



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

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

RIN 2120-AL99

### 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:** The Federal Aviation Administration (FAA) is issuing this final rule to permit 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, to operate transiting overflights of the Kabul Flight Information Region (FIR) (OAKX) on jet routes P500-G500 at altitudes at and above Flight Level (FL) 300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan. The FAA became aware that certain U.S. operators were having difficulty using jet routes P500-G500 in the Kabul FIR (OAKX) at altitudes at and above FL320 due to aircraft performance issues under certain meteorological conditions. After consideration of Afghanistan's practice of publishing Notices to Air Missions (NOTAMs) regarding overflights on these jet routes, the lack of any reported security incidents posing safety-of-flight risks to civil aircraft overflights on these jet routes since the FAA issued this Special Federal Aviation Regulation (SFAR) in July 2023 or while the FAA flight prohibition NOTAM that preceded it was in effect, and the very brief period of time U.S. civil aviation overflights on these jet routes would be in the Kabul FIR (OAKX), the FAA has determined transiting U.S. civil aviation overflights operating on jet routes P500-G500 in the Kabul FIR

(OAKX) at altitudes at and above FL300 present a low risk. The FAA continues to prohibit U.S. civil aviation operations in the remainder of the Kabul FIR (OAKX) at altitudes below FL320 due to hazards to persons and aircraft engaged in operations at those altitudes due to the risk posed by violent extremist and militant activity and the lack of adequate risk mitigation capabilities to counter such activity.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Bill Petrak, Flight Standards Service, through the Washington Operations Center, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-3203; email 9-FAA-OverseasFlightProhibitions@faa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

This action amends Special Federal Aviation Regulation (SFAR) No. 119, 14 CFR 91.1619, to permit U.S. civil aviation airmen and operators to conduct transiting overflights of the Kabul FIR (OAKX) on jet routes P500-G500 at altitudes at and above FL300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

On July 25, 2023, the Federal Aviation Administration (FAA) published a final rule in the *Federal Register* to prohibit 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. In that final rule, the FAA determined that U.S. civil aviation overflights of the Kabul FIR (OAKX) at altitudes at and

above FL320 could resume due to diminished risks to U.S. civil aviation operations at those altitudes.

Subsequently, the FAA became aware that certain U.S. operators were having difficulty using jet routes P500-G500 in the Kabul FIR (OAKX) at altitudes at and above FL320 due to aircraft performance issues under certain meteorological conditions. After consideration of Afghanistan's practice of publishing NOTAMs regarding overflights on these jet routes, the lack of any reported security incidents posing safety-of-flight risks to civil aircraft overflights on these jet routes since the FAA issued SFAR No. 119, 14 CFR 91.1619, in July 2023 or while the FAA flight prohibition NOTAM that preceded it was in effect, and the very brief period of time U.S. civil aviation overflights on these jet routes, on which the minimum en route altitude is FL300, would be in the Kabul FIR (OAKX), the FAA assesses the risk to the safety of transiting U.S. civil aviation overflights operating on jet routes P500-G500 in the Kabul FIR (OAKX) at altitudes at and above FL300 is low. Under the FAA flight prohibition NOTAM preceding the July 2023 final rule, the FAA had previously permitted U.S. civil aviation to conduct transiting overflight operations in the Kabul FIR (OAKX) on jet routes P500-G500. The FAA continues to prohibit U.S. civil aviation operations in the remainder of the Kabul FIR (OAKX) at altitudes below FL320 due to hazards to persons and aircraft engaged in operations at those altitudes due to the risk posed by violent extremist and militant activity and the lack of adequate risk mitigation capabilities to counter such activity.

Therefore, the FAA is issuing this final rule to permit U.S. civil aviation to operate transiting overflights of the Kabul FIR (OAKX) on jet routes P500-G500 at altitudes at and above FL300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

## **II. Authority and Good Cause**

### *A. Authority*

The FAA is responsible for the safety of flight in the U.S. 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 provides relief to U.S. civil aviation operators and airmen conducting transiting overflights of the Kabul FIR (OAKX) on jet routes P500-G500, permitting those persons to operate at altitudes at and above FL300, instead of at altitudes at and above FL320, as is required for operations conducted in the rest of the Kabul FIR (OAKX).

### *B. Good Cause for Immediate Adoption*

Section 553(b)(B) of title 5, U.S. Code, 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 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).

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 the FAA cannot provide. Disclosing classified or controlled unclassified information in order to seek meaningful comment on the proposal would harm the public interest. Accordingly, the 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 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 the 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. Additionally, for transiting overflights of the Kabul FIR (OAKX) on jet routes P500-G500 at altitudes at and above FL300, any delay in the effective date of the rule would continue a prohibition on U.S. civil aviation operations on these jet routes at altitudes at and above FL300 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 on those jet routes.

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

### **III. Background and Discussion of the Final Rule**

On August 30, 2021, the FAA issued NOTAM KICZ A0029/21 to address the then-existing unacceptable risks 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. 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 all 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.

