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Civil Aviation Act 6 of 2016

Namibian Civil Aviation Regulations, 2001

ORGANISATIONS

PART 140

SAFETY MANAGEMENT SYSTEMS AND RELATED MATTERS

[Part 140 is inserted by GN 293/2018. GN 293/2018 directs that Parts 2 and 3 should be inserted after the heading “ORGANISATIONS” in the regulations. There is no such heading in the body of the regulations, but the table of contents of the regulations suggests that the heading should appear as shown above in green type.]

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SUBPART 1
GENERAL

Applicability

140.01.1 (1) This Part applies to a participant or holder of an aviation document who or that the Executive Director has, by way of an aviation directive, determined that the Part applies.

(2) The participant's or holder's organisation SMS must address the identification of hazards, assessment of risk and development of risk mitigation strategies where applicable.

(3) In this Part the abbreviation "SMS" is used for the expression safety management system within the meaning and context of Annex 19 of the Chicago Convention.

Definitions for this Part

140.01.2 In this Part, unless the context indicates otherwise -

"acceptable level of safety performance (ALoSP)" means the minimum level of safety performance of civil aviation in Namibia, as defined in a participant's or holder's safety management system, expressed in terms of safety performance targets and safety performance indicators;

"change management" means a formal process to manage changes within a participant's or holder's organisation in a systematic manner, so that changes which may impact identified hazards and risk mitigation strategies, are accounted for, before the implementation of such changes;

"defences" means specific mitigating actions, preventive controls or recovery measures put in place to prevent the realisation of a hazard or its escalation into an undesirable consequence;

"large or turbojet aeroplane" means an aeroplane with all-up weight exceeding 5700 kilograms;

"risk mitigation" means the process of incorporating defences or preventive controls to lower the severity or likelihood of a hazard's projected consequence;

"safety data collection and processing systems" (SDCPS) means processing and reporting systems, safety databases, schemes for exchange of information, and recorded information including but not be limited to -

- (a) data and information pertaining to accident or incident investigations;
- (b) mandatory safety reporting systems;
- (c) continuing airworthiness reporting;
- (d) operational performance monitoring;
- (e) inspections, audits, surveys; or
- (f) safety studies and reviews; and

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- (g) voluntary safety reporting systems and self-disclosure reporting systems including automatic and manual data capturing;

“safety management system” (SMS) means a systematic approach to managing aviation safety, including the necessary organisational structures, accountability, responsibilities, policies and procedures;

“safety oversight” means a function performed by the Authority to ensure that individuals and organisations performing an aviation activity comply with the Act, regulations, technical standards and directives;

“safety performance” means the SSP or a participant’s or holder’s safety achievement as defined by its safety performance targets and safety performance indicators;

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

“safety performance target” means the SSP or a participant’s or holder’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;

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

“surveillance” means activities through which the Authority proactively verifies through inspections, monitoring, reviews and audits that an aviation document participant or holder continues to meet the established civil aviation requirements and functions at the level of competency and safety required in Namibia.

SUBPART 2
SMS FRAMEWORK

Establishment of SMS

140.02.1 (1) A participant or holder must under the SSP, establish, implement, maintain and adhere to an SMS that is appropriate to the size, nature and complexity of the operations, activities or services authorised to be conducted in terms of the participant’s or holder’s aviation document and the hazards and risks related to the relevant operations, activities or services.

(2) The SMS of a participant or holder must include its acceptable level of safety performance (ALoSP), the safety oversight framework, safety performance indicators and targets that are acceptable to the Executive Director.

(3) The acceptance of a participant’s or holder’s SMS by the Executive Director is conditional on proof that it was developed effectively and progressively within the context of the participant’s or holder’s operational change management and other systems, and in accordance with requirements for SMS implementation specified in regulation 140.02.3.

(4) A participant or holder must comply with the SMS requirements issued under the SSP, liaise with the SSP Committee established under Part 11 when required, and support the

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SDCPS to facilitate safety information sharing and exchange and the protection to safety data captured and derived from mandatory and voluntary safety information systems authorised by the Executive Director.

Requirements of SMS

140.02.2 (1) The SMS must follow the framework set out in the safety management manual and include -

- (a) safety policy, safety oversight, and objectives, including -
 - (i) management commitment;
 - (ii) safety accountability and responsibilities;
 - (iii) appointment of key safety personnel;
 - (iv) coordination of emergency response planning (ERP); and
 - (v) SMS documentation;
- (b) safety risk management, including -
 - (i) hazard identification; and
 - (ii) safety risk assessment and mitigation;
- (c) safety assurance, including -
 - (i) safety performance monitoring and measurement;
 - (ii) change management; and
 - (iii) continuous improvement of the SMS;
- (d) safety promotion, including -
 - (i) training and education; and
 - (ii) safety communication.

