

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2017/363

of 1 March 2017

amending Regulation (EU) No 965/2012 as regards the specific approval of single-engine turbine aeroplane operations at night or in instrument meteorological conditions and the approval requirements for the dangerous goods training relating to commercial specialised operations, non-commercial operations of complex motor-powered aircraft and non-commercial specialised operations of complex motor-powered aircraft

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, and in particular Article 8(5) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 216/2008, the Commission should adopt the necessary implementing rules for establishing the conditions for the safe operation of aircraft. Commission Regulation (EU) No 965/2012 ⁽²⁾ establishes those conditions.
- (2) The application of Regulation (EU) No 965/2012 to ferry-flights would lead to a disproportionate administrative burden on the industry and on competent authorities. In order to introduce a more proportionate and risk-based approach to the application of that Regulation, one-off flights carrying no passengers or cargo where the aircraft is ferried for refurbishment, repair, maintenance checks, inspections, delivery, export or similar purposes should be exempted from the application of Regulation (EU) No 965/2012.
- (3) The International Civil Aviation Organisation (ICAO) standards and recommended practices, set out in Part I of Annex 6 to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, include provisions for the operation of single-engine turbine aeroplanes at night or in instrument meteorological conditions. Those provisions contain, inter alia, a requirement that, in approving such operations, the State of the operator needs to ensure that certain conditions are complied with, including those relating to installed equipment, engine reliability, engine monitoring, operator procedures and flight crew training. Union law should be aligned with those provisions, by ensuring that commercial air transport operations of single-engine aeroplanes at night or in instrument meteorological conditions are subject to the approval of the competent authority.

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

- (4) That alignment makes the possibility of operating, by means of a derogation, single-engined aeroplanes under the conditions set out in the existing exemptions granted by Member States in accordance with Article 8(2) of Council Regulation (EEC) No 3922/91 ⁽¹⁾, provided for in Article 6(5) of Regulation (EU) No 965/2012, obsolete. That provision should therefore be deleted. Those exemptions for the operation of single-engined aeroplanes, including the conditions set out therein, should be considered to constitute approvals by the competent authority as required under the aligned legal framework for a suitable period after the entry into force of this Regulation, so as to ensure a smooth transition. After that transitional period, it should no longer be possible to rely upon such exemptions, such approvals being required instead. Any relevant changes to the operation of those aeroplanes during that transitional period should continue to be notified.
- (5) Operators of commercial specialised operations, as well as operators conducting non-commercial operations with complex motor-powered aircraft or non-commercial specialised operations with complex motor-powered aircraft that do not transport dangerous goods should continue to establish and maintain dangerous goods training programmes, in accordance with Annex III (Part-ORO) to Regulation (EU) No 965/2012. However, in order to introduce a more proportionate and risk-based approach to the application of those rules, the competent authority should no longer be required to approve such training programmes.
- (6) Regulation (EU) No 965/2012 should therefore be amended accordingly. In particular, Annex III (Part-ORO) to that Regulation should be amended to adopt a more proportionate and risk-based approach to the approval requirements for dangerous goods training programmes and a new subpart on single-engined turbine aeroplane operations should be added to its Annex V (Part-SPA).
- (7) The measures provided for in this Regulation regarding single-engined turbine aeroplanes are based on the opinion ⁽²⁾ issued by the European Aviation Safety Agency in accordance with point (b) of Article 17(2) and Article 19(1) of Regulation (EC) No 216/2008.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 965/2012 is amended as follows:

- (1) Article 6(3) is replaced by the following:

‘3. By way of derogation from Article 5 and without prejudice to Regulation (EC) No 216/2008 and Commission Regulation (EU) No 748/2012 ^(*) related to the permit to fly, flights related to the introduction or modification of aircraft types conducted by design or production organisations within the scope of their privileges, as well as flights carrying no passengers or cargo where the aircraft is ferried for refurbishment, repair, maintenance checks, inspections, delivery, export or similar purposes shall be operated under conditions set out in Member States’ national law.

