



Civil Aviation Safety Amendment Regulations 2004 (No. 1)¹

Statutory Rules 2004 No. 4²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Civil Aviation Act 1988*.

Dated 5 February 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

JOHN ANDERSON
Minister for Transport and Regional Services

1 Name of Regulations

These Regulations are the *Civil Aviation Safety Amendment Regulations 2004 (No. 1)*.

2 Commencement

These Regulations commence on the commencement of item 15 of Schedule 1 to the *Civil Aviation Amendment Act 2003*.

3 Amendment of *Civil Aviation Safety Regulations 1998*

Schedule 1 amends the *Civil Aviation Safety Regulations 1998*.

Schedule 1 Amendment

(regulation 3)

[1] Part 13

substitute

Part 13 Enforcement procedures

Note Subparts 13.A to 13.J are reserved for future use.

Subpart 13.K Voluntary reporting and demerit points schemes

Division 13.K.1 Aviation Self Reporting Scheme

13.320 Definitions

In this Division:

Aviation Self Reporting Scheme or *ASRS* means the voluntary reporting scheme established under subregulation 13.335 (1) for reporting reportable contraventions.

Executive Director means the person for the time being holding, occupying or performing the duties of the position of Executive Director of Transport Safety Investigation referred to in section 12 of the *Transport Safety Investigation Act 2003*.

13.325 Contraventions that are not reportable

For the purposes of paragraph (d) of the definition of *reportable contravention* in section 30DL of the Act, contraventions of the following provisions of CAR are prescribed:

- (a) regulation 282;
- (b) subregulation 288 (2);
- (c) regulation 298A;
- (d) regulation 298B;
- (e) regulation 298C;
- (f) regulation 301;
- (g) regulation 302;
- (h) subregulation 305 (1A).

13.330 Prescribed person (Act s 30DM)

For the purposes of Division 3C (Protection from administrative action for voluntary reporting) of Part III of the Act, the Executive Director is prescribed.

13.335 Establishment and purposes of scheme (Act s 30DN)

- (1) There is established a scheme (to be known as the *Aviation Self Reporting Scheme*) for the voluntary reporting of reportable contraventions.
- (2) The scheme is to be administered by the Executive Director.
- (3) The purposes of the scheme are:
 - (a) to enable holders of civil aviation authorisations to voluntarily report reportable contraventions without administrative action being taken against them; and
 - (b) to strengthen the foundation of aviation human factors safety research; and
 - (c) to identify deficiencies and problems in the Australian aviation safety system; and
 - (d) to provide data for planning and improvements to the Australian aviation safety system.

13.340 Powers and functions of Executive Director

Without limiting the generality of the powers and functions of the Executive Director as administrator of ASRS, the Executive Director has the following powers and functions:

- (a) to process and accept reports;
- (b) to give receipts for reports;
- (c) to review information contained in reports in order to identify potential safety deficiencies and lessen the likelihood of accidents and serious incidents;
- (d) to issue information briefs or alert bulletins that the Executive Director considers are necessary in the interests of aviation safety;
- (e) to publish details of reviews made under paragraph (c).

Note Regulation 13.360 affects the powers and functions of the Executive Director relating to information contained in reports.

13.345 Manner in which reports to be made (Act s 30DN (2) (b))

- (1) A holder of a civil aviation authorisation who has committed a reportable contravention may make a written report of the reportable contravention under ASRS.
- (2) The report must be made to the Executive Director, in a form approved by the Executive Director, not later than 10 days after the reportable contravention.
- (3) The report must include the following information:
 - (a) the name, postal address and daytime telephone number of the authorisation holder making the report;
 - (b) if applicable — the aviation reference number of the authorisation holder;
 - (c) the class or classes of civil aviation authorisation held by the authorisation holder;
 - (d) the time, date, place and nature of the contravention;
 - (e) a description of the circumstances of the contravention;
 - (f) so far as is practicable, the regulations contravened by the authorisation holder.

Note 1 A copy of the approved form is available from ATSB's website (<http://www.atsb.gov.au>) or by contacting 1-800-020-505.

Note 2 A report made by an authorisation holder under this regulation does not satisfy the reporting obligations under:

- (a) the *Transport Safety Investigation Act 2003*; or
- (b) any other provision of these Regulations relating to the reporting of defects or service difficulties on aircraft or aeronautical products.

13.350 Processing of reports

- (1) A report purportedly made in accordance with regulation 13.345 must be accepted by the Executive Director, unless it appears on the face of the report that the contravention for which the report is made is not a reportable contravention.

Note Under section 30DL of the Act, the following contraventions are not reportable contraventions:

- (a) a contravention of these Regulations that is deliberate;
- (b) a contravention of these Regulations that is fraudulent;

- (c) a contravention of these Regulations that causes or contributes to an accident or to a serious incident (whether before or after the contravention is reported);
 - (d) a contravention of a regulation prescribed under regulation 13.325.
- (2) If the Executive Director accepts a report, the Executive Director must:
- (a) ensure that the report is given a unique receipt number and stamped, on the front page, with the receipt number and the date when the report was made; and
 - (b) give to the holder of a civil aviation authorisation who made the report a receipt that sets out:
 - (i) the authorisation holder's name; and
 - (ii) the date the report was made; and
 - (iii) the date and nature of the contravention; and
 - (c) having regard to subregulation 13.360 (2), determine what information contained in the report is to be included in the files or databases primarily kept for the purposes of ASRS; and
 - (d) return the report to the authorisation holder who made the report.
- (3) If the Executive Director does not accept a report, he or she must, subject to regulation 13.355, return the report to the authorisation holder.

