ANE NH D Portsmouth, NH [Amended]
Portsmouth International Airport at Pease, NH
(Lat. 43°04′41″ N, long. 70°49′24″ W)
Elliot, Littlebrook Air Park, ME
(Lat. 43°08′35″ N, long. 70°46′24″ W)
That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of the Portsmouth International Airport at Pease, excluding that airspace within a 1.5-mile radius of the Littlebrook Air Park.

Paragraph 6004 Class E Airspace Designated as an Extension to Class E Surface Area.

ANE NH E4 Portsmouth, NH [Removed]
Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

ANE NH E3 Portsmouth, NH [Amended]
Portsmouth International Airport at Pease, NH
(Lat. 43°04′41″ N, long. 70°49′24″ W)
That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Portsmouth International Airport at Pease.

Issued in College Park, Georgia, on September 29, 2021.

Andreese C. Davis,
Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–21631 Filed 10–5–21; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 91
[Docket No.: FAA–2014–0225; Amdt. No. 91–331G]
RIN 2120–AL68

Extension of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region (FIR) (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 Dnipro 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 due to the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. The FAA extends the expiration date of this Special Federal Aviation Regulation from October 27, 2021, until October 27, 2023. 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 6, 2021.

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 extends the prohibition against certain flights in the specified areas of the Dnipro 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 due to the continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. The FAA extends the expiration date of this Special Federal Aviation Regulation from October 27, 2021, until October 27, 2023. 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.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the U.S. and 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, United States Code (U.S.C.), subtitile I, establish the FAA Administrator’s authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency’s authority. Section 40101(d)(1) provides that the Administrator shall consider, in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

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

This regulation is within the scope of the FAA’s authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 113, § 91.1607, from conducting flight operations in the specified areas of the Dnipro FIR (UKDV) due to 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)(B) of title 5, U.S.C., 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 a 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 effectiveness.
of the prohibition of U.S. civil flights in the areas to which this SFAR applies, making it appropriate to waive any delay in effective date.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to the safety of flight is often fluid in circumstances involving 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 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 that 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. As a result, engaging in notice and comment would be impracticable.

Additionally, while there is a public interest in having an opportunity for the public to comment on agency action, it is crucial that the FAA’s flight prohibitions, and any amendments therefore, 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.

As described in the preamble to this rule, 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 continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. Inadvertent risk to U.S. civil aviation operations continues to exist due to the potential for miscalculation or misidentification. Such circumstances establish that engaging in notice and comment for this rule would be 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

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 Russia unlawfully seized Crimea from Ukraine. 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 military aircraft flying at low altitudes, two aircraft operating at high altitudes were shot down over eastern Ukraine. The first was a Ukrainian Antonov An-26, which was shot down on July 14, 2014, while flying at 21,000 feet, southeast of Luhansk, Ukraine. The second was Malaysia Airlines Flight 17 (MH 17), which was shot down on July 17, 2014, while flying over Ukraine at 33,000 feet, just west of the Russian border. 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 dangerous threat to U.S. civil aviation operating in the Simferopol and Dnipropetrovsk FIRs (UKFV and UKDV, respectively). On July 18, 2014, Coordinated Universal 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 flight prohibition into SFAR No. 113, § 91.1607, on December 29, 2014.

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

In the October 2018 final rule, the FAA determined an inadvertent risk to civil aviation associated with ongoing violence continued to exist in the eastern portion of the Dnipropetrovsk FIR (UKDV). This violence involved localized skirmishes and the potential for large-scale fighting. The FAA was concerned this situation could lead to certain air defense forces misidentifying or engaging civil aviation. 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 large-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 ABDBR (471802N 351373E) 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 (UKHK), Dnipropetrovsk International Airport (UKDD), and Zaporizhzhia International Airport (UKDE).

The FAA determined in the October 2020 final rule that the situation in the specified areas of the Dnipropetrovsk FIR (UKDV) continued to present an unacceptable level of risk to U.S. civil aviation. This inadvertent risk arose from the ongoing violence based on localized skirmishes and the potential for large-scale fighting in the eastern portion of the Dnipropetrovsk FIR (UKDV).
March 2021, Russia had deployed additional military capabilities, including ground forces, tactical fighter aircraft, and air defense equipment, to occupied Crimea and to western Russia in close proximity to the Russia-Ukraine border. Russia’s military force mobilization, increased cease-fire violations along the established line of contact in eastern Ukraine, and heightened political rhetoric had the potential to escalate tensions further and result in increased military activities in the region, which elevates the level of risk to U.S. civil aviation operations. Russian military exercises near the Russia-Ukraine border further strained regional tensions.

