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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2011-0246; Amdt. No. 91-321C]

RIN 2120-AK99

Extension of the Prohibition against Certain Flights in the Tripoli (HLLL) Flight Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends the prohibition of flight operations in the Tripoli (HLLL) Flight Information Region (FIR) 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 a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except operators of such aircraft that are foreign air carriers. The extension of the expiration date is necessary due to continued hazards to persons and aircraft engaged in such flight operations. This Special Federal Aviation Regulation (SFAR) will now remain in effect until March 20, 2019.

DATES: This final rule is effective on [INSERT DATE OF FILING FOR PUBLIC INSPECTION AT THE OFFICE OF THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the prohibition of flight operations in the Tripoli (HLLL) 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 finds this action necessary due to continued hazards to persons and aircraft engaged in such flight operations. The prohibition, which is scheduled to remain in effect until March 20, 2017, will now remain in effect until March 20, 2019.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the United States (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, sections 106(f) and (g) describe 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 FAA's authority under the statutes cited previously, because it continues to prohibit the persons subject to paragraph (a) of 14 CFR 91.1603, (SFAR No. 112), from conducting flight operations in the Tripoli (HLLL) FIR due to the continued hazards to the safety of such persons' flight operations, as described in the Background section of this document.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) also authorizes agencies to forgo the delay in effective date for good cause found and published with the rule. In this instance, the FAA finds an immediate need to address the continued hazard to U.S. civil aviation due to threats from political instability and associated militant/terrorist activity that exists in the Tripoli (HLL) FIR. This hazard is further described in the Background section of this rule.

Because the circumstances described herein warrant a continuation of the flight restrictions imposed by SFAR No. 112, 14 CFR 91.1603, the FAA finds that notice and public comment under 5 U.S.C. 553(b)(3)(B), and a delay in the effective date described in 5 U.S.C. 553(d), are impracticable and contrary to the public interest. The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

III. Background

The significant threat, identified when the FAA published its most recent extension of the expiration date of SFAR No. 112, 14 CFR 91.1603,¹ to U.S. civil aviation operating in the Tripoli (HLLL) FIR continues, due to threats from political instability and associated militant/terrorist activity. Libya continues to experience a fluid conflict environment involving heavily-armed elements that are equipped with a variety of anti-aircraft-capable weapons and that have demonstrated the capability and intent to target aviation interests.

As a result of safety and national security concerns regarding flight operations in the Tripoli (HLLL) FIR, the FAA issued SFAR No. 112, 14 CFR 91.1603, in March 2011,² prohibiting 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 a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except

¹ 80 FR 15503, March 24, 2015.

² 76 FR 16238, March 23, 2011.

operators of such aircraft that are foreign air carriers, from conducting flight operations in the Tripoli (HLLL) FIR, except as provided in paragraphs (c) and (d) of the regulation.

When SFAR No. 112, 14 CFR 91.1603, was issued, an armed conflict was ongoing in Libya and presented a hazard to U.S. civil aviation. The FAA was concerned that runways at Libya's international airports, including the main international airports serving Benghazi (HLLB) and Tripoli (HLLT), might be damaged or degraded. There was also concern that air navigation services in the Tripoli (HLLL) FIR might be unavailable or degraded. In addition, the proliferation of air defense weapons, including Man-Portable Air-Defense Systems (MANPADS), and the presence of military operations, including Libyan aerial bombardments and unplanned military flights entering and departing the Tripoli (HLLL) FIR, posed a hazard to U.S. operators, U.S.-registered civil aircraft, and FAA-certificated airmen that might operate in the Tripoli (HLLL) FIR. Additionally, the United Nations Security Council adopted Resolution 1973 on March 18, 2011, which mandated a ban on all flights in the airspace of Libya, with certain exceptions.

By March 2014, although former Libyan leader Muammar Gadhafi's regime had been overthrown and the UN-mandated ban on flights in Libyan airspace had been lifted, the FAA continued to have significant security concerns for Libya and for the safety of U.S. civil aviation operations in that country. On March 20, 2014, the FAA extended the expiration date of SFAR No. 112, 14 CFR 91.1603, to March 20, 2015.³ The FAA considered that, on December 12, 2013, the Department of State had issued a Travel Warning strongly advising against all non-

³ 79 FR 15679, March 20, 2014, corrected at 79 FR 19288, April 8, 2014.

essential travel to Libya. Various groups had called for attacks against U.S. citizens and U.S. interests in Libya. As a consequence of the unpredictable security environment, a hazard to U.S.-registered civil aircraft, U.S. operators, and FAA-certificated airmen still existed. Additionally, many military-grade weapons remained in the hands of private individuals and groups, among them anti-aircraft weapons that could be used against civil aviation, including MANPADS. The Travel Warning also warned that closures or threats of closures of the international airports occurred regularly for maintenance, labor, or security-related reasons.

