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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

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[Docket No. FAA-2001-10664; SFAR No. 90-1]

RIN 2120-AH64

**Removal of the Prohibition Against Certain Flights Within the Territory and
Airspace of Afghanistan**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 90, which prohibits flight operations within the territory and airspace of Afghanistan by all U.S. air carriers, all 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 air carrier.

This action is taken because the heightened threat to civil aviation within the territory and airspace of Afghanistan, which warranted the issuance of the emergency rule, no longer exists.

FEB 1 2002

EFFECTIVE DATE: [INSERT DATE OF ISSUANCE]

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

SUPPLEMENTARY INFORMATION:

*now
8-1-02*

*Reply 2/1/02
Pub. 2/7/02
Part II*

Availability of Rulemaking Documents

You can get an electronic copy of this SFAR using the Internet through the FAA's web page at <http://www.faa.gov/avr/arm/nprm.htm> or through the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can get a paper copy 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. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information and advice about compliance statutes 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.dot.gov*.

Background

Following the September 11, 2001, terrorist attacks against the United States, the FAA determined that unrest in Kabul, Afghanistan, combined with the heightened state of alert by military forces controlled by the Taliban, could 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 FAA determined that it was unsafe and contrary to the national security interests of the United States for

U.S. operators and airmen to fly within the territory and airspace of Afghanistan. On September 19, 2001, the FAA issued SFAR 90, which prohibits all flight operations within the territory and airspace of Afghanistan by U.S. 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. The FAA imposed the flight prohibition in the exercise of its statutory responsibility for the safety of U.S.-registered aircraft and U.S. operators.

The FAA has since determined that the above-referenced hazards to civil aviation operations in Afghanistan have largely disappeared. There now appears to be no heightened threat to civil aviation within the territory and airspace of Afghanistan.

Because this action lifts a prohibition on certain operations conducted by U.S. air carriers and commercial operators, and persons exercising the privileges under FAA issued certificates with limited exception, I find that notice and public comment under 5 U.S.C. § 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. § 533(d) for making this rule effective immediately upon issuance.

Regulatory Analyses

The FAA has determined that this action is not a “significant regulatory action” under Executive Order 12866, nor is it considered a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because this amendment removes a restriction that is no longer appropriate, the FAA finds that this final rule may be issued without public comment and may be made effective immediately. The FAA also 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. It also will have no impact on international trade and creates no unfunded mandate for any entity.

Therefore, on the basis of the foregoing information, I have determined that the immediate removal of SFAR 90 from 14 CFR Part 91 is appropriate. The Department of State has been advised of, and has no objection to, the action taken herein.

List of Subjects in 14 CFR Part 91

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

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2-1-07

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends part 91 of Title 14 of the Code of Federal Regulations, by removing SFAR 90 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, 44111, 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).

Special Federal Aviation No. 90 [Removed]

2. Special Federal Aviation Regulation No. 90 – Prohibition Against Certain
Flights Within the Territory and Airspace of Afghanistan [Removed]

MM
2-1-02

Issued in Washington, DC, on FEB 1 2002



Jane F. Garvey
Administrator