Commission Regulation (EC) No 859/2008 of 20 August 2008 amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane

COMMISSION REGULATION (EC) No 859/2008

of 20 August 2008

amending Council Regulation (EEC) No 3922/91 as regards common technical requirements and administrative procedures applicable to commercial transportation by aeroplane

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation[(1)], and in particular Article 11(1) thereof,

Whereas:

(1) Regulation (EEC) No 3922/91 provides that the Commission shall adopt the amendments to the common technical requirements and administrative procedures listed in Annex III thereto which are necessitated by scientific and technical progress;

(2) Annex III to Regulation (EEC) No 3922/91 is based on a set of harmonised rules adopted by the Joint Aviation Authorities (JAA) called Joint Aviation Requirements for Commercial Air Transportation (Aeroplanes) (JAR-OPS 1).

(3) Regulation (EEC) 8/2008[(2)].updated Annex III in order to reflect the amendments made to JAR-OPS since 1 January 2005 (Amendments 9 to 12) before the date on which that Annex will become applicable (16 July 2008)

(4) On the basis of further work conducted by the European Air Safety Agency, and pending the adoption of the implementing regulations provided in Regulation (EC) 8/2008, that Annex should be amended again in order to include certain detailed technical and operational requirements relating to the most crucial safety elements of that Annex.

(5) These new requirements should be applicable without delay. However, a lead time is needed by the industry and the authorities for the implementation of complex provisions pertaining to all weather operations and cabin crew training;

(6) Annex III to Regulation (EEC) No 3922/91 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Air Safety Committee established by Article 12 of Regulation (EEC) No 3922/91,

HAS ADOPTED THIS REGULATION:

Changes to legislation: Commission Regulation (EC) No 859/2008 is up to date with all changes known to be in force on or before 21 July 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 1

Annex III to Council Regulation (EEC) No 3922/1991 is replaced by the Annex to this Regulation.

Article 2

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

2 The provisions of the Annex of this Regulation concerning OPS 1.1005, OPS 1.1010, OPS 1.1015, Appendix 1 to OPS 1.1005, Appendix 1 to OPS 1.1010, Appendix 1 to OPS 1.1015 and Appendix 3 to OPS 1.1005/1.1010/1.1015 shall apply from 16 July 2009.

3 The provisions of the Annex of this Regulation concerning OPS 1.430, OPS 1.435, OPS 1.440, OPS 1.450, OPS 1.455, OPS 1.460, Appendix 1 to OPS 1.430, Appendix 1 to OPS 1.440, Appendix 1 to OPS 1.450 and Appendix 1 to OPS 1.455 shall apply from 16 July 2011.

4 Pending the application of the provisions referred to in paragraphs 2 and 3, the corresponding provisions of the Annex to Regulation (EEC) 8/2008 shall continue to apply.

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

Done at Brussels, 20 August 2008.

For the Commission

Antonio TAJANI

Vice-President

***Changes to legislation:** Commission Regulation (EC) No 859/2008 is up to date with all changes known to be in force on or before 21 July 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

ANNEX

ANNEX IICommon technical requirements and administrative procedures applicable to commercial transportation by aircraft

OPS 1: Commercial air transportation (aeroplanes)

Contents (General layout)

SUBPART A	—	Applicability and definitions
SUBPART B	—	General
SUBPART C	—	Operator certification and supervision
SUBPART D	—	Operational procedures
SUBPART E	—	All weather operations
SUBPART F	—	Performance general
SUBPART G	—	Performance Class A
SUBPART H	—	Performance Class B
SUBPART I	—	Performance Class C
SUBPART J	—	Mass and balance
SUBPART K	—	Instruments and equipment
SUBPART L	—	Communication and navigation equipment
SUBPART M	—	Aeroplane maintenance
SUBPART N	—	Flight crew
SUBPART O	—	Cabin crew
SUBPART P	—	Manuals, logs and records
SUBPART Q	—	Flight and duty time limitations and rest requirements
SUBPART R	—	Transport of dangerous goods by air
SUBPART S	—	Security

SUBPART A

APPLICABILITY AND DEFINITIONS

OPS 1.001Applicability

OPS Part 1 prescribes requirements applicable to the operation of any civil aeroplane for the purpose of commercial air transportation by any operator whose principal place of business and, if any, registered office is in a Member State, hereafter called operator. OPS 1 does not apply:

Changes to legislation: Commission Regulation (EC) No 859/2008 is up to date with all changes known to be in force on or before 21 July 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

1. to aeroplanes when used in military, customs and police services; nor

2. to parachute dropping and fire-fighting flights, and to associated positioning and return flights in which the persons carried are those who would normally be carried on parachute dropping or fire-fighting; nor

3. to flights immediately before, during, or immediately after an aerial work activity provided these flights are connected with that aerial work activity and in which, excluding crew members, no more than 6 persons indispensable to the aerial work activity are carried.

