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CIVIL AVIATION AUTHORITY ACT, 2009
(Act No. 10 of 2009)

CIVIL AVIATION AUTHORITY (AIR NAVIGATION SERVICES) REGULATIONS,
2013
(Under section 104)

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PART I
PRELIMINARY

Title

1. These Regulations may be cited as the Civil Aviation Authority (Air Navigation Services) Regulations, 2013, and shall come into force on the date of publication in the Gazette.

Interpretation.

2. In these Regulations unless the context otherwise requires, words or expressions used in the Act have the same meaning as in these Regulations, and-

“accident” means an occurrence associated with the operation of an aircraft which takes place between the time any person boards an aircraft with the intention of flying in that aircraft until the time that person disembarks and-

(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;

“accuracy” means a degree of conformance between the estimated or measured value and the true value;

“Act” means Civil Aviation Authority Act, 2009;

“aeronautical data” means a representation of aeronautical facts, concepts or instructions in a formalized manner suitable for communication, interpretation or processing;

“aeronautical information” means information resulting from the assembly, analysis and formatting of aeronautical data;

“aeronautical information circular (AIC)” means a notice containing information that does not qualify for the origination of a NOTAM or for inclusion in the AIP, but which relates to flight safety, air navigation, technical, administrative or legislative matters;

“aeronautical information service (AIS)” means a service established within the defined area of coverage responsible for the provision of aeronautical information or data necessary for the safety, regularity and efficiency of air navigation;

“AIP amendment” means permanent change to information contained in the AIP;

“AIP supplement” means temporary changes to the information contained in the AIP which are published by means of special pages;

“AIRAC” an acronym means, aeronautical information regulation and control signifying a system aimed at advance notification based on common effective dates of circumstances that necessitate significant changes in operating practices;

“assemble” means a process of merging data from multiple sources into a database and establishing a baseline for subsequent processing;

“aerodrome” means a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“aeronautical fixed service (AFS)” means a telecommunication service between specified fixed points provided primarily for the safety of air navigation and for the regular, efficient and economical operation of air services;

“aeronautical information publication (AIP)” means a publication issued by or with the authority of a State and containing aeronautical information of a lasting character essential to air navigation;

“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;

“air navigation services” includes air traffic management, communication, navigation and surveillance, meteorological services for air navigation, search and rescue and aeronautical information services;

“air navigation services facility” means any facility used, available for use, or designed for use in aid of navigation of aircraft, including airports, landing fields, any structures, mechanisms, lights, beacons, marks, communicating systems, or other instruments or devices used or useful as

an aid to the safe taking off, navigation, and landing of aircraft and any combination of such facilities;

“air navigation services provider” means an independent entity established for the purpose of operating and managing air navigation services and empowered to manage and use the revenues generated to cover its costs;

“air traffic” means all aircraft in flight or operating on the manoeuvring area of an aerodrome;

“air traffic service” means a generic term meaning variously, flight information service, alerting service, air traffic control service (area control service, approach control service or aerodrome control service);

“air traffic control service” means a service provided for the purpose of preventing collisions between aircraft and on the manoeuvring area between aircraft and obstructions and expediting and maintaining an orderly flow of air traffic;

“Authority” means the Swaziland Civil Aviation Authority;

“authorised person” means a person authorized by the Authority either generally or in relation to a particular case or class of cases and any reference to an authorized person includes reference to the holder for the time being of an office designated by the Authority;

“certificate” means the certificate for the provision of air navigation services issued by the Authority under Part II of these Regulations;

“control area” means a controlled airspace extending upwards from a specified limit above the earth;

“controlled aerodrome” means an aerodrome at which air traffic control service is provided to aerodrome traffic;

“controlled flight means any flight which is subject to an air traffic control clearance;

“control zone” means a controlled airspace extending upwards from the surface of the earth to a specified upper limit;

“cyclic redundancy checks (CRC)” means a mathematical algorithm applied to the digital expression of data that provides a level of assurance against loss or alteration of data;

“data link communications” means a form of communication intended for the exchange of messages via a data link;

“data quality” means a degree or level of confidence that the data provided meets the requirements of the data user in terms of accuracy, resolution and integrity;

“flight crew member” means a licensed crew member charged with duties essential to the operation of an aircraft during a flight duty period;

