

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2001-10664; SFAR 90]

RIN 2120

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action prohibits flight operations within the territory and airspace of Afghanistan by all United States air carriers, U.S. commercial operators, and by all persons exercising the privileges of an airman certificate issued by the FAA unless that airman is a foreign national engaged in the operation of a U.S.-registered aircraft for a foreign carrier. This action is deemed necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations for the reasons set forth below.

DATES: This action is effective September 19, 2001, and shall remain in effect until further notice.

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

SUPPLEMENTARY INFORMATION:**Availability of This Action**

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) or the Government Printing Office's (GPO) electronic bulletin board service ((202) 512-1661). Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO Web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a paper 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) 267-9680. Communications must identify the docket number of this action.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information 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.gov.

Background

The 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. Additionally, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. Title 49 United States Code (U.S.C.) Section 40101(d)(1) provides that the Administrator shall consider the following, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Title 49 U.S.C. Section 44701(a) provides the FAA with broad authority to prescribe regulations governing the practices, methods, and procedures necessary for safety in air commerce and national security.

The United States has aviation safety and national security interests in not having the flights or the individuals affected by this SFAR overfly Afghanistan or land anywhere in Afghanistan for any reason (e.g., an aircraft mechanical problem or fuel problem). Recent unrest in Kabul, coupled with a heightened alert by military forces controlled by the Taliban, may exacerbate coordination and communication problems between military air defense and civil air traffic authorities that could result in an inadvertent attack on civil aviation.

Consequently, the Federal Aviation Administration has determined that it is not safe to overfly Afghan territory and it is not in the national security interests of the United States for those covered by this SFAR to fly within the territory and airspace of Afghanistan. The FAA had previously issued a flight prohibition for Afghanistan in SFAR 67, which expired in May 2000.

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 and to issue aviation rules in the national security interests of the United States, I have determined that action by the FAA is necessary to prevent the injury to U.S. operators or the loss of certain U.S.-registered aircraft conducting flights in the territory and airspace of Afghanistan. Accordingly, I am ordering a prohibition on all flight operations within the territory and airspace of Afghanistan by all United States air carriers, U.S. commercial operators, and all persons exercising the privileges of an airman certificate issued by the FAA unless that person is a foreign national engaged in the operation of a U.S.-registered aircraft for a foreign air carrier. This prohibition also applies to the operation of U.S.-registered aircraft in the territory and airspace of Afghanistan except where the operator 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. This SFAR will remain in effect until further notice.

Because the circumstances described herein warrant immediate action by the FAA, I 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 under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under Title 49 U.S.C. Section 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. The FAA certifies that this rule will not have a substantial impact on a substantial number of small entities as defined in the Regulatory Flexibility Act

of 1980, as amended. It also will have no impact on international trade and creates no unfunded mandate for any entity.

List of Subjects in 14 CFR Part 91

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

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 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), 1155, 40103, 40113, 40120, 44101, 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. Special Federal Aviation Regulation (SFAR) No. 90 is added to read as follows:

Special Federal Aviation Regulation No. 90—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) No. 90 applies to all U.S. carriers, all U.S. commercial operators and all persons exercising the privileges of an airman certificate issued by the FAA, unless those airmen are foreign nationals engaged in the operation of a U.S.-registered aircraft for a foreign air carrier. This SFAR also applies to all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided in paragraph 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations 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 where such operations are authorized either by exemption issued by the Administrator or

by an authorization issued by another agency of the United States Government with the approval of the FAA.

4. *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 SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of Title 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (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 therefor.

5. *Expiration.* This Special Federal Aviation Regulation shall remain in effect until further notice.

Issued in Washington, DC, on September 19, 2001.

Jane F. Garvey,

Administrator.

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