By March 2015, the FAA continued to have significant concerns regarding the safety of U.S. civil aviation operations in the Tripoli (HLLL) FIR at all altitudes due to the hazardous situation created by the ongoing fighting involving various militant groups and Libyan military forces in various areas of Libya, including some near Tripoli and Benghazi. Islamist militant groups held and controlled significant portions of Western Libya, including Tripoli International Airport (HLLT). Militant groups, such as Libyan Dawn, possessed a variety of anti-aircraft weapons, which gave them the capability to target aircraft upon landing and departure and at higher altitudes. Civil aviation infrastructure continued to be at risk from indirect fire from mortars and rockets targeting Libyan airports during the ongoing fighting. Civil aviation in the Tripoli (HLLL) FIR was also at risk from aerial combat operations and other military activity conducted by Libyan forces. Further, the security situation in the Tripoli (HLLL) FIR continued to be unpredictable and unstable. For these reasons, the FAA extended the expiration date of SFAR No. 112, 14 CFR 91.1603, from March 20, 2015, to March 20, 2017.⁴

⁴ 80 FR 15503, March 24, 2015.

The FAA continues to assess the situation in the Tripoli (HLLL) FIR as being hazardous for U.S. civil aviation. The newly-established interim government does not control vast amounts of Libyan territory, security conditions remain unstable throughout the country, and fighting could flare with little or no warning as various elements vie for political influence and territorial control. Anti-aircraft-capable weapons remain a continuing threat, as demonstrated by the July 2016 shoot down of a military helicopter near Benghazi.

Therefore, since there is a significant continuing risk to the safety of U.S. civil aviation in the Tripoli (HLLL) FIR, the FAA extends the expiration date of SFAR No. 112, 14 CFR 91.1603, from March 20, 2017, to March 20, 2019, to maintain the prohibition on flight operations in the Tripoli (HLLL) FIR 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 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 will continue to actively monitor the situation and, based on evaluations, determine the extent to which U.S. civil operators may be able to safely operate in the Tripoli (HLLL) FIR in the future. Amendments to SFAR No. 112, 14 CFR 91.1603, may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 112, 14 CFR 91.1603, as necessary, prior to its expiration date.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et*

seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39, 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 (Publ. L. 104-4), as codified in 2 U.S.C. 1532, 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 a 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 this final rule is a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, as 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 international trade, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

Department of Transportation (DOT) 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.

This rule extends, by an additional two years, SFAR No. 112, 14 CFR 91.1603. Due to the conditions in Libya at the time that SFAR No. 112, 14 CFR 91.1603, was issued, the FAA believed the rule would impose only minimal cost because few, if any, operators subject to the rule were operating in the Tripoli (HLLL) FIR. The FAA has again determined that the costs of continuing to prohibit U.S. civil flights in the Tripoli (HLLL) FIR are minimal. The FAA finds that the costs to the few operators who might wish to operate in the Tripoli FIR are exceeded by the benefits of avoiding the loss of life, injuries, and property damage that could be caused by the significant hazards to U.S. civil aviation detailed in the Background section of this rule.

B. Regulatory Flexibility Analysis

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.

The FAA estimates the costs of extending this rule will continue to be minimal, as discussed previously. 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) 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 hazards 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 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 (Pub. L. 104-13) 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 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 the 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.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA analyzed this 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 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.

VI. 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.fdsys.gov>

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. 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 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, Libya.

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).

2. Revise § 91.1603 to read as follows:

§ 91.1603 Special Federal Aviation Regulation No. 112—Prohibition Against Certain Flights in the Tripoli (HLLL) Flight Information Region (FIR).

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

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

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

(3) All operators of U.S.-registered civil aircraft, except operators of such aircraft that are foreign air carriers.

(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 Tripoli (HLLL) FIR.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Tripoli (HLLL) FIR under the following conditions:

(1) 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.

(2) [Reserved]

(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 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 Special Federal Aviation Regulation will remain in effect until March 20, 2019. The FAA may amend, rescind, or extend this Special Federal Aviation Regulation as necessary.

Issued in Washington, D.C., under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on March 15, 2017.

Victoria B. Wassmer,

Acting Deputy Administrator.

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