



This document is scheduled to be published in the Federal Register on 12/10/2015 and available online at <http://federalregister.gov/a/2015-31200>, and on [FDsys.gov](http://FDsys.gov)

[Billing Code: 4710-06]

## DEPARTMENT OF STATE

### 22 CFR Part 102

[Public Notice: 9365]

RIN: 1400-AD55 **Repeal of Civil Aviation Regulations**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Executive Order 13563 of January 18, 2011, which addresses agency review of existing regulations, including those that may be outmoded or ineffective, the Department of State is repealing our regulations on civil aviation. These regulations, which relate to civil aircraft accidents abroad and were promulgated in 1957, are outdated and duplicative of other authorities, including subsequent statutes, regulations, and Department of State guidance, that specify detailed, modern, comprehensive, and effective procedures for dealing with civil aircraft disasters abroad.

**DATES:** This rule is effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Daniel Klimow, Attorney Adviser, Office of Legal Affairs, Overseas Citizen Services, U.S. Department of State, 2201 C Street NW, SA-17, Washington, DC, 20520, (202) 485-6224, klimowda1@state.gov.

**SUPPLEMENTARY INFORMATION:** This rule removes 22 CFR part 102, which relates to consular responsibilities regarding an aircraft accident abroad involving U.S. citizens and property. In particular, subpart A of part 102 addresses reporting, rendering assistance, safeguarding wreckage, salvage of diplomatic pouches, protective services for survivors,

disposition of remains, preservation of property, limitations on expenditure of funds, and protection of U.S. interests in the case of civil aviation disasters. Subpart B addresses the Department of State's responsibility to report to the President on public comments related to decisions of the now-dissolved Civil Aeronautics Board. The Department of State is repealing part 102 because it is outdated and duplicative of other federal laws, regulations, and guidelines that provide modern, comprehensive, and detailed instructions and information for consular officers dealing with civil aviation disasters abroad involving U.S. citizens, as outlined below.

The Aviation Security Improvement Act of 1990 (AVA), 22 U.S.C. 5501 et seq., was enacted to improve the response of the Department of State and missions abroad to aircraft disasters abroad in which U.S. citizens are killed. The AVA mandates a series of detailed responsibilities pertaining to the treatment of victims and their families following an aviation disaster abroad. For example:

- 22 U.S.C. 5501(b)(1)(C) directs the Departments of State and Transportation to negotiate agreements to achieve improved availability of passenger manifest information;
- 22 U.S.C. 5503 addresses notification of families of victims and sets a policy of the Department of State, pursuant to 22 U.S.C. 2715, to directly and promptly notify the families of victims of aviation disasters abroad concerning U.S. citizens directly affected by such a disaster, including timely written notice, notwithstanding notification by any other person;
- 22 U.S.C. 5504 provides that, if possible, in the event of an aviation disaster directly involving U.S. citizens abroad, the Department of State will assign a specific individual and an alternate as the Department of State liaisons for the family of each

such U.S. citizen affected, and establish a toll-free communications system to facilitate inquiries concerning the effect of any disaster abroad on U.S. citizens residing or traveling abroad;

- 22 U.S.C. 5505 addresses disaster management training for Department of State personnel;
- 22 U.S.C. 5506 addresses Department of State responsibilities and procedures at international disaster sites and provides, among other items, that not less than one senior officer from the Bureau of Consular Affairs of the Department of State shall be dispatched to the site of an international disaster involving significant numbers of U.S. citizens abroad. It also requires the Department of State to promulgate procedures for deployment of crisis response teams to provide on-site assistance to families who may visit the site and to act as an ombudsman in matters involving the foreign local government authorities and social service agencies. Crisis teams may include public affairs, forensic, and bereavement experts, and are to be sent to the site of any international disaster involving U.S. citizens abroad to augment in-country embassy and consulate staff; and
- 22 U.S.C. 5507 addresses recovery and disposition of remains and personal effects, and identifies a Department of State policy to liaise with foreign governments and persons and U.S. air carriers concerning arrangements for the preparation and transport of the remains of U.S. citizens who die abroad, as well as the disposition of their personal effects.

