

received hundreds of inquiries through emails, phone calls, and in-person questions about the remote identification operational compliance date. Flight Standards District Offices alone are receiving over 10 emails a day related to remote identification requirements. The FAA UAS Support Center has received over 380 inquiries over the past 60 days. Their primary inquiry was about the compliance date and the inability to obtain remote identification modules. UAS operators within the Commercial Drone Alliance, the Association of Uncrewed Vehicle Systems International, multiple public safety agencies such as the Nebraska Department of Transportation and the Iowa Department of Transportation, as well as FAA Lead Participants in the BEYOND program, have all indicated that they are encountering significant difficulty obtaining remote identification broadcast modules, which would allow continued operation of existing unmanned aircraft instead of purchasing new standard remote identification unmanned aircraft. Those difficulties are primarily related to availability of broadcast modules, the shipping timelines for broadcast modules, and the cost of those modules. Data from the FAA Drone Zone as of August 28, 2023, shows that there are 261,143 operators flying with a remote pilot certificate under 14 CFR part 107 and 328,372 recreational flyers operating under the provisions of 49 U.S.C. 44809 who are not remote identification equipped. The FAA has also received feedback from operators, including numerous public safety agencies, about difficulties in obtaining firmware updates to some existing models of unmanned aircraft to activate standard remote identification capabilities and make them remote identification compliant.

As a separate matter, as of August 18, 2023, the FAA has approved 412 applications for FRIAs, with 1,206 yet to be reviewed. The FAA has endeavored to review these FRIA applications as quickly as possible but expects a large increase in applications as the mandatory compliance date approaches. This influx is expected to increase the application processing backlog and impair the ability of recreational operators to comply with the rule. The FAA anticipates that the supply of remote identification broadcast modules, resolution of firmware issues, and approval of FAA-recognized identification areas will increase in the next six months.

### Statement of Policy

The FAA recognizes that it has yet to evaluate a majority of submitted applications for FAA-recognized identification areas. The FAA also recognizes the unanticipated issues that operators are facing related to the availability of remote identification broadcast modules. The FAA has continued to monitor this situation as long as possible before making a determination, but with less than a month remaining until the operational compliance date, the FAA acknowledges that for many operators, compliance with § 89.105 may prove difficult or impossible in the timeframe presented. While some operators, such as those who are using standard remote identification unmanned aircraft or those operating in FRIAs that have already been approved by the FAA, will be able to comply with the rule, the cumulative effect of the current state of the compliance issues reported to the FAA could otherwise cause a cessation of numerous UAS operations, which is not consistent with the FAA's intent for this rule or its statutory mandate to integrate UAS operations into the National Airspace System.

Accordingly, the FAA will exercise its discretion in determining how to handle any apparent noncompliance, including exercising discretion to not take enforcement action, if appropriate, for any noncompliance that occurs on or before March 16, 2024—the six-month period following the compliance deadline for operators initially published in the Remote Identification of Unmanned Aircraft final rule, RIN 2120-AL31. The exercise of enforcement discretion herein creates no individual right of action and establishes no precedent for future determinations.

Issued in Washington, DC, on September 12, 2023.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

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

RIN 2120-AL90

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

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

**ACTION:** Final rule.

**SUMMARY:** This action extends the prohibition against certain flight operations in the Pyongyang Flight Information Region (FIR) (ZKKP) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier, for an additional five years, from September 18, 2023, until September 18, 2028. The FAA finds this action necessary to address significant safety-of-flight risks to U.S. civil aviation associated with the Democratic People's Republic of Korea's (DPRK's) military capabilities and activities. The FAA also republishes the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

**DATES:** This final rule is effective on September 15, 2023.

**FOR FURTHER INFORMATION CONTACT:** Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-8166; email [bill.petrak@faa.gov](mailto:bill.petrak@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

