

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

N 8900.162

National Policy

Effective Date:
7/27/11

Cancellation Date:
7/27/12

SUBJ: Special Emphasis Review—Part 121 Minimum Equipment List Management Program

1. Purpose of This Notice. This notice advises Flight Standards Service (AFS) personnel of a change to guidance contained in Federal Aviation Administration (FAA) Order 8900.1, Flight Standards Information Management System (FSIMS), Volume 4, Chapter 4, Section 1, Minimum Equipment Lists and Configuration Deviation Lists for Part 91K Program Managers, and Part 121, 129, and 135 Certificate Holders. The purpose of the change is to correct guidance that conflicts with the intent of Title 14 of the Code of Federal Regulations (14 CFR) part 121, § 121.628. The intent of this regulation is made clear in a legal interpretation, which the Assistant Chief Counsel of the Regulations Division issued in 1997 (see Appendix B, Letter of Interpretation). This notice further advises principal operations inspectors (POI) to review a certificate holder's current minimum equipment list (MEL) processes and procedures to determine compliance with the new guidance and the CFRs.

2. Audience. The primary audience for this notice is aviation safety inspectors (ASI) who are responsible for the regulatory oversight of air carrier certificate holders conducting operations in accordance with 14 CFR part 121. The secondary audience includes AFS branches and divisions in the regions and in headquarters (HQ).

3. Where You Can Find This Notice. You can find this notice on the MyFAA employee Web site at https://employees.faa.gov/tools_resources/orders_notices. Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at <http://fsims.avs.faa.gov>. Air carriers (operators) can find this notice on the FAA's Web site at <http://fsims.faa.gov>. This notice is available to the public at http://www.faa.gov/regulations_policies/orders_notices.

4. Background. A recent review of FAA Order 8900.1, Volume 4, Chapter 4, Section 1 revealed guidance that conflicts with the intent of § 121.628 and § 121.605; specifically, the conflicting guidance applied to instrument or equipment discrepancies that occur after an aircraft leaves the gate or ramp area (pushes back or taxis), but prior to takeoff. The new guidance clarifies the following:

a. Definitions. The definition of "takeoff" and "departure" as it applies to the MEL;

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b. Verification of Airworthiness. Verification of airworthiness (in accordance with § 121.605) by dispatchers and authorized personnel to exercise operational control; and

c. Processes and Procedures. The requirement for certificate holders to have processes and procedures in place that ensure that the pilot in command (PIC) communicates with the dispatch and maintenance organizations to determine the appropriate action to be taken if instruments or equipment become inoperative between the time an aircraft pushes back, or leaves the gate area, and takes off.

5. Guidance. The guidance found in FAA Order 8900.1, Volume 4, Chapter 4, Section 1 is the basis for the information found in this notice.

6. Action. POIs must review the new guidance contained in FAA Order 8900.1, Volume 4, Chapter 4, Section 1 and complete the attached Constructed Dynamic Observation Report (ConDOR) within 60 days from the date of this notice. The ConDOR contains five questions and is designed to target the area in which FAA Order 8900.1 guidance has been revised. POIs must review the certificate holder's manual(s) containing MEL processes and procedures to determine compliance with §§ 121.628 and 121.605, and the new guidance contained in FAA Order 8900.1, Volume 4, Chapter 4, Section 1 and answer the five questions in the ConDOR (as applicable). Refer to Appendix A, Minimum Equipment List National Use Constructed Dynamic Observation Report.

a. Affirmation of Compliance: "Yes" Response. If the certificate holder's MEL processes and procedures comply with the specific regulatory and guidance references contained in the ConDOR, then no further action is required once the ConDOR is complete.

b. Conflict with Specific Regulatory and Guidance References: "No" Response. If the certificate holder's MEL processes and procedures conflict with the specific regulatory requirements and guidance references contained in the ConDOR, POIs will ensure that certificate holders revise their processes and procedures within 60 days of the completion of the initial ConDOR. Track all required corrective actions using the Corrective Action Tracking Tool (CATT) in the Air Transportation Oversight System (ATOS) automation.