“flight information centre” means a unit established to provide flight information service and alerting service;

“flight information region” means airspace of defined dimensions within which flight information service and alerting service are provided;

“flight information service” means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights;

“forecast” means a statement of expected meteorological conditions for a specified time or period, and for a specified area or portion of airspace;

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

“integrated aeronautical information package” means a package which consists of the following elements-

- (a) AIP, including amendment service;
- (b) supplements to the AIP;
- (c) NOTAM and PIB;
- (d) AIC; and
- (e) checklists and lists of valid NOTAM;

“integrity aeronautical data” means a degree of assurance that an aeronautical data and its value has not been lost nor altered since the data origination or authorized amendment;

“international NOTAM office” means an office designated for the exchange of NOTAM internationally;

“meteorological office” means an office designated to provide meteorological service for international air navigation;

“NOTAM” means a notice distributed by means of telecommunication containing information concerning the establishment, condition or change in any aeronautical facility, service, procedure or hazard, the timely knowledge of which is essential to personnel concerned with flight operations;

“operator” means a person, organization or enterprise engaged in or offering to engage in an aircraft operation;

“printed communications” means communications which automatically provide a permanent printed record at each terminal of a circuit of all messages which pass over such circuit;

“runway” means a defined rectangular area on a land aerodrome prepared for the landing and take-off of aircraft;

“runway visual range (RVR)” means the range over which the pilot of an aircraft on the centre line of a runway can see the runway surface markings or the lights delineating the runway or identifying its centre line;

“rescue” means an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety;

“search” means an operation normally coordinated by a rescue coordination centre or rescue sub-centre using available personnel and facilities to locate persons in distress;

“search and rescue service” means the performance of distress monitoring, communication, coordination and search and rescue functions, initial medical assistance or medical evacuation through the use of public and private resources, including cooperating aircraft, vessels and other craft and installations;

“traceability” means the ability to trace the history, application or location of that which is under consideration;

“validation” means the confirmation, through the provision of objective evidence, that the requirements for a specific intended use or application have been fulfilled; and

“verification” means the confirmation, through the provision of objective evidence, that specified requirements have been fulfilled.

Application

3. These Regulations shall apply to a person who wants to become, or is, an air navigation service provider but shall not apply to a person providing air navigation services in the course of the duties of that person for the military or any air navigation service provided by the military.

PART II

CERTIFICATION OF AIR NAVIGATION SERVICE PROVIDERS

Requirements for the provision of air navigation services

4. A person shall not provide air navigation services in the designated airspace, aerodromes and portions of the airspace over the high seas that lie within the designated airspace unless-

- (a) the person holds a certificate issued under these Regulations; and

- (b) the services are provided in accordance with the requirements prescribed by the Authority and procedures specified in the Manual of Air Navigation Service Operations (MANSOPs).

Application for certificate

5. A person applying for a certificate shall make the application in the form prescribed by the Authority and the form shall be accompanied by-

- (a) the manual of air navigation service operations (MANSOPs) of the applicant;
- (b) a written statement setting out the services and locations at which the services will be provided; and
- (c) the prescribed fee.

Issuance of certificate

6. (1) The Authority shall, before issuing a certificate, be satisfied that-

- (a) the personnel of the applicant are adequate in number and have the necessary competency and experience to provide the service;
- (b) the MANSOPs prepared and submitted with the application contains all the relevant information;
- (c) the facilities, services and equipment are established in accordance with these Regulations;
- (d) the operating procedures make satisfactory provision for the safety of aircraft;
- (e) an approved safety management system is in place;
- (f) the applicant has approved procedures to meet the requirements of the Civil Aviation Authority (Security) Regulations;
- (g) the applicant has financial capability to provide the service; and
- (h) the applicant has an insurance policy in force in relation to the services provided.

(2) Subject to sub-regulation (1), the Authority may set any other conditions that may be considered necessary.

(3) The issuance of a certificate shall be subject to compliance with these Regulations and any other condition that may be specified or notified by the Authority in accordance with a safety audit and inspection.

(4) The Authority may refuse to grant a certificate to an applicant and where the Authority refuses, it shall notify the applicant, in writing, of the reasons for the refusal, not later than fourteen days after making that decision.

