



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Docket No. FAA-2003-14766; Amendment No. 91-327; SFAR No. 77

RIN 2120-AK07

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action is taken to allow U.S. civil flight operations to and from Erbil and Sulaymaniyah International Airports in Northern Iraq by any United States (U.S.) air carrier or commercial operator, any person exercising the privileges of an airman certificate issued by the FAA except such persons operating U.S.-registered aircraft for a foreign air carrier (who are not covered by the prohibition), or a person operating an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier (which also is not covered by the prohibition). The FAA has recently determined that a full flight prohibition is no longer necessary for these airports in Northern Iraq, and this action will allow flights to be conducted provided that certain measures are taken. Additional adjustments to the current flight prohibition may be appropriate as the risk to aviation safety and security lessens in other parts of the country, and ultimately the prohibition may be lifted completely.

DATES: This action is effective [insert date 30 days from date of publication]

FOR FURTHER INFORMATION CONTACT: For technical questions about this final rule, contact: Will Gonzalez, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: 202-267-4080. For legal questions, contact: Lorna John, Office of the Chief Counsel, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3921.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered aircraft, and U.S.-certificated airmen throughout the world. Also, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. The FAA's authority to issue rules for aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106(g), describes the authority of the FAA Administrator. Subtitle VII, 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. Furthermore, the FAA has broad authority under section 44701(a)(5) to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

I. Background

On October 16, 1996, SFAR No. 77 was issued to prohibit flight operations within the territory and airspace of Iraq by any U.S. 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 (who are not covered by the prohibition), or by a person operating an aircraft registered in the United States, unless the operator of such aircraft is a foreign air carrier (which also is not covered by the prohibition). The prohibition was issued in response to concerns for the safety and security of U.S. civil flights within the territory and airspace of Iraq. In the final rule, the FAA cited a threat made by then President Saddam Hussein who urged his air defense forces to ignore both the southern and northern no-fly zones and to attack “any air target of the aggressors.” The FAA was concerned that this threat could apply to civilian as well as military aircraft, and therefore issued SFAR 77.

In early 2003, a U.S.-led coalition removed Saddam Hussein’s regime in Iraq from power. The FAA anticipated that when hostilities ended in Iraq, humanitarian efforts would be needed to assist the people of Iraq. To facilitate those efforts, in April 2003, the FAA amended paragraph 3 of SFAR No. 77 to clarify what the approval process was for such flights, making clear that operations could not be authorized by another agency without the approval of the FAA.

On November 19, 2003, the FAA determined that certain limited overflights of Iraq could be conducted safely, subject to the permission of the appropriate authorities in Iraq and in accordance with the conditions established by those authorities. Accordingly,

the FAA amended SFAR No. 77 to permit overflights of Iraq above Flight Level (FL) 200. That amendment also allowed aircraft departing from countries adjacent to Iraq to operate at altitudes below FL 200 within Iraq to the extent necessary to permit a climb above FL 200 if the climb performance of the aircraft would not permit operation above FL 200 prior to entering Iraqi airspace.

Results of recent evaluations of airports in Iraq prompted the FAA to consider removing the flight prohibition for Erbil and Sulaymaniyah. The Erbil and Sulaymaniyah International Airports have supported non-U.S. air carrier operations for a number of years without incident. Based largely on the initiation of those operations and on improvements in the operational environment, the FAA has determined that flights by U.S. operators may now be conducted safely to these two airports under certain conditions.

Therefore, the FAA is amending paragraph (b) (former paragraph 2) of SFAR No. 77 to allow certain flights from outside Iraq to and from the international airports of Erbil and Sulaymaniyah in the northern provinces of Iraq by any U. S. 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 (who are not currently affected by the prohibition), or a person operating an aircraft registered in the United States, unless the operator of such aircraft is a foreign air carrier (which also is not currently affected by the prohibition). The FAA is committed to actively and continually evaluating airports in other regions of Iraq so that they can be used by U.S. civil operators. It is anticipated that additional adjustments to the SFAR

may be appropriate as the risk to aviation safety and security lessens in other parts of the country, and ultimately the SFAR may be lifted completely.

