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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2014-0225; Amdt. No. 91-331E]

RIN 2120-AL39

Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)

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

ACTION: Final rule.

SUMMARY: This action extends, with modifications to reflect changed conditions in specified areas of Ukraine, the Special Federal Aviation Regulation (SFAR) prohibiting certain flight operations in the Simferopol Flight Information Region (FIR) (UKFV) and Dnipropetrovsk Flight Information Region (FIR) (UKDV) 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. This action extends the prohibition in specified areas of Ukraine to safeguard against continuing hazards to U.S. civil aviation. However, this action also reduces the scope of the prohibition against flights in the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) permitting U.S. civil operations to resume in specified areas due to the stabilization of safety and security conditions in the relevant regions of Ukraine.

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 extends, with modification to reflect changed conditions in Ukraine, the prohibition against U.S. civil flight operations in specified areas of the Simferopol Flight Information Region (FIR) (UKFV) and Dnipropetrovsk Flight Information Region (FIR) (UKDV) 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 October 27, 2018, until October 27, 2020. The FAA assesses that security and safety conditions have sufficiently stabilized in certain regions of Ukraine, thereby reducing the area of hazard to U.S. civil aviation in specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV). However, the FAA finds an extension of the prohibition is necessary in other specified areas of Ukraine to safeguard against continuing hazards to civil aviation. The new boundaries of the prohibition are described in the preamble to this final rule. In this action, the FAA retains the lateral limits of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV), for reference as definitions in new paragraph (f) of the final rule.

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 this authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in title 49, U.S. Code, 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 continues to prohibit the persons described in paragraph (a) of SFAR No. 113, 14 CFR 91.1607, from conducting flight operations in specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) due to the continuing hazards to the safety of U.S. civil flight operations in certain regions of Ukraine, as described in the preamble to this final 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.

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. In addition, it is contrary to the public interest to delay the effective date of this SFAR.

The FAA has identified an ongoing need to maintain the flight prohibition in certain specified areas of Ukraine due to continued safety of flight hazards associated with both Ukraine and Russia air navigation service providers (ANSPs) claiming control of airspace over portions of the Simferopol FIR (UKFV) and due to the ongoing conflict with localized skirmishes within the eastern portion of the Dnipropetrovsk FIR (UKDV). These hazards are further described in the preamble to this rule. 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 can evolve rapidly. 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. For these reasons, the FAA finds good cause to forgo notice and comment and any delay in the effective date for this rule.

III. Background

The FAA first published SFAR No. 113, § 91.1607, on April 25, 2014, to prohibit certain flight operations in a portion of the Simferopol FIR (UKFV) 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.¹ At that time, the FAA viewed the possibility of civil aircraft receiving confusing and conflicting air traffic control instructions from both Ukrainian and Russian air navigation service providers (ANSPs) when operating in the portion of the Simferopol FIR (UKFV) covered by SFAR No. 113, § 91.1607, as an unsafe condition that presented a potential hazard to U.S. civil flight operations.

On July 18, 2014, the FAA issued a Notice to Airmen (NOTAM) FDC 4/2182, expanding the flight prohibition to the entire Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV), primarily as an immediate response to the shoot-down of Malaysia Airlines flight MH17 on July 17, 2014, while flying over Ukraine at 33,000 feet just west of the Russian border. The FAA determined that the ongoing conflict in the region posed a significant threat to U.S. civil aviation operations in these FIRs. The use of weapons capable of targeting and shooting down aircraft flying on civil air routes at cruising altitudes posed a significantly dangerous threat to civil aircraft flying in the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV). The FAA published a final rule incorporating the expanded flight prohibition into

¹ 79 FR 22862.