Contents of the certificate

7. A certificate issued under these Regulations shall include among others, the following information-

- (a) the holder's name and physical address of its principal place of business;
- (b) a list of services covered by the holder's certificate; and
- (c) for each air traffic service-
 - (i) the location from which the service will be provided; and
 - (ii) if the service is to be provided within a particular airspace or controlled aerodrome designated to the provider by the Authority.

Validity of a certificate

8. A certificate shall be valid for a period of two years from the date of issue, unless suspended, cancelled or revoked in accordance with these Regulations.

Renewal of certificate

9. (1) A person applying for the renewal of a certificate shall submit an application in a form and pay the fee prescribed by the Authority.

(2) The application shall be submitted to the Authority not less than 60 days before the expiry of the certificate.

(3) The renewal of a certificate shall be subject to compliance with these Regulations and any other conditions that may be specified or notified by the Authority.

Surrender of certificate

10. (1) Subject to sub-regulation (2) and any conditions prescribed by the Authority, a holder of a certificate may surrender the certificate to the Authority at any time or when requested to do so by the Authority.

(2) A holder of a certificate who wishes to surrender the certificate shall give the Authority not less than 180 days notice in writing, before the date on which the certificate is to be surrendered.

(3) Upon expiry of the period in sub-regulation (2), an air navigation service provider shall not provide services unless authorized to do so by the Authority.

Amendment of certificate

11. (1) The Authority may amend a certificate upon-

- (a) application made by a holder of a certificate in the prescribed form; or
- (b) the Authority's initiative, where the Authority considers it necessary.

(2) A holder of a certificate applying to the Authority for amendment of a certificate under sub-regulation (1) shall be required to-

- (a) attach to the application form two copies of proposed amendments in the MANSOPs; and
- (b) pay the prescribed fee.

(3) Where the Authority initiates amendments under sub-regulation (1) the holder of a certificate shall be required to make amendments in the MANSOPs accordingly.

Display of certificate

12. (1) The holder of a certificate shall display the certificate, or a copy of the certificate, in a conspicuous place, generally accessible to the public at the holder's principal place of business.

(2) Where a copy of the certificate is displayed under sub-regulation (1), the holder of the certificate shall produce the original certificate to the Authority for inspection if requested to do so.

Transfer of certificate

13. A certificate issued under these Regulations shall not be transferable.

Suspension and revocation of certificates.

14. (1) The Authority may suspend provisionally, pending further investigation, any certificate issued under these Regulations, if it considers that-

- (a) a relevant provision of the Act or these Regulations, or a condition in the certificate, has not been, or is not being, complied with;
- (b) false or materially incorrect information was given to the Authority in the application for the certificate; or
- (c) it is in the public interest to do so.

(2) The Authority may, upon the completion of an investigation which shows sufficient ground to the Authority's satisfaction, suspend, vary or revoke any certificate issued under these Regulations.

(3) A holder or any person having possession or custody of any certificate which is suspended, revoked or varied under these Regulations shall surrender the certificate to the Authority within 14 days from the date of suspension, revocation or variation.

Register of certificate holders

15. (1) The Authority shall keep and maintain a register showing-

- (a) the name of the holder of the certificate;
- (b) date of issue or renewal of the certificate;
- (c) type of service offered by the holder of the certificate;
- (d) expiry date of the certificate;
- (e) date of revocation or suspension of the certificate, if any;
- (f) physical and postal address of the holder of the certificate; and.
- (g) any other particulars that may be prescribed by the Authority.

(2) Any changes in the particulars recorded under sub-regulation (1) shall be entered in the register by the Authority.

(3) The register shall be a public document and any person may obtain information contained in the register upon payment of the prescribed fee.

PART IV

MANUAL OF AIR NAVIGATION SERVICES OPERATIONS

Requirements for the manual of ANS operations

16. (1) The manual of air navigation services (ANS) operations submitted shall be-

- (a) type written;
- (b) signed by the operator;
- (c) in a format that is easy to revise;
- (d) organized in a manner that facilitates the preparation, review and approval processes; and

- (e) in a system that records the current pages and any amendments, including a page for logging revisions.

(2) A holder of a certificate shall keep at least one approved copy of the manual at the principal place of business.

