

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

[Docket No. 27744; Notice No. 983]

RIN 2120-AG56

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Special Federal Aviation Regulation (SFAR) 67 to extend until May 10, 2000, the prohibition on flight operations within portions of the territory and airspace of Afghanistan by any United States air carrier and 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 unless the operator of such aircraft is a foreign air carrier, and to permit flight operations by the aforementioned persons through Afghan airspace east of 070°35' east longitude, or south of 33° north latitude. This action is necessary to continue the prevention of an undue hazard to persons and aircraft engaged in such flight operations as a result of the ongoing civil war in Afghanistan.

DATES: Comments must be received by April 16, 1998.

ADDRESSES: Comments should be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 27744, 800 Independence Avenue, SW, Washington, DC 20591.

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:**Comments Invited**

All interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments as they may desire, including comments relating to the environmental, energy, or economic impacts. Communications should identify the regulatory docket number, and be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket

(AGC-200), Docket No. 27744, 800 Independence Ave., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov. All communications received will be considered by the Administrator. This proposed rule may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 915-G of the FAA Building, 800 Independence Ave., Washington, DC 20591. Persons wishing to have the FAA acknowledge receipt of their comments must submit a self-addressed, stamped postcard with the following statement: "Comments to Docket Number 27744." The postcard will then be dated, time stamped, and returned by the FAA.

Availability of This Proposed Rule

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 ((703) 321-3339), the **Federal Register's** electronic bulletin board service ((202) 512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322-2722 or (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 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 Ave, SW, Washington, DC 20591, or by calling (202) 267-9677. Communications must identify the docket number of this proposal.

Persons interested in begin placed on the 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, which describes the application procedure.

Background

On May 10, 1994, the FAA issued SFAR 67 in response to the threat to civil aviation due to the civil war in Afghanistan (59 FR 25282; May 14, 1994). SFAR 67 was originally scheduled to expire after one year. Notices of the extension of SFAR 67 were published on May 15, 1995 (60 FR 25980) and May 14, 1996 (61 FR 24430). On May 9, 1997, the FAA again extended the expiration date to May 10,

1998, and permitted flight operations by affected persons through Afghan airspace over the Wakhan Corridor (62 FR 26890; May 15, 1997).

Fighting between government and opposition forces, and the resulting threat to civil aviation, continues in portions of Afghanistan, although at a lower level and intensity in the areas proposed to be opened to U.S. civil aviation than when SFAR 67 was originally issued and later amended. The Taliban have controlled all of southern Afghanistan for a considerable time; currently the fighting is primarily confined to the central Kabul area and northern and northwestern Afghanistan. While other areas of the country continue to be the scene of sporadic fighting, the factions involved have little or no capability to target aircraft operating at normal cruising altitudes. The area where civil aviation most threatened in Afghanistan lies in an area north of 33° north latitude and west of 070°35' east longitude.

The primary factions, the Taliban and a loose coalition of opposition forces, still possess a wide range of sophisticated surface- and air-based weapons that potentially could be used to attack civil aircraft overflying central, northern, and northwestern 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 also have been observed. Press reports also suggest that a number of Afghan military and civil aircraft have been shot down using SAMs. The fluctuations in the level and intensity of combat create an unsafe environment for transiting civilian aircraft in the vicinity of Kabul and northern and northwestern Afghanistan.

Advisories issued by the International Civil Aviation Organization (ICAO) urging civil aircraft to avoid Afghan airspace remain valid for at least a portion of 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 notice to airmen (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 portions of Afghan airspace.

In the past, at least two major factions in Afghanistan have 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.

Currently, none of the factions in the civil war has a clear intent to deliberately target a foreign-flagged commercial air carrier. However, the Taliban's continued frustration with the airlift of arms, ammunition, and supplies to other factions, combined with the other factions' interest in bringing down Taliban flights, creates a potentially hazardous environment whereby an airliner might be misidentified and inadvertently targeted in the central, northern, and northwestern portions of Afghanistan. The FAA has received 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.

