

Government Gazette 6763

**PART 13
ENFORCEMENT PROCEDURES****LIST OF REGULATIONS****SUBPART 1: ENFORCEMENT POWERS OF EXECUTIVE DIRECTOR, DESIGNATED INSPECTORS, AUTHORISED OFFICERS AND AUTHORISED PERSONS AND PROCEDURES FOR INVESTIGATIONS**

- 13.01.1 Applicability
- 13.01.2 Authority of designated inspectors, authorised officers and authorised persons
- 13.01.3 In-flight inspections
- 13.01.4 Notice of infringement: suspension, revocation and imposition of conditions
- 13.01.5 Notice of investigation of participant or holder of aviation document

SUBPART 2: DOCUMENTS, RECORDS AND EVIDENCE

- 13.02.1 Service of documents and records
- 13.02.2 Evidence

SUBPART 3: ADMINISTRATIVE FINES

- 13.03.1 Administrative fines
- 13.03.2 Process on imposition of administrative fine
- 13.03.3 Administrative fine notice
- 13.03.4 Use of information regarding administrative fines

SUBPART 4: INTERNAL REVIEWS

- 13.04.1 Administrative review of decisions of designated inspectors, authorised officers and authorised persons
- 13.04.2 Administrative review of decisions of Executive Director

SUBPART 1**ENFORCEMENT POWERS OF EXECUTIVE DIRECTOR, DESIGNATED INSPECTORS, AUTHORISED OFFICERS AND AUTHORISED PERSONS AND PROCEDURES FOR INSPECTIONS AND INVESTIGATIONS****Applicability**

13.01.1 (1) This Part applies to -

- (a) alleged violations by holders or participants, inclusive of aircraft operators, crew members, owners, passengers and pilots-in-command;
- (b) designated inspectors, authorised officers and authorised persons, performing functions or exercising powers or delegated powers of inspection, investigation, control and monitoring adherence as required under Part 5 of the Act; and
- (c) the review of entry into and exiting from, and within, the Namibia civil aviation system (NCAS) contemplated in Part 10 of the Act.

Government Gazette 6763

(2) The Executive Director must publish, for the use, application training and guidance of designated inspectors, authorised officers, and authorised persons, and holders or participants -

- (a) an enforcement code which must set out the relevant procedures, determinations and decisions on enforcement provided for in these regulations, the technical standards and directives;
- (b) any amendments to the enforcement code; and
- (c) any other directives, advisory and information pamphlets, setting out the manner in which enforcement actions, including inspections and investigations, duties, powers and responsibilities, and the required forms for use, shall be conducted and exercised.

(3) In compliance with section of 66 of the Act, every participant or holder must produce, when so requested by the Executive Director, the management system for monitoring and review, and submit reports in the format as directed, on the provision of training, and supervision to its staff and on the provision of sufficient resources to ensure that safety standards and conditions attached to aviation documents are complied with.

(4) The Executive Director, and through his or her delegations, must in the manner contemplated by section 38 of the Act, report on monitoring actions on adherence to the requirements of subregulation (3), and may apply the enforcement code where the availability of manuals, guidance material and other material which are needed to ensure that the Act and these regulations are not contravened, are inadequate.

(5) Despite the provisions on offences as provided for in the Act which are subject to the Criminal Procedure Act of 1977(Act No. 51 of 1977), and the suspension, revocation and imposition of conditions (including endorsement) on aviation documents contemplated in sections 42 and 43 of the Act, enforcement through the imposition of administrative fines must be applied in the manner as set out in this Part and in any other Part of these regulations.

Authority of designated inspectors, authorised officers and authorised persons

13.01.2 (1) In addition to any specific power granted to, or duty imposed on, a designated inspector, authorised officer or authorised person or under the Act or these regulations, and required under the delegations issued by the Executive Director as contemplated by section 37 of the Act, such designated inspector, authorised officer or authorised person may, upon showing his or her credentials, or if required, to produce his or her credentials -

- (a) without prior notification to the holder or participant, enter any premises for the purposes of the on-site inspection of any aircraft, aircraft factory, aerodrome, civil aviation related facility, aircraft component, aircraft equipment, licence, certificate, permit, approval, authorisation, register, computer, data, cable, book or document which the designated inspector, authorised officer or authorised person believes to be either in or on such premises, in the possession of the holder or participant or suspected of being under the custody or control of the holder or participant;
- (b) search, impound, confiscate, remove or retain anything, article, book, register, computer, data, cable, document, aircraft, aircraft component, aircraft equipment, vehicle, licence, certificate, permit, approval or authorisation, which the designated