7. Special Emphasis Review ConDOR (refer to Appendix A). Instructions for accessing and using the template for the National Use ConDOR are as follows:

- From the ATOS home page, click the "Create ConDOR" link. This will open the "Create ConDOR" screen.
- Click the "Load Template" button on the ConDOR form, which will open a window from which you can select templates.
- Select "MEL National Use ConDOR" and click the "Load" button to load the selected template.
- Select appropriate questions for the operator (flag, domestic, and/or supplemental), and click the save button.
- Place "MEL" in the local/regional/national use field

8. Disposition. We will permanently incorporate the information in this notice into FSIMS before this notice expires. Direct questions concerning the information in this notice to the Air Transportation Division (AFS-200) Technical Programs Branch (AFS-260) at 202-267-8166.

for 

John M. Allen
Director, Flight Standards Service

Appendix A. Minimum Equipment List National Use Constructed Dynamic Observation Report

Custom Question Number	Questions	Answer Type
1.1	In accordance with FAA Order 8900.1, Volume 4, Chapter 4, Section 1, does the certificate holder's MEL management program contain a means of ensuring that a dispatcher is able to verify the airworthiness of an aircraft?	Yes/No
1.2	Kind of Operation: Domestic, Flag In accordance with FAA Order 8900.1, Volume 4, Chapter 4, Section 1, does the certificate holder's MEL management program contain a means of ensuring that persons who are responsible for operational control and the issuance of flight releases are able to verify the airworthiness of an aircraft?	Yes/No
1.3	Kind of Operation: Supplemental In accordance with FAA Order 8900.1, Volume 4, Chapter 4, Section 1, does the certificate holder's MEL management program have procedures that address equipment discrepancies that occur after an aircraft leaves the gate or ramp area, and which state that any discrepancy that occurs after that time but prior to takeoff requires that item to either be repaired or addressed by the approved MEL procedures?	Yes/No
1.4	Kind of Operation: Domestic, Flag, Supplemental In accordance with FAA Order 8900.1, Volume 4, Chapter 4, Section 1, does the certificate holder's MEL management program have procedures for handling equipment or instrument failure after the aircraft has left the gate or ramp area, but prior to takeoff, that ensure that the pilot in command (PIC) communicates with the dispatch, and maintenance organizations to determine appropriate action for domestic and flag operations?	Yes/No
	Kind of Operation: Domestic, Flag	

- 1.5 In accordance with FAA Order 8900.1, Yes/No
Volume 4, Chapter 4, Section 1, does the
certificate holder's MEL management program
have procedures for handling equipment or
instrument failure after the aircraft has left the
gate or ramp area but prior to takeoff that ensure
the PIC communicates with the Director of
Operations (DO) (or the person authorized to
exercise operational control) and the maintenance
organization to determine appropriate action for
supplemental operations?

Kind of Operation: Supplemental

Appendix B. Letter of Interpretation**U.S. Department of Transportation****Federal Aviation Administration**

Mr. Charles Lewis
393 Route 168
Darlington, PA
16115

April 17, 1997

Dear Mr. Lewis:

This is in response to your letter of February 27, 1997, regarding a request for an interpretation of 14 C.F.R. 121.628. Specifically, you request an interpretation of the terms "*departure*" and "*enroute*," and whether the use of a minimum equipment list (MEL) under 121.628 is applicable to discrepancies occurring after push-back, but prior to take-off.

The FAA has, as referenced in your letter, defined the term "*departure*" to mean "the time the aircraft leaves the takeoff surface." See September 18, 1990 Letter to J. Miller from D. Byrne, Acting Assistant Chief Counsel. "Take-off," in turn, has been defined as the act of beginning flight in which an aircraft is accelerated from a state of rest to that of flight." *Id.* Consistent with these definitions, the FAA has interpreted the term "*enroute*" to be from the time of lift off to the time of touch down." See September 21, 1988 Letter to Manager, Flight Standards Division, ANM-200 from J.H. Cassady, Assistant Chief Counsel, Regulations and Enforcement Division. The FAA has not changed its view regarding the scope of these definitions.