Before U.S. air carriers begin commercial operations to either Erbil or Sulaymaniyah, the Transportation Security Administration (TSA) must review the current security situation.¹ Consequently, all U.S. air carriers who are required to have a TSA-approved security program under 49 C.F.R. § 1544.101 that are planning operations to and from Erbil or Sulaymaniyah must contact TSA before initiating service to obtain appropriate security approvals to operate the proposed service.²

Under new paragraphs (b)(3) and (4) (former paragraphs 2(c) and (d)) of SFAR No. 77, flights may be operated by persons covered by paragraph (a) (former paragraph 1) of the SFAR within the territory and airspace of Iraq north of the 34°30' North latitude below FL200 to and from Erbil International Airport (ORER) or Sulaymaniyah International Airport (ORSU) to and from points outside Iraq. All other flight operations by persons covered by paragraph (a) (former paragraph 1) of SFAR No. 77 within the territory and airspace of Iraq north of the 34°30' North latitude and in other areas within

¹ In matters relating to aviation security, the FAA works closely with the Transportation Security Administration (TSA), which, pursuant to Subtitle I, Sections 114(d) and (f) of Title 49 of the United States Code, is responsible for civil aviation security, including the implementation and adequacy of security measures at airports and other transportation facilities. With respect to foreign airports, the TSA, on behalf of the Secretary of the Department of Homeland Security (DHS), implements the requirement set forth in Section 44907 of Title 49 to assess the effectiveness of the security measures maintained at foreign airports 1) served by an air carrier; 2) from which a foreign air carrier serves the United States as a last point of departure; 3) that pose a high risk of introducing danger to international air travel; or 4) that the DHS Secretary considers appropriate. Among its other authorities, the TSA has the general authority under Section 40113 of Title 49 to prescribe regulations, standards, and procedures and issue orders in carrying out its security responsibilities.

² U.S. air carriers also must hold any necessary U.S. and Iraqi economic operating authority.

the territory and airspace of Iraq must be in accordance with paragraphs (b)(1), (b)(2), (c) and (d) (former paragraphs 2(a), 2(b), 3 and 4) of SFAR No. 77.

Under new paragraph (b)(5) (former paragraph 2(e)), prior to conducting operations under paragraphs (b)(3) and (b)(4) (former paragraphs 2(c) and 2(d)), the operator must apply for and obtain a letter of authorization (LOA) or operations specification (OpSpec), as appropriate, from the Director, Flight Standards Service, AFS-1, which will specify the limitations and conditions under which the operation must be conducted. An OpSpec or LOA addresses operational safety both for the particular flight and for continuing operations. The FAA often uses OpSpecs and LOAs to manage specific operations conducted pursuant to underlying regulations. In this instance, the OpSpecs and LOAs will address the residual risk associated with operating into and out of ORER or ORSU. Generally, the operator must:

- Have a method for obtaining current reports and information on airport conditions, navigation aids, weather, and any other factors that may affect the safety of flight including commercially available current threat information. This includes both preflight planning and enroute operations.
- Use specific airways to enter Iraqi airspace.
- Operate in accordance with the Iraq Aeronautical Information Publication (AIP).
- Minimize time below FL200 within the amended airspace.
- Not land at airports other than ORER and ORSU, except in an emergency.

- Report any security incidents/events to the FAA Washington Operations Center (WOC) via phone at 202-267-3333 or email aeo-citewatch@faa.gov.
- Comply with 14 CFR Parts 91, 119, 125, 135 or 121.

While the conditions imposed in the OpSpec or LOA may be similar to the conditions imposed in OpSpecs and LOAs issued under exemptions or approvals for operations to the rest of Iraq, the threshold for issuance of an OpSpec or an LOA for flight operations into and out of ORER or ORSU is significantly different and does not rise to the level required for an exemption or approval for operations to the rest of Iraq. In order for an operator to receive an OpSpec or LOA under the approval process that applies to the rest of Iraq, a U.S. government agency must request approval of the specific operation or series of operations. Approval is granted only if the request for approval includes a written contract between the U.S. government agency and the operator, a plan approved by the U.S. government agency describing how the threats to the operation will be mitigated, and any other information requested by the FAA. That information will not be required for flights into and out of ORER or ORSU. The FAA will not require any contractual relationship between the operator and another U.S. government agency, and it will not require another agency to request operations be permitted. Nor will there be a requirement for a threat mitigation plan, although there may be some requirements that the operator provide the FAA with information regarding the situation in or around the airports.