SFAR No. 113, § 91.1607, on December 29, 2014.² The FAA extended this flight prohibition on October 27, 2015^{3,4} and October 27, 2016 due to continuing flight safety concerns regarding conflicting ANSP guidance in the Simferopol FIR (UKFV) and the ongoing conflict in eastern Ukraine within the Dnipropetrovsk FIR (UKDV).⁵

The flight safety concern for the Simferopol FIR (UKFV) at that time was demonstrated by an European Aviation Safety Agency Safety Information Bulletin on February 17, 2016, indicating that ATS routes L851 and M856 could be considered for planning flights in the Simferopol FIR (UKFV), and subsequent Russian Federal Air Transport Agency response in which it asserted that it was responsible for air traffic services in a portion of the Simferopol FIR (UKFV).

Separately, in the Dnipropetrovsk FIR (UKDV), the FAA noted that there was an ongoing risk of skirmishes in the area and a potential for larger-scale fighting in eastern Ukraine involving combined Russian-separatist forces, which could result in civil aircraft being misidentified as a threat and then intercepted or otherwise engaged. In the 2016 final rule, the FAA identified that these combined forces had access to a variety of anti-aircraft weapons, to include man-portable air defense systems (MANPADS) and possibly more advanced surface-to-air missiles (SAMs) that had the capability to engage aircraft at higher altitudes.

² 79 FR 77857.

³ 80 FR 65621.

⁴ The FAA notes that the State Aviation Administration of Ukraine conducted and completed an airspace restructuring that went into effect in the late 2014 timeframe. The new configuration altered both the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) altitude structures. To address the Ukraine airspace restructuring and provide additional clarity, on July 22, 2016, the FAA published a technical amendment to specifically identify the prohibited airspace in which SFAR No. 113, § 91.1607, applies, with inclusive altitudes and lateral limitations (latitude and longitude coordinates). 81 FR 47699.

⁵ 81 FR 74671.

IV. Discussion of the Final Rule

Since the 2016 final rule, the FAA assesses that security and safety conditions have sufficiently stabilized in certain regions of Ukraine, thereby reducing the area of impacted airspace in specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) and is revising the flight prohibition to allow U.S. civil flights to resume in certain areas. However, the FAA finds an extension of the prohibition is necessary in other specified areas of Ukraine to safeguard against continuing hazards to civil aviation.

A. Simferopol Flight Information Region (FIR) (UKFV)

Since 2014, the FAA has prohibited operations within the Simferopol FIR (UKFV) by all U.S. civil operators and airmen, in part, due to continuing flight safety concerns regarding the risk of pilots being given conflicting ANSP guidance within the Simferopol FIR (UKFV). Specifically, in 2014, the Russian Federation annexed the Crimean Peninsula and claimed ANSP authority over the Simferopol FIR (UKFV), including airspace over the Black Sea, and deployed a substantial military force to the Peninsula, including advanced weapon capabilities to enforce their territorial and airspace claims for portions of the Simferopol FIR (UKFV). Since that time, the Russian Federation has claimed authority over the entire Simferopol FIR (UKFV) and continues to assert authority over the Crimean Peninsula and adjacent waters. However, the International Civil Aviation Organization (ICAO) and other countries do not support these assertions by the Russian Federation and recognize the Ukrainian State Air Traffic Service Enterprise as the ANSP with authority over the Simferopol FIR (UKFV).

The previous flight safety concerns for conflicting ANSP guidance for the Black Sea air routes at a distance offshore from the Peninsula within portions of the Simferopol FIR (UKFV)

