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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

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

**RIN 2120-AL34**

**Amendment 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 amends the prohibition against 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 where the operator of such aircraft is a foreign air carrier. The FAA is also providing an approval process and exemption information for this Special Federal Aviation Regulations (SFAR), consistent with the approval process and exemption information for more recently published flight prohibition SFARs. This final rule will remain in effect for 2 years.

**DATES:** This final rule is effective on [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:**

**I. Executive Summary**

This action amends the prohibition of flight operations in the Pyongyang FIR (ZKKP)<sup>1</sup> 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. From February 17, 1998, until November 3, 2017, the FAA prohibited U.S. civil aviation operations in the Pyongyang FIR (ZKKP) west of 132 degrees east longitude under SFAR No. 79 due to the hazardous situation created by North Korea's military capabilities and its rules of engagement. On November 3, 2017, the FAA issued KICZ Notice to Airmen (NOTAM) A0023/17, prohibiting U.S. civil aviation operations in the

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<sup>1</sup> The FAA notes that, prior to this rule, the FAA referred to the Pyongyang FIR (ZKKP) as "the flight information region of the Democratic People's Republic of Korea (DPRK)" in the title of SFAR No. 79. The FAA has changed that reference in this rule to more accurately represent the FIR name, in accordance with International Civil Aviation Organization (ICAO) naming conventions. The Democratic People's Republic of Korea (DPRK) is the official name of North Korea.

entire Pyongyang FIR (ZKKP) due to the hazardous situation created by North Korean military capabilities and activities, including unannounced North Korean missile launches and air defense weapons systems. This amendment to SFAR No. 79 incorporates the November 3, 2017 NOTAM's expanded flight prohibition into the Code of Federal Regulations (CFR). The FAA finds this action necessary due to continued hazards to U.S. civil aviation operations in the entire Pyongyang FIR (ZKKP).

Further, this action moves SFAR No. 79 into subpart M, Special Federal Aviation Regulations, of part 91 and adds an expiration date, consistent with other flight prohibition SFARs. The FAA also is providing an approval process and exemption information for SFAR No. 79, 14 CFR 91.1615, consistent with the approval process and exemption information for more recently published flight prohibition SFARs.

SFAR No. 79, § 91.1615, will expire on September 18, 2020.

## **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. The FAA Administrator's authority to issue rules on aviation safety is found in title 49, U.S. Code, Subtitle I, sections 106(f) and (g). 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 his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 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 FAA's authority, because it prohibits the persons subject to paragraph (a) of SFAR No. 79, § 91.1615, (formerly paragraph (1)) from conducting

flight operations in the entire Pyongyang FIR (ZKKP) due to the continued hazards to the safety of such persons' flight operations, as described in the Background section of 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 that 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 to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. To the extent that the rule is based upon classified information, such information is not

permitted to be shared with the general public. Also, threats to U.S. civil aviation and intelligence regarding these threats are fluid. As a result, the agency's original proposal could become unsuitable for minimizing the hazards to U.S. civil aviation in the affected airspace during or after the notice and comment process. The FAA further finds an immediate need to address the hazardous situation for U.S. civil aviation that exists in the Pyongyang FIR (ZKKP) due to North Korean military capabilities and activities, including unannounced North Korean missile launches and air defense weapons systems. These hazards are further described in the Background section of this rule.

For these reasons, the FAA finds good cause to forgo notice and comment and any delay in the effective date for this rule. The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

### **III. Background**

On April 24, 1997, the FAA published a final rule, SFAR No. 79, which prohibited certain U.S. civil flight operations within the entire FIR of the Democratic People's Republic of Korea (DPRK or North Korea), i.e., the Pyongyang FIR (ZKKP). 62 FR 20076. In its original form, SFAR No. 79 prohibited all U.S. air carriers or commercial operators; all persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and all operators of aircraft registered in the U.S., except where the operator of such aircraft is a foreign air carrier, from conducting flight operations through the Pyongyang FIR (ZKKP). At that time, North Korea had begun allowing

routine international overflights, and the U.S. Government had lifted its prohibition on the payment of overflight fees to North Korea, which had the practical effect of allowing U.S. operators to fly in the Pyongyang FIR (ZKKP). Nevertheless, the FAA determined that a variety of factors in North Korea posed a potential threat to civil aircraft flying through the Pyongyang FIR (ZKKP), necessitating an FAA flight prohibition.