Contents of the manual of ANS operations

17. (1) A manual of air navigation service operations shall contain all information and instructions necessary to enable the personnel of an air navigation service provider perform their duties and in particular shall include-

- (a) services to be provided;
- (b) personnel requirements and their responsibilities;
- (c) training and performance assessment of staff and how that information is tracked;
- (d) safety management system and quality assurance;
- (e) contingency plans developed for part or total system failure;
- (f) compliance with the Civil Aviation Authority (Security) Regulations as required;
- (g) facilities and equipment and how they are installed and maintained;
- (h) fault and defect reporting;
- (i) maintenance of documents and records;
- (i) search and rescue responsibilities and co-ordination; facility operations and maintenance plan and procedure;
- (j) schedule of the proposed hours of service for the first 12 months of operation;
- (k) a summary of safety factors considered before seeking certification;
- (l) systems and procedures to ensure separation between controlled flights and active special use airspace; and

- (m) any other information requested by the Authority.

Amendment of the manual of ANS operations

18. (1) For the purpose of maintaining the accuracy of the information in MANSOPs, the holder of a certificate shall, whenever necessary, amend the manual.

(2) The Authority may issue a written directive requiring the holder of a certificate to alter or amend the manual.

(3) Notwithstanding sub-regulation (1), the holder of a certificate shall submit the proposed amendment to the Authority for approval before the manual is amended.

PART V
AIR NAVIGATION SERVICES

Air navigation services facilities and standard systems

19. The Authority shall designate a service provider to-

- (a) provide in the designated portion of airspace, facilities for the provision of air navigation services;
- (b) adopt and put into operation the appropriate standard systems of communications procedures, codes, markings, signals, lighting and other operational practices and rules;
- (c) publish aeronautical maps and charts.

Approval of ANS facilities

20. A person shall not install and use air navigation service facilities in the designated airspaces and aerodromes without approval of the Authority.

Safety inspections and audit on ANS facilities

21. (1) The Authority shall carry out safety inspections and audits on air navigation facilities, services, documents and records of an air navigation service provider which may be necessary to determine compliance with these Regulations.

(2) An inspector of the Authority shall have unrestricted access to the facilities, installations, records and documents of an air navigation services and the air navigation meteorological service provider to determine compliance with these regulations.

(3) The safety inspections and audits shall be carried out as prescribed by the Authority.

Production of documents

22. A holder of a certificate shall, if requested by an authorized person, produce any relevant documents under the possession of that holder within seventy-two hours of that request.

ANS contingency plan

23. (1) A holder of a certificate shall develop and maintain contingency plans for implementation in the event of disruption or potential disruption of air navigation services in the airspace for which the holder is responsible.

(2) The holder of a certificate shall liaise with other air navigation service providers in adjacent or contiguous airspaces while developing contingency plans.

(3) The contingency plan shall include-

- (a) the actions to be taken by the certificate holder's personnel responsible for providing the service;
- (b) possible alternative arrangements for providing the service; and
- (c) the arrangements for resuming normal operations for the service.

Alternative designated service provider

24. The Authority may, when it considers it necessary in the public interest, appoint an alternative designated service provider to provide service in respect of a certificate suspended by the Authority for the duration of that suspension.

Designation of Airspace

25. (1) The Authority shall designate portions of the airspace or particular aerodromes for the provision of air traffic services.

(2) The Authority shall designate portions of the airspace or the particular aerodromes as follows-

- (a) flight information region;
- (b) control area;
- (c) control zone;
- (d) controlled aerodromes.

(3) In determining the need for the provision of air traffic services, the Authority shall take into consideration-

- (a) the types of air traffic involved;

- (b) the density of air traffic;
- (c) the meteorological conditions; and
- (d) any other factors which may be relevant.

(4) Upon application by the service provider for air traffic services to be provided, the Authority shall designate the service provider responsible for providing such services.

(5) The Authority shall publish the designation of a particular portion of the airspace in the relevant aeronautical publications.

Provision of air traffic services

26. The holder of a certificate shall-

- (a) apply for the portions of the airspace and the aerodromes which shall be provided with air traffic services; and
- (b) provide air traffic services that are prescribed by the Authority.

Coordination in air traffic services

27. An air traffic service provider shall, in carrying out its objectives, establish procedures for coordinating with air operators, military authorities, meteorological service providers and aeronautical information service providers by-

- (a) making available to the air operators information to enable them meet their obligations;
- (b) coordinating with the military authorities responsible for activities that may affect civil flights;
- (c) providing the most up to date meteorological information for aircraft operations;
- (d) providing timely and up to date information to meet the need for in-flight information.
- (e) exchanging and coordinating aeronautical information relating to the safety of air navigation between adjacent air traffic service units.