OPS 1.005 Definitions

(a) For the purpose of this Annex:

1. "accepted/acceptable" means not objected to by the Authority as suitable for the purpose intended.

2. "approved (by the Authority)" means documented (by the Authority) as suitable for the purpose intended.

3. "Master minimum equipment list (MMEL)" means a master list (including a preamble) appropriate to an aircraft type which determines those instruments, items of equipment or functions that, while maintaining the level of safety intended in the applicable airworthiness certification specifications, may temporarily be inoperative either due to the inherent redundancy of the design, and/or due to specified operational and maintenance procedures, conditions and limitations, and in accordance with the applicable procedures for Continued Airworthiness.

4. "Minimum equipment list (MEL)" means a list (including a preamble) which provides for the operation of aircraft, under specified conditions, with particular instruments, items of equipment or functions inoperative at the commencement of flight. This list is prepared by the operator for his own particular aircraft taking account of their aircraft definition and the relevant operational and maintenance conditions in accordance with a procedure approved by the Authority.

(b) Part M and Part 145 as referred to in this Annex are those of Commission Regulation (EC) No 2042/2003[(3)].

SUBPART B

GENERAL

OPS 1.006 General

(a) An operator shall not operate an aeroplane for the purpose of commercial air transportation other than in accordance with OPS Part 1. For operations of Performance Class B aeroplanes, alleviated requirements can be found in Appendix 1 to OPS 1.005(a).

(b) An operator shall comply with the applicable retroactive airworthiness requirements for aeroplanes operated for the purpose of commercial air transportation.

***Changes to legislation:** Commission Regulation (EC) No 859/2008 is up to date with all changes known to be in force on or before 21 July 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) Each aeroplane shall be operated in compliance with the terms of its Certificate of Airworthiness and within the approved limitations contained in its Aeroplane Flight Manual.

(d) All synthetic training devices (STD), such as flight simulators or flight training devices (FTD), replacing an aeroplane for training and/or checking purposes are to be qualified in accordance with the requirements applicable to synthetic training devices. An operator intending to use such STD must obtain approval from the Authority.

OPS 1.020 Laws, regulations and procedures — Operator's responsibilities

An operator must ensure that:

1. all employees are made aware that they shall comply with the laws, regulations and procedures of those States in which operations are conducted and which are pertinent to the performance of their duties; and

2. all crew members are familiar with the laws, regulations and procedures pertinent to the performance of their duties.

OPS 1.025 Common language

(a) An operator must ensure that all crew members can communicate in a common language.

(b) An operator must ensure that all operations personnel are able to understand the language in which those parts of the Operations Manual which pertain to their duties and responsibilities are written.

OPS 1.030 Minimum equipment lists — Operator's responsibilities

(a) An operator shall establish, for each aeroplane, a minimum equipment list (MEL) approved by the Authority. This shall be based upon, but no less restrictive than, the relevant master minimum equipment list (MMEL) (if this exists) accepted by the Authority.

(b) An operator shall not operate an aeroplane other than in accordance with the MEL unless permitted by the Authority. Any such permission will in no circumstances permit operation outside the constraints of the MMEL.

OPS 1.035 Quality system

(a) An operator shall establish one quality system and designate one quality manager to monitor compliance with, and adequacy of, procedures required to ensure safe operational practices and airworthy aeroplanes. Compliance monitoring must include a feed-back system to the accountable manager (see also OPS 1.175 (h)) to ensure corrective action as necessary.

(b) The quality system must include a quality assurance programme that contains procedures designed to verify that all operations are being conducted in accordance with all applicable requirements, standards and procedures.

(c) The quality system and the quality manager must be acceptable to the Authority.

(d) The quality system must be described in relevant documentation.

(e) Notwithstanding subparagraph (a) above, the Authority may accept the nomination of two quality managers, one for operations and one for maintenance provided that