



BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

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

RIN 2120-AL58

**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 amends and extends the Special Federal Aviation Regulation (SFAR) prohibiting certain flights in the specified areas of the 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 when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address hazards to persons and aircraft engaged in such flight operations. However, due to changed conditions in Ukraine and the associated risks to U.S. civil aviation, this action does not extend the prohibition against certain flights in the specified areas of the Simferopol FIR (UKFV), which will expire on October 27, 2020. This action extends the expiration date of the prohibition against certain flights in the specified areas of the Dnipropetrovsk FIR (UKDV) from October 27, 2020, to October 27, 2021. Additionally, the FAA republishes the approval

process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs, and makes minor administrative revisions.

DATES: This final rule is effective on October 27, 2020.

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action amends and extends the prohibition against certain flight operations in the specified areas of the 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 when the operator of such aircraft is a foreign air carrier. Specifically, this amendment continues to prohibit all persons described in paragraph (a) of SFAR No. 113, 14 CFR 91.1607, from conducting civil flight operations in the specified areas of the Dnipropetrovsk FIR (UKDV) until October 27, 2021, due to the hazards to civil aviation associated with the ongoing violence, including potential for misidentification.

However, this amendment does not extend the prohibition against certain flight operations in the specified areas of the Simferopol FIR (UKFV), which will expire on October 27, 2020, due to changed conditions in that airspace and the associated decrease in risk to U.S. civil aviation. The FAA also republishes the approval process and exemption information for this SFAR, consistent with other recently published flight prohibition SFARs, and makes minor administrative revisions.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rulemaking under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 113, § 91.1607, from conducting flight operations in the specified areas of the Dnipropetrovsk FIR (UKDV) due to the continuing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds 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 exists to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to allow any lapse of effectivity of the prohibition of U.S. civil flights in the specified areas of the Dnipropetrovsk FIR (UKDV).

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

Under these conditions, public interest considerations favor not providing notice and seeking comment for this rule. While there is a public interest in having an opportunity for the public to comment on agency action, there is a greater public interest in having the FAA’s flight prohibitions, and any amendments thereto, reflect the agency’s current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators’

aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options.

The FAA has determined extending the flight prohibition for U.S. civil aviation operations in the specified areas of the Dnipropetrovsk FIR (UKDV) is necessary due to continuing safety-of-flight hazards associated with the ongoing violence, including a risk of misidentification of civil aircraft. These hazards continue to present an unacceptable level of risk to U.S. civil aviation operations in the Dnipropetrovsk FIR (UKDV), as described in the preamble to this rule.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule that might allow the existing prohibition that applies to U.S. civil flights in the specified areas of the Dnipropetrovsk FIR (UKDV) to lapse.

III. Background

On April 25, 2014, the FAA published SFAR No. 113, § 91.1607, which prohibited certain flight operations in a portion of the Simferopol FIR (UKFV) after the Russian Federation unlawfully seized Crimea from Ukraine.¹ At that time, the FAA was concerned about the potential for civil aircraft to receive confusing and conflicting air traffic control instructions from both Ukrainian and Russian air traffic services providers while operating in the portion of the Simferopol FIR (UKFV) covered by SFAR No. 113, § 91.1607. In addition, political and

¹ Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR) final rule, 79 FR 22862, April 25, 2014. As described in the 2014 final rule, the Russian Federation had also issued a NOTAM purporting to establish unilaterally a new FIR, effective April 3, 2014, in a significant portion of the Simferopol FIR (UKFV). The affected airspace included sovereign Ukrainian airspace over the Crimean Peninsula and the associated Ukrainian territorial sea, as well as international airspace managed by Ukraine over the Black Sea and the Sea of Azov under a regional air navigation agreement approved by the Council of the International Civil Aviation Organization (ICAO).

military tensions between Ukraine and the Russian Federation remained high, and the FAA was concerned compliance with air traffic control instructions issued by the authorities of one country could result in a civil aircraft being misidentified and intercepted, or otherwise engaged, by air defense forces of the other country.