(2) A participant or holder must develop and implement the components and elements listed in subregulation (1) in accordance with the standards prescribed in Document NAM-CATS SMS 140.

Implementation of SMS

140.02.3 (1) The senior accountable manager of a participant or holder must -

- (a) ensure that the SMS requirements specified in regulation 140.02.2 are implemented in a planned, structured and effective manner to ensure that the SMS is applied to maintain and improve aviation safety; and

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- (b) implement the SMS phases in the manner as specified in Document NAM-CATS SMS 140 and in accordance with any other directives issued by the Executive Director.

(2) The time-scale for completion of SMS implementation, for a participant or holder whose aviation document is suspended or made subject to conditions on or after the date this Part comes into effect, must be determined by the Executive Director.

SUBPART 3
SENIOR ACCOUNTABLE MANAGER AND KEY PERSONNEL

Senior accountable manager

140.03.1 (1) The participant or holder by way of a written notice in the manner acceptable to the Executive Director, must nominate a suitably qualified natural person, to be the senior accountable manager who is to have or is likely to have control over the exercise of the privileges under the aviation document in the manner contemplated by sections 66 and 68 of the Act.

(2) On receipt of a nomination, the Executive Director must give due consideration, to the nominated persons, compliance with the qualifications and experience requirements and the conclusion of the fit and proper person test in the manner contemplated by sections 68 and 69 of the Act in particular, and generally required in terms of the Act.

(3) Where applicable, the nominee must meet the other relevant requirements as provided for in the approved operational manual or other documents of the participant or holder as authorised by the Executive Director when approving the application and grant, including any renewal or amendment, of the aviation document concerned.

(4) The Executive Director must, within 21 days of receiving the written notice referred to subregulation (1), inform the participant or holder of the proposed or final determination on whether or not the nominee is fit and proper for the purposes of control over the exercise of the privileges under the aviation document.

- (5) If the Executive Director determines that the nominee -

- (a) meets the fit and proper requirements, the Executive Director must in writing notify the participant or holder who must designate the person concerned as the senior accountable manager of the participant or holder to carry out the responsibilities under the aviation document irrespective of that person's employment, contractual or other functions at the participant's or holder's organisation; or
- (b) does not meet the fit and proper requirements, the Executive Director must in writing notify the participant or holder and the nominee of the determination, giving the reasons for that determination.

(6) Without derogating from the generality of subregulation (5), the senior accountable manager must undertake the participant's or holder's compliance and responsibilities as required under this Subpart, including but not limited to -

- (a) unrestricted access to work performed or activities undertaken by all other persons as employees of, and other persons rendering service under contract with, the participant or holder concerned;

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- (b) full rights of consultation with any other person in respect of compliance required of that person;
- (c) powers to order cessation of any activity where such an activity endangers or is likely to endanger civil aviation safety;
- (d) a duty to establish liaison mechanisms in writing with the Executive Director with a view to ascertain correct ways of compliance with the safety oversight and performance, SMS requirements and interpretations of those requirements by the Executive Director, and to facilitate regular liaison between the Executive Director and the participant or holder; and
- (e) powers to report directly to the management of the participant or holder.

(7) The Executive Director may address any enquiry in relation to a matter connected with the participant's or holder's senior accountable manager, and the senior accountable manager must reply in writing not later than the date specified by the Executive Director.

(8) In the event that the senior accountable manager is replaced as a consequence of employment or other organisational changes, the participant or holder must ensure the nomination of a replacement by notification to the Executive Director within 14 days after the event.

(9) When a replacement in terms of subregulation (8), the procedures set out in subregulations (1) to (5) must be followed.

(10) If the senior accountable manager -

- (a) is negligent or incompetent in implementing the SMS and safety oversight, approved manuals, the Act or these regulations or any directive; or
- (b) no longer meets the qualifications and experience requirements or no longer satisfies the fit and proper test determinations as required under the Act or this Part,

the Executive Director may, after giving the participant or holder, and the senior accountable manager concerned, an opportunity to be heard, direct the removal of that person from office of senior accountable manager by a specified date and request the nomination for determination of suitability of another person in his or her place by the participant or holder within a specified period.

(11) The Executive Director may, upon the receipt of a written request made by a participant or holder, before the date determined in subregulation (10) and on good cause shown, in writing, grant an extension of time to such participant or holder, for the removal of that person from office as senior accountable manager, but subject to such conditions as the Executive Director may impose.

