

[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 135**

**[Docket No. FAA–1999-6717; Amendment No. 135-112]**

**RIN 2120-AI03**

**Extended Operations (ETOPS) of Multi Engine Airplanes**

**AGENCY:** Federal Aviation Administration, DOT

**ACTION:** Final Rule; Delay of compliance dates.

**SUMMARY:** The Federal Aviation Administration (FAA) is delaying the compliance date for certain sections of a final rule, published January 16, 2007, that established regulations governing the design, operation, and maintenance of certain airplanes operated on flights that fly over 180 minutes from an adequate airport. The extension of the compliance date is necessary to give operators additional time to gain a comprehensive understanding of Extended Operations (ETOPS) requirements, develop training and procedures, and implement safety measures established in the final rule. In addition, the regulatory text for certain sections is amended to reflect this delay of compliance dates.

**DATES: *Effective Dates:*** The effective date for the amendments in this final rule is **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**.

***Compliance Dates:*** The compliance date contained in the Final Rule (72 FR 1808), for §§135.98, 135.345 (a)(9), and 135.364, section G135.2.1 of appendix G to part 135, and section G135.2.9 of appendix G to part 135 is delayed by 180 days, from February 16, 2008, to August 13, 2008. The delay of compliance dates for these specific sections of the Final Rule does not

affect any other compliance date established in Table 2 of Section VI of the preamble to the Final Rule.

**FOR FURTHER INFORMATION CONTACT:** Jim Ryan, Air Carrier Operations Branch (AFS-220), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave, S.W., Washington, DC 20591, Telephone (202-267-7493), E-Mail [jim.ryan@faa.gov](mailto:jim.ryan@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Availability of Rulemaking Documents**

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

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](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. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://DocketInfo.dot.gov>.

**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. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### **Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart I, 49 U.S.C. 44701. Under that section, the FAA is charged with regulating air commerce in a way that best promotes safety.

### **Background**

The Extended Operations of Multi Engine Airplanes (ETOPS) Final Rule (72 FR 1808) established regulations governing the design, operation, and maintenance of certain airplanes operated on flights that fly long distances from an adequate airport. The final rule affected aircraft operators under 14 CFR parts 121 and 135, as well as manufacturers under 14 CFR parts 21, 25, and 33. The Final Rule, published January 16, 2007, establishes a compliance schedule for affected operators and manufacturers that was designed to ease the burden of compliance and make the rule less costly. The FAA established a compliance date of 1 year for part 135 operators to meet the operational and training requirements of the final rule. For cargo fire suppression, the final rule allows 8 years for currently approved part 135 ETOPS operators to

comply. In that final rule, the FAA published commenters' observations that "There is no FAA guidance for, and FAA Inspectors have not approved, any part 135 ETOPS flights" (72 FR 1849).

Previous FAA guidance has addressed ETOPS operations for 121 operators. In December 1998, the FAA published Advisory Circular (AC) 120-42A, Extended Range Operation with Two- Engine Airplanes. This AC contained guidance for operators under part 121 who wished to engage in ETOPS operations. Based on this guidance, part 121 operators have been conducting safe and successful ETOPS flights for over 20 years. Until the final rule was published on January 16, 2007, part 135 operators did not need FAA approval for ETOPS flights. Because the final rule establishes new requirements for part 135 operations, the FAA intends to support successful implementation of the operational and training requirements in the final rule for part 135 operations by publishing an AC that addresses the requirements for part 135 operators. On September 17, 2007, the FAA published and invited comment on two draft ACs, draft AC 120-42B for part 121 operators and draft AC 135-42 for part 135 operators (FAA-2002-6717, <http://dms.dot.gov>).

The FAA has determined that the current guidance available for part 121 operators regarding ETOPS flights is sufficient for part 121 operators to meet the compliance schedule in the final rule. However, because the ETOPS requirements in the final rule are new for part 135 operators, the FAA has determined that it is appropriate to delay compliance for certain part 135 operational and training requirements (i.e. §§135.98, 135.345 (a)(9), 135.364, section G135.2.1 of appendix G to part 135, and section G135.2.9 of appendix G to part 135) until after the guidance in AC 135-42 is published. The delay of the compliance date is necessary to give part 135 operators additional time to gain a comprehensive understanding of ETOPS requirements,

develop training and procedures, and implement the safety measures established in the Final Rule.