have been addressed by the government of Ukraine. Since the FAA extended the prohibition in SFAR No. 113, § 91.1607, in 2016, the government of Ukraine has established, via its aeronautical information publication (AIP), a restricted airspace area over the Crimean Peninsula and the adjacent territorial sea. In addition, the government of Ukraine has issued flight advisories, prohibitions and other instructions for the safe navigation of civil aircraft, which are published via NOTAMs,⁶ reclassified Ukrainian airspace in 2014 as discussed earlier, and improved safety incident reporting procedures to mitigate the risks associated with conflicting ANSP guidance from the Russian Federation over the Black Sea routes offshore from the Crimean Peninsula and over the high seas. Since these actions were implemented, there has been a decrease in safety-related hazards demonstrated by over two years of safe flight operations on the Black Sea air routes by non-U.S. civil operators. Therefore, the FAA assesses that these actions have sufficiently mitigated the hazard to civil aviation operating on the Black Sea air routes to allow U.S. civil flights to resume on those routes. Specifically, the FAA is relaxing the prohibition from the surface to unlimited south and southwest of a line drawn direct from SOBLO (431503N 362298E) to DOLOT (434214N 332819E), direct to SOROK (440628N 324260E), then direct to OTPOL (452738N 313064E). This change will allow U.S. operators and codeshare partners the ability to use, among others, the following Black Sea routes; M856, M854, M860 and L851. Ukrainian air traffic control routing dynamically manages the routing of air traffic in the specified airspace to meet changing operational demands and conditions.

⁶ The advisories and prohibitions, including instructions regarding the closure of certain air routes, which are issued by Ukraine and published via NOTAM can be accessed at <https://www.icao.int/safety/iStars/Pages/notams.aspx> See e.g. A1055/18 - UKFV (Ukraine): Flight information region Plain language, which requires all aircraft crews flying within the Simferopol FIR to comply only with instructions from Ukraine's air navigation service provider.

Nevertheless, the government of Ukraine has not mitigated the hazards in all of the Simferopol FIR (UKFV) necessitating a continuing, albeit more limited, flight prohibition. An overwhelming Russian military presence and weapon capabilities continue to be located on the Crimean Peninsula, creating a continuing risk for misidentification of aircraft flying over the Peninsula and in the airspace near the Peninsula. Additionally, Ukraine and Russia continue to assert competing claims of the airspace. For those reasons, and their attendant risk to U.S. civil aircraft operations, the FAA is continuing to prohibit operations by U.S. civil operators and airmen in the Simferopol FIR (UKFV) from the surface to unlimited north and northeast of a line drawn direct from SOBLO (431503N 362298E) to DOLOT (434214N 332819E), direct to SOROK (440628N 324260E), then direct to OTPOL (452738N 313064E). The use of airway M747, which partially overlaps with the line of demarcation for the area of prohibition, is also prohibited. The remaining area of prohibition includes a sufficient buffer from the continuing hazard associated with operating over the Crimean Peninsula.

B. Dnipropetrovsk Flight Information Region (FIR) (UKDV)

In the Dnipropetrovsk FIR (UKDV) there continues to be an inadvertent risk to civil aviation associated with the ongoing conflict, which involves localized skirmishes and the potential for larger scale fighting in the eastern portion of the Dnipropetrovsk FIR (UKDV). These skirmishes and a risk for potential larger-scale fighting could lead to the misidentification and/or engagement of civil aviation by separatist air defense forces, as demonstrated by the shoot-down of Malaysia Airlines flight MH17 on July 17, 2014. The majority of military engagements have been in close proximity to the line of conflict in the eastern portion of the Dnipropetrovsk FIR (UKDV). The various military and militia elements in that region have

access to a variety of anti-aircraft weapons systems to include MANPADS and possibly more advanced SAMs that have the capability to engage aircraft at higher altitudes. Separatists have demonstrated their ability to use these anti-aircraft weapons by successfully shooting down a number of aircraft during the course of the fighting in eastern Ukraine in 2014. Organization for Security and Cooperation in Europe Special Monitoring Mission to Ukraine unmanned aircraft systems continue to be shot down by SAMs and small arms ground fire, and brought down with GPS jamming in the eastern portion of the Dnipropetrovsk FIR (UKDV).

These threats are concentrated in the eastern portion of the Dnipropetrovsk FIR (UKDV) within the pro-Russian separatist enclave and in close proximity to the line of control that borders the enclave. The anti-aircraft weapons capabilities and deployments of forces associated with the pro-Russian separatists are limited at this time to within the eastern portion of the Dnipropetrovsk FIR (UKDV). While the potential for fluctuating levels of military engagement continues along the line of control in eastern portions of the Dnipropetrovsk FIR (UKDV), the military conflict has begun to stabilize, which reduces the risk of a larger-scale conflict that might extend into the western portion of the Dnipropetrovsk FIR (UKDV). This results in a reduced risk to civil aviation in the western portion of the Dnipropetrovsk FIR (UKDV), and the FAA is relaxing the area of prohibition to account for the reduced risk.

