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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2003-14766; SFAR No. 77

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR) No. 77 to allow certain limited overflights of Iraq, subject to the permission of the appropriate authorities in Iraq and in accordance with the conditions established by those authorities. The United States Government recently has determined that certain overflights may be conducted safely.

EFFECTIVE DATE: [~~INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER~~] Nov. 19, 2003

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267-3732 or 267-8166.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html

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

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information and advice about compliance statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send

electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.dot.gov*.

Background

SFAR 77, which was issued October 16, 1996, 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 a person operating an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. The prohibition was issued in response to concerns for the safety and security of 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 country 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 without an expiration date.

The United States Government has determined that certain limited overflights of Iraq now may be conducted safely. Therefore, the FAA is amending SFAR 77 to permit overflights of Iraq above Flight Level 200. This amendment also permits 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 will not permit operation above FL 200 prior to entering Iraqi airspace. Both types of operations must be conducted with the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

Immediate adoption

Because this action lifts a prohibition on certain overflights of Iraq, I find that notice and public comment under 5 U.S.C. § 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. § 533(d) for making this rule effective immediately upon issuance.

List of Subjects in 14 CFR Part 91

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

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends part 91 of Title 14 of the Code of Federal Regulations, ~~by revising SFAR 77~~ as follows:

JMB 11/14/03

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~~ Revise paragraph 2 of Special Federal Aviation Regulation No. 77 - ~~Prohibition Against Certain Flights Within the Territory and Airspace of Iraq~~ to read as follows:

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

* * *

2. *Flight prohibition.* No person may conduct flight operations over or within the territory of Iraq except as provided in paragraphs 3 and 4 of this SFAR or except as follows:

(a) 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.

(b) Flights departing from countries adjacent to Iraq whose climb performance will not permit operation above FL 200 prior to entering Iraqi airspace may operate at altitudes below FL 200 within Iraq to the extent necessary to permit a climb above FL 200, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

(c) Reserved.

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Issued in Washington, DC, on NOV 13 2003, 2003.

Marion C. Blakey
Marion C. Blakey
Administrator

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