^(*) Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1).’;

- (2) Article 6(5) is replaced by the following:

‘5. Until 2 September 2017, exemptions granted before 22 March 2017 in accordance with Article 8(2) of Regulation (EEC) No 3922/91, as provided for in Article 6(5) of Regulation (EU) No 965/2012 as applicable before 22 March 2017, shall be considered to constitute approvals referred to in point (a) of CAT.POL.A.300 of Annex IV (Part-CAT). After 2 September 2017, those exemptions shall no longer be valid for the operation of single-engined aeroplanes.

⁽¹⁾ Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation (OJ L 373, 31.12.1991, p. 4).

⁽²⁾ European Aviation Safety Agency Opinion No 06/2015 of 11 November 2015 for a Commission Regulation establishing technical special approval requirements for the operation of single engine turbine aircraft at night or in instrument meteorological conditions.

If any change to the operation of those aeroplanes that affects the conditions set out in those exemptions is envisaged between 22 March 2017 and 2 September 2017, that envisaged change shall be notified to the Commission and the Agency before it is implemented. The Commission and the Agency shall assess the envisaged change in accordance with Article 14(5) of Regulation (EC) No 216/2008.;

(3) Annexes II, III, IV and V are amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Annexes II, III, IV and V to Regulation (EU) No 965/2012 are amended as follows:

(1) in Annex II (Part-ARO), Appendix II is replaced by the following:

Appendix II

OPERATIONS SPECIFICATIONS (subject to the approved conditions in the operations manual)					
Issuing authority contact details Telephone (1): _____; Fax _____; Email: _____					
AOC (2): _____		Operator Name (3): _____		Date (4): _____	Signature: _____
Dba Trading Name: _____ Operations specifications #: _____					
Aircraft model (5): _____ Registration marks (6): _____					
Types of operations: Commercial air transport <input type="checkbox"/> Passengers <input type="checkbox"/> Cargo <input type="checkbox"/> Others (7): _____					
Area of operation (8): _____					
Special limitations (9): _____					
Specific approvals:	Yes	No	Specification (10)	Remarks	
Dangerous goods	<input type="checkbox"/>	<input type="checkbox"/>			
Low visibility operations Take-off Approach and landing	<input type="checkbox"/>	<input type="checkbox"/>	CAT (11) ... RVR (12): m DA/H: ft RVR: m		
RVSM (13) <input type="checkbox"/> N/A	<input type="checkbox"/>	<input type="checkbox"/>			
ETOPS (14) <input type="checkbox"/> N/A	<input type="checkbox"/>	<input type="checkbox"/>	Maximum diversion time (15): min.		
Complex navigation specifications for PBN operations (16)	<input type="checkbox"/>	<input type="checkbox"/>		(17)	
Minimum navigation performance specification	<input type="checkbox"/>	<input type="checkbox"/>			
Operations of single-engined turbine aeroplane at night or in IMC (SET-IMC)	<input type="checkbox"/>	<input type="checkbox"/>	(18)		
Helicopter operations with the aid of night vision imaging systems	<input type="checkbox"/>	<input type="checkbox"/>			
Helicopter hoist operations	<input type="checkbox"/>	<input type="checkbox"/>			
Helicopter emergency medical service operations	<input type="checkbox"/>	<input type="checkbox"/>			
Helicopter offshore operations	<input type="checkbox"/>	<input type="checkbox"/>			
Cabin crew training (19)	<input type="checkbox"/>	<input type="checkbox"/>			
Issue of CC attestation (20)	<input type="checkbox"/>	<input type="checkbox"/>			
Continuing airworthiness	<input type="checkbox"/>	<input type="checkbox"/>	(21)		
Others (22)					

