

TABLE 1.—MATERIAL INCORPORATED
BY REFERENCE

Agusta Alert Bollettino Tecnico	Date
No. 109EP-83, No. 109S-18, and No. 119-25.	November 29, 2007.

Issued in Fort Worth, Texas, on June 3, 2008.

Judy I. Carl,

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. FAA-2002-6717, Amendment
No. 121-339, 135-115]

RIN 2120-AJ26

Extended Operations (ETOPS) of Multi-Engine Airplanes

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; immediately
adopted.

SUMMARY: The Federal Aviation Administration is amending its regulations governing extended range operations of turbine powered multi-engine airplanes operated by air carriers and in commuter and on-demand passenger carrying operations. This action clarifies the qualifications of individuals who certify by signature the ETOPS pre-departure service check for ETOPS flights.

This change follows current FAA guidance and clarifies the regulations for the affected public.

DATES: This action is effective June 16, 2008.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this final rule contact Jim Ryan, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-7493; facsimile (202) 267-5229; e-mail Jim.Ryan@faa.gov. For legal information, contact Bruce Glendening, Office of the Chief Counsel, Division of Regulations, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591; telephone (202) 267-3073; facsimile

(202) 267-7971; e-mail Bruce.Glendening@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in 49 U.S.C. section 44701, "General Requirements". Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority.

Background

The ETOPS final rule, Extended Operations (ETOPS) of Multi-Engine Airplanes, published in the **Federal Register** on January 16, 2007, (72 FR 1808) applies to part 121 and part 135 turbine powered multi-engine airplanes used in passenger-carrying, extended-range operations. All cargo operations in airplanes with more than two engines of both part 121 and part 135 were exempted from the majority of this rule. The rule established regulations governing the design, operation, and maintenance of certain airplanes operated on flights involving long distances from an adequate airport. It codified current FAA policy, industry best practices and recommendations, and international standards designed to ensure long range flights will continue to operate safely. To ease the transition for current operators, the rule included delayed compliance dates for certain ETOPS requirements. However, as written, the final rule language does not accurately reflect the intent of the FAA to have a qualified mechanic perform the ETOPS pre-departure service check (PDSC) even though this intent is clearly stated in the preamble.

The regulatory evaluation, found in the docket of the final rule (Docket No. 2002-6717), further substantiates the FAA's intent by using the hourly wage rate of an aircraft mechanic as the basis for establishing the cost of this requirement.

Good Cause Justification for Immediate Final Rule Adoption

We find that notice and public comment under 5 U.S.C. 553(b) is impracticable because part 121 regulation, as currently written, would clearly require the use of mechanics with airframe and powerplant ratings to be the only people who could certify by signature the ETOPS pre-departure service check for ETOPS flights, even for flights outside of the United States. As written, an operator would be

required to comply with an almost impossible requirement to have mechanics with an airframe and powerplant rating, issued by the FAA, positioned at numerous maintenance facilities outside of the United States. As literally written in the final rule, this requirement is overly burdensome and was not (1) The intent of the FAA, (2) contained in any previous FAA guidance, and (3) contained in the notice of proposed rulemaking for this rule.

We find that notice and public comment under 5 U.S.C. 553(b) is unnecessary for the amendment to part 135 regulations because this intent is clearly stated in the preamble to the final rule. In response to the comment "that the check required immediately before a flight and certified by an ETOPS qualified maintenance person is unrealistic for part 135 operators who do not fly ETOPS routes on a regular basis", the FAA responded, "The FAA disagrees that a predeparture service check is unrealistic for 135 operators. Part 135 operators are already required to have procedures in place to ensure that maintenance is performed by properly qualified maintenance personnel. Allowing a pilot to perform a PDSC degrades the importance of the check and places a safety critical task below the level of performance required to change a tire or replace a light bulb for reading" (72 FR 1858, January 16, 2007).

Discussion of the Final Rule

Clarification of Who May Certify by Signature That the ETOPS Pre-Departure Service Check (PDSC) Has Been Completed

Following publication of the ETOPS final rule, the FAA learned that the qualification requirements for mechanics certifying by signature the completion of the ETOPS PDSC did not codify existing FAA ETOPS guidance for part 121 operators. Since 1998, FAA Advisory Circular (AC) 120-42A, Extended Range Operation with Two-Engine Airplanes (applicable to part 121 operators) has stated, "This check should be accomplished and signed off by an ETOPS qualified maintenance person, immediately prior to an ETOPS flight."