Good Cause Justification for Waiving Notice and Comment

Because the circumstances described herein require immediate action and results in a lessening of the current flight prohibition, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. 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.

II. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 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 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade 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 (Public Law 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 for inflation with the base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected impact on costs and benefits is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows: This rule will permit additional flights to be flown within the territory of Iraq north of the 34°30' North latitude to or from Erbil International Airport (ORER) and Sulaymaniyah International Airport (ORSU). The relaxation of restrictions on operations to and from these two airports provides more commercial opportunities for operators, as well as improved consumer choice, and therefore, has more benefits than costs. Further, this expansion of opportunities is likely to lower transportation costs associated with these trips today. For example, with this rule U.S. operators may operate directly into these two airports without incurring the cost of contracting with a foreign operator or using foreign-registered aircraft. Therefore, the rule expands commercial opportunities with an expected minimal additional cost.

FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 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.

This rule permits more flights to Iraq; permits more direct flights which reduce costs; and expands revenue opportunity. Therefore, as the acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), 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 these Acts, 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 it will reduce obstacles to the foreign commerce of the United States and is consistent with this Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visiting the FAA's Regulations and Policies Web page at

http://www.faa.gov/regulations_policies/ or

3. Accessing the Government Printing Office's Federal Digital System at:

<http://www.fdys.gov>

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267-9680. Make sure to identify the amendment or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 91

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

The Amendment

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

PART 91-GENERAL OPERATING AND FLIGHT RULES

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

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

2. Amend part 91 by removing SFAR No. 77.
3. Amend Subpart M by adding § 91.1605 to read as follows:

§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights Within the Territory and Airspace of Iraq.

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

- (1) All U.S. air carriers or commercial operators;
- (2) 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
- (3) All operators of aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* No person may conduct flight operations over or within the territory of Iraq, except as provided in paragraphs (c) and (d) of this section or except as follows:

- (1) Overflights of Iraq may be conducted above flight level (FL) 200 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.
- (2) Flights departing from the countries adjacent to Iraq whose climb performance will not permit operations above FL200 prior to entering Iraqi airspace may operate at

altitudes below FL200 within Iraq 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 Iraq.

(3) Flights originating from or destined to areas outside of Iraq may be operated to or from Erbil International Airport (ORER) or Sulaymaniyah International Airport (ORSU) within the territory of Iraq north of 34°30' North latitude. Such flights may operate below FL200 only when initiating an arrival to or departure from Erbil International Airport (ORER) or Sulaymaniyah International Airport (ORSU).

(4) Flights departing Erbil and Sulaymaniyah whose climb performance will not permit operation above FL200 prior to entering Iraqi airspace south of the 34°30' North latitude may operate at altitudes below FL 200 to the extent necessary to permit a climb above FL200.

(5) Prior to conducting the flight operations described in paragraphs (b)(3) and (4) of this section, the operator must obtain a letter of authorization or operations specification, as appropriate, from the Director, Flight Standards Service, AFS-1, which will specify the limitations and conditions under which the operation must be conducted. All flights conducted under paragraphs (b)(3) and (4) of this section are subject to the approval of, and must be conducted in accordance with the conditions established by the appropriate authorities of Iraq.

(c) *Permitted Operations.* This SFAR does not prohibit persons described in paragraph (a) of this section from conducting flight operations within the territory and airspace of Iraq when such operations are authorized either by another agency of the

United States Government with the approval of the FAA, or by an exemption granted by the Administrator.

(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 SFAR to the extent required by that emergency. Except for U.S. air carriers or commercial operators that are subject to the requirements of 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 Flight Standards Service Air Transportation Division (AFS-200) a complete report of the operations of the aircraft involved in the deviation including a description of the deviation and the reasons therefore.

Issued in Washington, D.C. on November 28, 2012

Michael P. Huerta

Acting Administrator

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