Following the Taliban takeover of Afghanistan, the International Civil Aviation Organization (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 broadcasts 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 determined that U.S. civil aviation operations throughout the Kabul FIR (OAKX) could resume at altitudes at and above FL320 due to diminished risks to U.S. civil aviation operations at those altitudes. On July 25, 2023, the FAA published in the *Federal Register* a final rule, Prohibition Against Certain Flights in the Kabul Flight Information Region (FIR) (OAKX), allowing U.S. civil overflights of the Kabul FIR (OAKX) to resume at altitudes at and above FL320.<sup>1</sup> However, as described in more detail in the preamble to the July 2023 final rule, the FAA continued to assess the situation in the Kabul FIR (OAKX) at altitudes below FL320 as being hazardous for U.S. civil aviation and prohibited U.S. civil aviation operations at those altitudes.

Although the FAA did not identify or assess that there existed any increased safety-of-flight risks to transiting U.S. civil aviation overflights operating on jet routes P500-G500 due to violent extremist or militant activity, the FAA prohibited operations on those routes at altitudes below FL320 in the July 2023 final rule because the Kabul FIR Air Traffic Management Contingency Plan indicates that, as necessary, FL300 may be reserved for military operations by NOTAM. Consequently, the FAA decided to establish a minimum allowed overflight level of FL320 for U.S. civil aviation operations in the entirety of the Kabul FIR (OAKX) to help ensure

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<sup>1</sup> *Prohibition Against Certain Flights in the Kabul Flight Information Region (FIR) (OAKX)* final rule, 88 FR 47765 (Jul. 25, 2023). The FAA had prohibited U.S. civil flight operations at all altitudes in the Kabul FIR (OAKX) in NOTAM KICZ A0029/21, except for transiting overflights on jet routes P500-G500. With the publication of the July 2023 final rule, the FAA rescinded NOTAM KICZ A0029/21.

aircraft separation between any military operations being conducted in the Kabul FIR (OAKX) at FL300 and U.S. civil aviation overflights.

Since it issued the July 2023 final rule, the FAA has received two petitions for exemption from SFAR No. 119, § 91.1619, from U.S. air carriers requesting to operate on jet routes P500-G500 at altitudes at and above FL300 instead of at altitudes at and above FL320 as required by SFAR No. 119, § 91.1619, due to aircraft performance issues under certain meteorological conditions.<sup>2,3</sup>

Since the publication of the Kabul FIR Air Traffic Management Contingency Plan and continuing since the FAA issued the July 2023 final rule, Afghanistan has issued a series of NOTAMs permitting overflight operations between waypoints FIRUZ and MOTMO on jet routes P500-G500 at altitudes between FL300-FL510. The FAA is not aware of any safety or security incidents experienced by civil aircraft operating on jet routes P500-G500 in the Kabul FIR (OAKX) at altitudes at or above FL300 due to military flight operations while FAA NOTAM KICZ A0029/21, which permitted U.S. civil aviation operations on that route, was in effect or since the July 2023 final rule. In addition, the FAA is not aware of any active threats to U.S. civil aviation operations on jet routes P500-G500 in the Kabul FIR (OAKX) from violent extremist and militant activity and is not aware of any reports of security incidents involving violent extremist and militant activity posing safety-of-flight risks to civil aircraft overflights using these jet routes at altitudes at or above FL300 in the Kabul FIR (OAKX), either while FAA NOTAM KICZ A0029/21 was in effect or since the issuance of the July 2023 final rule. The very limited flight time in the Kabul FIR (OAKX) minimizes both potential exposure to any military operations in the Kabul FIR (OAKX) that might be operating at FL300 and to potential opportunistic threats should a violent extremist observe or hear an overflying aircraft. Specifically, the flight distance between waypoints FIRUZ and MOTMO on jet routes P500-

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<sup>2</sup> American Airlines, docket FAA-2023-1985.

<sup>3</sup> United Parcel Service, Co., docket FAA-2023-2065.

G500 is approximately 12 nautical miles, which takes approximately 95 seconds at cruising speeds.

Consequently, the FAA has determined that U.S. civil aviation overflights of the Kabul FIR (OAKX) at altitudes at and above FL300 on jet routes P500-G500 present a low risk. Although violent extremists and militants have access to weapons posing risks up to 25,000 feet, and there is high terrain in the vicinity of jet routes P500-G500, the FAA did not see such weapons used against civil aviation overflights on these jet routes during approximately 20 years of U.S. military presence in Afghanistan or since the coalition withdrawal in August of 2021.

Therefore, consistent with the foregoing, the FAA is amending SFAR No. 119, § 91.1619, to permit U.S. civil aviation to conduct transiting overflights of the Kabul FIR (OAKX) on jet routes P500-G500 at altitudes at and above FL300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

However, this final rule continues to prohibit U.S. civil flight operations at altitudes below FL320 throughout the rest of the Kabul FIR (OAKX). Violent extremist and militant activities continue to pose safety-of-flight risks to U.S. civil aviation at altitudes below FL320 throughout the rest of Afghanistan. Violent extremists and militants are primarily armed with small arms, crew-served weapons, and field rockets and may have access to legacy man-portable air defense systems (MANPADS). Some MANPADS may be capable of reaching a maximum altitude of up to 25,000 feet above ground level; 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, other than on jet routes P500-G500, accounts for risks associated with the capabilities of weapons systems potentially available to violent extremist organizations and the terrain under other established international air routes in the Kabul FIR (OAKX).<sup>4</sup>

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<sup>4</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.

