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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2018-0838; Amdt. No. 91-352A]

RIN 2120-AL57

Extension of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP)

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

ACTION: Final rule.

SUMMARY: This action extends the Special Federal Aviation Regulation (SFAR) prohibiting certain flight operations in the Pyongyang Flight Information Region (FIR) (ZKKP) 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 significant, continuing hazards to U.S. civil aviation associated with North Korean military capabilities and activities, including unannounced North Korean missile launches and air defense weapons systems. Additionally, the FAA republishes the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs, and makes a minor administrative change to the wording of the applicability paragraph of the SFAR for consistency with other recently published flight prohibition SFARs.

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

FOR FURTHER INFORMATION CONTACT: Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202-267-8166; email dale.e.roberts@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action amends, by extending its expiration date, the prohibition against certain flight operations in the Pyongyang FIR (ZKKP) 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. Specifically, this amendment extends the expiration date of SFAR No. 79, § 91.1615 of title 14 Code of Federal Regulations (CFR) from September 18, 2020, to September 18, 2023, due to the significant, continuing hazards to the safety of U.S. civil aviation operations in the Pyongyang FIR (ZKKP) associated with North Korean military capabilities and activities, including unannounced North Korean missile launches and air defense weapons systems, as described in the preamble to this final rule. This action also republishes, with minor revisions, the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs. Finally, the FAA makes a minor administrative change to the wording of the applicability paragraph of the SFAR for consistency with other recently published flight prohibition SFARs.

II. Legal Authority and Good Cause

A. Legal 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, 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 rulemaking 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 continues to prohibit the persons described in paragraph (a) of SFAR No. 79, § 91.1615, from conducting flight operations in the Pyongyang FIR (ZKKP) due to the continuing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(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 those procedures are

“impracticable, unnecessary, or contrary to the public interest.” Section 553(d) also authorizes agencies to forgo the delay in the effective date of the final rule for good cause found and published with the rule. In this instance, the FAA finds good cause exists to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to delay the effective date of this SFAR.

The risk environment for U.S. civil aviation in airspace other countries manage with respect to safety of flight is fluid due to the risks posed by weapons capable of targeting, or otherwise negatively affecting, U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist or militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks make issuing notice and seeking comments impracticable and contrary to the public interest. With respect to the impracticability of notice and comment procedures, 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. Furthermore, to the extent these rules and any amendments to them are based upon classified information, the FAA is not legally permitted to share such information with the general public, who cannot meaningfully comment on information to which they are not legally allowed access.

Under these conditions, public interest considerations favor not providing notice and seeking comment for this rule. While there is a public interest in having an opportunity for the public to comment on agency action, there is a greater public interest in having the FAA’s flight prohibitions, and any amendments thereto, 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 U.S. operators' routing options.

The FAA has determined extending the flight prohibition for U.S. civil aviation operations in the Pyongyang FIR (ZKKP) is necessary due to continued safety-of-flight hazards associated with North Korean military capabilities and activities, including unannounced North Korean missile launches and air defense weapons systems. These hazards continue to present significant risks to U.S. civil aviation operations in the Pyongyang FIR (ZKKP), as described in the preamble to this rule. Therefore, it is important the FAA's flight prohibition for U.S. civil aviation operations in the Pyongyang FIR (ZKKP) continue without interruption.

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

The continued level of risk also requires extension of the expiration date of the rule for an additional three years.

III. Background

Since 1997, the FAA has prohibited U.S. civil aviation operations in the Pyongyang FIR (ZKKP), or portions thereof, and has issued various advisory Notices to Airmen (NOTAMs) regarding the Pyongyang FIR (ZKKP) and adjacent areas to warn U.S. civil aviation of hazards to their operations.¹ In 2014, North Korea initiated a ballistic missile test program involving frequent unannounced missile launches into the Sea of Japan. A number of the missiles impacted in the Pyongyang FIR (ZKKP) east of what was then the 132 degrees east longitude eastern boundary of SFAR No. 79 and in relatively close proximity to international air routes transiting

¹ For a more detailed history of SFAR No. 79, § 91.1615, see *Amendment of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP)* final rule, 83 FR 47059 (Sept. 18, 2018).

the region. North Korea, as recently as April 2016, has also employed electronic jamming equipment on several occasions for intentional interference with aviation and maritime navigation and communication networks. While these intentional interference events primarily impacted flight operations in the Incheon FIR (RKRR), the associated capabilities and effects could also have affected operations in adjoining airspace, including the Pyongyang FIR (ZKKP).