Jamming and electronic warfare activity, which could affect civil aircraft navigation or communications systems, also increased in the border region. On April 8 and 9, 2021, the OSCE’s SMM to Ukraine lost an unmanned aircraft to small-arms fire. Russian-led forces in eastern Ukraine regularly used SAMs, small-arms ground fire, and Global Positioning System (GPS) jamming to target OSCE SMM unmanned aircraft, including in the eastern portion of the Dnipro 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 remained unconfirmed.

Although the situation had remained mostly stable since 2018, skirmishes and attacks within the Dnipro FIR (UKDV) occurred periodically near the line of contact bordering the Russian-controlled area. In addition, by late

Russia declared its military readiness exercise had met its objectives and announced forces deployed to the Russia-Ukraine border region would begin returning to their respective bases. By early to mid-May 2021, this redeployment activity had begun, reducing tensions and the associated risks to civil aviation in the Simferopol FIR (UKFV), the Kyiv FIR (UKBV), and the Dnipro FIR (UKDV) from their peak. Consequently, the FAA cancelled NOTAM KICZ A0013/21 on May 13, 2021. NOTAM KICZ A0012/21 remains in effect.

An unacceptable level of inadvertent risk to U.S. civil aviation operations remains in the specified areas of the Dnipro FIR (UKDV) described in this final rule, which include the airspace over and near the line of contact where most of the recent cease-fire violations occurred. While tensions between Ukraine and Russia have lowered from their peak earlier this year, they remain elevated, in part due to the recent period of heightened Russian military force posturing in Crimea and along the Russia-Ukraine border and increases in cease-fire violations. In addition, the conflict between Ukraine and Russian-backed separatists in eastern Ukraine continues. These circumstances result in a continued inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification.

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 Dnipro FIR (UKDV), the FAA extends the expiration date of SFAR No. 113, § 91.1607, from October 27, 2021, to October 27, 2023.

Further amendments to SFAR No. 113, § 91.1607, 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 specified areas of the Dnipro 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.

Finally, the FAA makes several technical revisions to the rule to reflect current naming conventions and clarify the description of the airspace in which
U.S. civil aviation operations remain prohibited. This rule contains updated names for the Dnipro FIR (UKDV) and the Dnipro International Airport (UKDD) to reflect Ukraine’s current nomenclature. This rule also describes the specified areas of the Dnipro FIR (UKDV) in a manner that is easier for operators to understand. Previously, paragraph (b) of SFAR No. 113, § 91.1607, described the boundaries of the specified areas of the Dnipro FIR (UKDV), from surface to unlimited, in terms of airways and detailed waypoints with their corresponding latitudes and longitudes. Meanwhile, paragraph (f) of the rule described the boundaries of the Dnipro FIR (UKDV) in terms of a series of waypoints and their corresponding latitudes and longitudes and international borders. Because paragraph (f) is no longer necessary, this rule contains a clarifying sentence to paragraph (b) to describe the flight prohibition. The boundaries of the area in which the FAA prohibits U.S. civil aviation operations that are subject to this rule remain unchanged.

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 Dnipro 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 Dnipro 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 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. 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 proposed operation(s) to commence.

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the 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 multiple flight operations. To the extent known, the letter must identify the person(s) the requestor 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 specified areas of the Dnipro 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 Dnipro FIR (UKDV) 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 premission 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 Dnipro 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 an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the specified areas of the Dnipro FIR (UKDV). 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, 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.

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, agencies, or instrumentalities 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 that will form the basis for FAA’s approval on behalf of entities with 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. 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 is listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

VII. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 601 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 55489 Federal Register
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 specified areas of the Dnipro 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 (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 mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

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

E. Paperwork Reduction Act

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

F. International Compatibility and Cooperation

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

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. 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. Commenters must identify the docket or notice number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit 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, 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:


2. Revise § 91.1607 to read as follows:

§ 91.1607 Special Federal Aviation Regulation No. 13—Registration Against Certain Flights in Specified Areas of the Dnipro 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 Dnipro FIR (UKDV) from the surface to unlimited, east of a line drawn direct from ABDAR (471802N 351732E) along airway M653 to NIKAD (485946N 447160E); then along airway N604 to GOBUN (501806N 373824E). This prohibition applies to all aircraft.
description of the deviation and the reasons for it.