Therefore, due to the continued threats in the eastern portion of the Dnipropetrovsk FIR (UKDV), the FAA is continuing to prohibit operations by U.S. civil operators and airmen in the Dnipropetrovsk FIR (UKDV) from the surface to unlimited east of a line drawn direct from ABDAR (471802N 351732E) along airway M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E). The use of airways M853 and N604, which

partially overlap with the line of demarcation for the prohibition, is also prohibited. This revised area of prohibition includes a sufficient buffer between the conflict region along the Ukraine-Russia border, including known weapons that may be threats to aviation, and the portions of the Dnipropetrovsk FIR (UKDV) where U.S. civil flights are permitted to resume.

Based on the reduced scope of the prohibition, U.S. operators and airmen are permitted to conduct operations in the western portions of the Dnipropetrovsk FIR (UKDV) from the surface to unlimited west of a line drawn direct from ABDAR (471802N 351732E) along airway M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E), which previously had been prohibited.

In addition, due to the relatively close proximity of the approach and departure routes of three airports to the new boundary of the prohibition flight area, the FAA has added an exception for takeoffs and landings. This exception permits operations within the flight prohibition area of the Dnipropetrovsk FIR (UKDV), to the extent necessary to takeoff and land at three specified airports, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Ukraine: Kharkiv International Airport (UKHH); Dnipropetrovsk International Airport (UKDD); and Zaporizhzhia International Airport (UKDE). The FAA has determined these operations can be conducted with minimal additional risk due to the sufficient distance provided by the specified prohibition boundary line as a buffer from the area of fighting and associated weapons capabilities.

Therefore, as a result of the significant continuing risk to the safety of U.S. civil aviation in specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV), the FAA extends the expiration date of SFAR No. 113, 14 CFR 91.1607, from October 27, 2018, to

October 27, 2020, to maintain the prohibition on flight operations in specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) 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 is a foreign air carrier. 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. The FAA is also retaining the lateral limits of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV), which are recognized by ICAO, for reference as definitions in new paragraph (f) of the final rule.

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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV). Amendments to SFAR No. 113, § 91.1607, may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 113, § 91.1607, as necessary, prior to its expiration date.

The FAA is incorporating minor editorial changes for clarifying purposes in § 91.1609, including correcting the title of the FIR and clarifying the procedure for considering approval and exemption requests. These changes are consistent with other recently published SFARs. The FAA is also republishing the details concerning the approval and exemption processes in Sections V and VI of this preamble so that interested persons will be able to refer to this final rule for all relevant information regarding SFAR No. 113.

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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV). The FAA is revising the approval process for SFAR No. 113, § 91.1607, to make it consistent with the approval process of more recently published flight prohibition SFARs. 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. 113, § 91.1607, 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 specified areas of the Simferopol FIR (UKFV) or Dnipropetrovsk FIR (UKDV), that department, agency, or instrumentality may request the FAA to approve persons covered under SFAR No. 113, § 91.1607, 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 FAA will not accept or process requests for approval by 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 highly placed within the 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. 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 operations to commence.

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. 113, § 91.1607, 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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) 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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) 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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV). 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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV), 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. 113, § 91.1607, does not relieve persons subject to this SFAR of their responsibility to comply with all 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 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 Simferopol FIR (UKFV) and/or Dnipropetrovsk FIR (UKDV); 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 specified areas of the Simferopol FIR (UKFV) and/or Dnipropetrovsk FIR (UKDV).