13.355 Reports relating to unlawful interference

If a report relates to an act of unlawful interference (within the meaning of ICAO Document 9713, '*International Civil Aviation Vocabulary*', as in force from time to time), the Executive Director must send it to the Aviation Security Duty Officer in the Department.

13.360 Use of information contained in reports (Act s 30DN (2) (c))

- (1) The Executive Director must not keep a copy of a report made under ASRS.
- (2) The Executive Director must ensure that, to the extent practicable, information that identifies the authorisation holder who made the report (or any person referred to in the report) is not included in any file or database primarily kept for the purposes of ASRS.
- (3) Information contained in a report of a reportable contravention (other than information that is personal information within the meaning of the *Privacy Act 1988*) may be disclosed by the Executive Director without the consent of the authorisation holder who made the report but only if the information is to be used for a purpose mentioned in subregulation 13.335 (3).

13.365 Delegation by Executive Director

- (1) The Executive Director may, in writing, delegate to a person engaged to perform duties in the Department (whether as an APS employee, SES employee or under any other arrangement) a power (except this power of delegation), function or duty of the Executive Director under this Division.
- (2) In exercising powers, functions and duties under a delegation, the delegate must comply with any directions of the Executive Director.

Division 13.K.2 Demerit points scheme**13.370 Offences to which demerit points scheme applies (Act s 30DT)**

- (1) All offences under CAR and CASR that are specified as strict liability offences are prescribed as offences to which Division 3D (Demerit points scheme) of Part III of the Act applies.

- (2) The number of points that are incurred in relation to an offence to which that Division applies are as follows:
- (a) if the maximum penalty for the offence is 10 penalty units or less — 1 demerit point;
 - (b) if the maximum penalty for the offence is more than 10 penalty units but less than 26 penalty units — 2 demerit points;
 - (c) if the maximum penalty for the offence is 26 penalty units or more — 3 demerit points.

13.375 Classes of civil aviation authorisations

For the purposes of section 30DU of the Act, a civil aviation authorisation mentioned in column 2 of an item in table 13.375 belongs to the class of civil aviation authorisation mentioned in column 3 of the item.

Table 13.375 Classes of civil aviation authorisations

Column 1	Column 2	Column 3
Item	Particular civil aviation authorisations	Class of civil aviation authorisation
1	a certificate issued under section 27 of the Act	Air operator certificate
2	a certificate issued under Part 3 of CAR	Certificate of registration
3	a certificate issued under regulation 30 of CAR	Certificate of approval
4	(a) a licence referred to in regulation 31 of CAR (b) an authority referred to in regulation 33B or 33C of CAR	Maintenance authority
5	a licence referred to in paragraph 5.08 (a) of CAR	Flight radiotelephone licence
6	a licence referred to in paragraphs 5.08 (b) to (m) of CAR	Pilot licence

Column 1	Column 2	Column 3
Item	Particular civil aviation authorisations	Class of civil aviation authorisation
7	a licence referred to in paragraph 5.08 (o) or (p) of CAR	Flight engineer licence
8	a certificate issued under Part 6 of CAR or Part 67 of CASR	Medical certificate
9	a licence or authorisation issued under Part 65 of CASR	Air traffic control licence
10	a certificate issued under Subpart 101.F of CASR	UAV certificate
11	(a) a certificate issued under Subpart 139.B of CASR (b) a registration granted under Subpart 139.C of CASR	Aerodrome certificate
12	an approval granted under Subpart 139.H of CASR	ARFFS approval
13	an approval granted under Part 143 or 172 of CASR	ATS approval
14	an approval granted under Part 171 of CASR	Aeronautical telecommunication and radionavigation provider approval
15	a certificate or authorisation issued under Part 173 of CASR	Instrument flight procedure approval

13.380 Effect of subsequent suspension or cancellation in certain situations (Act s 30DV)

If:

- (a) a civil aviation authorisation is cancelled (the *earlier cancellation*); and
- (b) if there had been no earlier cancellation, a subsequent suspension or cancellation under Division 3D of Part III of the Act would have had effect in relation to the authorisation; and
- (c) the earlier cancellation is later set aside by the Administrative Appeals Tribunal;

the subsequent suspension or cancellation has effect, in relation to the civil aviation authorisation, on the day immediately following the day when the Administrative Appeals Tribunal set aside the earlier cancellation.

Notes

- 1. These Regulations amend Statutory Rules 1998 No. 237, as amended by 1999 Nos. 166 (as amended by 1999 No. 262) and 262; 2000 Nos. 7, 204 (Item [7] of Schedule 2 was disallowed by the Senate on 8 November 2000) and 227; 2001 Nos. 34, 242 and 349 (as amended by 2002 No. 79); 2002 Nos. 167 (as amended by 2003 No. 58), 266, 268, 320, 321, 349 and 350; 2003 Nos. 58, 75, 189, 232, 240, 297 and 365.
- 2. Notified in the *Commonwealth of Australia Gazette* on 12 February 2004.