

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91****[Docket No. 27744; Special Federal Aviation Regulation (SFAR) No. 67]****RIN 2120-AG10****Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; extension of expiration date.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR) 67 to extend the prohibition on flight operations within 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. 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: Effective Date: May 10, 1996. Expiration date: May 10, 1997.

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:**Availability of Document**

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, Attention: ARM-1, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 267-9677. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. 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 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 U.S.-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).

Fighting between government and opposition forces continues throughout Afghanistan at a level and intensity similar to that noted when SFAR 67 was originally issued. Opposing forces in this long-running civil war possess a wide range of sophisticated weapons that potentially could be used to attack civil aviation aircraft overflying Afghanistan at cruising altitudes. These weapons include Russian-made fighter and attack aircraft armed with cannons and air-to-air missiles, and surface-to-air missile (SAM) systems. Although aircraft primarily have been used 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 civilian 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.

Advisories have been issued by the International Civil Aviation Organization (ICAO) urging civil air carriers 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 of November 14,

1994, President 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 FIR can not be assured." These advisories reflect the uncertain nature of the situation and underscore the danger to flights in Afghan airspace.

There also are indications that at least two rebel factions, in Afghanistan intend to deliberately target civil aircraft. In a statement released in September 1995, forces opposed to the Rabbani Government warned all international air carriers that they would force or shoot down any plane that ventured into airspace they controlled without first obtaining proper clearance from them. This follows a similar warning issued in 1994 by the Opposition Council. Air corridors over central and southern Afghanistan have been closed frequently as a result of these threats. Although it seems unlikely that any faction in the civil war would deliberately target a foreign-flagged commercial air carrier, their growing frustration with the airlift of arms, ammunition and other supplies to the Kabul regime creates a potentially hazardous environment whereby an airliner might be misidentified and inadvertently targeted. The FAA has received reports that scheduled passenger flights have been intercepted by opposition fighter aircraft. Other reports indicate that charter flights have been forced to land in Kandahar; one of these aircraft and its crew continue to be held there.

At the very least, central Afghan government control over installations critical to navigation and communication can not be assured. The use of combat aircraft and SAMs by all factions in the conflict calls into question the security/safety of Afghan airspace for civilian aircraft. An environment for long-term stability in this troubled region has yet to emerge.

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 required to prevent the injury to or loss of certain U.S.-registered aircraft and U.S. operators 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 in the territory and airspace of Afghanistan. Accordingly, I am ordering the amendment of SFAR 67 to extend for an additional year the prohibition on flight operations (excluding those operations approved by the U.S. Government and certain emergency operations) within 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. This action is necessary to prevent an undue hazard to aircraft and to protect persons and property on board those aircraft. Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under 49 U.S.C. 40105(b)(1)(A) to exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has no objection to, the action taken herein.

The rule now contains an expiration date of May 10, 1997, but may be terminated sooner or extended through the publication of a corresponding notice if circumstances so warrant.

Regulatory Evaluation

Over the past 10 years, there have been a number of instances worldwide where civilian aircraft were either shot at or shot down. In some instances, the shooting was intentional, while in others the aircraft was misidentified as an enemy aircraft. One such reported incident, described earlier, involved Afghan government forces mistakenly shooting at a civilian aircraft. This incident highlights the risk that one side in the Afghan civil war will misidentify a U.S. civil aircraft overflying Afghanistan as a hostile aircraft. One faction involved in the fighting in Afghanistan has specifically stated that it would target the aircraft of an Afghan air carrier. This stated threat increases the risk of a U.S. aircraft being misidentified and shot down.

Navigating around Afghanistan will result in increased variable operating costs (i.e., maintenance, fuel, and crew)

primarily for U.S. operators who conduct flights between Europe and India. The FAA estimates that the weighted-average variable operating cost for a wide-body aircraft is approximately \$3,100 per hour. Based on data received from two U.S. carriers, the amount of additional time it takes to navigate around Afghanistan using alternate routes ranges from 10 minutes by flying over Iran to between one and four hours by flying over Saudi Arabia (depending on flight's origin and destination).

Some U.S. operators use the alternate route over Iran, thereby incurring little, if any, additional flying time and operating costs. Two U.S. operators use routes over Saudi Arabia, which result in additional costs of approximately \$3,100 to \$12,400 per flight.

Based on the potentially small costs of navigating around Afghanistan and the potentially devastating result of a U.S. air carrier being shot down, the FAA has determined that the SFAR 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 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA has determined that none of the U.S. air carriers affected by the SFAR are "small entities" as defined by FAA Order 2100.14A. Thus, the SFAR would not impose a "significant economic impact on a substantial number of small entities."

International Trade Impact Assessment

The SFAR could have an adverse affect on the international flights of U.S. air carriers and commercial operators primarily because it could increase their operating costs relative to foreign carriers who continue to overfly Afghanistan. However, because of the narrow scope of the SFAR and the small incremental cost of some of the alternate routes available to U.S. operators, the FAA has determined that the SFAR would have little effect on the sale of U.S. aviation products and services in foreign countries.

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 U.S.C. 3507 et seq.)

Federalism Determination

The SFAR 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 41685; 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, 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 U.S. 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 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Section 5 of Special Federal Aviation Regulation (SFAR) No. 67 is revised to read as follows:

5. Expiration. This Special Federal Aviation Regulation expires May 10, 1997.

Issued in Washington, DC, on May 9, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–12132 Filed 5–9–96; 4:52 pm]

BILLING CODE 4910-13-M