

**ANE NH D Portsmouth, NH [Amended]**

Portsmouth International Airport at Pease,  
NH

(Lat. 43°04'41" N, long. 70°49'24" W)

Eliot, 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 E5 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.*

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**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](mailto: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)<sup>1</sup> by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, this amendment continues to prohibit all persons described in paragraph (a) of SFAR No. 113, 14 Code of Federal Regulations (CFR), § 91.1607, from conducting civil flight operations in the specified areas of the Dnipro FIR (UKDV) until October 27, 2023, due to hazards to the safety of U.S. civil aviation associated with continuing hostilities along the line of contact between Ukraine and Russian-backed separatists and heightened tensions between Russia and Ukraine. These circumstances result in a continued inadvertent risk to U.S. civil aviation

operations due to the potential for miscalculation or misidentification.

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

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

<sup>1</sup> In its May 24, 2018, Aeronautical Information Regulation and Control (AIRAC 1806) publication, the Ukrainian State Air Traffic Services Enterprise, the air navigation service provider for Ukraine, renamed the FIR formerly known as the Dnipropetrovsk FIR (UKDV) the Dnipro FIR (UKDV). This rule uses the current FIR name, including in historical references to the FIR.

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 thereto, reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options.

As described in the preamble to this rule, extending the flight prohibition for U.S. civil aviation operations in the specified areas of the Dnipro 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.<sup>2</sup> In the months that followed, the violence and the associated risks to civil aviation expanded to encompass the entirety of the Simferopol and Dnipro 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 Dnipro 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 Dnipro FIRs (UKFV and UKDV, respectively). The FAA subsequently incorporated the flight prohibition into SFAR No. 113, § 91.1607, on December 29, 2014.<sup>3</sup>

In 2018, the FAA determined security and safety conditions had stabilized sufficiently in certain portions of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively), for U.S. civil aviation operations to resume safely.<sup>4</sup> However, the FAA also determined continuing hazards to U.S. civil aviation existed in certain specified areas of the Simferopol and Dnipro FIRs (UKFV and UKDV, respectively).<sup>5</sup>

<sup>2</sup> *Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR)* final rule, 79 FR 22862 (Apr. 25, 2014).

<sup>3</sup> *Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs)* final rule, 79 FR 77857 (Dec. 29, 2014).

<sup>4</sup> *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)* final rule, 83 FR 52954 (Oct. 19, 2018).

<sup>5</sup> *Id.* In 2020, the FAA determined U.S. civil aviation operations could resume safely in the specified areas of the Simferopol FIR (UKFV) when the flight prohibition for that FIR contained in SFAR No. 113, § 91.1607, expired on October 27,

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 Dnipro 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 Dnipro 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 Dnipro 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 Dnipro FIR (UKDV). The FAA determined these circumstances indicated the level of risk to civil aviation in the western portion of the Dnipro 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 Dnipro FIR (UKDV) in NOTAM FDC 4/2182. As a result, the FAA amended its flight prohibition for the Dnipro FIR (UKDV) to allow U.S. civil aviation to resume flight operations in the western portion of the Dnipro FIR (UKDV) from the surface to unlimited, west of a line drawn direct from ABDAR (471802N 351732E) along airway M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E). The October 2018 final rule also provided an exception to permit takeoffs and landings at Kharkiv International Airport (UKHH), Dnipro International Airport (UKDD),<sup>6</sup> and Zaporizhzhia International Airport (UKDE).

The FAA determined in the October 2020 final rule that the situation in the specified areas of the Dnipro 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 Dnipro FIR (UKDV),

<sup>6</sup> *Amendment of the Prohibition Against Certain Flights in Specified Areas of the Simferopol and Dnipropetrovsk Flight Information Regions (FIRs) (UKFV and UKDV)* final rule, 85 FR 65678 (Oct. 16, 2020).

<sup>7</sup> The FAA has updated the airport name in accordance with the Aeronautical Information Publication of Ukraine (AIP), available at [http://www.aisurene.net/publications/eng/publ\(eng\).htm](http://www.aisurene.net/publications/eng/publ(eng).htm).

particularly near the line of contact bordering the Russian-controlled area. The FAA remained concerned these skirmishes and the risk for potential large-scale fighting could lead to the misidentification or engagement of civil aviation by certain air defense forces. The various military and militia elements in the region continued to have access to a variety of anti-aircraft weapons systems, including man-portable air defense systems and possibly more advanced surface-to-air missile (SAM) systems with the capability to engage aircraft at higher altitudes.

Despite a cease-fire arrangement between Ukraine and Russia, which went into effect in December 2019, conflict-related air defense activity in eastern Ukraine also indicated the existence of an inadvertent risk to U.S. civil aviation operations in the eastern portion of the Dnipro FIR (UKDV). On April 5, 2020, Ukrainian forces shot down a Russian military unmanned aircraft flying over the Donetsk region in the eastern portion of the Dnipro FIR (UKDV). On April 10, 2020, the Organization for Security and Cooperation in Europe (OSCE) Special Monitoring Mission (SMM) to Ukraine lost an unmanned aircraft to small-arms fire. 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) and sub-adjacent Ukrainian territory continued to occur with little or no warning. 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 extended the expiration date of SFAR No. 113, § 91.1607, from October 27, 2020, to October 27, 2021.