Effective September 18, 2018, the FAA amended SFAR No. 79, § 91.1615, to incorporate the flight prohibition contained in KICZ NOTAM A0023/17 into the rule. Increased North Korean military capabilities and activities, including upgraded air defense weapons systems and unannounced North Korean missile launches, had increased the inadvertent risk of North Korea misidentifying U.S. civil aviation operating in the Pyongyang FIR (ZKKP) east of 132 degrees east longitude as a threat and inadvertently engaging it or striking a U.S. operators' aircraft with a missile or debris from an unannounced missile launch. Such events could involve loss of life, injuries, and property damage. In response to this situation, on November 3, 2017, the FAA issued NOTAM KICZ A0023/17 to prohibit flight operations in the entire Pyongyang FIR (ZKKP), including the area east of 132 degrees east longitude, 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 where the operator of such aircraft is a foreign air carrier.

In September 2018, the FAA amended SFAR No. 79, § 91.1615, to incorporate the flight prohibition contained in KICZ NOTAM A0023/17 into the rule, due to the significant, continuing risk to U.S. civil aviation in the Pyongyang FIR (ZKKP), including the area east of 132 degrees east longitude, and the uncertainty about when the risks described in that final rule

would abate sufficiently to allow for safe U.S. civil aviation operations in the Pyongyang FIR (ZKKP).²

IV. Discussion of the Final Rule

The FAA has determined the situation in the Pyongyang FIR (ZKKP) continues to present an unacceptable level of risk for U.S. civil aviation safety. North Korea continues to conduct no-notice ballistic missile launches to meet its weapons development program goals and to signal its resolve, and displeasure with the lack of a diplomatic breakthrough and sanctions relief, to the international community. As of March 28, 2020, four North Korean missile launch events had occurred in 2020. On March 28, 2020, North Korea launched at least two probable short-range ballistic missiles (SRBMs). These probable SRBMs impacted within the Pyongyang FIR (ZKKP). Previous salvos occurred on March 2, 9, and 21, 2020.

These events are consistent with North Korean missile test launch activity observed in 2019. On November 28, 2019, a salvo of two probable SRBMs impacted within the Pyongyang FIR (ZKKP). These probable SRBMs had possible trajectories and impact points near an international air route transiting the Pyongyang FIR (ZKKP), highlighting the continued risk to U.S. civil aviation if authorized to operate in the Pyongyang FIR (ZKKP). A total of 25 North Korean missile test launches occurred in 2019, including 12 salvos consisting of two SRBMs each and one possible submarine-launched ballistic missile test launch, which occurred in early October 2019.

For each of the 2019 and 2020 missile launch events, North Korea failed to issue any NOTAMs or other aeronautical information to warn civil aircraft operators of the hazards

² *Id.*

associated with these missile launches. In late 2019, North Korea made public statements indicating an end-of-year deadline for a diplomatic breakthrough. It is unclear whether North Korea will return to longer-range missile testing with impact areas beyond the Pyongyang FIR (ZKKP) that could pose a potential risk to U.S. civil aviation operating in adjacent FIRs. Additionally, North Korea maintains air defense and tactical aircraft capabilities that, if forward deployed, would have ranges covering the entire Pyongyang FIR (ZKKP). These weapons could present an inadvertent risk to U.S. civil aviation operations during periods of heightened tensions.

Therefore, as a result of the significant continuing risk to the safety of U.S. civil aviation in the Pyongyang FIR (ZKKP), the FAA extends the expiration date of SFAR No. 79, § 91.1615, from September 18, 2020 until September 18, 2023. Amendments to SFAR No. 79, § 91.1615, could be appropriate if the risk to 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 Pyongyang FIR (ZKKP). The FAA may amend or rescind SFAR No. 79, § 91.1615, as necessary, prior to its expiration date.

