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THE CIVIL AVIATION ACT

(No. 21 of 2013)

THE CIVIL AVIATION (SAFETY MANAGEMENT)
REGULATIONS, 2018

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THE CIVIL AVIATION ACT

(No. 21 of 2013)

IN EXERCISE of the powers conferred by section 82 of the Civil Aviation Act, 2013, the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development makes the following Regulations—

THE CIVIL AVIATION (SAFETY MANAGEMENT)
REGULATIONS, 2018

PART I –PRELIMINARY

1. This Regulations may be cited as the Civil Aviation (Safety Management) Regulations, 2018. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“accident” means 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 as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which—

- (a) a person is fatally or seriously injured as a result of—
 - (i) being in the aircraft;
 - (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
 - (iii) direct exposure to jet blast,

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 the passengers and 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) which would normally require major repair or replacement of the affected component,

except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes), 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 missing or is completely inaccessible.

“Act” means the Civil Aviation Act, 2013;

No. 21 of 2013.

“aeroplane” means a power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth’s surface;

“Authority” means the Kenya Civil Aviation Authority established by section 4 of the Act;

“general aviation operation” means an aircraft operation other than a commercial air transport operation or an aerial work operation;

“hazard” means a condition or an object with the potential to cause or contribute to an aircraft incident or accident;

“helicopter” means a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

“industry codes of practice” means Guidance material developed by an industry body, for a particular sector of the aviation industry to comply with the requirements of the International Civil Aviation Organization’s Standards and Recommended Practices, other aviation safety requirements and the best practices deemed appropriate;

“large aeroplane” means an aeroplane of a maximum certificated take-off mass of over 5 700 kg;

“operational personnel” means personnel involved in aviation activities who are in a position to report safety information;

“safety” means the state in which risks associated with aviation activities, related to, or in direct support of the operation of aircraft, are reduced and controlled to an acceptable level;

“safety data” means a defined set of facts or set of safety values collected from various aviation-related sources, which is used to maintain or improve safety;

“safety information” means safety data processed, organized or analyzed in a given context so as to make it useful for safety management purposes;

“Safety Management System (SMS)” means a systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies and procedures;

“safety oversight” means a function performed by the Authority to ensure that individuals and organizations performing an aviation activity comply with safety-related national laws and regulations.

“safety performance” means a State or a service provider’s safety achievement as defined by its safety performance targets and safety

performance indicators;

“safety performance indicator” means a data-based parameter used for monitoring and assessing safety performance;

“safety performance target” means the State or service provider’s planned or intended target for a safety performance indicator over a given period that aligns with the safety objectives;

“safety risk” means the predicted probability and severity of the consequences or outcomes of a hazard;

“serious injury” means an injury which is sustained by a person in an accident and which—

- (a) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received;
- (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose);
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
- (d) involves injury to any internal organ;
- (e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or
- (f) involves verified exposure to infectious substances or injurious radiation;

“State of Design” means the State having jurisdiction over the organization responsible for the type design;

“State of Manufacture” means the State having jurisdiction over the organization responsible for the final assembly of the aircraft;

“State of Registry” means the State on whose register the aircraft is entered;

“State of the Operator” means the State in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence;

“State Safety Programme (SSP)” means an integrated set of regulations and activities aimed at improving safety.

“Surveillance” means the State activities through which the Authority proactively verifies through inspections and audits that aviation license, certificate, authorization or approval holders continue to meet the established requirements and function at the level of competency and safety required by the State.

3. (1) These Regulations shall apply to safety management functions related to, or in direct support of, the safe operation of aircraft. Application.

(2) Except where otherwise specified, these Regulations shall not

apply to, such areas including, but not limited to, occupational safety, environmental protection, customer service or product quality.

PARTII—STATE SAFETY MANAGEMENT RESPONSIBILITIES

4. (1) The Authority shall establish, and maintain a State Safety Programme (SSP) commensurate with the size and complexity of the Kenya's civil aviation system.

Establishment of State Safety Programme.

(2) The SSP established under sub-regulation (1) shall be founded on the State Safety Oversight (SSO) system which shall be implemented in accordance with the following critical elements —

- (a) the provisions of the Act;
- (b) the regulations made under the Act and as periodically reviewed;
- (c) State systems and functions;
- (d) qualified technical personnel;
- (e) technical guidance, tools and safety-critical information;
- (f) licensing, certification, authorization and approval obligations;
- (g) surveillance obligations; and
- (h) resolution of safety issues.

