

GENERAL NOTICE

NOTICE 856 OF 2010

PROPOSED ISSUE OF PART 12 TO THE CIVIL AVIATION REGULATIONS, 2010

The Chairperson of the Civil Aviation Regulations Committee (CARCOM) hereby publishes for comment the proposed issue of Parts of the Civil Aviation Regulations, 2010, as set out in the schedule hereto. Any comments or representations on the proposed amendments shall be lodged in writing with the Chairperson of CARCOM, for attention: Monica Sonjani or Herman Wildenboer, Private Bag X 73 Halfway House, 1685, fax: (011) 545-1201, or e-mail at sonjanim@caa.co.za or wildenboerh@caa.co.za, before or on 11 October 2010.

PROPOSAL FOR THE ISSUE OF PART 1 AND PART 12 OF THE CIVIL AVIATION REGULATIONS, 2010

A. PROPOSER

SACAA
Private Bag X73
Halfway House
1685

B. PROPOSER'S INTEREST

The proposer has been established in terms of the Civil Aviation Act, 2009, (Act No. 13 of 2009), to control and regulate civil aviation in South Africa and to oversee the functioning and development of the civil aviation industry.

C. MOTIVATION

The relevant provisions in the CAR Part 1 and Part 12 are not in line with the requirements of Amendment 13 to ICAO Annex 13, and not having them incorporated in the Regulations will result in future findings by ICAO-AIG and/or FAA.

D. GENERAL EXPLANATORY NOTE

Words underlined indicate insertions from existing provisions of the CARs, 1997
Words with a strike through indicate omissions from existing provisions of CARs.

1. PROPOSAL FOR THE ISSUING OF DEFINITIONS IN PART 1

1.1 The following definitions are hereby issued in Part 1:

"accident" ~~for the purposes of the definition of "accident" in section 1 of the Act,~~ includes an occurrence associated with the operation of an aircraft which, in the case of a manned aircraft takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to

move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, during which –

- (a) a person is fatally or seriously injured as result of –
 - (i) being in the aircraft;
 - (ii) direct contact with any part of the aircraft, including parts which have become detached or are released from the aircraft; or
 - (iii) direct exposure to jet blast, rotor or propeller wake, except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and flight crew; or
- (b) the aircraft sustains damage or structural failure which –
 - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component, except for engine failure or damage when the damage is limited to the a single engine, (including its cowlings or accessories), or for damage limited propellers, wing tips, antennae, probes, vanes, tyres, brakes, wheels, fairings, panels, landing gear doors, windcreens, the aircraft skin (such as small dents or puncture holes), in the aircraft skin; or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome); or
- (c) the aircraft is still missing after an official search has been terminated and the wreckage has not been located; or
- (d) the aircraft is in a place where it is completely inaccessible;

“cause” for the purpose of Part 12, means any action, omission, event, condition or any combination thereof, which leads to an accident or incident. The identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability;

“investigation” in relation to accidents and incidents, means a process conducted for the purpose of accident prevention and includes the gathering and evaluation of information, the drawing of conclusions, including the determination of the cause, causes, probable cause or probable causes of an accident or the underlying cause or causes and/or contributing factors leading to an incident and, when appropriate, the making of recommendations in connections with aviation safety;

“safety recommendation” means a proposal of the an investigator-in-charge based on information derived from the an investigation and made with the intention of preventing accidents or incidents; and which in no case has the purpose of creating a presumption of blame or liability for an accident or incident. In addition to safety

recommendations arising from accident and incident investigations, safety recommendations may result from diverse sources, including safety studies;

“serious incident” means an incident involving circumstances indicating that there was a high probability of an accident nearly occurred and is associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down.

2. PROPOSAL FOR THE ISSUING OF REGULATION 12.02.4

2.1 The following regulation is hereby issued as Part 12.02.4:

Particulars of notification

12.02.4 Any notification of an accident or incident referred to in regulation 12.02.1, 12.02.2 or 12.02.3 other than an air traffic service incident, shall –

(a) include the following particulars:

- (i) Type, model, nationality and registration marks of the aircraft;
- (ii) name of the owner or operator, as applicable;
- (iii) qualification surnames and initials of flight crew members;
- (iv) the date and time of the accident or incident, specified in Co-ordinated Universal Time or local time;
- (v) last point of departure and point of intended landing of the aircraft;
- (vi) location of accident or incident with reference to an easily identifiable geographical point and, if known, with reference to latitude and longitude;
- (vii) number of –
 - (aa) flight crew members and passengers aboard, killed or seriously injured; and
 - (bb) other persons killed or seriously injured;
- (viii) nature of the accident or incident and extent of damage to aircraft as far as is known;
- (ix) terrain characteristics of the area where the accident or incident occurred;
- (x) details of any dangerous goods or hazardous substances known to be on board the aircraft; and
- (xi) any other relevant information; and

(b) be submitted forthwith to the Director, and any information which is not immediately available shall be submitted in writing as soon as it becomes available.

3. PROPOSAL FOR THE ISSUING OF REGULATION 12.04.6

Non-disclosure of records

12.04.6 (1) The following records shall not be made available for purposes other than accident or incident investigations, unless a court of law determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or future investigations, taking into account all applicable law –

- (a) all statements taken from persons by the investigator/s of the investigation team in the course of the investigation;
 - (b) all records of communications between persons having been involved in the operation of the aircraft;
 - (c) names, medical and private information regarding persons involved in the accident or incident;
 - (d) cockpit voice recordings and transcripts from such recordings;
 - (e) recordings and transcriptions of recordings from air traffic control units;
 - (f) cockpit airborne image recordings and any part or transcripts from such recordings;
and
 - (g) opinions expressed in the analysis of information, including information obtained from flight recorders.
- (2) These records shall be included in the final report or its appendices only when pertinent to the analysis of the accident or incident.
- (3) Parts of the record not relevant to the analysis shall not be disclosed.
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