

No. R. 25

11 January 2002

**AVIATION ACT, 1962,(ACT NO 74 OF 1962)
PROPOSED AMENDMENT TO THE CIVIL AVIATION
REGULATIONS, 1997**

Under regulation 11.03.2(1)(a) of the Civil Aviation Regulations, the Chairperson of the Civil Aviation Regulations Committee (CARCOM) hereby publishes for comment the proposed amendments to the Civil Aviation Regulations, 1997, as set out in the schedules. Any comments or representations on the proposed amendments should be lodged in writing with the Chairperson of the Regulations Committee, for attention Mr. Kim Gorringer or Mr. Herman Wildenboer, Private Bag X08, Waterkloof, 0145, fax: (012) 346-5979, or e-mail at gorringerk@caa.co.za or wildenboerh@caa.co.za, before or on 11 February 2002.

SCHEDULE (4)

1. Proposal to introduce Part 96, Commercial Operation of Non-Type Certificated Aircraft

PROPOSER:

Civil Aviation Authority
Private Bag X 08
Waterkloof
0145

Explanation of interest of the PROPOSER

The Proposer administers the Aviation Act, 1962 (Act No. 74 of 1962) and regulations and technical standards issued in terms thereof.

2. Proposed introduction of Part 96

It is proposed to introduce the under-mentioned regulations, as Part 96.

Motivation :

The operation of non - type certificated aircraft is currently regulated in terms of Document LS/1 dated 30 November 2000. The re-introduction of Document LS/1, on 15 December 2000, was intended only as a temporary measure, until such time as new regulations pertaining to non - type certificated aircraft had been developed. The proposals contained in this schedule, read together with proposed Parts 24 and 94, (the proposals contained in schedules 2 and 3) are proposed as the requirements which will replace and expand upon those requirements currently contained in Document LS/1. The proposed Parts 24, 94 and 96 are a synthesis of; work previously undertaken on this topic, the requirements contained in Document LS/1, the requirements of other aviation authorities, and the inputs obtained from both the CAA and other stakeholders. The proposed Part 24 (Schedule 2) establishes the minimum airworthiness standards for non-type certificated aircraft. Proposed Part 94 (this Schedule) stipulates the operational requirements for non - type certificated aircraft and the proposed Part 96 (Schedule 4), establishes the requirements for the commercial operation of non - type certificated aircraft. The requirements contained in the proposed Part 96 are to address the South African and universal trend towards the utilization of non type certificated aircraft for commercial purposes and establish standards that will permit commercial operation within parameters that maintain adequate levels of safety. All three of the proposed Parts have been work shopped with stakeholders.

