

CIVIL AVIATION ACT
(Cap. 71:01)

CIVIL AVIATION (DANGEROUS GOODS) (AMENDMENT) REGULATIONS, 2022
(Published on 13th June, 2022)

ARRANGEMENT OF REGULATIONS

REGULATION

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IN EXERCISE of the powers conferred on the Minister of Transport and Public works by section 89 of the Civil Aviation Act, the following Regulations are hereby made —

1. These Regulations are the Civil Aviation (Dangerous Goods) (Amendment) Regulations, 2022. Citation

2. The Civil Aviation (Dangerous Goods) Regulations (herein referred to as “the Regulations”) are amended in regulation 2 by — Amendment of regulation 2 of Cap. 71:01 (Sub. Leg.)

(a) substituting for the definition of —

(i) “state of destination”, the following new definition —

“state of destination” means the country in the territory of which the consignment is finally to be unloaded from an aircraft;” and

(ii) “UN number”, the following new definition —

““UN number” means the four-digit number assigned by the United Nations Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals to identify an article or substance or a particular group of articles or substances;”;
and

(b) inserting in their correct alphabetical order, the following new definitions —

“consignment” means one or more packages of dangerous goods accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address;

“crew member” means a person assigned by an operator to duty on an aircraft during a flight duty period;

“exception” means a provision in these Regulations which excludes a specific item of dangerous goods from the requirements normally applicable to that item;

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

“pilot-in-command” means the pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight;

“radioactive material” means a radioactive material as defined under the Radiation Protection Act;

“state of operator” means the state in which the operator’s principal place of business is located or, if there is no such place of business, the operator’s permanent residence;”.

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Amendment of regulation 3 of the Regulations

3. The Regulations are amended by substituting for regulation 3, the following new regulations —

“General application

3. (1) These Regulations shall apply to carriage of dangerous goods where Botswana is a State of origin, State of Transit, State of Overflight or the State of Destination.

(2) The Standards and Recommended Practices of these Regulations shall be applicable to all international operations of civil aircraft.

(3) Where specifically provided for in the Technical Instructions, the Authority may grant an approval, provided that in such instances an overall level of safety in transport which is equivalent to the level of safety provided for in the Technical Instructions is achieved.

(4) In instances —

(a) of extreme urgency;

(b) when other forms of transport are inappropriate; or

(c) when full compliance with the prescribed requirements is contrary to the public interest,

the Authority may grant an exemption from the provisions of the Technical Instructions provided that in such instances every effort shall be made to achieve an overall level of safety in transport which is equivalent to the level of safety provided for in the Technical Instructions.”.

4. Regulation 4 is amended —

Amendment of
regulation 4 of
the Regulations

- (a) in subregulation 1 (b), by substituting for the words “may be” the words “shall be”;
- (b) by substituting for subregulation 2, the following new subregulation —
“(2) Notwithstanding the requirements of subregulation (1), an article or substance —
 - (a) which would otherwise be classed as dangerous goods but which is required to be aboard the aircraft in accordance with the pertinent airworthiness requirements and operating procedures; or
 - (b) which is intended for specialised purposes or carried by crew and is identified in the Technical Instructions,

shall be exempted from the provisions of these Regulations.”;

- (c) by inserting immediately after subregulation (2), the following new subregulations —

“(3) Where an article or a substance intended as replacements for those described in subregulation (2) or which have been removed for replacement are carried on an aircraft, they shall be transported in accordance with the provisions of these Regulations, except as permitted in the Technical Instructions.

(4) A passenger or crew member carrying a specific article and substance shall be exempted from the provisions of these Regulations to the extent specified in the Technical Instructions.

- (5) Each contracting State shall —

- (a) take the necessary measures to achieve compliance with the provisions contained in the Technical Instructions;
- (b) comply with any amendment to the Technical Instructions which may be published during the specified period of applicability of an edition of the Technical Instructions.; and

(6) Any person who contravenes this regulation commits an offence and is liable to a fine not exceeding P5000 000, or imprisonment for a term not exceeding 10 years, or both.”.

5. Regulation 7 is amended —

Amendment of
regulation 7

- (a) in subregulation 1, by inserting immediately after the last sentence therein, the following new sentence —
“Provided that the applicant meets the requirements of these Regulations.”;
- (b) in subregulation (3), by substituting for the word “may” the word “shall”;
and
- (c) in subregulation (4), by substituting for the word “may” the word “shall”.

