

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

[Docket No. FAA–2023–1415; Amdt. No. 91–369]

RIN 2120–AL71

**Prohibition Against Certain Flights in the Kabul Flight Information Region (FIR) (OAKX)****AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).**ACTION:** Final rule.

**SUMMARY:** This action prohibits certain flight operations in the Kabul Flight Information Region (FIR) (OAKX) at altitudes below Flight Level (FL) 320 by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address hazards to persons and aircraft engaged in such flight operations due to the risk posed by violent extremist and militant activity and the lack of adequate risk mitigation capabilities to counter such activity. However, the FAA has determined that U.S. civil overflights of the Kabul FIR (OAKX) at altitudes at and above FL320 may resume due to diminished risks to U.S. civil aviation operations at those altitudes. This action also provides information regarding the approval and exemption processes for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

**DATES:** This final rule is effective on July 25, 2023.

**FOR FURTHER INFORMATION CONTACT:** Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202–267–8166; email [bill.petrak@faa.gov](mailto:bill.petrak@faa.gov).

**SUPPLEMENTARY INFORMATION:****I. Executive Summary**

This action prohibits certain flight operations in the Kabul FIR (OAKX) at altitudes below FL320 by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered

civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address continuing significant hazards to persons and aircraft engaged in such flight operations due to the risk posed by violent extremist and militant activity and the lack of adequate risk mitigation capabilities to counter such activity.

However, the FAA has determined that U.S. civil overflights of the Kabul FIR (OAKX) at altitudes at and above FL320 may resume due to diminished risks to U.S. civil aviation operations at those altitudes. The FAA previously prohibited civil overflights of the Kabul FIR (OAKX) at all altitudes, except for the use of jet routes P500–G500, under Notice to Air Missions (NOTAM) KICZ A0029/21. Afghanistan has promulgated contingency measures based upon internationally recognized flight procedures and its published contingency plan. Afghanistan developed this contingency plan in consultation with the International Civil Aviation Organization (ICAO) and neighboring States. Consistent with other recently published flight prohibition SFARs, this action provides information about how to seek relief from this SFAR through the approval and exemption processes, as applicable. This rule expires on July 25, 2025.

**II. Authority and Good Cause****A. Authority**

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider, in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General Requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for

practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of the FAA's authority because it prohibits the persons described in paragraph (a) of SFAR No. 119, § 91.1619, from conducting flight operations in the Kabul FIR (OAKX) at altitudes below FL320 due to the continuing significant hazards to the safety of U.S. civil flight operations at those altitudes, as described in the preamble to this final rule.

**B. Good Cause for Immediate Adoption**

Section 553(b)(B) of title 5, U.S.C., authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable and contrary to the public interest.

Providing notice and the opportunity for the public to comment here would be impracticable. The FAA's flight prohibitions, and any amendments thereto, need to include appropriate boundaries that reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting or under-restricting U.S. operators' routing options. However, the risk environment for U.S. civil aviation in airspace managed by other countries with respect to the safety of flight is fluid in circumstances involving fighting, violent extremist and militant activity, or periods of heightened tensions, particularly where weapons capable of targeting or otherwise negatively affecting U.S. civil aviation are or may be present. This fluidity, and the potential for rapid changes in the risks to U.S. civil aviation, significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. The delay that would be occasioned by providing an opportunity to comment on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the

flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; violent extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-aircraft weapon systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and operations-related costs, as well as potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Kabul FIR (OAKX) at altitudes below FL320.

Alternatively, if the FAA made changes to the area in which U.S. civil aviation operations would be prohibited between a notice of proposed rulemaking and a final rule due to changed conditions, the version of the rule the public commented on would no longer reflect the FAA's current assessment of the risk environment for U.S. civil aviation.

In addition, seeking comment would be contrary to the public interest because some of the rational basis for the rulemaking is based upon classified information and controlled unclassified information not authorized for public release. In order to meaningfully provide comment on a proposal, the public would need access to the basis for the agency's decision-making, which FAA cannot provide. Disclosing classified or controlled unclassified information in order to seek meaningful comment on the proposal would harm the public interest. Accordingly, FAA meaningfully seeking comment on the proposal is contrary to the public interest.

Therefore, providing notice and the opportunity for comment would be

impracticable as it would hinder the FAA's ability to maintain appropriate flight prohibitions based on up-to-date risk assessments of the risks to the safety of U.S. civil aviation operations in airspace managed by other countries and contrary to the public interest as FAA cannot protect classified and controlled unclassified information and meaningfully seek public comment.

