, and the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Iraq. SFAR 61-2 implements Executive orders 12722 (1990) and 12724 (1990) and UN Security Council Resolutions 661, 666 and 670 (1990) mandating an embargo of air traffic with Iraq.

The FAA also has published a Notice to Airmen (NOTAM) advising of no-fly zones established by the United States and its coalition allies. The no-fly zones cover Iraqi territorial airspace north of 36 degrees north latitude and south of 33 degrees north latitude. The no-fly zones may be entered by aircraft only in accordance with the procedures

established by the U.S. and its coalition allies, as described in the NOTAM.

The FAA has determined that the recently heightened tensions and instability in Iraq resulting from the actions of the Iraqi government have increased the threat to civil aircraft. The military situation in Iraq is tense after Iraqi attacks in Kurdish areas north of the 36th parallel (the boundary of the northern no-fly zone in Iraq) and the shift of the southern no-fly zone boundary from the 32nd to the 33rd parallel. On September 3, 1996, Iraqi President Saddam Hussein urged his air defense forces to ignore both the southern and northern no-fly zones and attack "any air target of the aggressors." This threat was not limited specifically to the aircraft of the U.S. military and the coalition forces. The threat could also apply to any civilian aircraft that might attempt to enter the area.

Even after the 1991 Gulf War, the Iraqi military still possesses a wide range of sophisticated weapons that potentially could be used to attack civil aviation aircraft overflying Iraq at cruising altitudes. These weapons include Russian- and French-made fighter and attack aircraft armed with cannons and air-to-air missiles, as well as Russian surface-to-air missile systems. The partially rebuilt integrated air defense command and control system combines early warning radars and visual observers with the sophisticated weapons.

These circumstances justify the imposition of certain additional measures to ensure the safety of U.S.-registered aircraft and operators that are conducting flight operations in the vicinity of Iraqi territory and airspace.

**Prohibition Against Certain Flights Within the Territory and Airspace of Iraq**

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that immediate action by the FAA is required to prevent the potential injury or loss of certain U.S.-registered aircraft and U.S. operators conducting flights in the vicinity of Iraq. I find that the circumstances surrounding the recently heightened tensions and instability in and around Iraq and the actions of the Iraqi military, as described above, present an immediate hazard to the operation of civil aircraft in the territory and airspace of Iraq. Accordingly, I am ordering a prohibition of flight operations within the territory and airspace of Iraq by any United States carrier or commercial operator, by any person exercising the

privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is necessary to prevent an undue hazard to U.S.-registered aircraft and to protect persons on board that aircraft. Operations approved by the Administrator or by another agency of the United States Government and certain emergency operations shall be excepted from the prohibition.

Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

This rule shall remain effective until further notice.

#### Regulatory Evaluation

##### Benefits

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. commercial air carriers and other operators. The potential benefits of this action will accrue only to those air carriers and other operators currently engaging in overflights of Iraqi territory; however, the FAA believes that there are no carriers currently engaged in commercial revenue operations over Iraq.

##### Costs

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of Iraqi territory and airspace. The FAA believes that there are no U.S. air carriers or commercial operators currently conducting revenue flights over Iraq. However, if there are affected carriers, the FAA seeks comments on the economic effects of this rule.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to

ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA believes that there are no U.S. air carriers affected by this SFAR and therefore no "small entities" affected as defined by FAA Order 2100.14A. Thus, the SFAR would not impose a "significant economic impact on a substantial number of small entities."

#### Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*).

#### International Trade Impact Assessment

This final rule could have an impact on the international flights of U.S. air carriers or commercial operators because it will restrict their ability to overfly the territory of Iraq and therefore may impose additional costs relating to the circumnavigation of Iraq's territorial airspace. This final rule, however, will not restrict the ability of foreign air carriers to overfly Iraqi territory. Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

#### Federalism Determination

The SFAR set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

#### Conclusion

For the reasons set forth above, the FAA has determined that this action is a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The FAA has determined that there are no U.S. air carriers affected by the SFAR, nor any "small entities" as defined by

FAA Order 2100.14A. Thus, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

#### The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

### PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 USC 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Special Federal Aviation Regulation (SFAR) No. 77 is added to read as follows:

Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

1. *Applicability.* This rule applies to the following persons:

(a) All U.S. air carriers or commercial operators;

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

(c) All operators of aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations over or within the territory and airspace of Iraq.

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations over or within the territory and airspace of Iraq where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government.

4. *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 SFAR to the extent required by that emergency. Except for U.S. air carriers or commercial operators that are subject to

the requirements of 14 CFR parts 119, 121, or 135, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation including a description of the deviation and the reasons therefore.

5. *Expiration.* This Special Federal Aviation Regulation will remain in effect until further notice.

Issued in Washington, DC, on October 9, 1996.

David R. Hinson,  
*Administrator.*

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