In addition, the Department of State updated and republished the regulations at 22 CFR part 72, entitled Deaths and Estates, in 2007, which provide detailed guidance for consular officials regarding their consular authorities and responsibilities in cases of deaths of U.S. nationals abroad. The regulations apply to deaths that occur in the course of an aircraft disaster, and further address consular reports of death abroad, circumstances and responsibilities for serving as provisional conservator of a deceased U.S. citizen's estate, disposition of remains, taking physical possession of specified personal effects, release of the deceased's personal estate to the estate's legal representative, and disposition of real estate, among other issues. 22 CFR 72.21 and 72.7 impose restrictions on the expenditure of funds and the incurring of financial obligations in connection with deaths and estates of U.S. citizens abroad. 22 CFR 71.6 provides that Foreign Service Officers shall not expend the funds nor pledge the credit of the U.S. government to aid distressed U.S. citizens except as authorized by the Department of State. Deaths in private aviation disasters involving U.S. citizens and their property abroad as well as deaths in aircraft carriers are subject to 22 CFR part 72 titled "Reporting Deaths of United States Nationals."

Further, the Department of State has adopted detailed, comprehensive guidance in volume seven of the Foreign Affairs Manual (FAM), chapter 1800, on coordinating and managing the federal response to aviation disasters involving U.S. citizens abroad. Specific instructions, operational frameworks, and resources to guide consular officers' responses to aircraft disasters abroad involving U.S. citizens are detailed in 7 FAM 1800 on Consular Crisis Management; 7 FAM 1830 on Aviation and Other Transportation Disasters; 7 FAM 1880 entitled At the Focal Point of a Disaster; and attached appendices, in particular Appendix 7 FAM Exhibit 1830(A), Checklist of Post's Responsibilities in an Aviation Crisis. Additionally 12

FAM, in particular 12 FAM 100 and 500, provide detailed guidance for U.S. government personnel on safeguarding diplomatic pouch shipments generally, including shipments transported by aircraft.

There are other pertinent legal authorities, including the Foreign Air Carrier Family Support Act of 1997, Public Law 105-148, which require foreign air carriers to provide the National Transportation Safety Board (NTSB) with a plan addressing the needs of the families of passengers on foreign air carriers involved in aviation disasters; the 1944 Convention on International Civil Aviation (the Chicago Convention), to which the United States is a party and which addresses, among other items, aircraft disaster investigations; and 14 CFR part 243 on passenger manifests.

Subpart B of part 102 established procedures for the receipt by the Department of State of comments from private parties on possible recommendations by the Department of State to the President on decisions of the Civil Aeronautics Board submitted for the President's approval under section 801 of the Federal Aviation Act of 1958, which relates to overseas and international air transportation. This responsibility is now with the Department of Transportation. See 49 U.S.C. 41307.

These authorities render 22 CFR part 102 obsolete. It is therefore removed.

## **REGULATORY ANALYSIS**

### **Administrative Procedure Act**

This action is being taken as a final rule, with an immediate effective date, pursuant to the “good cause” provision of 5 U.S.C. 553(b). It is the position of the Department of State that

notice and comment are not necessary in light of the fact that 22 CFR part 102, repealed by this rulemaking, is obsolete and duplicative of other authorities.

**Regulatory Flexibility Act**

It is hereby certified that the repeal of these regulations will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by state, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

**Executive Orders 12866 and 13563**

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this regulation justify any costs. The Department of State does not consider this rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order. The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

**Federalism**

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities

among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

**Civil Justice Reform**

The Department has reviewed the regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

**Consultations with Tribal Governments**

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

**Paperwork Reduction Act**

This rule does not impose or revise any information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 102

Aircraft, Foreign Service.

Accordingly, under the authority of 22 U.S.C. 2651a, the Department of State amends 22 CFR chapter I, subchapter K, by removing part 102.

---

December 1, 2015

---

David T. Donahue  
Principal Deputy Assistant Secretary

Bureau of Consular Affairs

[FR Doc. 2015-31200 Filed: 12/9/2015 8:45 am; Publication Date: 12/10/2015]