As to the applicability of the MEL to discrepancies occurring after push-back, but prior to take-off, the FAA notes that the MEL concept recognizes that a flight or series of flights might be continued with certain inoperable instruments or equipment without compromising the safety level implied by the type certificate. See 56 Fed. Reg. 12,306 (Mar. 22, 1991). The MEL is therefore a "dispatch document." *Id.* At 12,307. This means that prior to releasing a flight, the dispatcher must be made aware of any item on the MEL that becomes inoperative. The dispatcher must be made aware of each MEL item regardless of whether the specified MEL procedure requires a mechanic to address the discrepancy before releasing the flight or whether the specified MEL procedure allows the pilot-in-command ("PIC") to address the

discrepancy. 1

Specifically, 121.628 prohibits *take-offs* with inoperable instruments or equipment *unless* an approved MEL exists for that airplane and the procedures relating to its use are followed. 2 *See* 121.628(a)(1). The regulations also require that a flight crew have "direct access" to the MEL at all times prior to flight. 3 *See* 121.628(a)(2). Accordingly, the procedures relating to the MEL must be applied before take-off, even after push-back. 4

(1) In response to comments by the International Federation of Airline Dispatchers Association (IFALDA) that dispatchers should be provided the same information, including access to MELs, as the flight crews, the FAA stated that:

The FAA agrees that dispatchers should be provided with the same information since they are jointly responsible, with the PIC, for the dispatch of the flight. The FAA has determined that the authority provided in FAR 121.605 covers this point and does not see a need to further clarify the requirement.

See 56 Fed. Reg. 12,307

(2) Consequently, "(a) approved Minimum Equipment List...constitutes an approved change to the type design." *See id.*

(3) Note that the term "flight" as used in 121.628(a)(2) is *not* synonymous with "flight time" (i.e. "block to block" time), but rather refers to when the aircraft has left the earth's surface. *See, e.g.,* September 21, 1988 Letter re: Definition of Enroute, *supra*. ("No matter how one defines "flight" the connotation is that the object must literally be flying through the air.")

(4) You cite in your letter a 1991 oral initial decision by Administrative Law Judge Patrick G. Geraghty in *Administrator v. Buckalew*, Case No. 89WP230099 (3/25/92) for the proposition that the policy of deeming an aircraft to the "enroute" immediately after push-back was unsound. Note that under the National Transportation Safety Board's Rules of Practice, an appeal that is not perfected by filing an appeal brief within 50 days after an oral initial decision has been rendered or 30 days after service of a written decision may be dismissed by the Board. *See* 49 C.F.R. 821.48(a). The NTSB dismissed the appeal in *Buckalew* for failure to file an appeal brief. *See Busey v. Buckalew*, Order EA-3395 (9/15/91). Accordingly, Judge Geraghty's oral initial decision cannot be relied upon as precedence. *See* 49 C.F.R. 821.43.

Therefore, in the event a discrepancy is discovered following push-back, but before take-off, and the MEL procedures for that item require a mechanic's inspection, take-off would be prohibited. Alternatively, where an item found inoperative during taxi will still permit the aircraft to be operated by the PIC in accordance with the approved

MEL, a flight may take-off. Finally, a discrepancy with an item not listed on the approved MEL would require that the aircraft not take-off, but instead return to the gate.

In contrast to 121.628, 121.627(b) applies to required equipment becoming inoperative *enroute*. As noted above, the FAA has consistently interpreted the term *enroute* as the time between take-off (when the aircraft leaves the runway surface) and landing. As a result, 121.627(b) is not implicated where a failure occurs during taxi.

This response was prepared by Stacie H. Galliani, Attorney, Operations Law Branch, and Joseph A. Conte, Manager. It has been coordinated with the Air Transportation Division of the Flight Standards Service at FAA Headquarters. We hope that this information satisfies your request.

Sincerely

Donald P. Byrne
Assistant Chief Counsel
Regulations Division