6. Regulation 8 is amended by substituting for the word “may”, appearing in subregulation (1), the word “shall”.

Amendment of
regulation 8

7. Regulation 9 is amended by substituting for the word “may” the word “shall”.

Amendment of
regulation 9

8. Regulation 10 is amended —

Amendment of
regulation 10

- (a) in subregulation (1), by substituting for the word “may” the word “shall”;
and
- (b) in subregulation (2), by substituting for the word “may” the word “shall”.

- Amendment of regulation 11
- 9.** The Regulations are amended by substituting for regulation 11, the following new regulation —
- “Validation of foreign certificate or approval
11. (1) The Authority shall on application by a foreign operator, validate a foreign certificate or an approval issued in the handling of dangerous goods to be conveyed by air, where the holder of such foreign certificate submits documentary proof that —
- (a) the foreign certificate has been obtained from an appropriate civil aviation Authority; and
 - (b) the dangerous goods transport document complies with the Technical Instructions.
- (2) The Authority of the operator shall take the necessary measures to ensure that when an operator adopts more restrictive requirements than those specified in the Technical Instructions, the notification of such operator variations is made to the International Civil Aviation Organisation (ICAO) for publication in the Technical Instructions.”.
- Amendment of regulation 12
- 10.** Regulation 12 is amended —
- (a) in subregulation (2) by substituting for the word “may” the word “shall”;
 - (b) in subregulation 3 by substituting for the word “may”, appearing in paragraph (b), subparagraph (i), the word “shall”; and
 - (c) in subregulation 3 by substituting for the word “may”, appearing in paragraph (b), subparagraph (ii), the word “shall”.
- Amendment of regulation 14
- 11.** Regulation 14 is amended in subregulation (1) by inserting immediately after paragraph (d), the following new paragraph —
- “(da) an article or substance that has been specifically identified by name or by generic description in the Technical Instructions as being forbidden for transport by air under any circumstances shall not be carried on any aircraft.”.
- Amendment of regulation 15
- 12.** The Regulations are amended by substituting for regulation 15, the following new regulation —
- “Exemption
15. (1) The Minister shall, upon application by an operator or a shipper, and on payment of a fee specified in Schedule 2, exempt the operator or shipper from regulation 14 (1) (a) where —
- (a) there is extreme urgency;
 - (b) other forms of conveyance are inappropriate; or
 - (c) full compliance with this Part will be contrary to the public interest.
- (2) The dangerous goods exempted in regulation 14 shall be forbidden on an aircraft unless —
- (a) exempted by the Minister under these Regulations or;
 - (b) the provisions of the Technical Instructions indicate that they may be transported under an approval granted by the State of Origin.
- (3) The Minister shall exempt an operator or shipper from the provisions of the Technical Instructions where in all instances, the operator or shipper has made every effort to achieve an overall level of safety in transport of the dangerous goods which is equivalent to the level of safety provided for in the Technical Instructions.
- (4) Where the Minister grants an exemption for a period exceeding 90 days, the Authority shall, within 30 days from the date on which the exemption was granted, publish the full particulars of such exemption in the *Gazette*.

(5) For the State of Overflight, if none of the criteria for granting an exemption is relevant, an exemption may be granted based solely on whether it is believed that an equivalent level of safety in air transport has been achieved.”.

13. The Regulations are amended by inserting immediately after regulation 16, the following new regulation —

“Packaging 16A. (1) A package used for the transportation of dangerous goods by air shall —

- (a) be of good quality and shall be constructed and securely closed so as to prevent leakage which might be caused in normal conditions of transport, by changes in temperature, humidity, pressure or by vibration;
- (b) be suitable for the contents, and packaging in direct contact with dangerous goods shall be resistant to any chemical or other action of such goods;
- (c) meet the material and construction specifications in the Technical Instructions; and
- (d) be tested in accordance with the provisions of the Technical Instructions.

(2) A package for which retention of a liquid is a basic function, shall be capable of withstanding, without leaking, the pressure stated in the Technical Instructions.

(3) An inner package shall be packed, secured or cushioned so as to prevent any breakage or leakage and to control their movement within the outer package during normal conditions of air transport.

(4) A package shall not be reused until it has been inspected and cleared from any corrosion or other damage.

(5) Where a package is reused, all necessary measures shall be taken to prevent contamination of subsequent contents.

(6) A package which is unclean and empty and which by the nature of its former contents may present a hazard, shall be tightly closed and treated according to the hazard it constitutes.

(7) A person responsible for packaging dangerous goods for transportation by air shall ensure that no harmful quantity of dangerous substance adheres to the outside of the package.”.