This action extends the expiration date of SFAR No. 79, § 91.1615 of title 14 Code of Federal Regulations (CFR), from September 18, 2023, until September 18, 2028. SFAR No. 79 prohibits certain flight operations in the Pyongyang FIR (ZKKP) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator

of such aircraft is a foreign air carrier. The FAA finds this action necessary to address significant safety-of-flight risks to U.S. civil aviation associated with the DPRK's military capabilities and activities. These risks include, but are not limited to, extensive unannounced ballistic missile test launches associated with the DPRK's strategic weapons development activities, DPRK air defense and tactical aircraft capabilities that now cover the entire Pyongyang FIR (ZKKP), the DPRK's potential use of electronic warfare (EW) capabilities during periods of heightened tensions, and potential DPRK weapons of mass destruction (WMD) testing, which would likely increase inadvertent risks to civil aviation, both within and potentially beyond the Pyongyang FIR (ZKKP), if it were to occur. Consistent with other recently published flight prohibition SFARs, this action also republishes the approval process and exemption information for this flight prohibition SFAR.

## II. Authority and Good Cause

### A. Authority

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

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 79, § 91.1615, from conducting flight

operations in the Pyongyang FIR (ZKKP) due to the significant safety-of-flight risks to U.S. civil flight operations in that airspace, as described in the preamble to this final rule.

### B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable and contrary to the public interest.

Providing notice and the opportunity for the public to comment here would be impracticable. The FAA's flight prohibitions, and any amendments thereto, need to include appropriate boundaries that reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting or under-restricting U.S. operators' routing options. However, the risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving fighting, extremist and militant activity, or periods of heightened tensions, particularly where weapons capable of targeting or otherwise negatively affecting U.S. civil aviation are or may be present. This fluidity, and the potential for rapid changes in the risks to U.S. civil aviation, significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. The delay that would be occasioned by providing an opportunity to comment on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; violent extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-

aircraft weapon systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and operations-related costs, as well as potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Pyongyang FIR (ZKKP).

Alternatively, if the FAA made changes to the area in which U.S. civil aviation operations would be prohibited between a notice of proposed rulemaking and a final rule due to changed conditions, the version of the rule the public commented on would no longer reflect the FAA's current assessment of the risk environment for U.S. civil aviation.

In addition, seeking comment would be contrary to the public interest because some of the rational basis for the rulemaking is based upon classified information and controlled unclassified information not authorized for public release. In order to meaningfully provide comment on a proposal, the public would need access to the basis for the agency's decision-making, which the FAA cannot provide. Disclosing classified or controlled unclassified information in order to seek meaningful comment on the proposal would harm the public interest. Accordingly, the FAA meaningfully seeking comment on the proposal is contrary to the public interest.

Therefore, providing notice and the opportunity for comment would be impracticable, as it would hinder the FAA's ability to maintain appropriate flight prohibitions based on up-to-date risk assessments of the risks to the safety of U.S. civil aviation operations in airspace managed by other countries, and contrary to the public interest, as the FAA cannot protect classified and controlled unclassified information and meaningfully seek public comment.

For the same reasons discussed above, the potential safety impacts and the need for prompt action on up-to-date information that is not public would make delaying the effective date impracticable and contrary to the public interest.

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

### III. Background

Since 1997, the FAA has prohibited U.S. civil aviation operations in the Pyongyang FIR (ZKKP), or portions thereof, and has issued various advisory Notices to Air Missions (NOTAMs) regarding the potential risks to civil aviation operations in the adjacent airspace.<sup>1</sup> On September 8, 2020, the FAA published a final rule in the **Federal Register** extending its existing flight prohibition for U.S. civil aviation operations in the entire Pyongyang FIR (ZKKP) for an additional three years.<sup>2</sup> At that time, the FAA determined the situation in the Pyongyang FIR (ZKKP) continued to present an unacceptable level of risk for U.S. civil aviation safety. The DPRK continued to conduct no-notice ballistic missile launches to meet its weapons development program goals and to signal its resolve, and displeasure with the lack of a diplomatic breakthrough and sanctions relief, to the international community. The DPRK consistently failed to issue any NOTAMs or other aeronautical information to warn civil aircraft operators of the hazards associated with these missile launches. Additionally, at the time of the 2020 final rule, the DPRK maintained air defense and tactical aircraft capabilities that, if forward deployed, would have had ranges covering the entire Pyongyang FIR (ZKKP). The FAA assessed these weapons could present an inadvertent risk to U.S. civil aviation operations during periods of heightened tensions.