These factors included the potential for periods of heightened tension on the Korean peninsula, North Korea's high state of military readiness and emphasis on air defense of certain areas, and the fact that the North Korean air defense system included modern surface-to-air missile systems and interceptor aircraft capable of engaging aircraft at cruising altitudes. The FAA further stated that it had been unable to determine the level of coordination and cooperation between North Korean civil air traffic authorities and air defense commanders for civil aircraft overflights, including military rules of engagement if an aircraft were to stray from its assigned flight route. The FAA was concerned that any lack of coordination, combined with North Korea's air defense capabilities, including its rules of engagement and limited capability to distinguish between military and civil aircraft, could result in civil aircraft operating in the Pyongyang FIR (ZKKP) west of 132 degrees east longitude being misidentified and inadvertently engaged by North Korea. In the FAA's view, this potential threat justified a prohibition on U.S. civil aviation operations in the Pyongyang FIR (ZKKP) west of 132 degrees east longitude.

With respect to U.S. civil aviation operations in the Pyongyang FIR (ZKKP) east of 132 degrees east longitude, the FAA indicated that, since it had not yet reviewed all applicable safety information provided by North Korea and necessary for operators to meet international safety

standards prescribed by the International Civil Aviation Organization (ICAO), it had not determined that the proper level of operational overflight safety could be assured. Remaining issues for review included, but were not limited to: differences from ICAO standards, if any; search and rescue capabilities and procedures; and North Korean military pilot training in the proper civil aircraft intercept procedures. The FAA stated that, once this information was reviewed, the FAA was prepared to amend SFAR No. 79, as warranted, to permit U.S. civil flights in the Pyongyang FIR (ZKKP) east of 132 degrees east longitude. 62 FR 20077.

Subsequently, North Korea provided the FAA with a copy of its Aeronautical Information Publication (AIP). Following a review of North Korea's AIP, the FAA determined that the proper level of flight safety could be assured for overflights occurring in the international airspace of the Pyongyang FIR (ZKKP) east of 132 degrees east longitude. On February 17, 1998, the FAA published a final rule amending SFAR No. 79 to permit U.S. civil aviation to conduct flights in the Pyongyang FIR (ZKKP) east of 132 degrees east longitude. 63 FR 8016; corrected at 63 FR 19286, (Apr. 17, 1998).

In recent years, North Korea has conducted a number of provocative actions that posed flight safety hazards and necessitated the FAA's issuance of various advisory NOTAMs regarding the Pyongyang FIR (ZKKP) and adjacent areas to warn U.S. civil aviation of these hazards. 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 the eastern boundary of SFAR No. 79 and in relatively close proximity to international air routes transiting 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 have primarily impacted flight operations in the Incheon (RKRR) FIR, the associated capabilities and effects could also affect operations in adjoining airspace, including the Pyongyang FIR (ZKKP). In recent months, increased North Korean military capabilities and activities, including upgraded air defense weapons systems and unannounced North Korean missile launches, have increased the risk of U.S. civil aviation operating in the Pyongyang FIR (ZKKP) east of 132 degrees east longitude being either misidentified as a threat and inadvertently engaged by North Korea or struck by a missile or debris from an unannounced launch. Such events could involve loss of life, injuries, and property damage.

In response to this situation, the FAA issued KICZ NOTAM A0023/17 on November 3, 2017, 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.

#### **IV. Discussion of the Final Rule**

As a result of the significant continuing risk to U.S. civil aviation in the Pyongyang FIR (ZKKP), including the area east of 132 degrees east longitude, and given the uncertainty about when the above-described hazards will abate sufficiently to allow for safe U.S. civil aviation operations therein, this amendment to SFAR No. 79, § 91.1615, incorporates the flight prohibition contained in KICZ NOTAM A0023/17. To maintain consistency with other flight

prohibition SFARs, the FAA moves SFAR No. 79 into subpart M of part 91, Special Federal Aviation Regulations. SFAR No. 79 will now be found at 14 CFR 91.1615. The FAA also adds an expiration date to SFAR No. 79 of September 18, 2010. Finally, the FAA is also publishing an approval process and exemption information for this SFAR, which is similar to those for more recently published flight prohibition SFARs.

The FAA will continue to actively monitor the situation and evaluate the extent to which U.S. civil operators and airmen may be able to operate safely in the Pyongyang FIR (ZKKP).

Amendments to SFAR No. 79, § 91.1615, may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 79, § 91.1615, as necessary, prior to its expiration date.

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

### A. Approval Process Based on a 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 that it has a critical need to engage any person covered under 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 (ZKKP) FIR, that department, agency, or instrumentality

may request the FAA to approve persons covered under SFAR No. 79, § 91.1615, to conduct such operations.

An approval request must be made directly by the requesting department, agency, or instrumentality of the U.S. Government 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. The senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently highly placed within his or her organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request 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. The FAA will not accept or consider requests for approval by anyone other than the requesting department, agency, or instrumentality. 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 intends to commence the proposed operations.