(3) The framework for the implementation and maintenance of the SSO under sub-regulation (2) shall be as specified in the First Schedule to these Regulations.

5. (1) As part of the SSP the Authority shall establish a safety policy, objectives and resources that accord to critical elements in regulation 1 (2) (a), (b), (c) (d) and (e).

Safety policy, objectives and resources.

(2) The Authority shall identify, define and document the requirements, obligations, functions and activities regarding the establishment and maintenance of the SSP, including the directives to plan, organize, develop, maintain, control and continuously improve the SSP in a manner that meets Kenya's safety objectives.

(3) The safety policy, objectives and resources shall reflect commitment regarding safety, facilitate the promotion of a safety culture in the aviation industry and be periodically reviewed to ensure that they remain relevant and appropriate.

6. (1) As part of the SSP the Authority shall establish and maintain mechanisms, including processes to manage safety risks in—

State safety risk management.

- (a) licensing, certification, authorization and approval obligations in accordance with regulation 1 (2) (f);
- (b) Safety Management System obligations in accordance with Part III of these Regulations;
- (c) accident and incident investigation in accordance with

Civil Aviation (Accident and Incident investigation) Regulations;

- (d) hazard identification and safety risk assessment; and
- (e) resolution of safety issues in accordance with regulation 4 (2) (h).

(2) In furtherance of the obligations in sub-regulation 6 (1) (b), the Authority shall—

- (a) require that the service providers listed under regulation 9 (1) implement a Safety Management System (SMS);
- (b) ensure that safety performance indicators and targets established by service providers and operators are acceptable to the Authority;
- (c) establish criteria for implementation of an SMS by international general aviation operators of large or turbojet aeroplanes conducting operations in accordance with the Civil Aviation (Operation of Aircraft-International General Aviation –Aeroplanes) Regulations; and
- (d) ensure that the criteria in (c) above addresses the framework and elements in the Second Schedule to these regulations.

(3) In furtherance of the obligation under sub-regulation (1) (d), the Authority shall—

- (a) establish and maintain a process to identify hazards from collected safety data; and
- (b) develop and maintain a process that ensures the assessment of safety risks associated with identified hazards.

7. (1) As part of the SSP the Authority shall develop and implement procedures and processes for state safety assurance in—

Safety assurance.

- (a) surveillance obligations in accordance with regulation 4 (2) (g); and
- (b) State safety performance.

(2) Without prejudice to sub-regulation (1) (a) the Authority shall prioritise inspections, audits and surveys towards areas of greater safety concern or need and periodically review the safety performance of individual service providers.

(3) Without prejudice to the generality and in furtherance of the obligation in sub-regulation (1) (b) the Authority shall—

- (a) establish acceptable level of safety performance to be achieved through the SSP;
- (b) develop and maintain a process to evaluate the effectiveness of actions taken to manage safety risks and resolve safety issues; and

- (c) periodically evaluate the effectiveness of the SSP to maintain or continuously improve the overall level of safety performance.

8. (1) As part of the SSP the Authority shall develop state safety promotion by means of— Safety promotion

- (a) internal communication and dissemination of safety information; and
- (b) external communication and dissemination of safety information.

(2) In furtherance of the obligation in sub-regulation (1) the Authority shall promote safety awareness and the sharing and exchange of safety information to support the development of a positive safety culture that fosters the maintenance and improvement of safety.

PART III—SAFETY MANAGEMENT SYSTEMS

9. (1) The following service providers shall implement a Safety Management System (SMS) — Safety Management System (SMS) obligations.

- (a) approved training organisations, certified in accordance with the Civil Aviation (Approved training Organisations) Regulations, that are exposed to safety risks related to aircraft operations during the provision of their services;
- (b) operators of aeroplanes or helicopters authorized to conduct international commercial air transport in accordance with the Civil Aviation (Air Operator Certification and Administration) Regulations;
- (c) approved maintenance organisations providing services to operators of aeroplanes or helicopters engaged in international commercial air transport in accordance with the Civil Aviation (Air Operator Certification and Administration) Regulations;
- (d) organisations responsible for the type design or manufacture of aircraft, engines or propellers in accordance with the Civil Aviation (Airworthiness) Regulations;
- (e) Air Traffic Services providers in accordance with the Civil Aviation (Certification of Air Navigation Service Providers) Regulations; and
- (f) operators of certified aerodromes in accordance with the Civil Aviation (Aerodromes) Regulations.