The FAA also republishes the details concerning the approval and exemption processes in Sections V and VI of this preamble, with clarifications for consistency with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for all relevant information about seeking relief from SFAR No. 79, § 91.1615. Lastly, the FAA makes minor administrative revisions, including updating the applicability paragraph of the regulatory text to make it consistent with other recently published flight prohibition SFARs.

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 Pyongyang FIR (ZKKP). If a department, agency, or instrumentality of the U.S. Government determines it has a critical need to engage any person described in SFAR No. 79, § 91.1615, including a U.S. air carrier or commercial operator, to conduct a charter to transport civilian or military passengers or cargo or other operations in the Pyongyang FIR (ZKKP), that department, agency, or instrumentality may request the FAA to approve persons described in SFAR No. 79, § 91.1615, to conduct such operations.

The requesting department, agency, or instrumentality of the U.S. Government 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.³ The FAA will not accept or consider requests for approval from anyone other than the requesting department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently positioned within the organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request

³ 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 within the area in which this SFAR prohibits their operations.

for approval and is committed to taking all necessary steps to minimize operational 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, requests for approval must be submitted to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the proposed operation(s) to commence.

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 approval request. 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. 79, § 91.1615, or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR 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 that the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Pyongyang FIR (ZKKP) where the proposed operation(s) will be conducted, including, but not limited to, the flight path and

altitude of the aircraft while it is operating in the Pyongyang FIR (ZKKP) and the airports, airfields, or landing zones at which the aircraft will take off and land; and

- The method by which the 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 Pyongyang FIR (ZKKP). 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 Pyongyang FIR (ZKKP). The approval conditions discussed below apply to all operators, whether included in the original list or subsequently added to the approval. Requestors should send updated lists to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Dale E. Roberts for instructions on submitting it to the FAA. His contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

FAA approval of an operation under SFAR No. 79, § 91.1615, 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 or agencies 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 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 Pyongyang FIR (ZKKP); 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 from or related to the approved operations in the Pyongyang FIR (ZKKP).

(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 authorizing them to conduct the approved operation(s). In addition, the FAA will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter.

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. 79, § 91.1615. 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 standard of 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 Pyongyang FIR (ZKKP) where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Pyongyang FIR (ZKKP) 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 establish 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 SFAR No. 79, § 91.1615, 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. 79, § 91.1615.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Dale E. Roberts 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. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 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. This rule also complies with the requirements of the Department of Transportation's administrative rule on rulemaking at 49 CFR part 5. 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 action extends the expiration date of the SFAR prohibiting U.S. civil flights in the Pyongyang FIR (ZKKP) for an additional three years due to the significant hazards to U.S. civil aviation described in the preamble of this final rule. U.S. Government departments, agencies, and instrumentalities may take advantage of the approval process on behalf of U.S. operators and airmen with whom they have a contract, grant, or cooperative agreement, or with whom their prime contractor has a subcontract. U.S. operators and airmen who seek to conduct operations in the Pyongyang FIR (ZKKP) without any of the foregoing types of arrangements with the U.S. Government may petition for exemption from this rule.

The FAA acknowledges this flight prohibition might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of deaths, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Pyongyang FIR (ZKKP).

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 (Public Law 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 Pyongyang FIR (ZKKP), 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 (Public Law 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 \$155 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), 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 would 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, Promoting International Regulatory Cooperation, 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.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, because it is issued with respect to a national security function of the United States.

IX. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of a rulemaking document may be obtained from the Internet by—

- Searching the docket for this rulemaking at <https://www.regulations.gov>;
- Visiting the FAA’s Regulations and Policies web page at https://www.faa.gov/regulations_policies; or
- Accessing the Government Publishing Office’s website at <https://www.govinfo.gov>.

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

Except for classified material, 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.

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/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, North Korea.

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 § 91.1615 by revising paragraphs (a)(3) and (e) to read as follows:

§ 91.1615 Special Federal Aviation Regulation No. 79—Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP).

(a) * * *

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

* * * * *

(e) *Expiration.* This SFAR will remain in effect until September 18, 2023. 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), on August 20, 2020.

Steve Dickson,

Administrator.

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