Key safety personnel

140.03.2 (1) The senior accountable manager must proceed to nominate the key safety personnel identified for designation in the approved manual of the participant or holder issued in terms of technical standards and under an application for and grant of, inclusive of an amendment or renewal, of an aviation document.

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(2) Where an approved manual provides for a safety manager as one of the key safety personnel, then the senior accountable manager must nominate a person in a similar manner prescribed in regulation 140.03.1(1) for the fit and proper person test pursuant to sections 68 and 69 of the Act in particular, and generally required in terms of the Act.

(3) The Executive Director may require the name and particulars regarding the qualifications and experience of any other person nominated by the senior accountable manager as key safety personnel, to be submitted for purposes of the fit and proper person test pursuant to sections 68 and 69 of the Act in particular, and generally required in terms of the Act.

(4) The qualifications and experience requirements and the fit and proper testing of any key safety personnel nominee may, at the discretion of the Executive Director, include matters relevant to the standards prescribed in Document NAM-CATS SMS 140 applicable to the participant or holder to enable the Executive Director to determine the fit and proper status of the nominated key safety personnel.

(5) Whenever any one or more, of the key safety personnel -

- (a) is negligent or incompetent in implementing the SMS and safety oversight, approved manuals, the Act or these regulations or any directive; or
- (b) no longer meets the qualifications and experience requirements or no longer satisfies the fit and proper test determinations as required under the Act or this Part,

the Executive Director may, after giving the senior accountable manager concerned, or, in the absence of a senior accountable manager in the manner set out under regulation 140.03.6, the participant or holder, and the key safety personnel concerned, an opportunity to be heard, direct the removal of that person or persons by the senior accountable manager or participant or holder, as the case may be, from office of key safety personnel by a specified date and request the nomination for determination of suitability of another person or persons in his or her, or their, place by the senior accountable manager or participant or holder, as the case may be, within a specified period.

[The word “manager” in the second use of the phrase “senior accountable manager or participant or holder” is misspelt in the *Government Gazette*, as reproduced above.]

(6) The Executive Director may, upon the receipt of a written request made by the senior accountable manager, or participant or holder, as the case may be, before the date determined in subregulation (5), and on good cause shown, in writing grant an extension of time to such senior accountable manager, or participant or holder, as the case may be, for the removal of that person or persons from the establishment of the key safety personnel, but subject to such conditions as the Executive Director may impose.

**SUBPART 4
MISCELLANEOUS MATTERS****Violations and offences**

140.04.1 (1) If the participant or holder or the senior accountable manager, as the case may be, fails, without good cause or reason acceptable to the Executive Director obtained beforehand, to nominate a senior accountable manager, or safety manager, or key safety personnel, as required under this Part, or to comply with the directive by the Executive Director for the removal of the senior accountable manager, or the safety manager, or the key safety

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personnel, as the case may be, or within the extended period of time, if any, granted by the Executive Director in the manner stipulated in this Part -

**[The word “manager” in the second use of the phrase “safety manager”
is misspelt in the Government Gazette, as reproduced above.]**

- (a) the participant or holder or senior accountable manager, as the case may be, is liable to pay the administrative fine upon assessment determined under Part 185, and in accordance with the daily fine provision provided for in that Part, for as long as the non-compliance exists; and
- (b) the aviation document may be suspended or revoked or be endorsed under the imposition of a condition in the manner contemplated by sections 42 or 43 of the Act, respectively.

(2) Despite the provisions of subregulation (1), any participant or holder or senior accountable manager, as the case may be, who fails to comply with a directive issued by the Executive Director, commits an offence and is liable to be prosecuted under any one or more of the offences in Parts 13 (General offences) or 14 (Safety Offences) of the Act.

Safety charges

140.04.2 The Authority may impose safety charges, prescribed in Part 187, payable by participants, holders or users of both domestic and international civil aviation services, to ensure safety compliance levels or in relation to any application action required for participation in the civil aviation system.

International general aviation operators of large or turbojet aeroplanes

140.04.3 An international general aviation operator of large or turbojet aeroplanes must establish and maintain an SMS that is appropriate to the size and complexity of the operation that must, as a minimum, include -

- (a) a process to identify actual and potential safety hazards and assess the associated risks;
- (b) a process to develop and implement remedial action necessary to maintain an acceptable level of safety;
- (c) provisions for continuous monitoring and regular assessment of the appropriateness and effectiveness of safety management activities; and
- (d) any other information as required by the Executive Director in relation to its operations in the Namibia civil aviation system.

Holder of more than one certificate

140.04.4 Where the participant or holder is the holder of more than one aviation document, it, may with the approval of the Executive Director, integrate the requirements of this Part into a single SMS.

[The comma after the word “it” is misplaced; it should appear after the word “may”.]