

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2018/394

of 13 March 2018

amending Regulation (EU) No 965/2012 as regards the deletion of air operations requirements for balloons

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, and in particular Article 8(5) thereof,

Whereas:

- (1) Commission Regulation (EU) No 965/2012 ⁽²⁾ establishes the conditions for the safety of several types of air operations with different categories of aircraft, including balloon operations.
- (2) Commission Regulation (EU) 2018/395 ⁽³⁾ establishes specific rules for the operation of balloons. From the date of application of that Regulation, such operations should no longer be subject to the general rules for air operations laid down in Regulation (EU) No 965/2012. However, the rules in respect of oversight of air operations by the competent authorities of the Member States, set out in Article 3 of Regulation (EU) No 965/2012 and Annex II thereof, should continue to apply with respect to air operations with balloons, as those requirements are not specific to any particular air operation activity but apply horizontally in respect of all such activities.
- (3) Regulation (EU) No 965/2012 should therefore be amended accordingly, so as to take account of the new rules applicable to balloon operations and to clarify the affected provisions of that Regulation where appropriate.
- (4) Considering the close link between them, the date of application of the amendments to Regulation (EU) No 965/2012 set out in this Regulation should be aligned with the date of application of Regulation (EU) 2018/395.
- (5) The Agency prepared draft implementing rules and submitted them as an opinion ⁽⁴⁾ to the Commission in accordance with point (b) of Article 17(2) and Article 19(1) of Regulation (EC) No 216/2008.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 65 of Regulation (EC) No 216/2008,

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

⁽³⁾ Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (see page 10 of this Official Journal).

⁽⁴⁾ Opinion No 01/2016 of the European Aviation Safety Agency of 6 January 2016 for a Commission Regulation on the revision of the European operational rules for balloons.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 965/2012 is amended as follows:

(1) Article 1 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. This Regulation lays down detailed rules for air operations with aeroplanes, helicopters and sailplanes, including ramp inspections of aircraft of operators under the safety oversight of another State when landed at aerodromes located in the territory subject to the provisions of the Treaties.

2. This Regulation also lays down detailed rules on the conditions for issuing, maintaining, amending, limiting, suspending or revoking the certificates of operators of aircraft referred to in points (b) and (c) of Article 4(1) of Regulation (EC) No 216/2008, except for balloons, engaged in commercial air transport operation, the privileges and responsibilities of the holders of certificates as well as conditions under which operations shall be prohibited, limited or subject to certain conditions in the interest of safety.

3. This Regulation also lays down detailed rules on the conditions and procedures for the declaration by operators engaged in commercial specialised operations of aeroplanes, helicopters and sailplanes or in non-commercial operation of complex motor-powered aircraft, including non-commercial specialised operations of complex motor-powered aircraft, of their capability and the availability of the means to discharge the responsibilities associated with the operation of aircraft, and for the oversight of such operators.’;

(b) paragraph 6 is replaced by the following:

‘6. This Regulation shall not apply to air operations with airships.’;

(c) the following paragraph 7 is added:

‘7. This Regulation shall not apply to air operations with balloons. However, in respect of such air operations with balloons, other than tethered gas balloons, the requirements in respect of oversight of Article 3 shall apply.’

(2) In Article 2 the following points (1a) and (1b) are inserted:

‘(1a) “balloon” means a manned lighter-than-air aircraft which is not power driven and sustains flight through the use of either a lighter-than-air gas or an airborne heater, including gas balloons, hot-air balloons, mixed balloons and, although power driven, hot-air airships;

(1b) “tethered gas balloon” means a gas balloon with a tether system that continuously anchors the balloon to a fixed point during operation.’;

(3) In Article 3(1), the following second subparagraph is inserted:

‘The administration and management systems of the competent authorities of the Member States and of the Agency shall comply with the requirements specified in Annex II.’