(2) A service provider's SMS referred to in sub-regulation (1) shall be—

- (a) acceptable to the Authority;
- (b) commensurate with the size of the service provider and the complexity of its aviation products or services; and
- (c) established in accordance with the framework elements

contained in the Second Schedule to these regulations.

(3) An international general aviation operator conducting operations of large or turbojet aeroplane in accordance with Civil Aviation (Operation of Aircraft – International General Aviation - Aeroplanes) Regulations, shall implement a Safety Management System (SMS) that shall be commensurate with the size and complexity of the operation and that shall meet the criteria established by the Authority.

(4) A service provider shall develop a plan to facilitate the implementation of the service provider's SMS.

(5) The Safety Management System established by a service provider under sub-regulation (1) shall have safety performance indicators and targets acceptable to the Authority.

10. The Authority shall develop and issue an enforcement policy that specifies the conditions and circumstances under which service providers with an SMS are allowed to deal with, and resolve, events involving certain safety issues, internally, within the context of their SMS and to the satisfaction of the Authority.

Enforcement policy.

PART IV—SAFETY DATA AND SAFETY INFORMATION COLLECTION, PROCESSING ANALYSIS, PROTECTION, SHARING AND EXCHANGE

11. (1) The Authority shall establish a safety data collection and processing system (SDCPS) to capture, store, aggregate and enable the analysis of safety data and safety information.

Safety data collection and processing systems.

(2) The Authority shall establish a mandatory safety reporting system that includes the reporting of incidents.

(3) The Authority shall establish a voluntary safety reporting system to collect safety data and safety information not captured by mandatory safety reporting systems.

(4) The Authority may grant other organisations responsible for the implementation of SSP access to the SDCPS referred to in sub-regulation (1) in accordance with the Third Schedule to these regulations.

(5) The database systems established under sub-regulation (1) shall use standardized taxonomy to facilitate safety information sharing and exchange.

12. (1) A service provider shall notify and make mandatory occurrence reports on accidents, serious incidents, incidents and other safety related occurrences to the Authority within 24 hours, in the case of accident, 48 hours in the case of serious incidents and 72 hours in the case of incidents and other safety related occurrences.

Mandatory safety reporting.

(2) Service providers shall, as part of their Safety Management System, be responsible for investigating all incidents that occur during their operations.

(3) Accidents and serious incidents are investigated by the Chief

Investigator of Air Accident who may, at his discretion, delegate investigations of certain serious incidents to the Authority.

13. (1) A service provider shall establish a voluntary safety reporting system to facilitate collection of information on actual or potential safety deficiencies that may not be captured by the mandatory safety reporting system.

Voluntary safety reporting.

(2) A voluntary safety reporting system established by a service provider shall be non-punitive and shall afford protection to the sources of the information.

(3) An organization's voluntary and confidential reporting system shall, as minimum, define—

- (a) the objective of the reporting system;
- (b) the scope of the aviation sectors or areas covered by the system;
- (c) who can make a voluntary report;
- (d) when to make such a report;
- (e) how the reports are processed; and
- (f) the contacting (name of system) manager.

14. The Authority shall establish and maintain a process to analyse the safety data and safety information from the SDCPS and associated safety databases.

Safety data and safety information analysis.

15. (1) Safety data or information obtained, gathered voluntarily or otherwise given to the Authority under the Act or these Regulations shall not be put to any inappropriate use.

Safety data and safety information protection.

(2) The Authority shall accord protection to safety data captured by, and safety information derived from, mandatory and voluntary safety reporting systems under regulation 11 and related sources in accordance with the Third Schedule to these Regulations.

(3) The Authority shall not make available or use safety data or safety information collected, stored or analysed in accordance with regulation 11 or 14 for purposes other than maintaining or improving safety, unless a competent authority determines, in accordance with the Third Schedule to these regulations, that the principle of exception applies.

(4) Notwithstanding sub-regulation (3), the Authority shall not be prevented from using safety data or safety information to take any preventive, corrective or remedial action that is necessary to maintain or improve aviation safety.

(5) The Authority shall take necessary measures, including the promotion of a positive safety culture, to encourage safety reporting through the systems referred to in sub-regulation 11 (2) and (3).

