

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. 27744; Special Federal Aviation Regulation (SFAR) No. 67]

RIN 2120-AG40

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR 67) to extend, with the exception noted below, the prohibition on flight operations within the territory and airspace of Afghanistan by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States, and to permit flight operations by the aforementioned persons through Afghan airspace over what is hereinafter described as the Wakhan Corridor. The current SFAR was issued on May 13, 1994, and was subsequently extended twice to the current expiration date of May 10, 1997. This action is taken to prevent an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Afghanistan.

DATES: This amendment to SFAR 67 is effective May 9, 1997. SFAR 67 shall remain in effect until May 10, 1998.

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, S.W., Washington, DC 20591. Telephone: 202-267-3515.

SUPPLEMENTARY INFORMATION:**Availability of Document**

An electronic copy of this document may be downloaded using a modern and suitable communications software from the FAA regulations section of the Fedworld 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: 800-FAA-ARAC).

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 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 S.W., Washington, DC 20591, or by calling 202-267-9680. Communications must identify the number of this SFAR or the docket number of this document. Persons interested in being placed on a mailing list for future rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

The FAA is responsible for the safety of flight in the United States and for the safety of United States-registered aircraft and operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, declares, as a matter of policy, that the regulation of air commerce to promote safety is 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 the exercise of these statutory responsibilities, the FAA on May 13, 1994, issued SFAR 67, prohibiting flight operations within the territory and airspace of Afghanistan by any United States air carrier or commercial operator, any person exercising the privileges of an airman certificate issued by the FAA, or any operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. Notice of SFAR 67 was published at 59 FR 25282 (May 13, 1994). The FAA issued SFAR 67 based upon a determination that the ongoing civil war in Afghanistan justified the imposition of certain measures to ensure the safety of United States-registered aircraft and operators that are conducting flight operations in the vicinity of Afghanistan's territory and airspace. SFAR 67 was originally scheduled to expire after one year. Notice of the extension of SFAR 67 for an additional year was published at 60 FR 25980 (May 15, 1995). Subsequently, by notice published at 61 FR 24430 (May 14, 1996), the FAA extended the expiration date of SFAR 67 to May 10, 1997.

Fighting between government and opposition forces continues throughout much of Afghanistan at a level and intensity similar to that described when

SFAR 67 was originally issued and later amended. Government and opposition forces still possess a wide range of sophisticated surface- and air-based weapons that potentially could be used to attack civil aircraft overflying Afghanistan at cruising altitudes. These weapons include fighter and attack aircraft armed with cannons and air-to-air missiles, and surface-to-air missiles (SAM) systems. Although aircraft have been used primarily for ground attacks against airfields and other key facilities, air-to-air encounters have also been observed. Press reports also suggest that a number of Afghan military and civil aircraft have been shot down using SAMs. Large areas of the country continue to be the scene of factional fighting. Fluctuations in the level and intensity of combat create an unsafe environment for transiting civilian aircraft in most areas of the country.

Advisories have been issued by the International Civil Aviation Organization (ICAO) urging civil aircraft to avoid Afghan airspace. In a letter dated April 8, 1994, Assad Kotaite, President of the ICAO Council, issued a notice urging air carriers to discontinue flights over Afghanistan. In a subsequent letter dated November 14, 1994, Dr. Kotaite warned of the continuing risks associated with flights over Afghanistan, including operations using certain routes developed by the Afghan government or neighboring countries. On September 18, 1995, in yet another letter addressing flight safety over Afghanistan, Dr. Kotaite advised that "the safety of international civil flight operations through the Kabul [Flight Information Region] can not be assured." Dr. Kotaite did indicate in this letter that if operators were using Afghan airspace, flying time over Afghanistan should be minimized and that route V500, promulgated by a Pakistani NOTAM, involves only a two minute flying time over Afghanistan.

A letter of May 10, 1996, advised of a report by the crew of a Boeing 747 cargo aircraft of anti-aircraft fire in the vicinity of Kabul. These advisories, which are still germane, reflect the uncertain nature of the situation and underscore the dangers to flights in Afghan airspace. There are also indications that at least two major factions in Afghanistan have in recent fighting deliberately targeted civil aircraft. Such policies occasionally have been publicly announced. In a statement released in September 1995, General Dostam, who at the time opposed the nominal Rabbani Government, warned all international air carriers that his forces would force or shoot down any airplane venturing into airspace

controlled by his faction without first obtaining proper clearance from them. This statement followed a similar warning issued in 1994 by an opposition council. Air corridors over central Afghanistan have been closed frequently as a result of these threats and active factional fighting.

Although it is not certain that any faction in the civil war would deliberately target a foreign-flagged commercial air carrier, the Taliban's growing frustration with the airlift of arms, ammunition, and supplies to other factions, and the other factions' interest in bringing down Taliban flights, creates a potentially hazardous environment whereby an airliner might be misidentified and inadvertently targeted. The FAA continues to receive reports that scheduled passenger flights have been intercepted by opposition fighter aircraft. In July 1996, a Taliban fighter intercepted a Pakistan International Airlines flight enroute from London to Lahore. Charter flights appear to be equally or more vulnerable. A Russian-operated charter flight from the UAE carrying unmanifested ammunition to Kabul was forced to land in Kandahar; the aircraft and its crew were held there for almost one year before escaping in August 1996.