Further amendments to SFAR No. 119, § 91.1619, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the Kabul FIR (OAKX).

The FAA also republishes the details concerning the approval and exemption processes in sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 119, § 91.1619.

## **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). 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), except for transiting overflights on jet routes P500-G500 at altitudes at and above FL300, 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>5</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, D.C. 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 Washington Operations Center by telephone at (202) 267-3203 or by email at 9-FAA-OverseasFlightProhibitions@faa.gov for submission instructions. The requestor must not submit its letter requesting FAA approval or related supporting documentation to the Washington

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<sup>5</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.

Operations Center. Rather, the Washington Operations Center will refer the requestor to an appropriate staff member of the Flight Standards Service for further assistance.

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 requestor 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) 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) 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), except for operations in the Kabul FIR (OAKX) limited to transiting overflights on jet routes P500-G500 at altitudes at and above FL300. 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 and/or at altitudes below FL300 on jet routes P500-G500, as applicable. The approval conditions discussed below apply to all operators. Requestors should contact the Washington Operations Center by telephone at (202) 267-3203 or by email at 9-FAA-OverseasFlightProhibitions@faa.gov for instructions on how to submit the names of additional operators the requestor wishes to add to an existing approval to the FAA. The requestor must not submit the names of additional operators it wishes to add to an existing approval to the Washington Operations Center. Rather, the Washington Operations Center will refer the requestor to an appropriate staff member of the Flight Standards Service for further assistance.

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact the Washington Operations Center for instructions on submitting it to the FAA. The Washington Operations Center's 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); and

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

(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 chapter 443 of title 49, U.S. Code.

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 described in the approval process in the previous section. 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) 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) 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 such relief 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 may be affected by SFAR No. 119, § 91.1619. 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 the Washington Operations Center for instructions on submitting it to the FAA. The Washington Operations Center's contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. Requestors must not submit their petitions for exemption or related supporting documentation to the Washington Operations Center. Rather, the Washington Operations Center will refer the requestor to the appropriate staff member of the Air Transportation Division, Flight Standards Service, or the Office of Rulemaking for further assistance.

## **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) below certain altitudes due to the continuing hazards to the safety of U.S. civil flight operations at those altitudes. The purpose of this rule is to operate holistically in addressing a range of hazards and needs in the Kabul FIR (OAKX). 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.

### **VIII. Regulatory Notices and Analyses**

Federal agencies consider impacts of regulatory actions under a variety of Executive orders and other requirements. First, Executive Orders 12866 and 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)(4) of Executive Order 12866 as amended by Executive Order 14094. 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 continues to prohibit U.S. civil flights in the Kabul FIR (OAKX) at altitudes below FL320, except for transiting overflights on jet routes P500-G500, due to the significant hazards to U.S. civil aviation described in this preamble. The alternative flight routes result in some additional fuel and operations costs to the affected operators, as well as some costs attributed to passenger time. However, this amendment of the SFAR provides relief to U.S. civil operators and airmen wishing to conduct transiting overflight operations on jet routes P500-G500 at altitudes at and above FL300, instead of requiring them to operate at altitudes at and above FL320, as the SFAR previously did.

For the reasons described in the Background and Discussion of the Final Rule section of this preamble, the FAA has determined that U.S. civil aviation overflights of the Kabul FIR (OAKX) at altitudes at and above FL300 on jet routes P500-G500 present a low risk and that U.S. operators and airmen may conduct such flights. However, as described in more detail in the Background and Discussion of the Final Rule section of this preamble, the FAA has also determined that U.S. civil aviation operations in the remainder of the Kabul FIR (OAKX) at altitudes below FL320 continue to pose unacceptable risks to the safety of U.S. civil aviation due to the risks to such operations posed by violent extremist and militant activity and the lack of adequate risk mitigation capabilities to counter such activity. The rule allows for a lower minimum flight level of FL300 on jet routes P500-G500, providing relief and reducing the cost for overflights transiting P500-G500 while continuing to prohibit unsafe flights in the remainder of 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), a location outside the U.S. 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 \$183 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 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 International Civil Aviation Organization (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 consistently 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.

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.

## **IX. 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.

## **X. 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 at 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.

### *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 [https://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](https://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. Amend § 91.1619 by revising paragraph (c) to read as follows:

#### **§ 91.1619 Special Federal Aviation Regulation No. 119—Prohibition Against Certain Flights 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) *Permitted operations that do not require an approval or exemption from the FAA.* (i) 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.

(ii) Transiting overflights of the Kabul Flight Information Region (FIR) (OAKX) may be conducted on jet routes P500-G500 at altitudes at and above FL300, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

(2) *Operations permitted under an approval or exemption issued by the FAA.* 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.

\* \* \* \* \*

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).

**Michael Gordon Whitaker,**

*Administrator.*

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