The control and operation of Afghanistan's limited air traffic control facilities remains relatively stable. Although central Afghan government

control over installations critical to air traffic navigation and communication changed hands when the Taliban took control of Kabul, the transfer of authority went smoothly. Indeed, most air traffic control employees remained on the job and only the senior leadership was replaced. If opposition forces retake Kabul, the realignment of control to the previous occupants should be smooth as well.

The greatest threat to civil aviation is within the area over Afghanistan north of 33° north latitude and west of 070°35' east longitude. The fighting described above, and the resulting threat to civil aviation, has occurred well away from the Wakhan Corridor, which the FAA opened to U.S. operators in May 1997 by allowing operations east of 071°35' east longitude. Several non-U.S. carriers also utilize international air corridor V876, just west of the Wakhan Corridor, as an alternate to the Wakhan Corridor. The area surrounding V876 (east of 070°35' east longitude) is remote and sparsely populated. There is no evidence that Afghan factions or terrorist elements would target or make preparations for specific operations against U.S. or other international air carriers overflying Afghanistan east of 070°35' east longitude, which includes V876. While an action aimed at shooting down or intercepting an aircraft on V876 cannot be absolutely ruled out, it is considered unlikely. The U.S. Government assesses the overall risk for flights using V876 as low; the risk for the Wakhan Corridor continues to be assessed as minimal. The slightly higher threat along V876 comes mainly from the fact that flights could cross factional boundaries and areas of expected fighting. This threat is mitigated by the lack of surface-to-air missiles and fighter aircraft in this area and the lack of intent to target aircraft by the armed factions in the area. Several non-U.S. air carriers currently operate safely along the V876 airway, and the International Air Transport Association endorses its use. Therefore, the FAA proposes to remove the flight prohibition for that portion of Afghan airspace east of 070°35' east longitude.

Similarly, civil aviation operations along several routes south of 33° north latitude—particularly G202 and V922—would encounter minimal to low risk. The Taliban has controlled all of southern Afghanistan, including the areas encompassing the routes south of the 33° north latitude. That area has remained relatively stable, with no fighting observed for at least two years. Therefore, the FAA proposes to remove the flight prohibition for that portion of

Afghan airspace south of the 33° north latitude.

Proposed 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 within portions of Afghan airspace. Accordingly, I am proposing to extend for 2 years 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 would expire on May 10, 2000.

I also am proposing to order 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 United States through Afghan airspace east of 070°35' east longitude or south of 33° north latitude.

The Department of State has been advised of the actions proposed 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 little, if any, by flying over Iran to between \$3,200 to \$12,700 per flight over Saudi Arabia.

Last year the FAA amended SFAR 67 to allow for flights along the route V500 airway that passes through the Wakhan

Corridor. This amendment to the extension to SFAR 67, allows United States air carriers access to more Afghan airspace east of 070°35' east longitude and south of 33° north latitude (the old boundaries were 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 or south of 33° north latitude for at least two years. This proposed amendment provides U.S. air carriers with the opportunity to operate along more routes than previously allowed. If U.S. air carriers choose to fly along the routes east of 070°35' east longitude or south of 33° north latitude, they could experience the same cost savings that route V500 offered, which ranged from approximately \$530 by flying over Iran, and between \$3,200 to \$12,700 per flight over Saudi Arabia.

This action imposes no additional cost burden on U.S. air carriers, only cost savings. 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), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

The FAA has determined that none of the United States air carriers or commercial operators are small entities. 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 Public Law 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 in 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 proposed 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 proposal contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Federalism Determination

The amendment proposed 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.

Significance

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.

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration is proposing to amend 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 U.S.C. 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. Paragraphs 3 and 5 of SFAR 67 are proposed to read as follows:

SPECIAL FEDERAL AVIATION
REGULATIONS 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 exemption issued by the Administrator or by another agency of the United States Government with the approval of the FAA; or

b. East of 070°35' east longitude, or south of 33° north latitude.

* * * * *

5. *Expiration.* This Special Federal Aviation Regulation remains in effect until May 10, 2000.

Issued in Washington, DC, on March 26, 1998.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

[FR Doc. 98-8495 Filed 3-31-98; 8:45 am]

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