### IV. Discussion of the Final Rule

The FAA has determined the situation in the Pyongyang FIR (ZKKP) continues to present an unacceptable level of risk for U.S. civil aviation safety. The DPRK continues to increase its military capabilities and activities in ways that would pose unacceptable safety-of-flight risks to U.S. civil aviation operations if

they were permitted to fly in the Pyongyang FIR (ZKKP). Most notably, in 2022 and continuing into 2023, the DPRK conducted extensive unannounced ballistic missile test launches, the overwhelming majority of which impacted in the Pyongyang FIR (ZKKP). The DPRK's strategic weapons development activities and the associated missile test launches are expected to continue, including launches associated with the DPRK's intercontinental ballistic missile (ICBM) and hyper-glide technologies, which demonstrate increased weapons ranges and sophistication in launch operations. To the extent that they continue to be conducted without adequate advance notice to the international civil aviation community, these longer-range missile test launches contribute to the unacceptable safety-of-flight risks for U.S. civil aviation operations in the Pyongyang FIR (ZKKP) and pose potential risks to civil aviation operations in adjacent FIRs.

The rate of unannounced DPRK missile test launches increased significantly in 2022 in comparison to previous years to nearly 70 such launches. The high rate of unannounced DPRK missile launches continued into 2023, with more than 26 unannounced missile launches occurring between January 1, 2023, and April 14, 2023. Many of the DPRK's ballistic missiles are also related to its WMD program, as they can carry conventional, chemical, or nuclear warheads.

On May 29, 2023, the DPRK publicly announced an impending satellite launch via state media. Subsequently, the Republic of Korea (ROK), Japan, and the Philippines issued NOTAMs establishing warning areas for rocket-associated debris in the Yellow Sea and the Philippine Sea for the period of May 30, 2023, to June 11, 2023. On May 31, 2023, the DPRK conducted a failed space launch from its northwest coastal area. The rocket body flew approximately six minutes before it crashed into the Yellow Sea, approximately 200 km west of Eocheong Island, Republic of Korea. This location places the impact of the launched rocket body near one of the announced closure areas. The DPRK's advance notice to the international civil aviation community of activity potentially hazardous to civil aviation in this instance is a positive development. However, it is unknown whether the DPRK will make providing adequate advance notice to the international community of activities potentially hazardous to civil aviation, including but not limited to ballistic missile test launches both within and

outside the Pyongyang FIR (ZKKP), its normal operating practice in the future.

As the DPRK continues its strategic weapons development programs, including sea and land-based ballistic missile launch capabilities, fewer indications provide advance warning of potential missile test launches. The reduced warning can be attributed to the DPRK's increased concealment of key indicators associated with missile launch preparations. This is due to the DPRK's underground infrastructure, its sea-launched ballistic missile (SLBM) developments, and the increasing sophistication of its weapons. For example, the DPRK's recent testing of a solid fuel ICBM reduces its missile support footprint and launch preparation timelines and, consequently, decreases insight into its missile test launch cycles. The reduction in indicators providing potential advance warning, in conjunction with the DPRK's failure in most cases to issue NOTAMs or other appropriate aeronautical information to inform the international civil aviation community of planned ballistic missile testing activities hazardous to civil aviation, increases the risk of the DPRK inadvertently striking a civil aircraft in flight with a missile or with falling debris from an unannounced missile launch. This situation further contributes to the already unacceptable safety-of-flight risks for U.S. civil aviation operations in the Pyongyang FIR (ZKKP) and poses potential risks to civil aviation operations in adjacent FIRs.