16. (1) If the Authority, in the analysis of the information contained in its SDCPS, identifies safety matters considered to be of

Safety information sharing and

interest to other States, the Authority shall forward such safety information to that State as soon as possible. exchange.

(2) Prior to sharing information referred to in sub-regulation (1), the Authority shall agree with such States on the level of protection and conditions on which safety information will be shared in accordance with Third Schedule to these Regulations.

(3) The Authority shall promote the establishment of safety information sharing or exchange networks among users of the aviation system, and facilitate the sharing and exchange of safety information, unless any Kenyan law provides otherwise.

PART V—GENERAL PROVISIONS

17. A service provider who fails to comply with the provision of these Regulations, may have his license, certificate, or authorization suspended or revoked in addition to any other administrative sanction as may be prescribed in the Act or these Regulations. Administrative sanctions.

18. The Civil Aviation (Safety Management) Regulations, 2015 are revoked.

19. All acceptances, authorisations or certificates issued or granted by the Authority before the commencement of these regulations shall continue to be in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of these regulations or until expiry or are revoked, annulled or replaced. Saving and transitional provision

FIRST SCHEDULE

{(r.4 (3))}

STATE SAFETY OVERSIGHT (SSO) SYSTEM CRITICAL ELEMENTS (CEs)

1. Primary aviation legislation (CE-1)

1.1 The Civil Aviation Act (No. 21 of 2013) is a comprehensive and effective aviation law, commensurate with the size and complexity of Kenya's aviation activity and consistent with the requirements contained in the Convention on International Civil Aviation, to enable the oversight and management of civil aviation safety and the enforcement of regulations.

1.2 The Act provides personnel performing safety oversight functions access to the aircraft, operations, facilities, personnel and associated records, as applicable, of individuals and organizations performing an aviation activity.

2. Specific operating regulations (CE-2)

2.1 Specific regulations address, at a minimum, national requirements emanating from the primary aviation legislation, for standardized operational procedures, products, services, equipment and infrastructures in conformity with the Annexes to the Convention on International Civil Aviation.

3. State system and functions (CE-3)

3.1 There are established authorities or agencies, as appropriate, supported by sufficient and qualified personnel and provided with adequate financial resources for the management of safety.

3.2 The authorities or agencies have stated safety functions and objectives to fulfil their safety management responsibility.

3.3 The Authority should take necessary measures, such as remuneration and conditions of service, to ensure that qualified personnel performing safety oversight functions are recruited and retained.

3.4 The Authority shall ensure that personnel performing safety oversight functions are provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflicts of interest in the performance of official duties.

3.5 The Authority should use a methodology to determine their staffing requirements for personnel performing safety oversight functions, taking into account the size and complexity of the aviation activities in their State.

4. Qualified technical personnel (CE-4)

4.1 The Authority shall establish minimum qualification requirements for the technical personnel performing safety-related functions and provide for appropriate initial and recurrent training to maintain and enhance their competence at the desired level.

4.2 The Authority shall implement a system for the maintenance of training records for technical personnel.

5. Technical guidance, tools and provision of safety-critical information (CE-5)

5.1 The Authority shall provide appropriate facilities, comprehensive and up-to-date technical guidance material and procedures, safety-critical information, tools and equipment, and transportation means, as applicable, to the technical personnel to enable them to perform their safety oversight functions effectively and in accordance with established procedures in a standardized manner.

5.2 The Authority shall provide technical guidance to the aviation industry on the implementation of relevant regulations.

6. Licensing, certification, authorization and approval obligations (CE-6)

6.1 The Authority shall implement documented processes and procedures to ensure that individuals and organizations performing an aviation activity meet the established requirements before they are allowed to exercise the privileges of a licence, certificate, authorization or approval to conduct the relevant aviation activity.

7. Surveillance obligations (CE-7)

7.1 The Authority shall implement documented surveillance processes, by defining and planning inspections, audits and monitoring activities on a continuous basis, to proactively assure that aviation licence, certificate, authorization and approval holders continue to meet the established requirements. This includes the surveillance of personnel designated by the Authority to perform safety oversight functions on its behalf.

8. Resolution of safety issues (CE-8)

8.1 The Authority shall use a documented process to take appropriate actions, up to and including enforcement measures, to resolve identified safety issues.