Responsibility for control

28. A holder of a certificate shall establish procedures to ensure responsibility of control of an aircraft and transfer of that responsibility as prescribed by the Authority.

Communication requirements

29. A holder of a certificate shall establish communication requirements as prescribed by the Authority.

Air Traffic Incidents

30. A holder of a certificate shall establish procedures for the notification, investigation, and reporting of air traffic incidents, which shall be made in a prescribed incident report form.

Aircraft in distress

31. A holder of a certificate shall-

- (a) make provision for assistance to aircraft in distress in the designated portion of airspace;
- (b) collaborate in coordinated measures when undertaking search and rescue for aircraft in distress.

Automatic recording of ATS data and communications

32. (1) A holder of a certificate shall-

- (a) make provision for the automatic recording of air traffic service data and communications; and
- (b) retain the recorded air traffic service data and communications for a period of at least thirty days.

(2) Subject to sub-regulation (1), the recorded air traffic service data and communications, if pertinent to accident and incident investigations, shall be retained for longer periods until it is evident that it is no longer required.

Safety management system

33. A holder of a certificate shall have a safety management system that complies with the requirements prescribed by the Authority.

Installation, operation and maintenance of CNS systems.

34. (1) The holder of a certificate shall ensure that the communication, navigation and surveillance systems are installed, operated, maintained, available and reliable in accordance with the requirements prescribed by the Authority.

(2) A person shall not perform a function related to the installation, operation or maintenance of any communication, navigation and surveillance system unless-

- (a) that person has successfully completed training in the performance of that function; and

- (b) the holder of a certificate is satisfied that the technical person is competent in performing that function.

Facility approval and flight inspection

35. (1) The Authority shall approve all the communication, navigation and surveillance facilities before their installation, use, decommissioning, upgrading or relocation in the designated airspace and aerodromes.

(2) A holder of a certificate shall ensure that the radio navigation aids prescribed by the Authority are available for use by aircraft engaged in air navigation and are subjected to periodic ground and flight inspection.

Provision of aeronautical information services

36. (1) A holder of a certificate shall-

- (a) receive, originate, collate, assemble, edit, format, publish, store and distribute aeronautical information concerning the designated airspace;
- (b) publish the aeronautical information as an integrated aeronautical information package;
- (c) ensure that the aeronautical information provided is adequate, of required quality and timely;
- (d) make available to aeronautical information services of other States any information necessary for the safety, regularity or efficiency of air navigation; and
- (e) designate the office to which all elements of integrated aeronautical information package originated by other states is addressed.

(2) The holder of a certificate shall, on request by other agencies provide, all information relating to the designated airspace.

(3) The conditions, requirements, rules, procedures and standards for the publication of aeronautical information in the-

- (a) aeronautical information circular;
- (b) aeronautical information publication and its amendments;
- (c) aeronautical information publication supplements;
- (d) notice to airmen (NOTAM),

as the case may be, shall be in accordance with the requirements of these Regulations.

(4) The aeronautical information publication amendments and supplements issued under the Aeronautical Information Regulation and Control (AIRAC) system shall be as prescribed by the Authority.

Production of aeronautical charts

37. (1) A holder of a certificate shall ensure the availability of the required charts containing accurate and adequate information including information relevant to the phase of flight.

(2) The aeronautical charts produced shall be maintained in a form prescribed by the Authority.

(3) The units of measurements used shall be as prescribed by the Authority.

Telecommunication requirements

38. (1) Each international NOTAM office shall be connected through the aeronautical fixed service (AFS) within the airspace for which it provides service, to-

(a) area control centres and flight information centres;

(b) aerodrome or heliport at which an information service is provided with pre-flight briefing and post-flight information.

(2) The connections shall provide for printed communications.

(3) AFS shall comprise the systems and applications that are used for ground-ground communications in the international telecommunication service in accordance with the requirements of these regulations.

(4) For exchange of messages over the teleprinter circuits, the signals of the appropriate international telegraphic alphabet permitted shall be in accordance with the requirements of these regulations.