In the months that followed, the violence and the associated risks to civil aviation expanded to encompass the entirety of the Simferopol and Dnipropetrovsk FIRs (UKFV and UKDV, respectively). In addition to a series of attacks on fixed-wing and rotary-wing military aircraft flying at lower altitudes, two aircraft operating at higher altitudes were shot down over eastern Ukraine. The first, which occurred on July 14, 2014, involved a Ukrainian Antonov An-26 flying at 21,000 feet southeast of Luhansk, Ukraine. The second involved Malaysia Airlines Flight 17 (MH 17), which was flying over Ukraine at 33,000 feet just west of the Russian border on July 17, 2014. All of the 298 passengers and crew on board MH 17 perished. The FAA determined 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 and Dnipropetrovsk FIRs (UKFV and UKDV, respectively). On July 18, 2014, Universal Coordinated Time (UTC), the FAA issued NOTAM FDC 4/2182, which prohibited U.S. civil aviation operations in the entire Simferopol and Dnipropetrovsk FIRs (UKFV and UKDV, respectively). The FAA subsequently incorporated the expanded flight prohibition into SFAR No. 113, § 91.1607, on December 29, 2014.²

² Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs) final rule, 79 FR 77857, December 29, 2014.

In 2018, the FAA determined security and safety conditions had sufficiently stabilized in certain regions of Ukraine for U.S. civil aviation operations to resume safely.³ However, the FAA also determined continuing hazards to U.S. civil aviation existed in the specified areas of the Simferopol FIR (UKFV) and the Dnipropetrovsk FIR (UKDV).⁴

A. Simferopol FIR (UKFV)

In the 2018 amendment, the FAA determined the government of Ukraine had addressed the FAA's previous flight safety concerns regarding conflicting air navigation service provider (ANSP) guidance for civil aircraft operating on certain air routes over the Black Sea in the Simferopol FIR (UKFV). In 2016, the government of Ukraine established, via its aeronautical information publication (AIP), a prohibited area over the Crimean Peninsula and the adjacent territorial sea. In addition, the government of Ukraine issued flight advisories, prohibitions and other instructions for the safe navigation of civil aircraft, which it published via NOTAMs; reclassified Ukrainian airspace in 2014;⁵ and had improved safety incident reporting procedures to mitigate the risks associated with conflicting ANSP guidance from the Russian Federation.

In the October 2018 final rule, the FAA also determined the government of Ukraine had not mitigated the risks to civil aviation safety in the remainder of the Simferopol FIR (UKFV), necessitating a continuing, albeit more limited, flight prohibition for U.S. civil aviation. An

³ Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV) final rule, 83 FR 52954, October 19, 2018.

⁴ Id.

⁵ 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 clarify the altitude and lateral boundaries of the airspace in which SFAR No. 113, § 91.1607, prohibited U.S. civil aviation operations. Extension of the Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions final rule, technical amendment, 81 FR 47699, July 22, 2016.

overwhelming military presence of Russian forces and weapon capabilities remained on the Crimean Peninsula, creating a continuing risk for misidentification of aircraft flying over the Peninsula and in the airspace near the Peninsula. Additionally, the Russian Federation continued to claim that it had established unilaterally a new FIR that includes sovereign Ukrainian airspace over the Crimean Peninsula and the associated Ukrainian territorial sea. The claimed new FIR also includes international airspace over the Black Sea and the Sea of Azov in which Ukraine is responsible for providing air navigation services under regional air navigation agreements approved by the Council of the International Civil Aviation Organization (ICAO) and the European Region Aviation System Planning Group (EASPG) of the ICAO European and North Atlantic (EUR/NAT) Regions. For those reasons and their attendant risk to U.S. civil aviation operations, the FAA continued to prohibit U.S. civil aviation operations 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 overlapped with the new SFAR boundary, also remained prohibited.

B. Dnipropetrovsk FIR (UKDV)

In the October 2018 final rule, the FAA also determined an inadvertent risk to civil aviation associated with the ongoing violence continued to exist in the eastern portion of the Dnipropetrovsk FIR (UKDV). This violence involved localized skirmishes and the potential for larger scale fighting. The FAA was concerned this situation could lead to certain air defense forces misidentifying or engaging civil aviation.