For the same reasons discussed above, the potential safety impacts and the need for prompt action on up-to-date information that is not public would make delaying the effective date impracticable and contrary to the public interest. For altitudes at and above FL320 in the Kabul FIR (OAKX), except for transiting overflights on jet routes P500–G500, any delay in the effective date of the rule would continue a prohibition on U.S. civil aviation operations at those altitudes that the FAA has determined is no longer needed for the safety of U.S. civil aviation and would thus unnecessarily restrict U.S. operators' routing options at those altitudes.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

### III. Background

The Taliban's takeover of Afghanistan and the ongoing threat of violent extremist organization (VEO) terrorist attacks, coupled with the coalition force withdrawal from Kabul International Airport (ICAO: OAKB),<sup>1</sup> resulted in a substantially degraded safety and security environment for U.S. civil aviation operations in the Kabul FIR (OAKX), including at Kabul International Airport (OAKB). The withdrawal of United States and coalition forces resulted in the removal of associated risk mitigation capabilities previously deployed at Kabul International Airport (OAKB). In addition, the absence of a functioning civil aviation authority and air navigation service provider created an unacceptable level of aviation safety risk for U.S. civil aviation operations in the Kabul FIR (OAKX) at all altitudes, with the exception of transiting overflight operations on jet routes P500–G500.

After the Taliban took over the country, the security environment in Afghanistan remained tenuous and complex and presented an enduring

<sup>1</sup> Between 2014 and late 2021, Kabul International Airport was known as Hamid Karzai International Airport (ICAO code: OAKB). The FAA has used the currently-recognized airport name throughout this document, although certain references are to historical events that occurred while the airport was named Hamid Karzai International Airport.

safety and security risk to U.S. civil aviation operating in the Kabul FIR (OAKX) at altitudes below FL260.<sup>2</sup> Thousands of individuals had been released from Afghan prisons, and various groups, including VEOs outside of Taliban control, had seized large quantities of military equipment. In addition, some VEOs operating in Afghanistan had demonstrated their capability and willingness to target civil aviation, as shown by attacks against Kabul International Airport (OAKB) during late August 2021 and previous instances of surface-to-air fire against U.S. Government-contracted aircraft over the course of the nearly 20-year U.S. presence in Afghanistan. On August 26, 2021, the Islamic State in Iraq and ash-Sham in Khorasan (ISIS–K) conducted a complex attack against Kabul International Airport (OAKB), killing hundreds, and, on August 30, 2021, ISIS–K employed indirect fire to target evacuation operations at the airport. Additionally, ISIS–K conducted an IED attack on a military security gate at Kabul International Airport (OAKB) on January 1, 2023, killing several people. Military and civil aircraft operating at lower altitudes had previously encountered weapons activity, and the FAA was concerned further incidents might occur from deliberate or inadvertent targeting that might endanger flight operations.

The FAA assessed that civil aircraft operating at lower altitudes might encounter direct or indirect surface-to-air fire threats, including small-arms fire, rocket-propelled grenades, and low-altitude anti-aircraft fire. The Taliban, ISIS–K, and other VEOs likely had access to weapons, including small arms, automatic machine guns, anti-aircraft artillery (AAA), anti-tank guided missiles (ATGMs), and unmanned aircraft systems (UAS), which posed a risk to aircraft during low-altitude flight operations, including the arrival and departure phases of flight, and while on the ground at targeted airports and airfields.

A limited threat also existed from the possible use of shoulder-fired man-portable air defense systems (MANPADS), which may be capable of reaching a maximum altitude of 25,000

<sup>2</sup> While the background notice the FAA published for NOTAM KICZ A0029/21 (available at [https://www.faa.gov/air\\_traffic/publications/us\\_restrictions/#restrictAF](https://www.faa.gov/air_traffic/publications/us_restrictions/#restrictAF)) refers to FL260 in discussing these threats, that reference did not take into account the high altitude of some of Afghanistan's terrain. As described later in this preamble, the use of FL320 in this final rule accounts for risks associated with the capabilities of weapons systems potentially available to VEOs and the terrain under established international air routes in the Kabul FIR (OAKX).

feet above ground level (AGL). While the stockpile of MANPADS in Afghanistan was limited, there were VEOs seeking to acquire this capability. In the recent past, civil aircraft in Afghanistan had not been targeted with MANPADS. Military aircraft had been infrequently targeted with MANPADS since coalition operations in Afghanistan began in 2001. Although the FAA assessed it was unlikely the Taliban would target civil aviation in the Kabul FIR (OAKX) now that they had taken over the country, ISIS-K and some other VEOs operating in Afghanistan remained outside of Taliban control. The FAA assessed that ISIS-K and other VEOs had varying capabilities, including potentially having access to anti-aircraft weapons, including MANPADS.

In addition to the noted security risks, there was also an increased safety risk to U.S. civil aviation operations in the Kabul FIR (OAKX) at all altitudes. The Taliban takeover resulted in the lack of a functioning civil aviation authority and air navigation service provider. This included a lack of air traffic services (ATS) capabilities necessary to support en-route services for overflight operations without the implementation of appropriate contingency measures to enable safe flight operations under those conditions. In the immediate aftermath of the Taliban takeover, such contingency measures were not in place.