The letter must be sent 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 approval request is granted. 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 covered under SFAR No. 79, § 91.1615, and/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 is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- 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 and/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., 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). Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional

operators must be identified to, and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, from the FAA for operations in the Pyongyang FIR (ZKKP), before such operators commence such operations. The approval conditions discussed below apply to any such additional operators. Updated lists should be sent 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 Michael Filippell 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 their responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificate, 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 (AVS) 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; 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 (ZK KP).

(3) Other conditions that the FAA may specify, including those that may be imposed 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 issued by the FAA under chapter 443 of title 49, U.S. Code.

If the proposed operations are approved, the FAA will issue an OpSpec or an LOA, as applicable, to the operator(s) identified in the original request. The FAA-issued OpSpec or LOA, as applicable, authorizes the operator(s) to conduct the approved operations. The FAA will also notify the department, agency, or instrumentality that requested FAA approval of such operation(s) of any additional conditions beyond those contained in the approval letter.

## **VI. Information Regarding Petitions for Exemption**

Any operations not conducted under an approval issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 79, § 91.1615. A petition for an exemption must comply with 14 CFR part 11 and requires

exceptional circumstances beyond those contemplated by the approval process described in the previous section. In addition to the information required by 14 CFR 11.81, at a minimum, the requestor must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- 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 and/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., pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures that the operator will use to minimize the risks, identified in the Background section of this rule, to the proposed operations, so 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.

Additionally, the release and agreement to indemnify, as referred to previously, are required as a condition of any exemption issued under SFAR No. 79, § 91.1615.

The FAA recognizes that operations that may be affected by SFAR No. 79, § 91.1615, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and prior to any private exemption requests.

## **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), 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 that this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive Order. As notice and comment under 5 U.S.C. 553 are not required for this final rule, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 regarding impacts on small entities are not required. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

#### A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the entire Pyongyang FIR (ZKKP), including the area east of 132 degrees east longitude, due to the significant hazards to U.S. civil aviation described in the Background section of this preamble. By mid-summer 2017, most, if not all, U.S. scheduled operators had voluntarily ceased flying in the portion of the Pyongyang FIR (ZKKP) east of 132 degrees east longitude due to the hazards posed by unannounced North Korean missile launches and increased tensions in the region. Nevertheless, in the rare cases where U.S. operators might have opted to transit that area but for this final rule, alternative flight routes could result in additional fuel usage and other flight time-associated operator costs, as well as costs attributed to passenger time. The FAA believes there are very few, if any, U.S. operators who intend to operate in the Pyongyang FIR (ZKKP) at this time due to the hazards described in the Background section of this final rule. The FAA anticipates receiving very few, if any, requests to operate in the Pyongyang FIR (ZKKP) east of 132 degrees east longitude due to the previously discussed hazards.

Consequently, the FAA expects the costs of this rule to be minimal and these minimal costs to be exceeded by the benefits of avoided risks of deaths, injuries, and property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged).

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553, or any other law, 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 being required by that section or any other law to publish a general notice of proposed rulemaking. The FAA found good cause to forgo notice and comment and any delay in the effective date for this rule. As notice and comment under 5 U.S.C. 553 are not required in this situation, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required.

### 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 effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from hazards to their operations in the Pyongyang FIR (ZKKP), a location outside the U.S. Therefore, the rule is in compliance 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 \$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 that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA’s policy to conform to ICAO Standards and Recommended Practices to the maximum

extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

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. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised/directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition.

#### G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), 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 that 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; this memorandum has been placed 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, Federalism. The agency has determined that 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, and, therefore, would 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, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would 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, (77 FR 26413, May 4, 2012) 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 would 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 (82 FR 9339, Feb. 3, 2017) 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 Federal Document Management System (FDMS) Portal (<http://www.regulations.gov>);
- Visiting the FAA’s Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies); or
- Accessing the Government Publishing Office’s web page at <http://www.fdsys.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 Federal Document Management System Portal referenced previously.

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

### **List of Subjects in 14 CFR part 91**

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), 1155, 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).

### **Special Federal Aviation Regulation No. 79 [Removed]**

2. In part 91, remove Special Federal Aviation Regulation No. 79.

3. Add § 91.1615 to subpart M 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) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

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

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

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

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

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Pyongyang Flight Information Region (FIR) (ZKKP), provided that such flight operations are conducted 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 department, agency, or instrumentality and the person described in paragraph (a) of this section) with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a

timely manner, with the order of preference being: first, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

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

(e) *Expiration.* This SFAR will remain in effect until September 18, 2020. 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 September 4, 2018.

Daniel K. Elwell,  
Acting Administrator.

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