

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 91

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

RIN 2120-AG24

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action prohibits certain flight operations within the 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, except such 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. The DPRK is opening its airspace to routine international overflights. On April 7, 1997, the U.S. Government lifted its prohibition on the payment of overflight fees to the DPRK, effectively opening the airspace to U.S. operators. However, pending the resolution of outstanding questions related to safety of flight operations in the area, the FAA will maintain a prohibition on certain flight operations within the Pyongyang Flight Information Region (FIR). The combination of the DPRK's military capabilities, rules of engagement, and inexperience in managing international civil aircraft poses a threat to civil aircraft in certain areas of the Pyongyang FIR. As a result, the FAA is prohibiting certain flight operations in the Pyongyang FIR. The FAA will consider authorizing U.S. flight operations east of 132 degrees east longitude following the review of applicable safety information received from the DPRK and an FAA determination that the proper level of safety for the overflights can be assured.

**DATES:** This SFAR is effective April 18, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Patricia Lane, Airspace and Air Traffic Law Branch, AGC-230, or Mark W. Bury, International Affairs and Legal Policy Staff, AGC-7, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 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](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**

The DPRK is opening its airspace to routine international overflights. The Office of Foreign Assets Control (OFAC), Department of Treasury, had prohibited the payment of overflight fees to the DPRK, effectively closing DPRK airspace to U.S. operators. On April 7, 1997, the U.S. government lifted the prohibition against the payment of overflight fees to the DPRK. However, because of the following concerns, the FAA has determined that immediate action is necessary to prohibit certain flight operations within DPRK airspace.

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operators throughout the world. Section 40101(d)(1) of Title 49, United States Code, requires the Administrator of the FAA to consider the regulation of air commerce in a manner that best promotes safety and fulfills the requirements of national security as being in the public interest. Section 44701(a) of Title 49, United States Code, provides the FAA with broad authority to carry out this policy by prescribing

regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce.

In the exercise of these statutory responsibilities, the FAA has determined that the combination of various factors in the DPRK poses a potential threat to civil aircraft flying through the Pyongyang FIR. Tensions on the Korean peninsula occasionally run high, and as a result the DPRK maintains a high state of military readiness. The DPRK military has emphasized the air defense of the Korean demilitarized zone (DMZ) and of areas further removed from the DMZ, particularly the capital city, Pyongyang. The DPRK air defense system includes modern surface-to-air missile systems and interceptor aircraft capable of engaging aircraft at cruising altitudes. The FAA has been unable to determine the current level of coordination and cooperation between civil air traffic authorities and air defense commanders for civil aircraft overflights, including military rules of engagement if an aircraft strays from its assigned flight route. Any lack of coordination presents a risk that civil aircraft operating in the Pyongyang FIR west of 132 degrees east longitude could be misidentified as a threat by the DPRK.

Given the DPRK's air defense capabilities, including its rules of engagement and limited capability to distinguish between military and civil aircraft, the FAA has determined that civil aircraft operating in the Pyongyang FIR west of 132 degrees east longitude could be misidentified and inadvertently engaged by the DPRK. This potential threat justifies the imposition of certain measures on U.S. flight operations to ensure the safety of U.S.-registered aircraft and operators considering flight operations in the Pyongyang FIR west of 132 degrees east longitude.

Further, since the FAA has not yet reviewed all applicable safety information provided by the DPRK and necessary for operators to meet international safety standards prescribed by the International Civil Aviation Organization, it has not determined that the proper level of operational overflight safety can be assured east of 132 degrees east longitude. Remaining issues for review include differences from ICAO standards, if any; search and rescue capabilities and procedures; DPRK military pilot training in the proper civil aircraft intercept procedures; and communications links other than air-ground communication. The FAA also needs to publish related information for its International Flight Information

Manual. Once this information is reviewed and published, the FAA is prepared to amend this SFAR as warranted to permit flights east of 132 degrees east longitude and to publish a Notice to Airmen (NOTAM) indicating that such flights are permitted and where to find the information supplied by the DPRK.