(4) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Operators shall only operate an aeroplane, a helicopter or a sailplane for the purpose of commercial air transport (hereinafter “CAT”) operations in accordance with the requirements specified in Annexes III and IV.’;

(b) in paragraph 2, point (b) is replaced by the following:

‘(b) aeroplanes, helicopters and sailplanes used for the transport of dangerous goods (DG)’;

(c) paragraph 4 is replaced by the following:

‘4. Operators of other-than complex motor-powered aeroplanes and helicopters, and of sailplanes, involved in non-commercial operations, including non-commercial specialised operations, shall only operate the aircraft in accordance with the requirements specified in Annex VII.’;

(d) in paragraph 5, point (b) is replaced by the following:

‘(b) other aeroplanes and helicopters, as well as sailplanes, in accordance with the provisions specified in Annex VII.’;

(e) paragraph 6 is replaced by the following:

‘6. Operators shall only operate an aeroplane, a helicopter or a sailplane for the purpose of commercial specialised operations in accordance with the requirements specified in Annexes III and VIII.’.

(5) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. By way of derogation from Article 5 of this Regulation, and without prejudice to point (a) of Article 5(4) of Regulation (EC) No 216/2008 and to Subpart P of Annex I to Commission Regulation (EU) No 748/2012 (*) concerning the permit to fly, the following flights shall continue to be operated under the requirements specified in the national law of the Member State in which the operator has its principal place of business, or, where the operator has no principal place of business, the place where the operator is established or resides.

(a) flights related to the introduction or modification of aeroplane, helicopter or sailplane types conducted by design or production organisations within the scope of their privileges;

(b) flights carrying no passengers or cargo where the aeroplane, helicopter or sailplane is ferried for refurbishment, repair, maintenance checks, inspections, delivery, export or similar purposes.

(*) Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1).’;

(b) in paragraph 4a, the introductory wording is replaced by the following:

‘By way of derogation from Article 5(1) and (6), the following operations with other-than complex motor-powered aeroplanes and helicopters, and with sailplanes may be conducted in accordance with Annex VII.’.

(6) Article 8 is replaced by the following:

‘Article 8

Flight time limitations

1. CAT operations shall be subject to the requirements of Subpart FTL of Annex III.

2. By way of derogation from paragraph 1, air taxi, emergency medical service and single pilot CAT operations by aeroplanes shall be subject to the requirements specified in the national law referred to in Article 8(4) of Regulation (EEC) No 3922/91 and in Subpart Q of Annex III to that Regulation.

3. By way of derogation from paragraph 1, CAT operations with helicopters and CAT operations with sailplanes shall comply with the requirements specified in the national law of the Member State in which the operator has its principal place of business.

4. Non-commercial operations, including non-commercial specialised operations, with complex motor-powered aeroplanes and helicopters, as well as commercial specialised operations with aeroplanes, helicopters and sailplanes shall comply as regards flight time limitations, with the requirements specified in the national law of the Member State in which the operator has its principal place of business, or, where the operator has no principal place of business, the place where the operator is established or resides.’

(7) Article 10 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The requirements of Annexes II and VII shall apply to non-commercial operations with sailplanes from 25 August 2013. However, Member States that have decided in accordance with Union law before 8 April 2019 that some or all of those requirements do not apply to such operations in their territory, shall make those decisions publicly available. If any such decision is still in force by 8 April 2020, it shall cease to apply from that date.

3. The requirements of Annexes II, III, VII and VIII shall apply to specialised operations with sailplanes from 1 July 2014. However, Member States that have decided in accordance with Union law before 8 April 2019 that some or all of those requirements do not apply to such operations in their territory, shall make those decisions publicly available. If any such decision is still in force by 8 April 2020, it shall cease to apply from that date.’;

(b) in paragraph 5, point (b) is replaced by the following:

‘(b) CAT operations with sailplanes from 1 July 2014. However, Member States that have decided in accordance with Union law before 8 April 2019 that some or all of those requirements do not apply to such operations in their territory, shall make those decisions publicly available. If any such decision is still in force by 8 April 2020, it shall cease to apply from that date.’

(8) Annexes I, II, III, IV, VII and VIII are amended in accordance with the Annex to this Regulation.