In the United States, this person is typically a certificated mechanic with an airframe and powerplant rating who received adequate airplane and engine specific training, as well as ETOPS specific training focused on the special nature of ETOPS flights. Outside of the United States, however, it is extremely difficult for an operator to ensure that a

certificated mechanic with an airframe and powerplant rating performs the pre-departure service check. In many cases, these maintenance technicians do not possess U.S. Mechanic's Certificates with Airframe and Powerplant Ratings. Instead, they have their country's Civil Aviation Authority's equivalent to an airframe and powerplant rating. The FAA does not officially recognize maintenance technicians' certificates from other countries except in the case of the Canadian equivalent to the U.S. Airframe and Powerplant Certificate (14 CFR 43.17).

In order for U.S. ETOPS operators to function overseas, the FAA consistently allowed part 121 operators to establish alternative qualification criterion to ensure an equivalent level of safety for maintenance technicians who conduct pre-departure service checks for ETOPS flights. Outside the U.S., the FAA always allowed the pre-departure service check for ETOPS flights for part 121 operators to be accomplished and signed off by trained maintenance personnel who work for a repair station or another part 121 operator.

The final rule did not accurately convey the FAA's intent to codify current practice and apply it to both part 121 and part 135 operators. This rule clarifies FAA's intent and corrects the regulatory language in §§ 121.374(b)(3) and Appendix G to Part 135, section G135.2.8(b)(3) and new (b)(4).

Continuous Airworthiness Maintenance Program (CAMP) for Two-Engine ETOPS in Part 121

The language in current § 121.374(b)(3), as written, requires the use of mechanics with airframe and powerplant ratings to be the only people who can certify by signature the ETOPS pre-departure service check for ETOPS flights, including flights outside the United States. As written, an operator is required to comply with an almost impossible requirement to have mechanics with an airframe and powerplant rating, issued by the FAA, positioned at numerous maintenance facilities outside of the United States. This requirement is (1) overly burdensome, (2) not the intent of the FAA, and (3) contrary to FAA guidance. The FAA has reconsidered the applicability of this rule in consideration of existing guidance and determined that this requirement must be consistent with existing guidance and practice.

ETOPS Pre-Departure Service Check (PDSC) in Part 135

The language in current Appendix G to Part 135, section G135.2.8(b)(3), does not accurately reflect the intent of the FAA to have a qualified maintenance person perform the ETOPS PDSC.

The intent is clearly stated in the preamble of the final rule (72 FR 1808, January 16, 2007). In response to the public comment “* * * that the check required immediately before a flight and certified by an ETOPS qualified maintenance person is unrealistic for part 135 operators who do not fly ETOPS routes on a regular basis”, the FAA responded, “The FAA disagrees that a pre-departure service check is unrealistic for part 135 operators.”

Paperwork Reduction Act

There are no new requirements for information collection associated with these amendments.

The FAA included a detailed discussion of the new information collection requirements of the proposed rule at 68 FR 64782, November 14, 2003. No comments were received on these estimated requirements.

International Compatibility

In keeping with U.S. obligations under the convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104-4) 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 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect, and the basis for it, be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Since this final rule merely clarifies FAA regulations covering ETOPS flights, the expected outcome will be a minimal impact with positive net benefits and a regulatory evaluation was not prepared.

FAA has, therefore, determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule merely clarifies FAA regulations covering ETOPS flights. The expected outcome will have minimal impact on any small entity affected by this rulemaking action.

Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-039) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The requirements imposed on both domestic and foreign operators create no obstacles to the foreign commerce of the United States. Thus, complies with the Trade Agreements Act of 1979.

Unfunded Mandates Reform Act

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 \$136.1 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.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by:

- (1) Searching the Federal eRulemaking Portal at <http://www.regulations.gov>;
- (2) Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy 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) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 121

Aircraft, Aviation Safety.

14 CFR Part 135

Aircraft, Airmen, Aviation Safety.

The Amendment

- For the reasons discussed in the preamble, the Federal Aviation Administration amends Title 14, parts 121 and 135 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

- 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901,

44903-44904, 44912, 45101-45105, 46105, 46301.

- 2. Amend § 121.374 by revising paragraph (b)(3) and adding paragraph (b)(4) to read as follows:

§ 121.374 Continuous airworthiness maintenance program (CAMP) for two-engine ETOPS.