#### IV. Discussion of the Final Rule

During the first quarter of the calendar year 2021, an increasing number of cease-fire violations in the eastern portion of the Dnipro FIR (UKDV) occurred, particularly near the line of contact bordering the Russian-controlled area. In addition, by late

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 reported two UAS flights experienced GPS interference while conducting monitoring missions along the line of contact. The April 9, 2021, SMM UAS flight experienced GPS interference resulting in an attempted orbit maneuver to regain the GPS signal prior to executing an emergency landing. OSCE indicated increased GPS interference occurred since March 21, 2021, along the line of contact.

Overall, circumstances in the region presented an increased potential inadvertent risk to U.S. civil aviation operations due to the potential for miscalculation or misidentification. Heightened regional tensions contributed to the inadvertent shoot down of Malaysia Airlines Flight 17 (MH 17) over eastern Ukraine in July 2014. Although this risk was greatest in the specified areas of the Dnipro FIR (UKDV) in which SFAR No. 113, § 91.1607, prohibits U.S. civil aviation operations, it also extended beyond those areas. As a result, the FAA issued two advisory Notices to Airmen (NOTAMs): NOTAMs KICZ A0012/21<sup>7</sup> and KICZ A0013/21.<sup>8</sup> In late April 2021,

<sup>7</sup> NOTAM KICZ A0012/21 (issued on or about Apr. 17, 2021) advised U.S. civil aviation to exercise extreme caution when flying into, out of, within, or over those areas of airspace in the Moscow FIR (UUWV) and Rostov-na Donu FIR (URRV) within 100 nautical miles outside the boundaries of the Dnipro FIR (UKDV), the Simferopol FIR (UKFV), and the Kyiv FIR (UKBV), including that portion of the Kyiv Upper Information Region (UIR) (UKBU) airspace within the lateral limits of the UKDV, UKFV, and UKBV FIRs.

<sup>8</sup> NOTAM KICZ A0013/21 (issued on or about Apr. 17, 2021) advised U.S. civil aviation operators to exercise extreme caution when flying into, out of, within, or over the Dnipro FIR (UKDV), the Simferopol FIR (UKFV), and the Kyiv FIR (UKBV), including a portion of the Kyiv Upper Information Region (UIR) (UKBU) airspace within the lateral limits of the entire UKDV, UKFV, and UKBV FIRs.

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.<sup>9</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 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 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;

<sup>9</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 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 approval.

- 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 pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the 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 them 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:

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

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

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

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

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

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

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. 113, § 91.1607. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those the approval process described in the previous section contemplates. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the specified areas of the 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;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble, to the proposed operations, to establish that granting the exemption would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

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

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 113, § 91.1607. While the FAA will not permit these operations

through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 113, § 91.1607.

If a petition for exemption includes security-sensitive or proprietary information, requestors may contact Aviation Safety Inspector Stephen Moates for instructions on submitting it to the FAA. His contact information 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. 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 it raises novel policy issues contemplated under that Executive order. 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 without change the prohibition against certain U.S. civil flight operations in the specified areas of the Dnipro FIR (UKDV) for two additional years due to significant, continuing hazards to U.S. civil aviation in that airspace, as described in the preamble to this final rule. Because this rule does not apply to the western portion of the Dnipro FIR (UKDV), U.S. civil operators and airmen may continue to operate in that area. This action also continues to permit U.S. civil flight operations to the extent necessary to conduct takeoffs and landings at three Ukrainian international airports near the western boundary of SFAR No. 113, § 91.1607, in the Dnipro FIR (UKDV).

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

#### 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 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 a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

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

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA 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 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 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 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](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/](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:

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

■ 2. Revise § 91.1607 to read as follows:

### § 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in Specified Areas of the 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 M853 to NIKAD (485946N 355519E), then along airway N604 to GOBUN (501806N 373824E). This prohibition applies to airways M853

and N604. This prohibition extends from the surface to unlimited and includes that portion of the Kyiv Upper Information Region (UIR) (UKBU) airspace within the lateral limits set forth in this paragraph (b) from the upper boundaries of the Dnipro FIR to unlimited.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the specified areas described in paragraph (b) of this section, under the following circumstances:

(1) Operations are permitted to the extent necessary to take off from and land at the following three airports, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Ukraine:

- (i) Kharkiv International Airport (UKHH);
- (ii) Dnipro International Airport (UKDD); and
- (iii) Zaporizhzhia International Airport (UKDE).

(2) Operations are permitted provided that they are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality of the U.S. Government and the person described in paragraph (a) of this section) with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the responsible Flight Standards office a complete report of the operations of the aircraft involved in the deviation, including a



description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until October 27, 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-A144

#### 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.

**DATES:** This rule is effective December 6, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482-1641 or email [steven.clagett@bis.doc.gov](mailto:steven.clagett@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

### Background

The Department of Commerce is publishing this final rule in conjunction with a U.S. Nuclear Regulatory Commission (NRC) final rule being published in this issue of the **Federal Register** 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 studies.

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 Participating Government 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