

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. 28831; Special Federal Aviation Regulation (SFAR) No. 79]

RIN 2120-AG48

Prohibition against certain flights within the Flight Information Region of the Democratic People's Republic of Korea

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action amends SFAR 79, issued on April 18, 1997, to permit certain flight operations within the international airspace controlled by the Democratic People's Republic of Korea (DPRK) by any United States air carrier or commercial operator; by any person exercising the privileges of an airman certificate issued by the FAA; and by any operator using an aircraft registered in the United States. Due to the lack of certain information from the DPRK necessary to the safety of flight operations in the area, the FAA issued SFAR 79, which prohibits certain flight operations within the Pyongyang Flight Information Region (FIR), pending resolution of outstanding questions related to safety of flight operations in the area. The FAA recently completed a review of safety information from the DPRK, and has determined that an acceptable level of safety exists in the Pyongyang FIR east of 132 degrees east longitude. The FAA therefore amends SFAR 79 to remove the prohibition on flight operations in that area.

DATES: This amendment to SFAR 79 is effective February 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mark W. Bury, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3515.

SUPPLEMENTARY INFORMATION:**Availability of Document**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339), the Federal Register's electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800-FAA-ARAC).

Internet users may reach the FAA's web page at <http://www.faa.gov> or the Federal Register's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the SFAR number or docket number of this document.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On April 18, 1997, the FAA issued SFAR 79 prohibiting certain flight operations within the Pyongyang FIR (62 FR 20076; April 24, 1997). In the exercise of its statutory responsibility for the safety of U.S.-registered aircraft and U.S. operators, the FAA determined a flight prohibition was justified by a combination of factors in the DPRK that posed a potential threat to civil aircraft flying through the area of the Pyongyang FIR west of 132 degrees east longitude, and by the lack of information from the DPRK indicating that flight safety could be assured for civil aircraft operating in the Pyongyang FIR east of 132 degrees east longitude.

The DPRK subsequently sent the FAA a copy of their new Aeronautical Information Publication (AIP). Following a review of this material, the FAA now has determined that the proper level of flight safety can be assured for overflights occurring in the international airspace of the FIR east of 132 degrees east longitude. In particular, the FAA is satisfied with the information in the AIP concerning search and rescue capabilities, civil aircraft intercept procedures, and communication links other than air-to-ground communication. Therefore, the FAA is amending this SFAR to remove the prohibition on flights by U.S.-registered aircraft and U.S. operators in that airspace. Because the Office of Foreign Assets Control of the U.S. Department of Treasury lifted its prohibition on the payment of overflight fees to the DPRK on April 7, 1997, this portion of the Pyongyang FIR is now available to U.S. operators.

The circumstances supporting the FAA's earlier determination that a potential threat to civil aircraft

operations exists in the area of the Pyongyang FIR west of 132 degrees east longitude have not changed. Specifically, the FAA stands by its conclusion that the combination of the DPRK's military capabilities and its rules of engagement poses a potential threat to civil aircraft in the area west of 132 degrees east longitude, which includes the DPRK's territorial airspace. Therefore, in the exercise of its statutory responsibility for the safety of U.S.-registered aircraft and U.S. operators, the FAA will continue its flight prohibition for the area of the Pyongyang FIR west of 132 degrees east longitude.

Amendment of Prohibition Against Certain Flights Within the Flight Information Region of the Democratic People's Republic of Korea (DPRK)

On the basis of the information above, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that SFAR 79 should be amended to permit flight operations by U.S.-registered aircraft and U.S. operators in the area of the Pyongyang FIR east of 132 degrees east longitude. I also have determined that circumstances justify the continued prohibition of flight operations within the Pyongyang FIR west of 132 degrees east longitude by any U.S. carrier or commercial operator; by any person exercising the privileges of an airman certificate issued by the FAA, except persons operating U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier.

In order to make pilots aware immediately of the lifting of certain restrictions affecting flight operations within international airspace controlled by the DPRK and to avoid any confusion by the pilots concerning areas safe for flight, I find that notice and public comment under 5 USC 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under 49 USC 40105(b)(1)(A) to ensure that I exercise my duties consistently with the obligations of the United States under international agreements. The Department of State has been advised of, and has not objection to, the action taken herein.

This rule shall remain effective until further notice.

Regulatory Evaluation Summary

In accordance with SFAR 79, United States air carriers and commercial operators currently use alternate routes to avoid the Democratic People's Republic of Korea's (DPRK) territory and airspace. Navigating around DPRK territory and airspace results in increased variable operation costs, primarily for any United States air carriers operating in the region. However, based on information in the original SFAR, there were no U.S. air carriers or commercial operators conducting revenue flights within the DPRK airspace, and as such, would not be adversely affected by the requirements of the original SFAR.

There are no costs, only cost savings, associated with this amendment to SFAR 79, because now flights by United States air carriers will be allowed through DPRK airspace east of 132 degrees east longitude. Costs savings are associated with the elimination of the alternate routes, and subsequent reduced flying time, to circumnavigate the Pyongyang FIR east of 132 degrees east longitude, as required by the original SFAR. The cost savings are represented by a decrease in variable operating costs, which the FAA estimates to be approximately \$3,200 per hour for a wide-body aircraft. Additionally, there is no undue hazard to persons and aircraft, because the FAA has reviewed all applicable safety information provided by DPRK and has determined that DPRK's regulations, procedures and capabilities conform to international safety standards.

Therefore, because there are some cost savings associated with this action, along with no reduction in aviation safety, the FAA has determined that the amendment to SFAR 79 is cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "significant economic impact on a substantial number of small entities." FAA Order No. 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA has determined that none of the United States air carriers or commercial operators that operate in the region are "small entities" as defined under FAA Order No. 2100.14A. Therefore, the FAA certifies that this SFAR would not impose a "significant economic impact

on a substantial number of small entities."

International Trade Impact Assessment

When the FAA promulgated SFAR 79, the FAA found that the SFAR could have an adverse impact on the international flights of United States air carriers and commercial operators because it could marginally increase their operating costs and flight times relative to foreign carriers who overfly the Pyongyang FIR. This action lifts some of the restrictions on United States air carriers or commercial operators originally imposed by SFAR 79. Therefore, the FAA believes that the amended SFAR would reduce the competitive disadvantage placed upon United States air carriers, and would have a positive effect on the sale of United States aviation products and services in foreign countries.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded

Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 USC 3507 *et seq.*)

Federalism Determination

The SFAR set forth herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this regulation does not have federalism implications warranting the preparation of a Federal Assessment.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Democratic People's Republic of Korea, Freight.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 USC 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506-46507, 47122, 47508, 47528-47531.

2. Paragraphs 2 and 3 of SFAR 79 are revised to read as follows:

Special Federal Aviation Regulation (SFAR) No. 79—Prohibition Against Certain Flights within the Flight Information Region (FIR) of the Democratic People's Republic of Korea (DPRK)

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2. *Flight Prohibition.* Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight through the Pyongyang FIR west of 132 degrees east longitude.

3. *Permitted Operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the Pyongyang FIR west of 132 degrees east longitude where such operations are authorized either by exemption issued by the Administrator or by another agency of the United States Government with FAA approval.

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Issued in Washington, DC on February 10, 1998.

Jane F. Garvey,
Administrator.

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