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 8 April 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 March 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Annexes I, II, III, IV, VII and VIII of Regulation (EU) No 965/2012 are amended as follows:

(1) In Annex I, point (120) is replaced by the following:

‘(120) “traffic load” means the total mass of passengers, baggage, cargo and carry-on specialist equipment and including any ballast;’

(2) Annex II is amended as follows:

(a) in point ARO.GEN.345, point (a) is replaced by the following:

‘(a) Upon receiving a declaration from an organisation carrying out or intending to carry out activities for which a declaration is required, the competent authority shall verify that the declaration contains all the information required pursuant to point ORO.DEC.100 of Annex III (Part-ORO) to this Regulation, or for balloons operators all the information required pursuant to point BOP.ADD.100 of Annex II (Part-BOP) to Commission Regulation (EU) 2018/395 (*), and shall acknowledge receipt of the declaration to the organisation.

(*) Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 71, 14.3.2018, p. 10);

(b) in point ARO.GEN.350(b), point (1) is replaced by the following:

‘(1) failure to give the competent authority access to the facilities of the organisation in accordance with point ORO.GEN.140 of Annex III (Part-ORO) to this Regulation, or for balloons operators in accordance with points BOP.ADD.015 and BOP.ADD.035 of Annex II (Part-BOP) to Regulation (EU) 2018/395, during normal operating hours and after two written requests;’

(c) the heading of point ARO.OPS.110 is replaced by the following:

‘ARO.OPS.110 Lease agreements for aeroplanes and helicopters;’

(3) Annex III is amended as follows:

(a) in point ORO.GEN.110, point (k) is replaced by the following:

‘(k) Notwithstanding point (j), operators conducting commercial operations with either of the following aircraft shall ensure that the flight crew has received an appropriate dangerous goods training or briefing, so as to enable them to recognise undeclared dangerous goods brought on board by passengers or as cargo:

(1) a sailplane;

(2) a single-engined propeller-driven aeroplane having a maximum certified take-off mass of 5 700 kg or less and a MOPSC of 5 or less, operated in a flight taking off and landing at the same aerodrome or operating site, under VFR by day;

(3) an other-than complex motor-powered helicopter, single-engined, with a MOPSC of 5 or less, operated in a flight taking off and landing at the same aerodrome or operating site, under VFR by day;’

(b) in point ORO.MLR.101, the introductory wording is replaced by the following:

‘Except for operations with single-engined propeller-driven aeroplanes with a MOPSC of 5 or less or with single-engined non-complex helicopters with a MOPSC of 5 or less, taking off and landing at the same aerodrome or operating site, under VFR by day, and for operations with sailplanes, the main structure of the OM shall be as follows:’;

(c) in point ORO.FC.005(b), point (1) is replaced by the following:

‘(1) commercial air transport operations of sailplanes; or’;

(d) in point ORO.CC.100, point (a) is replaced by the following:

‘(a) The number and composition of cabin crew shall be determined in accordance with point 7.a of Annex IV to Regulation (EC) No 216/2008, taking into account operational factors or circumstances of the particular flight to be operated. At least one cabin crew member shall be assigned for the operation of aircraft with an MOPSC of more than 19 when carrying one or more passenger(s).’;

(4) Annex IV is amended as follows:

(a) point CAT.GEN.105 is amended as follows:

(i) the heading is replaced by the following:

‘CAT.GEN.105 Touring motor gliders and powered sailplanes’;

(ii) point (d) is deleted;

(b) point CAT.GEN.NMPA.100 is amended as follows:

(i) in point (a), point (2) is replaced by the following:

‘(2) be responsible for the operation and safety of the sailplane from the moment the launch procedure is started until the sailplane comes to a rest at the end of the flight.’;

(ii) point (d) is deleted;

(c) point CAT.GEN.NMPA.105 is deleted;

(d) in point CAT.GEN.NMPA.140(a), point (19) is replaced by the following:

‘(19) mass and balance documentation.’;

(e) point CAT.OP.NMPA.105 is replaced by the following:

‘CAT.OP.NMPA.105 Noise abatement procedures — powered sailplanes

The commander shall take into account the effect of aircraft noise, while ensuring however that safety has priority over noise abatement.’;

(f) point CAT.OP.NMPA.110 is deleted;

(g) point CAT.OP.NMPA.135 is deleted;

(h) point CAT.OP.NMPA.140 is replaced by the following:

‘CAT.OP.NMPA.140 Smoking on board

No person shall be allowed to smoke on board a sailplane.’;

(i) point CAT.OP.NMPA.165 is deleted;

(j) point CAT.OP.NMPA.180 is deleted;

(k) in Subpart C, Section 5 is deleted;

(l) in Subpart D, Section 4 is deleted;

(5) Annex VII (Part-NCO) is amended as follows:

(a) point NCO.GEN.102 is amended as follows:

(i) the heading is replaced by the following:

‘NCO.GEN.102 Touring motor gliders and powered sailplanes’;

(ii) point (d) is deleted;

- (b) in point NCO.GEN.103, point (a) is replaced by the following:
'(a) start and end at the same aerodrome or operating site, except for sailplanes;'
- (c) point NCO.GEN.105 is amended as follows:
- (i) in point (a)(4), points (iii) and (iv) are replaced by the following:
- '(iii) instruments and equipment required for the execution of that flight are installed in the aircraft and are operative, unless operation with inoperative equipment is permitted by the minimum equipment list (MEL) or equivalent document, if applicable, as provided for in points NCO.IDE.A.105, NCO.IDE.H.105 or NCO.IDE.S.105;
- (iv) the mass of the aircraft and the centre of gravity location are such that the flight can be conducted within limits prescribed in the airworthiness documentation;'
- (ii) in point (f), point (1) is replaced by the following:
'(1) keep his/her safety belt fastened while at his/her station; and';
- (d) point NCO.GEN.106 is deleted;
- (e) in point NCO.GEN.135, point (c) is replaced by the following:
'(c) Notwithstanding point (a), on flights with sailplanes, excluding touring motor gliders (TMGs), the documents and information referred to in points (a)(2) to (a)(8) and points (a)(11), (a)(12) and (a)(13) may be carried in the retrieve vehicle.';
- (f) point NCO.OP.121 is deleted;
- (g) point NCO.OP.127 is deleted;
- (h) point NCO.OP.150 is replaced by the following:

'NCO.OP.150 Carriage of passengers

The pilot-in-command shall ensure that, prior to and during taxiing, take-off and landing, and whenever deemed necessary in the interest of safety, each passenger on board occupies a seat or berth and has his/her safety belt or restraint device properly secured.';

- (i) point NCO.OP.156 is replaced by the following:

'NCO.OP.156 Smoking on board — sailplanes

No person shall be allowed to smoke on board a sailplane.';

- (j) point NCO.OP.176 is deleted;
- (k) point NCO.OP.185 is replaced by the following:

'NCO.OP.185 In-flight fuel management

The pilot-in-command shall check at regular intervals that the amount of usable fuel remaining in flight is not less than the fuel required to proceed to a weather-permissible aerodrome or operating site and the planned reserve fuel as required by points NCO.OP.125 or NCO.OP.126.';

- (l) point NCO.OP.215 is deleted;
- (m) in point NCO.POL.100, point (a) is replaced by the following:
'(a) During any phase of operation, the loading, the mass and the centre of gravity (CG) position of the aircraft shall comply with any limitation specified in the AFM or equivalent document.';

- (n) point NCO.POL.105 is replaced by the following:

'NCO.POL.105 Weighing

- (a) The operator shall ensure that the mass and the CG of the aircraft have been established by actual weighing prior to the initial entry into service of the aircraft. The accumulated effects of modifications and repairs on the mass and balance shall be accounted for and properly documented. Such information shall be made available to the pilot-in-command. The aircraft shall be reweighed if the effect of modifications on the mass and balance is not accurately known.
- (b) The weighing shall be accomplished:
- (1) for aeroplanes and helicopters, by the manufacturer of the aircraft or by an approved maintenance organisation; and
 - (2) for sailplanes, by the manufacturer of the aircraft or in accordance with Annex I to Regulation (EU) No 1321/2014.;
- (o) in Subpart D, Section 4 is deleted;
- (p) in point NCO.SPEC.115, point (b) is replaced by the following:
- '(b) During critical phases of the flight or whenever deemed necessary by the pilot-in-command in the interest of safety, the crew member shall be restrained at his/her assigned station, unless otherwise specified in the checklist.:'
- (q) in NCO.SPEC.120, point (b) is replaced by the following:
- '(b) During critical phases of the flight or whenever deemed necessary by the pilot-in-command in the interest of safety, the task specialist shall be restrained at his/her assigned station, unless otherwise specified in the checklist.:'
- (6) Annex VIII is amended as follows:
- (a) point SPO.GEN.102 is amended as follows:
- (i) the heading is replaced by the following:
'SPO.GEN.102 Touring motor gliders and powered sailplanes';
 - (ii) point (d) is deleted;
- (b) in point SPO.GEN.105, point (b) is replaced by the following:
- '(b) During critical phases of the flight or whenever deemed necessary by the pilot-in-command in the interest of safety, the crew member shall be restrained at his/her assigned station, unless otherwise specified in the SOP.:'
- (c) in point SPO.GEN.106, point (b) is replaced by the following:
- '(b) During critical phases of the flight or whenever deemed necessary by the pilot-in-command in the interest of safety, the task specialist shall be restrained at his/her assigned station, unless otherwise specified in the SOP.:'
- (d) in point SPO.GEN.107(a)(4), points (iii) and (iv) are replaced by the following:
- '(iii) instruments and equipment required for the execution of that flight are installed in the aircraft and are operative, unless operation with inoperative equipment is permitted by the minimum equipment list (MEL) or equivalent document, if applicable, as required in points SPO.IDE.A.105, SPO.IDE.H.105 or SPO.IDE.S.105;
 - (iv) the mass of the aircraft and the centre of gravity location are such that the flight can be conducted within the limits prescribed in the airworthiness documentation.:'

- (e) point SPO.GEN.108 is deleted;
 - (f) in point SPO.GEN.140, point (c) is replaced by the following:
 - '(c) Notwithstanding point (a), on flights with sailplanes, excluding touring motor gliders (TMGs), the documents and information in points (a)(1) to (a)(10) and points (a)(13) to (a)(19) may be carried in the retrieve vehicle.';
 - (g) point SPO.OP.121 is deleted;
 - (h) point SPO.OP.132 is deleted;
 - (i) point SPO.OP.160 is replaced by the following:

'SPO.OP.160 Use of headset

Each flight crew member required to be on duty in the flight crew compartment shall wear a headset with boom microphone or equivalent and use it as the primary device to communicate with ATS, other crew members and task specialists.';
 - (j) point SPO.OP.181 is deleted;
 - (k) point SPO.OP.225 is deleted;
 - (l) in point SPO.POL.100, point (a) is replaced by the following:
 - '(a) During any phase of operation, the loading, the mass and the centre of gravity (CG) position of the aircraft shall comply with any limitation specified in the appropriate manual.';
 - (m) point SPO.POL.105 is replaced by the following:

'SPO.POL.105 Mass and balance

 - (a) The operator shall ensure that the mass and the CG of the aircraft have been established by actual weighing prior to the initial entry into service of the aircraft. The accumulated effects of modifications and repairs on the mass and balance shall be accounted for and properly documented. Such information shall be made available to the pilot-in-command. The aircraft shall be reweighed if the effect of modifications on the mass and balance is not accurately known.
 - (b) The weighing shall be accomplished:
 - (1) for aeroplanes and helicopters, by the manufacturer of the aircraft or by an approved maintenance organisation; and
 - (2) for sailplanes, by the manufacturer of the aircraft or in accordance with Annex I to Regulation (EU) No 1321/2014.';
 - (n) in Subpart D, Section 4 is deleted;
 - (o) point SPO.SPEC.PAR.120 is deleted.
-