8.2 The Authority shall ensure that identified safety issues are resolved in a timely manner through a system which monitors and records progress, including actions taken by individuals and organizations performing an aviation activity in resolving such issues.

SECOND SCHEDULE {(r.6 (2)(d); 9(2)(c)}

FRAMEWORK FOR A SAFETY MANAGEMENT SYSTEM (SMS)

This Schedule specifies the framework for the implementation and maintenance of an SMS. The framework comprises four components and twelve elements as the minimum requirements for SMS implementation:

1. Safety policy and objectives
 - 1.1 Management commitment
 - 1.2 Safety accountability and responsibilities
 - 1.3 Appointment of key safety personnel
 - 1.4 Coordination of emergency response planning
 - 1.5 SMS documentation
2. Safety risk management
 - 2.1 Hazard identification
 - 2.2 Safety risk assessment and mitigation
3. Safety assurance
 - 3.1 Safety performance monitoring and measurement
 - 3.2 The management of change
 - 3.3 Continuous improvement of the SMS

4. Safety promotion

4.1 Training and education

4.2 Safety communication

1. Safety policy and objectives

1.1 Management commitment

1.1.1 The service provider shall define its safety policy in accordance with international and national requirements. The safety policy shall—

- (a) reflect organizational commitment regarding safety, including the promotion of a positive safety culture;
- (b) include a clear statement about the provision of the necessary resources for the implementation of the safety policy;
- (c) include safety reporting procedures;
- (d) clearly indicate which types of behaviours are unacceptable related to the service provider's aviation activities and include the circumstances under which disciplinary action would not apply;
- (e) be signed by the accountable executive of the organization;
- (f) be communicated, with visible endorsement, throughout the organization; and
- (g) be periodically reviewed to ensure it remains relevant and appropriate to the service provider.

1.1.2 Taking due account of its safety policy, the service provider shall define safety objectives. The safety objectives shall—

- (a) form the basis for safety performance monitoring and measurement as required by 3.1.2;
- (b) reflect the service provider's commitment to maintain or continuously improve the overall effectiveness of the SMS;
- (c) be communicated throughout the organization; and
- (d) be periodically reviewed to ensure they remain relevant and appropriate to the service provider.

1.2 Safety accountability and responsibilities

The service provider shall—

- (a) identify the accountable executive who, irrespective of other functions, is accountable on behalf of the organization for the implementation and maintenance of an effective SMS;
- (b) clearly define lines of safety accountability throughout the organization, including a direct accountability for safety on the part of senior management;
- (c) identify the responsibilities of all members of management, irrespective of other functions, as well as of employees, with respect to the safety performance of the organization;

- (d) document and communicate safety accountability, responsibilities and authorities throughout the organization; and
- (e) define the levels of management with authority to make decisions regarding safety risk tolerability.

1.3 Appointment of key safety personnel

The service provider shall appoint a safety manager who is responsible for the implementation and maintenance of the SMS. Depending on the size of the service provider and the complexity of its aviation products or services, the responsibilities for the implementation and maintenance of the SMS may be assigned to one or more persons, fulfilling the role of safety manager, as their sole function or combined with other duties, provided these do not result in any conflicts of interest.

1.4 Coordination of emergency response planning

The service provider required to establish and maintain an emergency response plan for accidents and incidents in aircraft operations and other aviation emergencies shall ensure that the emergency response plan is properly coordinated with the emergency response plans of those organizations it must interface with during the provision of its products and services.

1.5 SMS documentation

1.5.1 The service provider shall develop and maintain an SMS manual that describes its—

- (a) safety policy and objectives;
- (b) SMS requirements;
- (c) SMS processes and procedures; and
- (d) accountability, responsibilities and authorities for SMS processes and procedures.

1.5.2 The service provider shall develop and maintain SMS operational records as part of its SMS documentation. Depending on the size of the service provider and the complexity of its aviation products or services, the SMS manual and SMS operational records may be in the form of stand-alone documents or may be integrated with other organizational documents (or documentation) maintained by the service provider.

2. Safety risk management

2.1 Hazard identification.

2.1.1 A service provider shall develop and maintain a process to identify hazards associated with its aviation products or services.

2.1.2 Hazard identification shall be based on a combination of reactive and proactive methods.

2.2 Safety risk assessment and mitigation.

The service provider shall develop and maintain a process that ensures analysis, assessment and control of the safety risks associated with identified hazards. The process may include predictive methods of safety data analysis.