In the October 2018 final rule, the FAA determined these threats were concentrated in the eastern portion of the Dnipropetrovsk FIR (UKDV) within the Russian-controlled area and in close proximity to the line of contact that bordered that area. While the potential for fluctuating levels of military engagement continued along the line of contact in eastern portions of the Dnipropetrovsk FIR (UKDV), the military situation had begun to stabilize, which reduced the risk of a larger-scale conflict that might extend into the western portion of the Dnipropetrovsk FIR (UKDV). The FAA determined these circumstances indicated the level of risk to civil aviation in the western portion of the Dnipropetrovsk FIR (UKDV) had diminished from the level of risk that had existed when the FAA initially prohibited U.S. civil aviation operations in the entire Dnipropetrovsk FIR (UKDV) in NOTAM FDC 4/2182. As a result, the FAA amended its flight prohibition for the Dnipropetrovsk FIR (UKDV) to allow U.S. civil aviation to resume flight operations in the western portion 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). The October 2018 final rule also provided an exception to permit takeoffs and landings at Kharkiv International Airport (UKHH), Dnipropetrovsk International Airport (UKDD), and Zaporizhzhia International Airport (UKDE).

IV. Discussion of the Final Rule

A. Simferopol FIR (UKFV)

The FAA has determined U.S. civil aviation operations may resume safely in the specified areas of the Simferopol FIR (UKFV) when the flight prohibition for that FIR contained in SFAR No. 113, § 91.1607, expires on October 27, 2020. Although the FAA expects the Russian Federation will continue to assert illegitimate territorial claims and maintain a

competing ANSP for the foreseeable future, Ukraine has demonstrated a sustained commitment to taking appropriate measures to minimize the residual risks to flight safety in the Simferopol FIR (UKFV) from these circumstances. Since the spring of 2016, Ukraine's ANSP consistently has provided the FAA, as well as other countries, with credible post-implementation monitoring reports on Ukraine's implementation of the risk management measures outlined in its safety case⁶ for international air routes over the Black Sea, including incidents and mitigation measures. These post-implementation monitoring reports indicate the number of incidents within well-defined categories of identified hazards, with appropriate mitigation measures for the few incidents that continue to occur. As a result of Ukraine's diligent efforts, the number of reported safety-related incidents involving civil air traffic associated with Russian aggression in Ukraine has decreased to near zero over three and a half years of flight operations on Black Sea air routes in the Simferopol FIR (UKFV).

Ukraine has also demonstrated a sustained commitment to taking appropriate steps to protect civil aviation from the risk of misidentification associated with the continuing substantial Russian military presence and weapons capabilities on and in the vicinity of the Crimean Peninsula. For example, Ukrainian authorities issue NOTAMs to inform pilots of the locations of Russian military operational areas, work to de-conflict military and civil air traffic in the Simferopol FIR (UKFV), and have established a prohibited area over the Crimean Peninsula and adjacent Ukrainian territorial waters.

⁶ As defined by ICAO, a safety case is "a document which provides substantial evidence that the system to which it pertains meets its safety objectives." *See, e.g.*, International Civil Aviation Organization Asia and Pacific Office, *Guidance on Building a Safety Case for Delivery of an ADS-B Separation Service*, version 1.0 (Sept. 2011), available at <https://www.icao.int/APAC/Documents/edocs/cns/APX.%20J%20-%20Guidance%20Material%20on%20Building%20Safety%20Case%20for%20ADS-B%20separation.pdf>.

Additionally, despite the Russian Federation's purported annexation and its occupation of the Crimean Peninsula and continued deployment of substantial military capabilities, the security situation in the Simferopol FIR (UKFV) has stabilized. No reported clashes or incidents demonstrating an inadvertent risk to U.S. civil aviation from misidentification or miscalculation have occurred since the November 2018 Kerch Strait maritime incident.