#### **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 immediate action by the FAA is required to ensure there is no damage to or loss of U.S.-registered aircraft or injury to U.S. operators conducting flights through the Pyongyang FIR. I find that the current air defense capabilities in the DPRK, as well as the need to review safety information from the DPRK necessary to determine the proper level of operational overflight safety, presents a potential hazard to the operation of civil aircraft in the Pyongyang FIR. Accordingly, I am ordering a prohibition of flight operations within the Pyongyang FIR 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. The FAA will amend this SFAR to permit flight operations east of 132 degrees east longitude once it evaluates certain information from the DPRK and determines that the proper level of operational overflight safety can be assured. The flight prohibition is necessary to prevent an undue hazard to U.S.-registered aircraft and to protect persons on board such aircraft. Operations approved by the Administrator, or by another agency of the United States Government with FAA approval, and certain emergency operations shall be excepted from the prohibition.

Because the circumstances described in this notice warrant immediate action by the FAA to maintain the safety of flight, I also find that notice and public comment under 5 U.S.C. 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 U.S.C.

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 no objection to, the action taken herein.

This rule shall remain effective until further notice.

#### **Regulatory Evaluation**

##### *Benefits*

This regulation will generate potential benefits in the form of ensuring that the current acceptable level of safety continues for U.S. commercial air carriers and other operators. Since this action is promulgated prior to the occurrence of a serious incident resulting in loss of life or damage to or destruction of property, there are no statistics from which a quantitative estimate of benefits can be derived.

##### *Costs*

The SFAR will impose a potential incremental cost of compliance in the form of the circumnavigation (including the additional time for preflight planning) of the Pyongyang FIR. Based on information available to informed FAA personnel, there are no U.S. air carriers or commercial operators currently conducting revenue flights within the Pyongyang FIR, and therefore none that will be adversely affected by this action.

#### **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 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. The FAA has determined that none of the U.S. air carriers affected by the SFAR are "small entities" as defined by FAA Order 2100.14A. Thus, the SFAR would not impose a "significant economic impact on a substantial number of small entities."

#### **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 U.S.C. 3507 et seq.).

#### **International Trade Impact Assessment**

This final rule could have an impact on the international flights of U.S. air

carriers and commercial operators because it will restrict their ability to fly through the Pyongyang FIR and therefore may impose additional costs relating to the circumnavigation of this airspace. This final rule, however, will not restrict the ability of foreign air carriers to fly through the Pyongyang FIR (unless they are carrying passengers under a code-share arrangement with a U.S. carrier). Given the narrow scope of this rule, it will not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

#### **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 Federalism Assessment.

#### **Conclusion**

For the reasons set forth above, FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866. This action is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The FAA has determined that none of the U.S. air carriers affected by the SFAR are "small entities" as defined by FAA Order 2100.14A. Thus, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### **List of Subjects in 14 CFR Part 91**

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

#### **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 U.S.C. 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. Special Federal Aviation Regulation (SFAR) No. 79 is added 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).**

1. *Applicability.* This rule applies to the following persons:

(a) All U.S. air carriers or commercial operators.

(b) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier.

(c) All operators of aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight Prohibition.* (a) Except as provided in paragraphs 2(b), 3, and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations through the Pyongyang FIR.

(b) Flight operations within the Pyongyang FIR east of 132 degrees east longitude are prohibited until the FAA determines, based on information from the DPRK civil aviation authority, that the proper level of operational overflight safety can be assured. The FAA will amend this SFAR and publish a notice to airmen (NOTAM) to permit flights east of 132 degrees east longitude once this determination is made.

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

4. Emergency situations. In an emergency that requires immediate decision and action

for the safety of the flight, the pilot in command on an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR parts 121, 125, or 135, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefore.

5. Expiration. This Special Federal Aviation Regulation No. 79 will remain in effect until further notice.

Issued in Washington, DC, on April 18, 1997.

**Barry L. Valentine,**  
*Acting Administrator.*

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