3. Safety assurance.

3.1 Safety performance monitoring and measurement.

3.1.1 The service provider shall develop and maintain the means to verify the safety performance of the organization and to validate the effectiveness of safety risk controls.

3.1.2 The service provider's safety performance shall be verified in reference to the safety performance indicators and safety performance targets of the SMS in support of the organization's safety objectives.

3.2 The management of change

The service provider shall develop and maintain a process to identify changes which may affect the level of safety risk associated with its aviation products or services and to identify and manage the safety risks that may arise from those changes.

3.3 Continuous improvement of the SMS

The service provider shall monitor and assess its SMS processes to maintain or continuously improve the overall effectiveness of the SMS.

4. Safety promotion

4.1 Training and education

4.1.1 The service provider shall develop and maintain a safety training programme that ensures that personnel are trained and competent to perform their SMS duties.

4.1.2 The scope of the safety training programme shall be appropriate to each individual's involvement in the SMS.

4.2 Safety communication

The service provider shall develop and maintain a formal means for safety communication that:

- a) ensures personnel are aware of the SMS to a degree commensurate with their positions;
- b) conveys safety-critical information;
- c) explains why particular actions are taken to improve safety; and
- d) explains why safety procedures are introduced or changed.

THIRD SCHEDULE (rr. 11(4), 15 (2), 15(3), 16(2))

PRINCIPLES FOR THE PROTECTION OF SAFETY DATA, SAFETY INFORMATION AND RELATED SOURCES

Note 1.—The protection of safety data, safety information and related sources is essential to ensure their continued availability, since the use of safety data and safety information for purposes other than maintaining or improving safety may inhibit the future availability of such data and information, with a significant adverse effect on safety.

Note 2.—In view of their different legal systems, States have the flexibility to draft their laws and regulations in accordance with their policies and practices.

Note 3.—The principles contained in this Schedule are aimed at assisting the enacting and adoption of national laws, regulations and policies to protect safety data and safety information gathered from safety data collection and processing systems (SDCPS), as well as related sources, while allowing for the proper administration of justice and necessary actions for maintaining or improving aviation safety.

Note 4.—The objective is to ensure the continued availability of safety data and safety information by restricting their use for purposes other than maintaining or improving aviation safety.

1. Introduction

1.1 The protection of safety data, safety information and related sources is essential to ensure their continued availability, since the use of safety data and safety information for purposes other than maintaining or improving safety may inhibit the future availability of such data and information, with a significant adverse effect on safety.

1.2 The principles allow for flexibility to draft laws and regulations in accordance with Kenya policies and practices.

1.3 The principles contained in this Schedule are aimed at assisting in the enacting and adoption of laws, regulations and policies to protect safety data and safety information gathered from safety data collection and processing systems (SDCPS), as well as related sources, while allowing for the proper administration of justice and necessary actions for maintaining or improving aviation safety.

1.4 The objective is to ensure the continued availability of safety data and safety information by restricting their use for purposes other than maintaining or improving aviation safety.

1.5 Throughout this Schedule, “SDCPS” means processing and reporting systems, safety databases, schemes for exchange of information, and recorded information including but not limited to—

- (a) data and information pertaining to accident and incident investigations, as described in the Civil Aviation (Accident and Incident Investigation) Regulations;
- (b) data and information related to safety investigations by State authorities or aviation service providers;
- (c) mandatory safety reporting systems, as described in regulation 11 (2) to these Regulations;
- (d) voluntary incident reporting systems, as described in regulation 11 (3) to these Regulations; and
- (e) self-disclosure reporting systems, including automatic data capture systems, as described in Civil Aviation Regulations, as well as manual data capture systems.

Note. — Information on SDCPS can be found in the Safety Management Manual (SMM).

2. General principles

2.1 National laws, regulations and policies protecting safety data, safety information and related sources, shall ensure that—

- (a) a balance is struck between the need for the protection of safety data, safety information and related sources to maintain or improve aviation safety, and the need for the proper administration of justice;
- (b) safety data, safety information and related sources are protected in accordance with this Schedule;
- (c) the conditions under which safety data, safety information and related sources qualify for protection are specified; and
- (d) safety data and safety information remain available for the purpose of maintaining or improving aviation safety.

Note.— The protection of safety data, safety information and related sources is not intended to interfere with the proper administration of justice or with maintaining or improving safety.