3. Current regulation : No Part 96 currently exists.

PART 96
LIST OF REGULATIONS
COMMERCIAL OPERATION OF NON-TYPE CERTIFICATED AIRCRAFT

Subpart 1 General

96.01.1 Applicability

Subpart 2 Flight Crew

96.02.1 In-flight relief of flight crew members

96.02.2 Cabin crew member compliment

96.02.3 Flight time and duty periods

96.02.4 Training and checking

Subpart 3 Documentation and records

96.03.1 Operations Manual

Subpart 4 Operating Certificate

96.04.1 Operating Certificate

96.04.2 Application for operating certificate

96.04.3 Adjudication of application for operating certificate

96.04.4 Period of validity of operating certificate

96.04.5 Safety inspections and audits

96.04.6 Suspension and cancellation of operating certificate and appeal

96.04.7 Duties of holder of operating certificate

96.04.8 Register of operating certificates

Subpart 5 Maintenance

96.05.1 General

SUBPART 1: GENERAL PROVISIONS

Applicability

96.01.1(1) This Part shall apply to –

- (a) non-type certificated aircraft engaged in commercial air transport operations within the Republic;
 - (b) non-type certificated aircraft registered in the Republic and engaged in commercial air transport outside the borders of the Republic;
 - (c) persons acting as flight crew members of non-type certificated aircraft registered in the Republic and engaged in commercial air transport operations; and
 - (d) persons on board a non-type certificated engaged in commercial air transport operations.
- (2) No non-type certificated aircraft shall be used in commercial air transport operations unless the operator is the holder of the appropriate air service licence issued in terms of the Air Services Licensing Act, 1990 (Act 115 of 1990) or International Air Services Act, 1993 (Act 60 of 1993): Provided that no amateur-built or production-built aircraft shall be issued with Class I - type S1 or a Class II - type N1 domestic air service licence, nor with a Class I or Class II international air service licence.
- (3) Notwithstanding the provisions of paragraph (2), an amateur-built or production-built aircraft may be issued with a Class II – type N1 domestic air service licence which restrict the holder to flights where the place of take-off and subsequent landing are one and the same (so-called 'flips').
- (4) No non-type certificated aircraft shall be used for flight training unless the operator is the holder of the appropriate aviation training organization approval, issued in terms of Part 141 of these Regulations.
- (5) The provisions of Part 24, Part 91 and Part 94 of these Regulations shall *mutatis mutandis* apply to any non-type certificated aircraft unless specifically exempted by the provisions of this Part.

SUBPART 2 FLIGHT CREW**In-flight relief of flight crew members**

- 96.02.1** In the case of a large non-type certificated aircraft engaged in commercial air transport operations, the provisions of Regulation 121.02.2 of Part 121 shall apply *mutatis mutandis*.

Cabin crew member compliment

- 96.02.2** In the case of a large non-type certificated aircraft engaged in commercial air transport operations, the provisions of Regulations 121.02.5 to 121.02.9 (both inclusive) of Part 121 shall apply *mutatis mutandis*.

Flight time and duty periods

- 96.02.3** (1) The operator of a non-type certificated aircraft engaged in commercial air transport shall –
- (a) establish a scheme for the regulation of flight time and duty periods for each flight crew member;
 - (b) include the scheme referred to in paragraph (a) in the operations manual referred to in Regulation 96.04.1;
 - (c) ensure that each flight crew member complies with the provisions of the scheme referred to in paragraph (a);
 - (d) not cause or permit any flight crew member to fly in the aircraft if such operator knows or has been made aware that such flight crew member –
 - (i) will exceed the flight time and duty periods referred to in sub-regulation (1)(a) while on flight duty; or
 - (ii) is suffering from or, having regard to the circumstances of the flight to be undertaken, is likely to suffer from fatigue which may endanger the safety of the aircraft or its flight crew members and passengers; and
 - (iii) not schedule a flight crew member for active flight duty for a period exceeding eight consecutive hours

during any given flight time and duty period unless authorised in the scheme referred to in paragraph (a).

- (2) Except with the approval of the Commissioner, the flight time and duty scheme of the operator shall not be in conflict with the provisions of Regulation 91.02.3(3)
- (3) The provisions to be included in a flight time and duty scheme referred to in sub-regulation (1) shall be as prescribed in Document SA-CATS-OPS 96.

Training and Checking

- 96.02.4** (1) The owner of a non-type certificated aircraft engaged in commercial air transport operations shall establish and maintain a ground and flight training and recurrent training programme for flight crew members in his permanent or part-time employ.
- (2) The training shall be provided by the holder of an aviation training organisation approval issued in terms of Part 141.
 - (3) Training shall be in accordance with the syllabi prescribed in Document SA-CATS-OPS 96.

SUBPART 3 DOCUMENTATION AND RECORDS

Operations Manual

- 96.03.1** (1) The operator of a non-type certificated aircraft used in commercial air transport operations shall draw up an operations manual containing all information required under this part and setting out the manner in which such operator will operate the air service for which such operator is licensed in terms of the Air Services Licensing Act, 1990 or International Air Services Act, 1993.
- (2) The operator shall submit the operations manual in duplicate to the Commissioner for approval.
 - (3) If the Commissioner is satisfied that the operator –
 - (a) will comply with the provisions of Regulation 96.04.7; and
 - (b) will not operate the air service concerned contrary to any provision of the Act, the Air Services Licensing Act, 1990, the International Air Services Act, 1993, or the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972),

the Commissioner shall certify in writing on both copies of the operations manual that such manual has been approved, and shall return one copy of the approved operations manual to the operator.