At the very least, central Afghan government control over installations critical to navigation and communication cannot be assured. The Taliban now controls Kabul and most government facilities, including air traffic control facilities. Moreover, the use of combat aircraft and SAMs by all factions in the conflict calls into question the security/safety of the majority of Afghan airspace for civil aircraft. An environment for long-term stability in Afghanistan has yet to emerge.

Although other areas of the country continue to be the scene of sporadic factional fighting, most of the recent combat has occurred in areas to the immediate north of Kabul, the central province of Bamiayan, and the northwestern provinces, away from the Wakhan Corridor. The Wakhan Corridor is a remote, sparsely populated expanse of Afghan territory jutting eastward to the Chinese border (from approximately 071°35' east longitude). The territory is nominally controlled by Commander Masood; however, due to its remoteness, inhospitable terrain and limited population, the Wakhan Corridor plays an insignificant role in the current conflict. No combat action is known to have taken place there, and the population is generally removed from the effects of the fighting. There is no evidence to suggest that Afghan factions

or terrorist elements harbor any intent to conduct activity against United States or other international air carriers overflying the Wakhan Corridor. The only potential threat against civil aircraft over the Wakhan Corridor is of a limited capability. While an action aimed at shooting down or intercepting an aircraft over the Wakhan Corridor cannot be absolutely ruled out, it is considered unlikely. The U.S. Government assessment is that the overall risk is minimal. Several non-U.S. air carriers currently operate safely over the Wakhan Corridor along the V500 airway.

Amendment of Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

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 continued action by the FAA is necessary to prevent the injury to U.S. operators or loss of certain U.S.-registered aircraft conducting flights in the vicinity of Afghanistan. I find that the current civil war in Afghanistan continues to present an immediate hazard to the operation of civil aircraft over Afghan territory and in most Afghan airspace. Accordingly, I am ordering a one-year extension of the prohibition under SFAR 67 on flight operations within the territory and airspace of Afghanistan. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. SFAR 67 will now expire on May 10, 1998. Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that good cause exists for making this amendment effective immediately on publication.

I also am ordering the amendment of SFAR 67 to allow flights by United States air carriers and commercial operators, by any person exercising the privileges of a certificate issued by the FAA, or by an operator using aircraft registered in the U.S. through Afghan airspace east of 071°35' east longitude. Because this action lifts a restriction, I find that good cause exists for making this amendment effective immediately upon publication.

The Department of State has been advised of, and has no objection to, the actions taken herein.

Regulatory Evaluation Summary

In accordance with SFAR 67, United States air carriers and commercial operators currently use alternate routes to avoid Afghan territory and airspace.

Navigating around Afghanistan results in increased variable operating costs, primarily for United States air carriers operating between Europe and India. Based on data identified during the promulgation of SFAR 67, the FAA estimates that the weighted-average variable cost for a wide-body aircraft is approximately \$3,200 per hour. Based on data received from two United States air carriers, the additional time it takes to navigate around Afghanistan ranges from 10 minutes by flying over Iran to between one and four hours by flying over Saudi Arabia (depending on the flight's origin and destination). Additional costs associated with these alternate routes range from \$530 by flying over Iran to between \$3,200 to \$12,700 per flight over Saudi Arabia.

In addition, there is an amendment to the extension to SFAR 67, which allows United States air carriers through Afghan airspace east of 071°35' east longitude. There is no inordinate hazard to persons and aircraft, due to the remote, sparsely populated nature of the Wakhan Corridor, and because no combat action is known to have occurred in the area. Therefore, if U.S. air carriers choose to fly over the Wakhan region, they could experience cost savings ranging from approximately \$530 by flying over Iran, and between \$3,200 to \$12,700 per flight over Saudi Arabia.

This Action imposes no additional burden on domestic and foreign air carrier certificate holders. In view of the foregoing, the FAA has determined that the extension to SFAR 67 is cost beneficial.

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 No. 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA has determined that none of the United States air carriers or commercial operators are "small entities" as defined under FAA Order No. 2100.14A. Therefore, the SFAR would not impose a "significant economic impact on a substantial number of small entities."

International Trade Impact Assessment

When the FAA promulgated SFAR 67, it found that the SFAR could have an adverse impact on the international flights of United States air carriers and

commercial operators because it could marginally increase their operating costs and flight times relative to foreign carriers who continue to overfly Afghanistan. This action does not impose any restrictions on United States air carriers or commercial operators beyond those originally imposed by SFAR 67. Therefore, the FAA believes that the SFAR would have little, if any, effect on the sale of United States aviation products and services in foreign countries.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate on a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small

governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed \$100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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 (44 USC. 3507 *et seq.*).

Federalism Determination

The amendment 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 4168; 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 not 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). Because revenue flights to Afghanistan are not currently being conducted by United States air carriers or commercial operators, 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

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

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, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506-, 47122, 47508, 47528-47531.

2. Paragraph 3 and 5 of SFAR 67 are (revised to read as follows:

Special Federal Aviation Regulation No. 67—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan.

* * * * *

3. *Permitted Operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Afghanistan:

a. Where such operations are authorized either by the exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA; or

b. East of 071°35' east longitude.

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5. *Expiration.* This Special Federal Aviation Regulation expires May 10, 1998.

Issued in Washington, DC, on May 9, 1997.

Barry Valentine,

Acting Administrator.

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