2.2 When an investigation under Civil Aviation (Accident and Incident Investigation) Regulations has been instituted, accident and incident investigation records protected under the said regulations shall be subject to the protections accorded therein instead of the protections accorded by this Schedule.

3. Principles of protection

3.1 Safety data or safety information should not be used for—

- (a) disciplinary, civil, administrative and criminal proceedings against employees, operational personnel or organizations;
- (b) disclosure to the public; or
- (c) any purposes other than maintaining or improving safety;

unless a principle of exception applies.

3.2 Protection to safety data, safety information and related sources shall be accorded by ensuring that—

- (a) the protection is specified based on the nature of safety data and safety information;
- (b) a formal procedure to provide protection to safety data, safety information and related sources is established;
- (c) safety data and safety information will not be used in a way different from the purposes for which they were collected, unless a principle of exception applies; and
- (d) to the extent that a principle of exception applies, the use of safety data and safety information in disciplinary, civil, administrative and criminal proceedings will be carried out only under authoritative safeguards.

Note 1.— The formal procedure may include that any person seeking disclosure of safety data or safety information will provide the justification for its release.

Note 2.— Authoritative safeguards include legal limitations or restrictions such as protective orders, closed proceedings, in-camera review, and de-identification of data for the use or disclosure of safety information in judicial or administrative proceedings.

4. Principles of exception

Exceptions to the protection of safety data, safety information and related sources shall only be granted when the competent authority:

- (a) determines that there are facts and circumstances reasonably indicating that the occurrence may have been caused by an act or omission considered, in accordance with national laws, to be conduct constituting gross negligence, willful misconduct or criminal activity;
- (b) after reviewing the safety data or safety information, determines that its release is necessary for the proper administration of justice, and that the benefits of its release outweigh the adverse domestic and international impact such release is likely to have on the future collection and availability of safety data and safety information; or
- (c) after reviewing the safety data or safety information, determines that its release is necessary for maintaining or improving safety, and that the benefits of its release outweigh the adverse domestic and international impact such release is likely to have on the future collection and availability of safety data and safety information.

Note 1.—In administering the decision, the competent authority takes into account the consent of the source of the safety data and safety information.

Note 2.—Different competent authorities may be designated for different circumstances. The competent authority could include, but is not limited to, judicial authorities or those otherwise entrusted with aviation responsibilities designated in accordance with national law.

5. Public disclosure

5.1 In the event of right-to-know laws, in the context of requests made for public disclosure, exceptions shall be created from public disclosure to ensure the continued confidentiality of voluntarily supplied safety data and safety information.

Note.—Laws, regulations and policies commonly referred to as right-to-know laws (freedom-of-information, open records, or sunshine laws) allow for public access to information held by the State.

5.2 Where disclosure is made in accordance with section 4, it shall be ensured that—

- (a) public disclosure of relevant personal information included in the safety data or safety information complies with applicable privacy laws; or
- (b) public disclosure of the safety data or safety information is made in a de-identified, summarized or aggregate form.

6. Responsibility of the custodian of safety data and safety information

It shall be ensured that each SDCPS has a designated custodian to apply the protection to safety data and safety information in accordance with applicable provisions of this Schedule.

Note.—The “custodian” may refer to an individual or organization.

7. Protection of recorded data

Note 1.—Ambient workplace recordings required by national laws, for example, Cockpit Voice Recorders (CVRs) or recordings of background communication and the aural environment at air traffic controller work stations, may be perceived as constituting an invasion of privacy for operational personnel that other professions are not exposed to.

Note 2.— Provisions on the protection of flight recorder recordings and recordings from air traffic control units during investigations instituted under Civil Aviation (Accident and Incident Investigation) Regulations are contained therein. Provisions on the protection of flight recorder recordings during normal operations are contained in Civil Aviation (Operation of Aircraft for Commercial Air Transport) Regulations.

7.1 Through national laws and regulations, specific measures of protection shall be provided regarding the confidentiality and access by the public to ambient workplace recordings.

7.2 Through national laws and regulations, ambient workplace recordings required by national laws and regulations shall be treated as privileged protected data subject to the principles of protection and exception as provided for in this Schedule.

Dated the 26th March, 2018.

JAMES MACHARIA,
*Cabinet Secretary for
Transport, Infrastructure, Housing and Urban Development.*