- (4) The operator shall submit an amendment to an approved operations manual in duplicate to the Commissioner for approval.
- (5) If the Commissioner is satisfied that the operator will comply with the provisions of sub-regulation (3)(a) and (b), the Commissioner shall certify in writing on both copies of the amendment to the approved operations manual that such amendment has been approved, and shall return one copy of the approved amendment to the operator.
- (6) The operator shall at all times operate the non-type certificated aircraft, when operated in terms of this Part in accordance with the approved operations manual or an approved amendment thereto.
- (7) The operator shall –
 - (a) ensure that all operations personnel are able to understand the technical language used in those sections of the operations manual which pertain to their duties;
 - (b) ensure that every flight is conducted in accordance with the operations manual and that those parts of the operations manual which are required for the conduct of a flight, are easily accessible to the flight crew members on board;
 - (c) make the operations manual available for the use and guidance of operations personnel;
 - (d) provide the flight crew members with their own personal copy of the sections of the operations manual which are relevant to the duties assigned to them;
 - (e) keep the operations manual up to date; and
 - (f) keep the operations manual in a safe place.
- (8) The contents of the operations manual shall not contravene the conditions contained in the operating certificate issued to the operator in terms of Regulation 96.04.3.

- (9) The structure and contents of the operations manual referred to in sub-regulation (1) shall be as prescribed in Document SA-CATS-OPS 96.

SUBPART 4 OPERATING CERTIFICATE

Operating certificate

96.04.1 The operator of a non-type certificated aircraft used in commercial air transport operations shall not operate the aircraft unless such operator is the holder of a valid –

- (a) licence issued in terms of the Air Services Licensing Act, 1990 or the International Air Services Act, 1993 ; and
- (b) operating certificate issued in terms of Regulation 96.04.3.

Application for operating certificate

96.04.2 An application for an operating certificate shall be made to the Commissioner in the appropriate form as prescribed in Document SA-CATS-OPS 96 and shall be accompanied by the appropriate fee as prescribed in Part 187.

Adjudication of application for operating certificate

- 96.04.3** (1) In considering an application referred to in Regulation 96.04.2 the Commissioner may conduct the investigation he or she deems necessary.
- (2) An application shall be granted and the operating certificate issued if the Commissioner is satisfied that –
- (a) the applicant will comply with the provisions of Regulation 96.04.7; and
 - (b) the applicant will not operate the air service concerned contrary to any provision of the Act, the Civil Aviation Offences Act, 1972, the Air Service Licensing Act, 1990, or the International Air Services Act, 1993.
- (3) If the Commissioner is not so satisfied, he or she shall notify the operator thereof, stating the reasons in the notification, and grant the operator the opportunity to rectify or supplement any defect within the period determined by the Commissioner, after which period the Commissioner shall grant or refuse the application concerned.

- (4) An operating certificate shall be issued on the appropriate form as prescribed in Document SA-CATS-OPS 96, under such conditions that the Commissioner may determine.

Period of validity of operating certificate

- 96.04.4** (1) An operating certificate shall be valid for such period as may be determined by the Commissioner: Provided that such period shall not exceed a period of 12 months from the date of issuing thereof.
- (2) If the holder of an operating certificate applies at least 30 days prior to the expiry thereof for a new operating certificate, that first-mentioned operating certificate shall, notwithstanding the provisions of sub-regulation (1), remain in force until such holder is notified by the Commissioner of the result of the application for the issuing of a new operating certificate.

Safety inspections and audits

- 96.04.5** (1) An applicant for the issuing of an operating certificate shall permit an authorised officer, inspector or authorised person to carry out such safety inspections and audits which may be necessary to verify the validity of an application made in terms of Regulation 96.04.2.
- (2) The holder of an operating certificate shall permit an authorised officer, inspector or authorised person to carry out such safety inspections and audits which may be necessary to determine compliance with the appropriate requirements prescribed in this part.

Suspension and cancellation of operating certificate and appeal

- 96.04.6** (1) An authorised officer, inspector or authorised person may suspend for a period not exceeding 30 days, an operating certificate issued under this subpart, if –
- (a) after a safety inspection and audit carried out in terms of Regulation 96.04.5, it is evident that the holder of the operating certificate does not comply with the requirements prescribed in this Part, and such holder fails to remedy such non-compliance within 30 days after receiving notice in writing from the authorised officer, inspector or authorised person to do so; or
- (b) the authorised officer, inspector or authorised person is prevented by the holder of the operating certificate to carry out a safety inspection and audit in terms of Regulation 96.04.5; or