(e) Expiration. This SFAR will remain in effect until October 27, 2023. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about September 30, 2021.

Steve Dickson,
Administrator.

[FR Doc. 2021–21797 Filed 10–5–21; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE
Bureau of Industry and Security

15 CFR Part 774
[Docket No. 210923–0195]

RIN 0694–AI44

Control of Deuterium That Is Intended for Use Other Than in a Nuclear Reactor Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is publishing this final rule in conjunction with a U.S. Nuclear Regulatory Commission (NRC) final rule to revise its regulations to remove the NRC’s licensing authority for exports of deuterium for non-nuclear end use. The responsibility for the licensing of exports of deuterium for non-nuclear end use is being transferred to the Department of Commerce’s Bureau of Industry and Security (BIS). BIS is publishing this final rule to include deuterium under its export licensing jurisdiction under the Export Administration Regulations (EAR). This Commerce final rule describes the changes made to the EAR to control the deuterium moved from the export control authority of the NRC to the export control authority of BIS under the EAR. Exports of deuterium for nuclear end use will remain under the NRC’s export licensing jurisdiction.

Deuterium Under NRC and Its Evolution Into Broader Commercial Use

Section 109 of the Atomic Energy Act of 1954 (AEA), as amended by the Nuclear Non-Proliferation Act of 1978 (NNPA), authorizes and directs the NRC, after consultation with the Secretaries of State, Energy, and Commerce, to exercise its export licensing authority over “items or substances” determined by the Commission to be “especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes” (42 U.S.C. 2139(b)). Since 1978, under this authority, the NRC has exercised jurisdiction over all exports of deuterium, including heavy water, as well as deuterium gas and other deuterated compounds for both nuclear and non-nuclear end uses. In the early years of the nuclear energy industry, deuterium oxide (heavy water) was largely produced for use in nuclear reactors. High-purity reactor grade heavy water, which has a deuterium concentration of 99.75 percent or greater, has been used to operate reactors with natural uranium.

In the last decade, the market for deuterium has significantly expanded and evolved beyond nuclear reactor use. Non-nuclear use of deuterium includes but is not limited to production of: Advanced electronics, deuterated solvents, deuterated pharmaceuticals, hydrogen arc-lamps, neutron generators, and tracers in hydrological, biological, and medical fields.

Despite this market change, the NRC has continued to control all exports of deuterium under the general or specific export licensing provisions in 10 CFR part 110. The NRC has determined, in consultation with the Executive Branch, that it is appropriate to revise its regulations and transfer the export licensing control of non-nuclear end uses of deuterium to the Department of Commerce, as was done for the non-nuclear end uses of nuclear graphite in 2005 (70 FR 41937; July 21, 2005).

Over the past 10 years, the quantity of deuterium exported for non-nuclear end use has steadily increased. A growing number of companies have been required to obtain specific licenses to export deuterium for non-nuclear use because the quantity exceeded the general license quantity thresholds. As stated in the NRC final rule published in this edition of the Federal Register in conjunction with this Commerce final rule, the NRC’s recent licensing experience has shown that deuterium has been exported almost exclusively for non-nuclear industrial and research end uses, prompting the reevaluation of NRC licensing requirements concerning these non-nuclear end use exports.

Other supplier nations have export controls over deuterium but have limited them to cover exports “for use in a nuclear reactor.” This limitation appears in both the Nuclear Non-Proliferation Treaty Exporters Committee (Zangger Committee) and the Nuclear Suppliers Group (NSG) clarifications of items on the Trigger List. The United States is a member of the Zangger Committee and a Participant in the Governance of the NSG.

As stated in the NRC final rule published in conjunction with this Commerce final rule, the history of the use of deuterium exported under the NRC’s authority indicates that deuterium has not been diverted for known illicit purposes to produce weapons-grade material or for use in unsafeguarded nuclear activities. To the extent that any risk of diversion may exist, exports of deuterium for non-nuclear end use will continue to be controlled by the Department of Commerce under the EAR, and appropriate control mechanisms exist within national regulatory authorities and the international community to detect efforts to divert deuterium for known illicit purposes. Exports and reexports of deuterium for non-nuclear end use will be controlled for Nuclear Proliferation (NP) Column 2 under the EAR. A license will be required for all destinations controlled for NP 2 reasons, which means an authorization (a BIS license or license exception) will be required under the EAR for exports and reexports to these destinations. In