(5) For the purpose of sub regulation (3) “ground-ground” means point to point or point to multiple points.

Quality system

39. (1) A holder of a certificate shall-

(a) establish and maintain a quality system of procedures, processes and resources in its aeronautical information services to implement quality management at each function stage; and

(b) receive, originate, collate, assemble, edit, format, publish, store and distribute aeronautical information and data concerning the designated

airspace responsible for air traffic services in accordance with its quality system.

- (2) A quality system established under sub-regulation (1) shall take ensure that-
- (a) personnel are trained to acquire the skills, knowledge and competencies required to perform those functions;
 - (b) procedures exist for traceability to its origin of data anomalies or errors, detected and corrected;
 - (c) procedures exist for assurance and confidence that distributed aeronautical information or data satisfies stated requirements for data quality, traceability and timeliness;
 - (d) publication resolution of aeronautical data shall be as prescribed by the Authority;
 - (e) confidence level and integrity are as prescribed by the Authority;
 - (f) the procedures for protection of electronic aeronautical data stored or in transit is monitored by the cyclic redundancy check (CRC) to assure integrity of data;
 - (g) material issued as part of the integrated aeronautical information package is checked and coordinated with the responsible services before it is published;
 - (h) procedures exist for validation and verification to ensure quality requirements and traceability of aeronautical data; and
 - (i) procedures exist for the audit and remedial action for the compliance of the quality system.

Provision of search and rescue service

40. (1) The Authority shall designate an agency to coordinate and direct the prompt provision of search and rescue services within the designated airspace on a 24 hour basis.

(2) The designated service provider shall have in place a search and rescue manual approved by the Authority.

Provision of meteorological services for air navigation

41. (1) The Authority shall designate a service provider for the provision of meteorological services for air navigation.

(2) The service provider designated under sub-regulation (1) shall provide the following services in support of aviation-

- (a) make routine meteorological observations at regular intervals;
- (b) make special weather observations whenever specified changes occur in respect of surface wind, visibility, runway visual range, present weather, cloud and air temperature;
- (c) prepare and obtain significant weather forecasts information and maintain contact with regional specialized meteorological centres for the exchange of information on volcanic ash and tropical cyclones activity;
- (d) provide briefing, consultation and flight documentation to flight crew members and other flight operations personnel;
- (e) perform weather watch and monitoring, including the ability to detect and forecast hazards relevant to the aviation community, as prescribed by the Authority;
- (f) derive forecast and warning products to the requirements prescribed by the Authority for the pilot, air traffic service and air operators;
- (g) maintain a record of aeronautical climatologically information for supply to pilot, air traffic service and air operators and any other persons on request;
- (h) exchange aeronautical meteorological information with other aeronautical meteorological offices; and
- (i) supply information received concerning the accidental release of radioactive materials into the atmosphere within its area of responsibility to the air traffic service providers for dissemination.

(3) The conditions, rules, requirements, procedures or standards of the designation shall be prescribed by the Authority.

(4) A person shall not provide meteorological information service at an aerodrome or a portion of airspace except under conditions prescribed by the Authority.

Construction of flight procedures

42. A holder of a certificate shall develop visual and instrument flight procedures to be used by aircraft operating in the designated airspace and aerodrome as prescribed by the Authority.

Approval as procedure designer for air navigation services.

43. A person shall not design or publish visual and instrument flight procedures for use in the designated airspace and aerodromes unless that person has completed approved training in the construction of visual and instrument flight procedures.

Responsibilities of a holder of certificate.

44. A holder of a certificate authorized under regulation 42 shall carry out design work, review or amend visual and instrument flight procedures subject to any conditions specified in the certificate.

**PART V
EXEMPTIONS**

Requirements for application

45. (1) A person may apply to the Authority for exemption from any application of these Regulations.

(2) Unless in case of emergency, a person requiring exemption from any of these regulations shall make an application to the Authority at least sixty days from the proposed effective date, giving information as to-

- (a) name and contact address including electronic mail and fax if any;
- (b) telephone number;
- (c) a citation of the specific requirement from which the applicant seeks exemption;
- (d) a description of the type of operations to be conducted under the proposed exemption;
- (e) the proposed duration of the exemption;
- (f) an explanation of how the exemption would be in the public interest, that is, benefit the public as a whole;
- (g) a detailed description of the alternative means by which the applicant will ensure a level of safety equivalent to that established by the regulation in question;
- (h) a review and discussion of any known safety concerns with the requirement, including information about any relevant accidents or incidents of which the applicant is aware; and
- (i) if the applicant handles international operations and seeks to operate under the proposed exemption, an indication whether the exemption would contravene any provision of the standards and recommended practices of the International Civil Aviation Organization (ICAO).