14. The Regulations are amended by inserting immediately after regulation 16A, the following new regulation —

“Labelling and marking 16B. Unless otherwise provided for in the Technical Instructions —

- (a) each package of dangerous goods shall be labelled with the appropriate labels and in accordance with the provisions set out in the Technical Instructions;
- (b) each package of dangerous goods shall be marked with the proper shipping name of its contents; and
- (c) each packaging of dangerous goods manufactured to a specification contained in the Technical Instructions shall be so marked in accordance with the appropriate provisions of those Technical Instructions and no packaging shall be marked with a packaging specification marking unless it meets the appropriate packaging specification contained in the Technical Instructions.”.

Insertion of regulation 16A in the Regulations

Insertion of regulation 16B in the Regulations

Amendment of regulation 18

15. The Regulations are amended by substituting for regulation 18, the following new regulation —

“Separation of dangerous goods 18. (1) A package containing dangerous goods which might react dangerously with other dangerous goods shall not be stowed on an aircraft next to each other or in a position that would allow interaction between them in the event of leakage.

(2) A package of a toxic and infectious substance shall be stowed on an aircraft in accordance with the provisions of the Technical Instructions.

(3) A package of a radioactive material shall be stowed on an aircraft so that it is separated from persons, live animals and undeveloped film, in accordance with the provisions in the Technical Instructions.”.

Insertion of regulation 18A in the Regulations

16. The Regulations are amended by inserting immediately after regulation 18, the following new regulation —

“Securing of dangerous goods 18A. (1) Where dangerous goods are loaded in an aircraft, the operator shall —

(a) protect the dangerous goods from being damaged; and

(b) secure such goods in the aircraft in such a manner that will prevent any movement in flight which would change the orientation of the packages.

(2) An operator shall, where a package contains radioactive materials, adequately secure the radioactive material to ensure that the separation requirements of regulation 18 (3) are met at all times.”.

Insertion of regulation 18B in the Regulations

17. The Regulations are amended by inserting immediately after regulation 18A, the following new regulation —

“Removal of contamination 18B. (1) An operator of an aircraft in which dangerous goods are carried shall ensure that any hazardous contamination found on an aircraft as a result of leakage or damage to dangerous goods is removed without delay.

(2) An aircraft which has been contaminated by radioactive materials shall immediately be taken out of service and not returned to service until the radiation level at any accessible surface and the non-fixed contamination are not more than the values specified in the Technical Instructions.

(3) An operator who contravenes subregulation (1) commits an offence and is liable to a fine not exceeding P5000 000, or imprisonment for a term not exceeding 10 years, or to both.”.

Amendment of regulation 19

18. Regulation 19 is amended —

(a) by substituting for subregulation (1), the following new subregulation —
“(1) An operator of an aircraft in which dangerous goods are to be carried shall provide the pilot-in-command as early as practicable before the departure of the aircraft with written information as specified in the Technical Instructions.”; and

(b) by inserting immediately after subregulation (2) the following new subregulations —

(2A) An operator shall provide —

(a) information in the Operations Manual to enable the flight crew to carry out its responsibilities in regard to the transportation of dangerous goods; and

(b) instructions as to the action to be taken in the event of emergencies involving dangerous goods.

(2B) A shipper and any agent of the shipper shall ensure that before a consignment of dangerous goods is offered to him or her for carriage by air, a person involved in its preparation has received training as specified in Chapter 4 of Part 1 of the Technical Instructions, to enable the person to carry out their responsibilities in regard to carriage of dangerous goods by air.

19. Regulation 21 is amended by inserting immediately after subregulation (1), the following new subregulation — Amendment of regulation 21

“(1A) An operator, a shipper or any other organisation involved in the transportation of dangerous goods by air shall provide —

(a) information to his or her personnel to enable him or her to carry out his or her responsibilities in regard to the transportation of dangerous goods; and

(b) instructions as to the action to be taken in the event of emergencies arising involving dangerous goods.”.

20. The Regulations are amended by inserting immediately after regulation 21, the following new regulation — Insertion of regulation 21A in the Regulations

“Dangerous goods by mail
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21A. (1) The Authority shall establish procedures to control the introduction of dangerous goods into air transport, which shall be subject to the conditions stated in the Communication Regulatory Authority Act, a person shall not transport dangerous goods into air transport through its postal services.

(2) Where the Authority determines the need to carry out oversight on handling of dangerous goods transported by post, the Authority shall require that the Agency responsible for postal services complies with the requirements specified in these Regulations and in the Technical Instructions.”.