Taken together, these circumstances posed an unacceptable risk to the safety of U.S. civil aviation operations in the Kabul FIR (OAKX) at all altitudes, except for transiting overflight operations on jet routes P500–G500. To address these risks, on August 30, 2021, the FAA issued NOTAM KICZ A0029/21. This NOTAM prohibited, with certain limited exceptions, U.S. civil aviation operations in the Kabul FIR (OAKX) at all altitudes by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier, due to the risk posed by violent extremist and militant activity, lack of adequate risk mitigation capabilities, and disruption to air traffic services. The NOTAM allowed U.S. civil aviation overflights to transit the Kabul FIR (OAKX) on jet routes P500–G500, as such operations are only in the Kabul FIR (OAKX) very briefly.

#### IV. Discussion of the Final Rule

Following the Taliban takeover of Afghanistan, the ICAO Asia-Pacific Office made contact with Afghanistan's civil aviation authority and stood up a contingency coordination team (CCT) composed of Afghanistan and neighboring air navigation service providers, as well as International Air Transport Association (IATA) representation. Afghanistan's civil aviation authority and the CCT worked with neighboring air navigation service providers to establish a contingency plan for the safe resumption of civil overflights in the Kabul FIR (OAKX).

Subsequently, Afghanistan issued a series of NOTAMs delineating overflight procedures and established altitude blocks for specific categories of flight operations across various regions. The overflight procedures rely upon internationally-recognized traffic information by aircraft (TIBA) procedures, which pilots use in areas around the world where air traffic services are very limited or unavailable to maintain safe separation between aircraft. Consequently, the FAA has determined that U.S. civil aviation operations in the Kabul FIR (OAKX) may resume at altitudes at or above FL320 due to diminished risks to U.S. civil aviation operations at those altitudes.

However, the FAA continues to assess the situation in the Kabul FIR (OAKX) at altitudes below FL320 as being hazardous for U.S. civil aviation. Following the Taliban takeover of the country and the withdrawal of coalition forces, the Taliban have struggled to ensure security throughout Afghanistan. The Taliban face increasing attacks from ISIS-K, who have also threatened Western and international interests in the country. During the first half of 2022, ISIS-K conducted multiple attacks, in part in an effort to frustrate Taliban attempts to normalize relations with the international community. One incident of note took place in June 2022, in which ISIS-K attacked a bus serving Mazar-I-Sharif Airport (ICAO: OAMS), killing two airport workers.

The Taliban, ISIS-K, and other VEOs likely had and potentially maintain access to a variety of weapons, including small arms, automatic machine guns, AAA, ATGMs, and UAS, posing an ongoing risk to civil aircraft during low-altitude flight operations, including the arrival and departure phases of flight, and while on the ground at targeted airports and airfields. Possible VEO use of shoulder-fired MANPADS also remains a concern. While the stockpile of MANPADS in

Afghanistan remains limited, VEOs continue to seek to acquire this capability. Some MANPADS may be capable of reaching a maximum altitude of 25,000 feet AGL; however, in the context of Afghanistan, the FAA must also account for the high altitude of some of the country's terrain. Allowing U.S. civil aviation operations in the Kabul FIR (OAKX) only at altitudes at or above FL320 accounts for risks associated with the capabilities of weapons systems potentially available to VEOs and the terrain under established international air routes in the Kabul FIR (OAKX).<sup>3</sup>

In addition, VEOs active in Afghanistan have increased cross-border attacks into Pakistan, drawing Pakistani air strikes against targets in Afghanistan in response. In mid-April 2022, Pakistani airstrikes in eastern Afghanistan reportedly killed 47 civilians. Pakistan likely does not coordinate cross-border tactical military airstrikes with the Afghan civil aviation authority to de-conflict them with civil air traffic. Pakistan likely conducts such tactical military operations at altitudes below FL320.

Therefore, as a result of the remaining unacceptable risks to U.S. civil aviation operations in the Kabul FIR (OAKX) at altitudes below FL320 and the likelihood the risk concerns will endure, the FAA promulgates this final rule to incorporate a prohibition on U.S. civil aviation operations at those altitudes into the Code of Federal Regulations (CFR). The FAA will continue to monitor the situation and evaluate the extent to which U.S. civil operators and airmen might be able to operate safely in the Kabul FIR (OAKX) at altitudes below FL320. Amendments to SFAR No. 119, § 91.1619, could be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 119, § 91.1619, as necessary, prior to its expiration date.

The FAA is also publishing the details concerning the approval and exemption processes in Sections V and VI of this preamble to enable interested persons to refer to this final rule for all relevant information about seeking relief from SFAR No. 119, § 91.1619.