(3) Where the applicant seeks emergency processing, the application shall contain supporting facts on the nature of the emergency.

(4) The Authority may deny, in writing, an application if it finds that the applicant has not justified the failure to apply for an exemption in time.

(5) The application for exemption shall be accompanied by the prescribed fee.

Review and publication

46. (1) The Authority shall review an application for accuracy and compliance with the requirements of Regulation 45 and if it appears satisfactory, it shall publish a detailed summary of the application for comments, within a prescribed time, in either-

- (a) the Gazette;
- (b) an aeronautical information circular; or
- (c) a daily newspaper with wide circulation.

(2) Where application requirements are not fully complied with, the Authority shall request the applicant in writing, to comply prior to publication or making a decision under sub-regulation (3).

(3) If the request is for emergency relief, the Authority shall publish the decision as soon as possible after processing the application.

Evaluation of the request

47. (1) Where the application requirements are satisfied, the Authority shall conduct an evaluation of the request to include-

- (a) determination of whether an exemption would be in the public interest;
- (b) a determination, after a technical evaluation of whether the applicant's proposal would provide a level of safety equivalent to that established by the regulation, although where the Authority decides that a technical evaluation of the request would impose a significant burden on the Authority's technical resources, the Authority may deny the exemption on that basis;
- (c) a determination of whether a grant of the exemption would contravene these Regulations; and
- (d) a recommendation based on the preceding elements, of whether the request should be granted or denied, and of any conditions or limitations that should be part of the exemption.

(2) The Authority shall notify the applicant by letter and publish a detailed summary of its evaluation and decision to grant or deny the request.

(3) The summary referred to in sub-regulation (2) shall specify the duration of the exemption and any conditions or limitations of the exemption.

(4) If the exemption affects a significant population of the aviation community of the State the Authority shall publish the summary in an aeronautical information circular.

PART VI

GENERAL PROVISIONS

Drug and alcohol testing and reporting.

48. (1) Any person who performs any function prescribed by these Regulations directly or by contract under the provisions of these Regulations may be tested for drug or alcohol usage.

(2) Where the Authority or any person authorized by the Authority wishes to test a person referred to in sub regulation (1) for the percentage by weight of alcohol in the blood, or for the presence of narcotic drugs, marijuana, or depressant or stimulant drugs or substances in the body, and that person-

- (a) refuses to submit to the test; or
- (b) having submitted to the test, refuses to authorize the release of the test results,

the Authority may suspend or revoke the certificate of the holder that employs that person.

(3) In determining whether to suspend or revoke the certificate of the holder, the Authority shall consider all relevant factors, including-

- (a) whether the holder had knowledge of the drug or alcohol use;
- (b) whether the holder encouraged the person to refuse the drug or alcohol test;
- (c) whether the holder dismissed the person who failed or refused the drug test; or
- (d) the position that person held with the holder.

(4) The Authority shall require the holder to show cause why the certificate should not be suspended, revoked or cancelled.

(5) A person who is convicted, whether in or outside the designated airspace, for any offence relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances, shall be dismissed from the employment by the holder of certificate.

(6) The Authority may suspend or revoke the certificate of a holder that refuses to dismiss from its employment a person convicted under sub-regulation (3).

Change of name.

49. (1) A holder of a certificate issued under these Regulations may apply to change the name on the certificate.

(2) The holder shall include with the request the current certificate and a court order or other legal document verifying the name change.

(3) The Authority may change the licence, certificate or authorization and issue a replacement of the licence, certificate or authorization.

(4) The Authority shall return to the holder with the appropriate endorsement, the original documents specified in sub-regulation 2 and retain copies of the documents.

Change of address.

50. (1) A holder of a certificate issued under these Regulations shall notify the Authority of a change in the physical and mailing address within fourteen days.

(2) A person who does not notify the Authority of a change in physical address within the period specified in sub-regulation (1) shall not exercise the privileges of the certificate.