* * * * *

(b) * * *

(3) An appropriately trained maintenance person, who is ETOPS qualified, must accomplish and certify by signature ETOPS specific tasks. Before an ETOPS flight may commence, an ETOPS pre-departure service check (PDSC) Signatory Person, who has been authorized by the certificate holder, must certify by signature, that the ETOPS PDSC has been completed.

(4) For the purposes of this paragraph (b) only, the following definitions apply:

(i) ETOPS qualified person: A person is ETOPS qualified when that person satisfactorily completes the operator's ETOPS training program and is authorized by the certificate holder.

(ii) ETOPS PDSC Signatory Person: A person is an ETOPS PDSC Signatory Person when that person is ETOPS qualified and that person:

(A) When certifying the completion of the ETOPS PDSC in the United States:

(1) Works for an operator authorized to engage in part 121 operation or works for a part 145 repair station; and

(2) Holds a U.S. Mechanic's Certificate with airframe and powerplant ratings.

(B) When certifying the completion of the ETOPS PDSC outside of the U.S. holds a certificate in accordance with § 43.17(c)(1) of this chapter; or

(C) When certifying the completion of the ETOPS PDSC outside the U.S. holds the certificates needed or has the requisite experience or training to return aircraft to service on behalf of an ETOPS maintenance entity.

(iii) ETOPS maintenance entity: An entity authorized to perform ETOPS maintenance and complete ETOPS PDSC and that entity is:

(A) Certificated to engage in part 121 operations;

(B) Repair station certificated under part 145 of this chapter; or

(C) Entity authorized pursuant to § 43.17(c)(2) of this chapter.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATION AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 4. Amend Appendix G to Part 135 by revising section G135.2.8(b)(3) and adding paragraph G135.2.8(b)(4) to read as follows:

Appendix G to Part 135—Extended (ETOPS)

* * * * *

G135.2.8 Maintenance Program Requirements. * * *

* * * * *

(b) * * *

(3) An appropriately trained maintenance person, who is ETOPS qualified must accomplish and certify by signature ETOPS specific tasks. Before an ETOPS flight may commence, an ETOPS pre-departure service check (PDSC) Signatory Person, who has been authorized by the certificate holder, must certify by signature, that the ETOPS PDSC has been completed.

(4) For the purposes of this paragraph (b) only, the following definitions apply:

(i) ETOPS qualified person: A person is ETOPS qualified when that person satisfactorily completes the operator's ETOPS training program and is authorized by the certificate holder.

(ii) ETOPS PDSC Signatory Person: A person is an ETOPS PDSC Signatory Person when that person is ETOPS Qualified and that person:

(A) When certifying the completion of the ETOPS PDSC in the United States:

(1) Works for an operator authorized to engage in part 135 or 121 operation or works for a part 145 repair station; and

(2) Holds a U.S. Mechanic's Certificate with airframe and powerplant ratings.

(B) When certifying the completion of the ETOPS PDSC outside of the U.S. holds a certificate in accordance with § 43.17(c)(1) of this chapter; or

(C) When certifying the completion of the ETOPS PDSC outside the U.S. holds the certificates needed or has the requisite experience or training to return aircraft to service on behalf of an ETOPS maintenance entity.

(iii) ETOPS maintenance entity: An entity authorized to perform ETOPS maintenance and complete ETOPS pre-departure service checks and that entity is:

(A) Certificated to engage in part 135 or 121 operations;

(B) Repair station certificated under part 145 of this title; or

(C) Entity authorized pursuant to § 43.17(c)(2) of this chapter.

* * * * *

Issued in Washington, DC on June 9, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–13479 Filed 6–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 080208146–8148–01]

RIN 0694–AE23

Revisions to the Export Administration Regulations Based on the 2007 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the November 2007 Plenary in Athens, Greece.

DATES: *Effective Date:* This rule is effective: June 16, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE23, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include “RIN 0694–AE23” in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE23.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection

of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE23)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow of missile systems capable of delivering weapons of mass destruction to the global marketplace.

While the MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead, it was expanded in January 1993 to also stem the flow of delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the November 2007 Plenary in Athens, Greece. Specifically, in section 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule amends the technical notes to the definition of the term “payload” to include munitions supporting structures and deployment mechanisms under paragraphs (e)(5) and (e)(7) (MTCR Annex Change Definitions: “Payload” Technical Notes 5.e and 5.g). This will clarify under the paragraph (e) technical notes to the definition of “payload” that payload for “other UAVs” (Unmanned Aerial Vehicles) includes munitions supporting structures and deployment mechanisms.