- (¹) Telephone and fax contact details of the competent authority, including the country code. Email to be provided if available.
- (²) Insertion of associated air operator certificate (AOC) number.
- (³) Insertion of the operator's registered name and the operator's trading name, if different. Insert "Dba" before the trading name (for "Doing business as").
- (⁴) Issue date of the operations specifications (dd-mm-yyyy) and signature of the competent authority representative.
- (⁵) Insertion of ICAO designation of the aircraft make, model and series, or master series, if a series has been designated (e.g. Boeing-737-3K2 or Boeing-777-232).
- (⁶) Either the registration marks are listed in the operations specifications or in the operations manual. In the latter case, the related operations specifications must make a reference to the related page in the operation manual. In case not all specific approvals apply to the aircraft model, the registration marks of the aircraft may be entered in the remark column to the related specific approval.
- (⁷) Other type of transportation to be specified (e.g. emergency medical service).
- (⁸) Listing of geographical area(s) of authorised operation (by geographical coordinates or specific routes, flight information region or national or regional boundaries).
- (⁹) Listing of applicable special limitations (e.g. VFR only, Day only, etc.).
- (¹⁰) List in this column the most permissive criteria for each approval or the approval type (with appropriate criteria).
- (¹¹) Insertion of applicable precision approach category: LTS CAT I, CAT II, OTS CAT II, CAT IIIA, CAT IIIB or CAT IIIC. Insertion of minimum runway visual range (RVR) in meters and decision height (DH) in feet. One line is used per listed approach category.
- (¹²) Insertion of approved minimum take-off RVR in metres. One line per approval may be used if different approvals are granted.
- (¹³) Not applicable (N/A) box may be checked only if the aircraft maximum ceiling is below FL290.
- (¹⁴) Extended range operations (ETOPS) currently applies only to two-engined aircraft. Therefore, the not applicable (N/A) box may be checked if the aircraft model has more or less than two engines.
- (¹⁵) The threshold distance may also be listed (in NM), as well as the engine type.
- (¹⁶) Performance-based navigation (PBN): one line is used for each complex PBN specific approval (e.g. RNP AR APCH), with appropriate limitations listed in the "Specifications" and/or "Remarks" columns. Procedure-specific approvals of specific RNP AR APCH procedures may be listed in the operations specifications or in the operations manual. In the latter case, the related operations specifications must have a reference to the related page in the operations manual.
- (¹⁷) Specify if the specific approval is limited to certain runway ends and/or aerodromes.
- (¹⁸) Insertion of the particular airframe/engine combination.
- (¹⁹) Approval to conduct the training course and examination to be completed by applicants for a cabin crew attestation as specified in Annex V (Part-CC) to Regulation (EU) No 1178/2011.
- (²⁰) Approval to issue cabin crew attestations as specified in Annex V (Part-CC) to Regulation (EU) No 1178/2011.
- (²¹) The name of the person/organisation responsible for ensuring that the continuing airworthiness of the aircraft is maintained and a reference to the regulation that requires the work, i.e. Subpart G of Annex I (Part-M) to Regulation (EU) No 1321/2014.
- (²²) Other approvals or data may be entered here, using one line (or one multi-line block) per authorisation (e.g. short landing operations, steep approach operations, helicopter operations to/from a public interest site, helicopter operations over a hostile environment located outside a congested area, helicopter operations without a safe forced landing capability, operations with increased bank angles, maximum distance from an adequate aerodrome for two-engined aeroplanes without an ETOPS approval, aircraft used for non-commercial operations).

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(2) Annex III (Part-ORO) is amended as follows:

(a) in point ORO.GEN.110, points (j) and (k) are replaced by the following:

'(j) The operator shall establish and maintain dangerous goods training programmes for personnel as required by the technical instructions. Such training programmes shall be commensurate with the responsibilities of personnel. Training programmes of operators performing CAT, whether they transport dangerous goods or not, and of operators conducting operations other than CAT referred to in points (b), (c) and (d) of point ORO.GEN.005 that transport dangerous goods shall be subject to review and approval by the competent authority.

(k) Notwithstanding point (j), operators conducting commercial operations with the following aircraft shall ensure that the flight crew has received an appropriate dangerous goods training or briefing, to enable them to recognise undeclared dangerous goods brought on-board by passengers or as cargo:

(1) a sailplane;

(2) a balloon;

(3) a single-engined propeller-driven aeroplane having a maximum certified take-off mass of 5 700 kg or less and a MOPSC of 5 or less operated in a flight taking off and landing at the same aerodrome or operating site, under VFR by day; or

(4) an other-than complex motor-powered helicopter, single-engined, with a MOPSC of 5 or less operated in a flight taking off and landing at the same aerodrome or operating site, under VFR by day;';

(b) in point ORO.FC.A.250, point (a) is replaced by the following:

