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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2010-0289; SFAR No. 110]

RIN 2120-AJ69

**Prohibition against Certain Flights within the Territory and Airspace of Afghanistan;
Withdrawal**

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking; withdrawal.

SUMMARY: The Federal Aviation Administration (FAA) is withdrawing a previously published notice of proposed rulemaking that proposed to restrict U.S. civil flight operations below flight level (FL) 160 within the territory and airspace of Afghanistan.

DATES: The notice of proposed rulemaking published on May 26, 2010 (75 FR 29466) is withdrawn as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Michael Filippell, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202-267-8166; email michael.e.filippell@faa.gov.

SUPPLEMENTARY INFORMATION

Background

On May 26, 2010, the FAA published a notice of proposed rulemaking (NPRM) titled “Prohibition against Certain Flights within the Territory and Airspace of Afghanistan” (75 FR 29466). The NPRM proposed to restrict U.S. civil flight operations below FL 160 within the territory and airspace of Afghanistan, unless the operations are authorized by another U.S. Government department or agency (hereinafter referred to as “department or agency”) and approved by the FAA, or subject to an exemption granted by the FAA. The preamble to the NPRM explained the process for a department or agency to apply for FAA approval for operations to be conducted under contract to that department or agency and for operators to apply for exemption.

The situation in Afghanistan presented a unique environment relative to other situations where the FAA had imposed similar regulations to address the safety of U.S. operators while in foreign territories and airspace. The presence of the U.S. military forces in Afghanistan had required a large presence of U.S. civil aircraft operations to support the warfighting, nation building, and humanitarian efforts. The level of these operations occurring in Afghanistan warranted the FAA to provide notice of the proposed regulation to limit flight in this area and a limited opportunity for comment from operators or other individuals that might have been affected by such action. The FAA found that good cause existed to limit the notice and public comment period required by 5 U.S.C. 553(d)(3) to 15 days. The comment period closed on June 10, 2010.

Discussion of Comments Received

The FAA received 22 submissions containing multiple comments from air carriers, associations, labor organizations, humanitarian organizations, and individuals. All of the commenters acknowledged the risks associated with conducting aviation operations in Afghanistan. Several commenters fully supported the provisions in the NPRM, while others requested clarification of certain elements in the proposal. The majority of commenters, however, asserted that the proposed rule would place unnecessary restrictions and burdens on U.S. civil aviation operations in Afghanistan. They contended that the proposed rule would result in an adverse economic impact for U.S. operators and limit their ability to support the ongoing U.S. military activities, nation building, and humanitarian efforts.

Following publication of the NPRM, several commenters, including Kalitta Air, Pactec International, and Atlas Air Worldwide Holdings submitted comments that questioned the FAA's determination of the costs of implementing the NPRM if adopted as proposed. Kalitta Air specifically requested that the FAA complete a regulatory impact analysis to accurately account for the costs associated with the proposal. In response, the FAA published a Supplemental Regulatory Flexibility Analysis on July 20, 2010 (75 FR 42015) for a 15-day comment period that closed on August 4, 2010. No comments were submitted to the supplemental regulatory flexibility analysis.

Conclusion

After considering the comments, the FAA has determined the unique environment in Afghanistan continues. There is no scheduled U.S. air service in Afghanistan, and the only

operations by U.S. operators or airmen currently conducted there are in support of U.S. Government activities. Additionally, the FAA has issued an advisory notice to airmen (NOTAM KICZ A0031/17) advising U.S. operators in Afghanistan airspace to operate, to the maximum extent possible, only on established air routes and at altitudes at or above FL 330 due to the risk to civil aviation.

Accordingly, the FAA has decided to withdraw this proposal. Withdrawal of proposed SFAR No. 110 does not preclude the FAA from issuing another notice on this subject matter in the future and does not commit the agency to any future course of action. The FAA continues to assess the circumstances in Afghanistan and intends to take action as appropriate to mitigate risks to aviation safety.

The FAA withdraws Notice No. 2010-12670, published at 75 FR 29466 on May 26, 2010.

Issued in Washington, D.C. under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1), and 44701(a)(5), on October 16, 2018.

Rick Domingo,

Executive Director, Flight Standards Service.

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