(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 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 it to conduct the approved operation(s), and 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 issued by the FAA through the approval process set forth previously must be conducted under an exemption from SFAR No. 113, § 91.1607. A petition for exemption must comply with 14 CFR part 11 and requires exceptional circumstances beyond those contemplated by the approval process set forth previously. 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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) 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 specified areas of the Simferopol FIR (UKFV) and Dnipropetrovsk FIR (UKDV) 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., the 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 preamble 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 that may be issued under SFAR No. 113, § 91.1607.

The FAA recognizes that operations that may be affected by SFAR No. 113, § 91.1607, 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 (Pub. L. 96-39), as amended, 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

On April 25, 2014, the FAA published SFAR No. 113 prohibiting flight operations in part of the Simferopol FIR (UKFV) by U.S. air carriers and airmen because of conflicting airspace claims between Ukraine and the Russian Federation owing to the Russian annexation of the Crimean Peninsula. The FAA expanded this prohibition to the entire Simferopol FIR (UKFV) and also to the Dnipropetrovsk FIR (UKDV), first by NOTAM (July 18, 2014 (UTC)) and then by rule (79 FR 77857, December 29, 2014), owing to conflict between Ukraine military forces and pro-Russian separatists. On October 27, 2015 (80 FR 65621) and October 27, 2016 (81 FR 74671), the FAA further extended this prohibition. The FAA now proposes to extend the prohibition for another two years, but only for portions of the Simferopol (UKFV) and Dnipropetrovsk (UKDV) FIRs where there is a continuing hazard to civil aviation. The FAA is extending the prohibition against U.S. civil operations over the Crimean peninsula in the Simferopol FIR (UKFV), but is permitting U.S. civil operations over four Black Sea routes, sufficiently offshore from the Crimea Peninsula, and over the high seas, due to a stabilization in the security conditions on these routes. In addition, the FAA is extending the prohibition in the eastern part of the Dnipropetrovsk FIR (UKDV), but is permitting U.S. civil operations from the surface to unlimited in the western portion of the Dnipropetrovsk FIR (UKDV). The FAA is also

permitting, by exception, takeoffs and landings at three Ukrainian international airports due to proximity of the arrival and departure routes to the area of prohibition within the Dnipropetrovsk FIR (UKDV).

As was noted in the most recent previous amendment to SFAR No. 113, § 91.1607 (81 FR 74671, October 27, 2016), almost all U.S. operators already had voluntarily ceased their operations in these FIRs prior to the issuance of the FAA NOTAM on July 18, 2014 (UTC), which prohibited U.S. civil flight operations in these two FIRs in their entirety. Owing to the continuing hazards to civil flight operations outlined in the preamble, the FAA believes that few, if any, U.S. operators presently seek to conduct operations in the eastern portion of the Dnipropetrovsk FIR (UKDV), or over the Crimean peninsula within the Simferopol FIR (UKFV) in which the FAA continues to prohibit U.S. operations. The FAA notes that since April 25, 2014, when U.S. operators and airmen were first prohibited from conducting operations in a portion of the Simferopol FIR (UKFV), the FAA has not received any requests for approval or petitions for exemption to conduct operations in either the Simferopol FIR (UKFV) or Dnipropetrovsk FIR (UKDV). Accordingly, where U.S. operations continue to be prohibited the FAA believes incremental costs will be minimal and exceeded by the benefits of avoiding the deaths, injuries, and/or property damage that would result from a U.S. operator's aircraft being shot down (or otherwise damaged) while operating in either the Dnipropetrovsk FIR (UKDV) or the Simferopol FIR (UKFV).

As noted in the sections above, the Ukraine ANSP has implemented risk mitigation measures to address safety hazards over the Black Sea routes and on the high seas. These measures have resulted in a significant decrease in safety-related hazards in that part of the

Simferopol FIR (UKFV) as shown by over two years of safe flight operations by non-U.S. civil operators on the Black Sea air routes. In the Dnipropetrovsk FIR (UKDV), the deployments of forces associated with the pro-Russian separatists are at this time limited to the eastern part, reducing the risk of a larger-scale conflict that might extend into the western portion of the Dnipropetrovsk FIR (UKDV) and thereby reducing risk to U.S. civil aviation in the western portion. The FAA believes that lifting the prohibition on U.S. civil operations in those parts of the two FIRs will be socially cost-beneficial because it may result in the resumption of safe U.S. civil operations.