- (c) the suspension is necessary in the interests of aviation safety.
- (2) The authorised officer, inspector or authorised person who has suspended an operating certificate in terms of sub-regulation (1), shall deliver within seven days a report in writing to the Commissioner, stating the reasons why, in his or her opinion, the suspended operating certificate should be cancelled.
- (3) The authorised officer, inspector or authorised person concerned shall submit a copy of the report referred to in sub-regulation (2), to the holder of the operating certificate which has been suspended, and shall furnish proof of such submission for the information of the Commissioner.
- (4) The holder of an operating certificate who feels aggrieved by the suspension of the operating certificate may appeal against such suspension to the Commissioner, within 30 days after such holder has been notified of such suspension.
- (5) The appeal, referred to in sub-regulation (4), shall be in writing, stating the reasons why, in the appellant's opinion, the suspension should be varied or set aside.
- (6) The appellant shall submit a copy of the appeal and any documents or records supporting such appeal, to the authorised officer, inspector or authorised person concerned and shall furnish proof of such submission for the information of the Commissioner.
- (7) The authorised officer, inspector or authorised person concerned may, within 30 days of receipt of the copy of the appeal referred to in sub-regulation (6), deliver his or her written reply to such appeal to the Commissioner.
- (8) The Commissioner may –
 - (a) either adjudicate the appeal on the basis of the documents submitted to him or her; or
 - (b) order the appellant and the authorised officer, inspector or authorised person concerned to appear before him or her to give evidence, either in person or through a representative, at a time and place determined by him or her; and
 - (c) at any time –

- (i) extend the period of suspension for further periods not exceeding each 30 days, if necessary to deal fairly with the appeal; and
 - (ii) either confirm, vary or set aside the suspension referred to in sub-regulation (1).
- (9) Before the Commissioner confirms the suspension in terms of sub-regulation (8)(ii), he or she shall permit the holder of the operating certificate to remedy any non-compliance, if the holder so wishes.
- (10) The Commissioner shall –
 - (a) if he or she confirms the suspension in terms of sub-regulation (8)(ii); or
 - (b) if an operating certificate is suspended in terms of sub-regulation (1) and the holder thereof does not appeal against such suspension in terms of sub-regulation (4),cancel the operating certificate concerned.

Duties of holder of operating certificate

96.04.7 The holder of an operating certificate shall –

- (a) notify the Commissioner in the manner as prescribed in Document SA-CATS-OPS 96, before any change is effected to the particulars on the operating certificate;
- (b) keep the operating certificate in a safe place and produce such operating certificate to an authorised officer, inspector or authorised person for inspection if so requested by such officer, inspector or person authorised person; and
- (c) not commence or continue with the air service concerned unless such holder is the holder of a valid operating certificate.

Register of operating certificates

96.04.8 (1) The Commissioner shall maintain a register of all operating certificates issued in terms of this Part.

(2) The register shall contain the following particulars:

- (a) The full name and, if any, the trade name of the holder of the operating certificate;

- (b) the postal address of the holder of the operating certificate;
 - (c) the number of the operating certificate issued to the holder;
 - (d) particulars of the type of air service for which the operating certificate was issued;
 - (e) particulars of the category of aircraft for which the operating certificate was issued; and
 - (f) the date on which the operating certificate was issued.
- (3) The particulars referred to in sub-regulation (2) shall be recorded in the register within 30 days from the date on which the operating certificate is issued by the Commissioner.
- (4) The register shall be kept in a safe place at the office of the Commissioner.
- (5) A copy of the register shall be furnished by the Commissioner, on payment of the appropriate fee as prescribed in Part 187, to any person who requests the copy.

SUBPART 5 MAINTENANCE

General

- 96.05.1** (1) A non-type certificated aircraft used in commercial air transport operations shall be maintained by a licensed AME or AMO with the appropriate rating, or by a person approved for the purpose by the Commissioner, as the case may be, in accordance with the provisions of Part 24 and Part 43 of these Regulations, as they *mutatis mutandis* apply, and as has been specified in the approved Maintenance Control Manual.
- (2) The Maintenance Control Manual shall –
- (i) be drawn up in the format as prescribed in TS 43.02.2 in Document SA-CATS-GMR;
 - (ii) prescribe who may carry out maintenance on the aircraft, and incorporate the terms of the contract between the operator and any outside maintenance personnel or organisation responsible for all or part of the maintenance, if any; and

- (iii) prescribe the environmental conditions under which maintenance may be carried out and, if applicable, the special tools and equipment that are to be used in maintenance.
 - (2) Notwithstanding the provisions of sub-regulations (1) and 96.01.1(4), the privilege extended by regulation 24.03.5 shall apply only in respect of an owner who is the holder of the valid applicable AME licence and ratings, issued in terms of Part 66.
-