<sup>3</sup> As defined in 14 CFR 1.1, "Flight level means a level of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury." Flight level, in this context, is differentiated from above-ground-level (AGL), which is altitude expressed in feet measured above ground level.

## V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

### A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Kabul FIR (OAKX) at altitudes below FL320. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 119, § 91.1619, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Kabul FIR (OAKX) at altitudes below FL320, that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 119, § 91.1619, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.<sup>4</sup> The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to (1) attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent

circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 119, § 91.1619, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Kabul FIR (OAKX) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Kabul FIR (OAKX) at altitudes below FL320 and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the Kabul FIR (OAKX) at altitudes below FL320. The requestor may identify additional operators to the

FAA at any time after the FAA issues its approval. Neither the operators listed in the original request nor any operators the requestor subsequently seeks to add to the approval may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the Kabul FIR (OAKX) at altitudes below FL320. The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 119, § 91.1619, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

### B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Kabul FIR (OAKX) at altitudes below FL320; and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party

<sup>4</sup> This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Kabul FIR (OAKX) at altitudes below FL320.

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under 49 U.S.C. chapter 443.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

## VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 119, § 91.1619. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those the approval process described in the previous section contemplates. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standards described in 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the Kabul FIR (OAKX) at altitudes below FL320 where the proposed operation(s) will

occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Kabul FIR (OAKX) at altitudes below FL320 and the airports, airfields, or landing zones at which the aircraft will take off and land;

- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks, identified in this preamble, to the proposed operations, to support the relief sought, and demonstrate that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that SFAR No. 119, § 91.1619, affects. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 119, § 91.1619.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

## VII. Severability

Congress authorized the FAA by statute to promote safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. 49 U.S.C. 44701. Consistent with that mandate, the FAA is prohibiting certain persons from conducting flight operations in the Kabul FIR (OAKX) at altitudes below FL320 due to the continuing significant risks to the safety

of U.S. civil flight operations. The purpose of this rule is to operate holistically in addressing a range of hazards and needs in the Kabul FIR (OAKX) at altitudes below FL320. However, the FAA recognizes that certain provisions focus on unique factors. Therefore, the FAA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule's unique provisions, the remaining provisions should stand, thus allowing the FAA to continue to fulfill its congressionally authorized role of promoting safe flight of civil aircraft in air commerce.

## VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 ("Modernizing Regulatory Review"), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that

Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, by exceeding the threshold identified previously.

#### A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the Kabul FIR (OAKX) at altitudes below FL320 as a result of the continuing significant risks to U.S. civil aviation detailed in the preamble of this final rule. Overflights of the Kabul FIR (OAKX) may be conducted at altitudes at and above FL320. The FAA acknowledges this flight prohibition may result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs, as well as some costs attributed to passenger time. However, the FAA expects the benefits of this action to exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged) while operating in the Kabul FIR (OAKX) at altitudes below FL320.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment

of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the Kabul FIR (OAKX) at altitudes below FL320, a location outside the United States. Therefore, the rule complies with the Trade Agreements Act of 1979.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$165 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined that no new requirement for information collection is associated with this final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistent with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

#### G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

The FAA has determined that this action will not have a significant environmental effect abroad. In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

### VIII. Executive Order Determinations

#### A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

#### B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the Executive order and will not be likely to have a

significant adverse effect on the supply, distribution, or use of energy.

### C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

## IX. Additional Information

### A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found on the FAA's Regulations and Policies website at [https://www.faa.gov/regulations\\_policies](https://www.faa.gov/regulations_policies).

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Interested persons must identify the docket or amendment number of this rulemaking.

### B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER**

**INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### List of Subjects in 14 CFR Part 91

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

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, 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(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Add § 91.1619 to read as follows:

### § 91.1619 Special Federal Aviation Regulation No. 119—Prohibition Against Certain Flights in the Kabul Flight Information Region (FIR) (OAKX).

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Kabul Flight Information Region (FIR) (OAKX).

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Kabul Flight Information Region (FIR) (OAKX) under the following circumstances:

(1) Overflights of the Kabul Flight Information Region (FIR) (OAKX) may be conducted at altitudes at and above Flight Level (FL) 320, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

(2) Flight operations may be conducted in the Kabul Flight Information Region (FIR) (OAKX) at altitudes below FL320, provided that such flight operations occur under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the U.S. Government department, agency, or instrumentality and the person described in paragraph (a) of this section) with the approval of the FAA or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

(d) *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 section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the responsible Flight Standards Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until July 25, 2025. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

**Polly Trottenberg,**

*Acting Administrator.*

[FR Doc. 2023-15635 Filed 7-24-23; 8:45 am]

**BILLING CODE 4910-13-P**