In addition to the DPRK's significant recent history of unannounced missile test launch activities, the DPRK maintains air defense and tactical aircraft capabilities covering the entire Pyongyang FIR (ZKKP), which have been active in conjunction with recent show-of-force exercises and unannounced missile test launches. These weapons could present an inadvertent risk to U.S. civil aviation operations in the Pyongyang FIR (ZKKP) during periods of heightened tensions. While the FAA has not observed any significant Global Positioning System (GPS) jamming emanating from the DPRK in recent years, it assesses the DPRK maintains electronic warfare capabilities that it would likely use in a conflict scenario or in conjunction with military exercises or other show of force operations during periods of heightened tensions. Such electronic interference could negatively affect communications and navigation systems for civil aviation operating in the Pyongyang FIR (ZKKP), as well as in adjacent airspace.

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

<sup>2</sup> *Extension of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP)* final rule, 85 FR 55372 (Sept. 8, 2020).

Therefore, as a result of the significant and unacceptable risks to the safety of U.S. civil aviation operations in the Pyongyang FIR (ZKKP) described in this preamble, the FAA extends the expiration date of SFAR No. 79, § 91.1615, from September 18, 2023, until September 18, 2028.

Further amendments to SFAR No. 79, § 91.1615, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the Pyongyang FIR (ZKKP).

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. 79, § 91.1615.

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

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

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

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.<sup>3</sup> The FAA will not

accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the 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. 79, § 91.1615, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Pyongyang FIR (ZKKP)

process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA authorization.

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 Pyongyang FIR (ZKKP) and the airports, airfields, or landing zones at which the aircraft will take off and land; and

- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases).

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

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

The FAA's approval of an operation under SFAR No. 79, § 91.1615, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

<sup>3</sup> This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's

## 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 Pyongyang FIR (ZKKP); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Pyongyang FIR (ZKKP).

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

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

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

## VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 79, § 91.1615. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standards described in 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation(s);
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the Pyongyang FIR (ZKKP) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Pyongyang FIR (ZKKP) and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

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

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 79, § 91.1615. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 79, § 91.1615.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

## VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 ("Modernizing Regulatory Review"), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866 as amended by Executive Order 14094. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or Tribal governments, or on the private

sector, by exceeding the threshold identified previously.

#### A. Regulatory Evaluation

This action extends the expiration date of the SFAR prohibiting U.S. civil flight operations in the Pyongyang FIR (ZKKP) for an additional five years due to the significant risks to U.S. civil aviation described in the preamble of this final rule. The FAA acknowledges this flight prohibition might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of deaths, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Pyongyang FIR (ZKKP).

#### B. Regulatory Flexibility Act

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

#### C. International Trade Impact Assessment

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

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the Pyongyang FIR (ZKKP), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$177 million in lieu of \$100 million.

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

#### E. Paperwork Reduction Act

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

#### F. International Compatibility and Cooperation

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

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

for which the FAA has issued a flight prohibition for U.S. civil aviation.

#### G. Environmental Analysis

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

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

### VIII. Executive Order Determinations

#### A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

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

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the Executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive

Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

## IX. Additional Information

### A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found at the FAA's Regulations and Policies website at [https://www.faa.gov/regulations\\_policies](https://www.faa.gov/regulations_policies).

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

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

### B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121), 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 [https://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](https://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### List of Subjects in 14 CFR Part 91

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

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

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

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

■ 2. Amend § 91.1615 by revising paragraph (e) to read as follows:

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

\* \* \* \* \*

(e) *Expiration.* This SFAR will remain in effect until September 18, 2028. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

**Polly Trottenberg,**

*Acting Administrator.*

[FR Doc. 2023-20017 Filed 9-14-23; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2023-0632]

RIN 1625-AA00

#### Safety Zone; Bay St. Louis, MS

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters at the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the 2023 Swim Across the Bay. Entry of vessels or persons into this zone is prohibited unless specifically authorized the Captain of the Port Sector Mobile (COTP) or a designated representative.

**DATES:** This rule is effective from 7 a.m. through 10 a.m. on September 17, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being

available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0632 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Lawrence J. Schad, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5678, email [sectormobilewaterways@uscg.mil](mailto:sectormobilewaterways@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

#### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by September 17th, 2023, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with the 2023 Swim Across the Bay. Immediate action is needed to protect vessels and mariners from the safety hazards associated with 2023 Swim Across the Bay.

#### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Mobile (COTP) has determined that potential