Replacement of documents.

51. A person may apply to the Authority in the prescribed form for replacement of documents issued under these Regulations if the documents are lost or destroyed.

Use and retention of documents and records.

52. (1) A person shall not-
- (a) use any certificate or exemption issued or required by or under these Regulations which has been forged, altered, revoked, or suspended, or to which that person is not entitled; or
 - (b) forge or alter any certificate or exemption issued or required by or under these Regulations; or
 - (c) lend any certificate or exemption issued or required by or under these Regulations to any other person; or
 - (d) make any false representation for the purpose of procuring for that person or any other person the grant, issue, renewal or variation of any certificate or exemption;
 - (e) mutilate, alter, render illegible or destroy any records or any entry made in the records, required by or under these Regulations to be maintained, or

knowingly make, or procure or assist in the making of, any false entry in that record, or wilfully omit to make a material entry in such record.

(3) All records required to be maintained by or under these Regulations shall be recorded in a permanent and indelible material.

(4) A person shall not issue any certificate or exemption under these Regulations unless that person is authorized to do so by the Authority.

(5) A person shall not issue any certificate under sub-regulation (4) unless that person is satisfied that all statements in the certificate are correct, and that the applicant is qualified to hold that certificate.

Reports of violation.

53. (1) Any person who knows of a contravention of the Act, any amendment to the Act or any Regulations, rules, or orders issued under the Act shall report the contravention to the Authority.

(2) The Authority may determine the nature and type of any additional investigation or enforcement action that need to be taken.

Enforcement of directions

54. Any person who fails to comply with any direction given to that person by the Authority or by any authorized person under any provision of these Regulations shall be deemed for the purposes of these Regulations to have contravened that provision.

Aeronautical fees

55. (1) The Authority shall notify in writing the fees to be charged in connection with the issue, renewal, extension or variation of any certificate, test, inspection or investigation required by or for the purpose of these Regulations, any orders, notices or proclamations made under these Regulations.

(2) Upon an application being made in connection with which any fee is chargeable in accordance with sub-regulation (1), the applicant shall be required, before the application is accepted, to pay the fee so chargeable.

(3) If, after payment is made, the application is withdrawn by the applicant or otherwise ceases to have effect or is refused, the Authority shall not refund the payment made.

**PART VII
OFFENCES AND PENALTIES**

Contravention of Regulations

56. A person who contravenes any provision of these Regulations may have the certificate or exemption revoked or suspended.

Penalties

57. (1) A person who contravenes any provision of these Regulations, orders, notices or proclamations made under these Regulations shall be liable, on conviction, to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a period not exceeding five years or to both and, in the case of a continuing contravention, each day of the contravention shall constitute a separate offence.

(3) If it is proved that an act or omission of any person, which would otherwise have been a contravention by that person of a provision of these Regulations, orders, notices or proclamations made under these regulations was due to any cause not avoidable by the exercise of reasonable care by that person, the act or omission shall be deemed not to be a contravention by that person of that provision.

Appeal

58. A person aggrieved by any order made under these Regulations may, within twenty- one days of that order being made, appeal to the High Court against that order.

SCHEDULE (Regulation 56)

<i>Regulation</i>	<i>Title</i>
4	Requirements for the provision of air navigation services
12	Display of certificate
13	Transfer of certificate
14(3)	Suspension, cancellation and revocation of certificate
18(2)	Amendment of the manual of air navigation services operations
20	Approval of air navigation services facilities
21(2)	Safety inspection and audit on air navigation services
22	Production of documents
23	Air navigation services contingency plan
28	Responsibility for control
29	Communication requirements
30	Air traffic incidents
31	Aircraft in distress
32	Automatic recording of surveillance data and communications
33	Safety management system
34	Installation, operation and maintenance of communication, navigation and surveillance systems
35	Facility approval and flight inspection
36	Provision of aeronautical information services
37	Production of aeronautical charts
38	Telecommunication requirements
39	Quality system
40	Provision of search and rescue service
41	Provision of meteorological service for air navigation
42	Construction of flight procedures
43	Approval as a procedures designer for air navigation services.

48	Drug and alcohol testing and reporting.
49	Change of name.
50	Change of address.
52	Use and retention of documents and records.
54	Enforcement of directions

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