21. The Regulations are amended by inserting immediately after regulation 23, the following new regulation — Insertion of regulation 23A in the Regulations

“Aircraft accident and incident
23A. (1) In the event of an aircraft accident or a serious incident where dangerous goods carried as cargo may be involved, the operator of the aircraft shall —

(a) provide information, without delay, to emergency services responding to the accident or serious incident about the dangerous goods on board, as shown on the written information to the pilot-in-command;

(b) provide the information in paragraph (a) to the appropriate authorities of the State of the Operator and the State in which the accident or serious incident occurred; and

(c) if requested to do so, provide information without delay, to emergency services responding to the incident and to the appropriate authority of the State in which the accident or serious incident occurred, about the dangerous goods on board, as shown on the written information to the pilot-in-command.

(2) The Authority shall establish procedures for investigating and compiling information and reports concerning accidents and incidents which —

- (i) occur in its territory, and
 - (ii) involve the transport of dangerous goods originating in or destined for another State, for the purpose of preventing recurrence of dangerous goods accidents and incidents,
- (3) the reports described in subsection (2) shall be made in accordance with the detailed provisions of the Technical Instructions.
- (4) Each contracting State shall establish procedures for investigating and compiling information concerning such accidents and incidents which occur in its territory other than those described in subsection 2, which reports shall be made in accordance with the detailed provisions of the Technical Instructions; and
- (5) The Authority shall establish procedures for investigating and compiling information concerning instances of undeclared or misdirected dangerous goods in cargo which —
- (a) occur in its territory; and
 - (b) involve the transport of dangerous goods originating in or destined for another State, for the purpose of preventing the recurrence of such instances.
- (6) The reports described in subsection (5) shall be made in accordance with the detailed provisions of the Technical Instructions.
- 22.** The Regulations are amended by inserting immediately after regulation 24, the following new regulation —
- 24A.** Dangerous goods training programmes shall be established and updated as provided for in the Technical Instructions.”
- 23.** The Regulations are amended by inserting immediately after regulation 24A, the following new regulation —
- 24B.** The Authority shall approve dangerous goods training programmes for —
- (a) operators;
 - (b) designated postal operators; and
 - (c) entities other than operators and designated postal operators.”.
- 24.** Regulation 25 is amended in subregulation (2) by substituting for the words “15 (3)” appearing in paragraph (c), the words “15 (4)”.
- 25.** Regulation 26 is amended —
- (a) in subregulation (1) by substituting for the words 15 (3) appearing in paragraph (d), the words 15 (4); and
 - (b) by inserting immediately after subregulation (2), the following new subregulation —
- “(2A). The Minister may extend the period of 60 days provided in subregulation (3) even where that period has expired.”.
- 26.** Regulation 27 is amended —
- (a) in subregulation (1), by substituting for the word “may” which appears after the word “person” the word “shall”;
 - (b) in subregulation (2), by substituting for the word “may” which appears after the word “person” the word “shall”; and
 - (c) in subregulation (4), by substituting for the word “may” which appears after the word “seized” the word “shall”.

Insertion of regulation 24A in the Regulations

Insertion of regulation 24B in the Regulations

Amendment of regulation 25
Amendment of regulation 26

Amendment of regulation 27

27. The Regulations are amended by inserting immediately after regulation 27, the following new regulation —
- “Compliance and enforcement 27A. (1) An operator shall establish inspection, surveillance and enforcement procedures for all entities performing any function for air transport of dangerous goods with a view to achieve compliance with these Regulations.
(2) The Authority shall oversee the established inspection, surveillance and enforcement procedures established by an operator.”.
28. The Regulations are amended by inserting immediately after regulation 29, the following new regulation —
- “Dangerous goods security provisions 29A. (1) An operator shall establish dangerous goods security measures applicable to an operator or a shipper, and any person engaged in the transportation of dangerous goods by air, to be taken to minimise theft or misuse of dangerous goods that endangers a person, property or the environment.
(2) The measures referred to under subregulation (1) shall be made in accordance with the security provisions specified in other Civil Aviation (Security) Regulations and the Technical Instructions.”.
29. The Regulations are amended by inserting immediately after regulation 29A, the following new regulation —
- “Enforcement 29B. The Authority shall carry out regular and random inspections of all entities involved in the transport of dangerous goods to confirm compliance as well as notifying ICAO of a designated and appropriate authority within its administration to be responsible for ensuring compliance with these Regulations.”.

Insertion of regulation 27A in the Regulations

Insertion of regulation 29A in the Regulations

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Insertion of regulation 29B in the Regulations

MADE this 27th day of May, 2022.

ERIC MOTHIBI MOLALE,
Minister of Transport and Public Works.