‘(a) The holder of a CPL(A) (aeroplane) shall only act as commander in commercial air transport on a single-pilot aeroplane if either of the following conditions is met:

- (1) when carrying passengers under VFR outside a radius of 50 NM (90 km) from an aerodrome of departure, he/she has a minimum of 500 hours of flight time on aeroplanes or holds a valid instrument rating;
- (2) when operating on a multi-engine type under IFR, he/she has a minimum of 700 hours of flight time on aeroplanes, including 400 hours as pilot-in-command. These hours shall include 100 hours under IFR and 40 hours in multi-engine operations. The 400 hours as pilot-in-command may be substituted by hours operating as co-pilot within an established multi-pilot crew system prescribed in the operations manual, on the basis of two hours of flight time as co-pilot for one hour of flight time as pilot-in command;
- (3) when operating on a single-engined aeroplane under IFR, he/she has a minimum of 700 hours of flight time on aeroplanes, including 400 hours as pilot-in-command. Those hours shall include 100 hours under IFR. The 400 hours as pilot-in-command may be substituted by hours operating as co-pilot within an established multi-pilot crew system prescribed in the operations manual, on the basis of two hours of flight time as co-pilot for one hour of flight time as pilot-in command.’;

(3) Annex IV (Part-CAT) is amended as follows:

(a) point CAT.OP.MPA.136 is replaced by the following:

‘CAT.OP.MPA.136 Routes and areas of operation — single-engined aeroplanes

Unless approved by the competent authority in accordance with Annex V (Part-SPA), Subpart L — SINGLE-ENGINE TURBINE AEROPLANE OPERATIONS AT NIGHT OR IN IMC (SET-IMC), the operator shall ensure that operations of single-engined aeroplanes are only conducted along routes, or within areas, where surfaces are available that permit a safe forced landing to be executed.’;

(b) in point CAT.OP.MPA.180, point (a) is replaced by the following:

‘(a) Where it is not possible to use the departure aerodrome as a take-off alternate aerodrome due to meteorological or performance reasons, the operator shall select another adequate take-off alternate aerodrome that is no further from the departure aerodrome than:

- (1) for two-engined aeroplanes:
 - (i) one hour flying time at an OEI cruising speed according to the AFM in still air standard conditions based on the actual take-off mass; or
 - (ii) the ETOPS diversion time approved in accordance with Annex V (Part-SPA), Subpart F, subject to any MEL restriction, up to a maximum of two hours, at the OEI cruising speed according to the AFM in still air standard conditions based on the actual take-off mass;
- (2) for three and four-engined aeroplanes, two hours flying time at the OEI cruising speed according to the AFM in still air standard conditions based on the actual take-off mass;
- (3) for operations approved in accordance with Annex V (Part-SPA), Subpart L — SINGLE-ENGINE TURBINE AEROPLANE OPERATIONS AT NIGHT OR IN IMC (SET-IMC), 30 minutes flying time at normal cruising speed in still air conditions, based on the actual take-off mass.

In the case of multi-engined aeroplanes, if the AFM does not contain an OEI cruising speed, the speed to be used for calculation shall be that which is achieved with the remaining engine(s) set at maximum continuous power.’;

(c) in point CAT.POL.A.300, point (a) is replaced by the following:

‘(a) Unless approved by the competent authority in accordance with Annex V (Part-SPA), Subpart L — SINGLE-ENGINE TURBINE AEROPLANE OPERATIONS AT NIGHT OR IN IMC (SET-IMC), the operator shall not operate a single-engined aeroplane:

(1) at night; or

(2) in IMC, except under special VFR.’;

(d) point CAT.POL.A.320 is replaced by the following:

‘CAT.POL.A.320 En-route — single-engined aeroplanes

(a) In the meteorological conditions expected for the flight, and in the event of engine failure, the aeroplane shall be capable of reaching a place at which a safe forced landing can be made, unless the operator is approved by the competent authority in accordance with Annex V (Part-SPA), Subpart L — SINGLE-ENGINE TURBINE AEROPLANE OPERATIONS AT NIGHT OR IN IMC (SET-IMC) and makes use of a risk period.