### **Good Cause for Foregoing Public Notice and Comment**

Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), authorizes agencies to dispense with certain notice procedures for rules when they find “good cause” to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.”

In this case, the FAA finds that notice and public comment are unnecessary and contrary to the public interest. This action delays the compliance date for several sections of the final rule published January 16, 2007. We issued those regulations using the public notice and comment procedure. In that final rule, we published commenters’ observations that “There is no FAA guidance for, and FAA inspectors have not approved, any part 135 ETOPS flights” (72 FR 1849). The FAA intends to support successful implementation of the operational and training requirements in the final rule for part 135 operations by publishing an Advisory Circular that addresses these requirements. On September 17, 2007, the FAA published and invited comment on draft AC 135-42 for part 135 operators (FAA-1999-6717, <http://www.regulations.gov>).

The FAA has determined that it is contrary to the public interest to require part 135 operators to comply with the requirements of the final rule until AC 135-42 is published. The FAA has determined that notice and public comment are unnecessary because the public has already commented that FAA guidance is necessary for part 135 operators. The public is best served by delaying the compliance date for the part 135 operational and training requirements in

the rule to allow time for publication of the AC, which will provide 135 operators with a comprehensive understanding of ETOPS requirements.

### **Good Cause for Immediate Adoption**

Since the delay in the compliance date of the final rule does not impose any new requirements or any additional burden on the regulated public, the FAA finds that good cause exists for immediate adoption of the compliance date without a 30-day notice period.

### **The Effect of Our Decision**

Our decision delays the compliance date of certain sections of the final rule (72 FR 1809, January 15, 2007), §§135.98, 135.345 (a)(9), and 135.364, section G135.2.1 of appendix G to part 135, and section G135.2.9 of appendix G to part 135, from February 16, 2008, to August 13, 2008.

### **List of Subjects in 14 CFR Part 135**

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

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

1. 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.

2. Amend § 135.98 by revising the introductory text to read as follows:

**§ 135.98 Operations in the North Polar Area.**

After August 13, 2008, no certificate holder may operate an aircraft in the region north of 78° N latitude (“North Polar Area”), other than intrastate operations wholly within the state of Alaska, unless authorized by the FAA. The certificate holder’s operation specifications must include the following:

\* \* \* \* \*

3. Amend § 135.345 by revising paragraph (a)(9) to read as follows:

**§ 135.345 Pilots: Initial, transition, and upgrade ground training.**

\* \* \* \* \*

(a) \* \* \*

(9) After August 13, 2008, passenger recovery plan for any passenger-carrying operation (other than intrastate operations wholly within the state of Alaska) in the North Polar area; and

\* \* \* \* \*

4. Revise § 135.364 to read as follows:

**§ 135.364 Maximum flying time outside the United States.**

After August 13, 2008, no certificate holder may operate an airplane, other than an all-cargo airplane with more than two engines, on a planned route that exceeds 180 minutes flying time (at the one-engine- inoperative cruise speed under standard conditions in still air) from an Adequate Airport outside the continental United States unless the operation is approved by the FAA in accordance with Appendix G of this part, Extended Operations (ETOPS).

5. Revise the introductory text of section G135.2.1, and section G135.2.9, of appendix G to part 135 to read as follows:

**Appendix G to Part 135—Extended Operations (ETOPS)**

\* \* \* \* \*

*G135.2 Requirements.*

*G135.2.1 General.* After August 13, 2008, no certificate holder may operate an airplane, other than an all-cargo airplane with more than two engines, outside the continental United States more than 180 minutes flying time (at the one engine inoperative cruise speed under standard conditions in still air) from an airport described in § 135.364 unless—

\* \* \* \* \*

*G135.2.9 Delayed compliance date for all airplanes.* A certificate holder need not comply with this appendix for any airplane until August 13, 2008.

Issued in Washington, DC, on February 11, 2008.

/s/ Rebecca Byers MacPherson  
Assistant Chief Counsel for Regulations