Therefore, as a result of the significantly reduced risk to U.S. civil aviation safety in the Simferopol FIR (UKFV), this rule does not extend the prohibition on U.S. civil aviation operations in the specified areas of the Simferopol FIR (UKFV), which will expire in accordance with the existing SFAR on October 27, 2020.

B. Dnipropetrovsk FIR (UKDV)

The FAA has determined the situation in the specified areas of the Dnipropetrovsk FIR (UKDV) continues to present an unacceptable level of risk to U.S. civil aviation. An inadvertent risk to U.S. civil aviation associated with the ongoing violence exists, involving localized skirmishes and the potential for larger scale fighting in the eastern portion of the Dnipropetrovsk FIR (UKDV), particularly near the line of contact that borders the Russian-controlled area. The FAA remains concerned these skirmishes and the risk for potential larger-scale fighting could lead to the misidentification or engagement of civil aviation by certain air defense forces. The various military and militia elements in the region continue to have access to a variety of anti-aircraft weapons systems, including man-portable air defense systems, and possibly more advanced surface-to-air missile (SAM) systems with the capability to engage aircraft at higher altitudes.

Despite the most recent ceasefire arrangement between Ukraine and the Russian Federation, which went into effect in December 2019, recent conflict-related air defense activity

in eastern Ukraine highlights the continuing inadvertent risk to U.S. civil aviation operations in the eastern portion of the Dnipropetrovsk FIR (UKDV). On April 5, 2020, Ukrainian forces shot down a Russian military unmanned aircraft flying over the Donetsk region in the eastern portion of the Dnipropetrovsk FIR (UKDV). On April 10, 2020, the Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission (SMM) to Ukraine lost an unmanned aircraft to small arms fire. Russia-led forces in eastern Ukraine regularly use SAMs, small-arms ground fire, and Global Positioning System (GPS) jamming to target OSCE SMM unmanned aircraft, including in the eastern portion of the Dnipropetrovsk FIR (UKDV). In October 2019, a Ukrainian military official indicated in public statements that Ukraine had lost numerous unmanned aircraft to Russian GPS interference throughout the conflict, though the true number of unmanned aircraft lost remains unconfirmed.

Although the situation has remained mostly stable since 2018, skirmishes and attacks within the Dnipropetrovsk FIR (UKDV) and sub-adjacent Ukrainian territory continue to occur with little or no warning. For example, on April 18 and 19, 2020, Russia-led forces conducted multiple mortar attacks in the Donbas region, which is located in the eastern portion of the Dnipropetrovsk FIR (UKDV), injuring several Ukrainian soldiers.

Therefore, as a result of the significant, continuing unacceptable risk to the safety of U.S. civil aviation operations in the specified areas of the Dnipropetrovsk FIR (UKDV), which remain unchanged, the FAA extends the expiration date of SFAR No. 113, § 91.1607, from October 27, 2020, to October 27, 2021. The extension is limited to one year, given the particularized limitations applicable in the different portions of the Dnipropetrovsk FIR (UKDV) covered by the SFAR.

Further amendments to SFAR No. 113, § 91.1607, might be appropriate if the risk to civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the specified areas of the Dnipropetrovsk FIR (UKDV).

The FAA also republishes the details concerning the approval and exemption processes in Sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 113, § 91.1607.

Lastly, the FAA makes minor administrative revisions to the regulatory text. These revisions include an update to the applicability paragraph of the regulatory text to make it consistent with other recently published flight prohibition SFARs and a minor non-substantive clarification of the SFAR boundary description for the specified areas of the Dnipropetrovsk FIR (UKDV).

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

A. Approval Process Based on an Authorization Request from a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the specified areas of the Dnipropetrovsk FIR (UKDV) described in this rule. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 113, § 91.1607, including a U.S. air carrier or commercial operator,

to transport civilian or military passengers or cargo or conduct other operations in the specified areas of the Dnipropetrovsk FIR (UKDV), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 113, § 91.1607, to conduct such operations.

The requesting department, agency, or instrumentality of the U.S. Government must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.⁷ The FAA will not accept or consider requests for approval from anyone other than the requesting department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently positioned within the organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request 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

⁷ This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR prohibits their operations.

calendar days before the date on which the requesting department, agency, or instrumentality wishes the proposed operation(s) to commence.