(b) For the purposes of point (a), it shall be assumed that, at the point of engine failure:

(1) the aeroplane is not flying at an altitude exceeding that at which the rate of climb equals 300 ft per minute, with the engine operating within the maximum continuous power conditions specified; and

(2) the en-route gradient is the gross gradient of descent increased by a gradient of 0,5 %.’;

(4) in Annex V (Part-SPA), the following Subpart L is added:

‘SUBPART L

SINGLE-ENGINE TURBINE AEROPLANE OPERATIONS AT NIGHT OR IN INSTRUMENT METEOROLOGICAL CONDITIONS (SET-IMC)

SPA.SET-IMC.100 SET-IMC operations

In commercial air transport (CAT) operations, single-engined turbine aeroplanes shall only be operated at night or in IMC if the operator has been granted a SET-IMC approval by the competent authority.

SPA.SET-IMC.105 SET-IMC operations approval

To obtain a SET-IMC approval by the competent authority, the operator shall provide evidence that all the following conditions have been complied with:

(a) an acceptable level of turbine engine reliability is achieved in service by the world fleet for the particular airframe-engine combination;

(b) specific maintenance instructions and procedures to ensure the intended levels of continued airworthiness and reliability of the aeroplane and its propulsion system have been established and included in the operator’s aircraft maintenance programme in accordance with Annex I to Regulation (EU) No 1321/2014 (Part-M), including all the following:

(1) an engine trend monitoring programme, except for aeroplanes first issued with an individual certificate of airworthiness after 31 December 2004 that shall have an automatic trend monitoring system;

(2) a propulsion and associated systems’ reliability programme;

(c) flight crew composition and a training/checking programme for the flight crew members involved in these operations have been established;

- (d) operating procedures have been established specifying all the following:
 - (1) the equipment to be carried, including its operating limitations and appropriate entries in the MEL;
 - (2) the flight planning;
 - (3) the normal procedures;
 - (4) the contingency procedures, including procedures following a propulsion system failure, as well as forced landing procedures in all weather conditions;
 - (5) the monitoring and incident reporting.
- (e) a safety risk assessment has been performed, including the determination of an acceptable risk period if an operator intends to make use of it.

SPA.SET-IMC.110 Equipment requirements for SET-IMC operations

Aeroplanes used for SET-IMC operations shall be equipped with all the following equipment:

- (a) two separate electrical generating systems, each one capable of supplying adequate power to all essential flight instruments, navigation systems and aeroplane systems required for continued flight to the destination or alternate aerodrome;
- (b) two attitude indicators, powered from independent sources;
- (c) for passenger operations, a shoulder harness or a safety belt with a diagonal shoulder strap for each passenger seat;
- (d) airborne weather-detecting equipment;
- (e) in a pressurised aeroplane, sufficient supplemental oxygen for all occupants to allow descent, following engine failure at the maximum certificated cruising altitude, at the best range gliding speed and in the best gliding configuration, assuming the maximum cabin leak rate, until sustained cabin altitudes below 13 000 ft are reached;
- (f) an area navigation system capable of being programmed with the positions of landing sites and providing lateral guidance to the flight crew to reach those sites;
- (g) a radio altimeter;
- (h) a landing light, capable of illuminating the touchdown point on the power-off glide path from 200 ft away;
- (i) an emergency electrical supply system of sufficient capacity and endurance capable of providing power, following the failure of all generated power, to additional loads necessary for all of the following:
 - (1) the essential flight and area navigation instruments during descent from maximum operating altitude after engine failure;
 - (2) the means to provide for one attempt to restart the engine;
 - (3) if appropriate, the extension of landing gear and flaps;
 - (4) the use of the radio altimeter throughout the landing approach;
 - (5) the landing light;
 - (6) one pitot heater;
 - (7) if installed, the electrical means to give sufficient protection against impairment of the pilot's vision for landing;

- (j) an ignition system that activates automatically, or is capable of being operated manually, for take-off, landing, and during flight, in visible moisture;
 - (k) a means of continuously monitoring the power train lubrication system to detect the presence of debris associated with the imminent failure of a drivetrain component, including a flight crew compartment caution indication;
 - (l) an emergency engine power control device that permits continuing operation of the engine at a sufficient power range to safely complete the flight in the event of any reasonably probable failure of the fuel control unit.
-