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 (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 hazards to their operations in the eastern part of the Dnipropetrovsk FIR (UKDV) and over specified areas of the Crimean Peninsula within the Simferopol FIR (UKFV), locations 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 (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 \$155.0 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 immediately adopted 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.

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 EO 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; 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 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, Ukraine.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, part 91, 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), 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).

2. Revise § 91.1607 to read as follows:

§91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in the Simferopol Flight Information Region (FIR) (UKFV) and the Dnipropetrovsk Flight Information Region (FIR) (UKDV).

(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 following specified areas of the Simferopol FIR (UKFV) or the Dnipropetrovsk FIR (UKDV)--

(1) Operations within the Simferopol FIR (UKFV) are prohibited from the surface to unlimited, north and northeast of a line drawn direct from SOBLO (431503N 362298E) to DOLOT (434214N 332819E), direct to SOROK (440628N 324260E), then direct to OTPOL (452738N 313064E). This prohibition applies to airway M747.

(2) Operations within the Dnipropetrovsk FIR (UKDV) are prohibited from the surface to unlimited, east of a line drawn direct from ABDAR (471802N 351732E) along airway M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E). This prohibition applies to airways M853 and N604.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations within either flight prohibition, as described in paragraph (b) of this section under the following circumstances:

(1) Operations are permitted within the flight prohibition area of the Dnipropetrovsk Flight Information Region (FIR) (UKDV), as described in paragraph (b)(2) of this section, to the extent necessary to takeoff and land at the following three airports, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Ukraine:

(i) Kharkiv International Airport (UKHH);

(ii) Dnipropetrovsk International Airport (UKDD); and

(iii) Zaporizhzhia International Airport (UKDE).

(2) Operations are permitted within the flight prohibition areas described in paragraph (b)(1) or (2) of this section 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 October 27, 2020. The FAA may amend, rescind, or extend this SFAR as necessary.

(f) *Definitions.* (1) The Simferopol FIR (UKFV) is defined as that airspace from the surface to unlimited within the following lateral limits:

465800N 0360000E-463500N 0364200E-
463424N 0372206E-452700N 0364100E-
452242N 0364100E-451824N 0363524E-
451442N 0363542E-451218N 0363200E-
450418N 0363418E-445612N 0363636E-
443100N 0364000E-424400N 0361600E-
424700N 0340000E-424800N 0320000E-
424800N 0310000E-424800N 0304500E-
434100N 0303200E-441000N 0302512E-
441500N 0302400E-444600N 0300900E-

445447N 0300448E-445230N 0302130E-
445848N 0303342E-451530N 0310642E-
452436N 0312500E-453828N 0315311E-
454436N 0320548E-455442N 0322700E-
460730N 0325430E-464600N 0325300E-
474400N 0330300E-472700N 0344800E-
470630N 0355500E-465800N 0360000E

(2) The Dnipropetrovsk FIR (UKDV) is defined as that airspace from the surface to unlimited within the following lateral limits:

511400N 0342700E-504942N 0341300E-
502043N 0335720E-501246N 0335307E-
491848N 0333700E-485700N 0332200E-
484118N 0324431E-483620N 0324010E-
483128N 0323605E-482300N 0323900E-
480730N 0325324E-474600N 0325000E-
474400N 0330300E-472700N 0344800E-
470630N 0355500E-465800N 0360000E-
463500N 0364200E-463424N 0372206E-
463930N 0372518E-464700N 0373000E-
465900N 0382000E-470642N 0381324E-
then along state boundary until point/-511400N 0342700.

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 October 15, 2018.

Daniel K. Elwell,

Acting Administrator.

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