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 113, § 91.1607, or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR on whose behalf the U.S.

Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service that the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the specified areas of the Dnipropetrovsk FIR (UKDV) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Dnipropetrovsk FIR (UKDV) and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the U.S. Government department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the

proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the Dnipropetrovsk FIR (UKDV). The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the specified areas of the Dnipropetrovsk FIR (UKDV). The approval conditions discussed below apply to all operators, whether included in the original list or subsequently added to the approval. Requestors should send updated lists to the email address obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Stephen Moates 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 the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of

other U.S. Government departments or agencies that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the 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 the specified areas of the Dnipropetrovsk FIR (UKDV).

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request authorizing them to conduct the approved operation(s). In addition, the FAA will notify the U.S. Government department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 113, § 91.1607. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those the approval process described in the previous section contemplates. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the specified areas of the Dnipropetrovsk FIR (UKDV) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Dnipropetrovsk FIR (UKDV) and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its

proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases); and

- The plans and procedures the operator will use to minimize the risks, identified in this preamble, to the proposed operations, to establish that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that SFAR No. 113, § 91.1607, affects. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 113, § 91.1607.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information appears in the FOR FURTHER INFORMATION CONTACT section of this final rule.

VII. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. In

addition, DOT rulemaking procedures in subpart B of 49 CFR part 5 instruct DOT agencies to issue a regulation upon a reasoned determination that benefits exceed costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866 and DOT rulemaking procedures, as it raises novel policy issues. This rule also complies with the requirements of the Department of Transportation's administrative rule on rulemaking at 49 CFR part 5. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This action does not extend the prohibition against certain U.S. civil flight operations in the specified areas of the Simferopol FIR (UKFV), which will expire on October 27, 2020. As a result of this expiration, U.S. civil operators will have additional routing options available to them, which may reduce flight times and operational costs for some flights, as SFAR No. 113, § 91.1607, will no longer require them to avoid the specified areas of the Simferopol FIR (UKFV) after that date.

This action also extends, without any changes to its boundaries, the prohibition against certain U.S. civil flight operations in the specified areas of the Dnipropetrovsk FIR (UKDV) for one additional year due to the significant, continuing hazards to U.S. civil aviation in that airspace, as described in the preamble to this final rule. Because this rule does not apply to the western portion of the Dnipropetrovsk FIR (UKDV), U.S. civil operators and airmen may continue to operate in that area. This action also continues to permit U.S. civil flight operations to the extent necessary to conduct takeoffs and landings at three Ukrainian international airports near the western boundary of SFAR No. 113, § 91.1607, in the Dnipropetrovsk FIR (UKDV).

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

airmen as a result of the security conditions in the specified areas of the Dnipropetrovsk FIR (UKDV).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553, after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the

specified areas of the Dnipropetrovsk FIR (UKDV), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA’s policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA also finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the

FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8-6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

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 this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy, Supply, Distribution, or Use. The agency has determined it is not a “significant energy action” under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

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

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

IX. Additional Information

A. Availability of Rulemaking Documents

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

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

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

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires the 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, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Revise § 91.1607 to read as follows:

§ 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in Specified Areas of 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 when 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 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). 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 in the specified areas described in paragraph (b) of this section, under the following circumstances:

(1) Operations are permitted to the extent necessary to take off from 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 provided that they 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 of the U.S. Government 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, 2021. The FAA may amend, rescind, or extend this SFAR as necessary.

(f) *Definition.* For purposes of this section, the Dnipropetrovsk FIR (UKDV) is defined as that airspace from the surface to unlimited within the lateral limits in figure 1 to this paragraph

(f):

Figure 1 to paragraph (f)

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 to 511400N 0342700.

Issued in Washington, D.C., 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 24, 2020.

Steve Dickson,
Administrator.

[FR Doc. 2020-22041 Filed: 10/15/2020 8:45 am; Publication Date: 10/16/2020]