Government Gazette 6763

inspector, authorised officer or authorised person reasonably believes relates to a contravention of the Act or these regulations and record same for purposes of evidence;

- (c) ground any aircraft which the designated inspector, authorised officer or authorised person reasonably believes to be unsafe, not duly registered or not airworthy;
- (d) close any aviation related facility which the designated inspector, authorised officer or authorised person reasonably believes does not comply with the Act or these regulations;
- (e) require the pilot of an aircraft, a crew member, holder or participant to furnish his or her name and address and any other particulars concerning his or her juristic person;
- (f) require any person on an aerodrome or in an aircraft, aircraft factory or civil aviation related facility to furnish his or her name and address and any other particulars concerning either or his or her juristic person and to furnish such information as is, or at his or her disposal, concerning the juristic person of the pilot, owner of any aircraft or of any aerodrome or a crew member, any aerodrome, holder, participant, aircraft factory or other civil aviation related facility;
- (g) require the owner or operator, crew member, holder or participant of an aircraft to furnish such information as may be necessary concerning the juristic person of the pilot of the aircraft at any time or during any particular period;
- (h) inspect an aircraft or any part, component or equipment of such aircraft, for the purpose of ascertaining whether the provisions of the Act and these regulations are being complied with;
- (i) ascertain the mass of any aircraft with or without load and, for the latter purpose, require any passengers or goods to be removed from such aircraft;
- (j) call upon any person required by these regulations to be the holder of a licence, certificate, permit, approval or authorisation or, in the case of a crew member or an aircraft maintenance engineer, his or her logbook, for inspection within a reasonable time to be stipulated by such inspector, authorised officer or authorised person; and
- (k) call upon the owner, operator, crew member, holder or participant or pilot-incommand of any aircraft, to produce or cause to be produced for inspection any licence, certificate, permit, manual, logbook or other document relating to the aircraft.

(2) Before a designated inspector, authorised officer or authorised person exercises any power under subregulation (1)(a), (b), (c) or (d), he or she must, unless he or she has already secured a warrant from a competent court, obtain the prior approval of the Executive Director.

(3) If it appears to any designated inspector, authorised officer or authorised person that any aircraft or aeronautical product, as it appears to him or her -

- (a) is intended or likely to be flown or used in such circumstances that the flight or usage would involve a contravention of the Act or these regulations; or

Government Gazette 6763

- (b) is likely to be a cause of danger to persons in the aircraft or when using the aeronautical product or to persons or property on the ground,

the designated inspector, authorised officer or authorised person may take such action to detain and seize the aircraft or aeronautical product in the manner contemplated in section 47 of the Act, and such other action as he or she may consider necessary for the purpose of causing the circumstances relating to the flight or usage to be investigated or the aircraft or aeronautical product to be inspected.

(4) If an aircraft or aeronautical product has been detained or seized pursuant to the provisions of subregulation (3), the aircraft or aeronautical product may not be operated or used until the Executive Director, being satisfied that the Act or these regulations are being complied with, approves, or until such alterations or repairs or any adjustments have been effected which the Executive Director considers necessary, to render such aircraft fit for flight or that the threat or danger on the safe use of the aeronautical product has been removed.

In-flight inspections

13.01.3 (1) The Executive Director may authorise a designated inspector, authorised officer or authorised person to carry out, at any time, an in-flight inspection in any civil aviation aircraft engaged in an aircraft operation.

(2) The owner, operator or pilot-in-command of an aircraft must immediately take all reasonable steps to accommodate the designated inspector, authorised officer or authorised person to facilitate the carrying out of the in-flight inspection.

(3) The provisions of this regulation may not be construed as derogating from the duties to be executed by an in-flight security officer authorised in terms of section 159 of the Act.

Notice of infringement: suspension, revocation and imposition of conditions

13.01.4 (1) A designated inspector, authorised officer or authorised person must within seven days of exercising any power under regulation 13.01.1, complete and submit an inspection report in writing and in the form set out in the enforcement code to the Executive Director stating the reasons why, in the opinion of the designated inspector, authorised officer or authorised person, such holder or participant must have his or her aviation document suspended or revoked and the conditions thereon to be imposed with endorsement, in the manner as set out in section 44 of the Act.

(2) Following on the report made in terms of subregulation (1) the Executive Director may issue a notice on infringement with particulars in the form set out in the enforcement code, informing the holder or participant, as the case may be, of the intention to suspend or revoke the privileges associated with the aviation document in issue or to impose conditions thereon, including its endorsement, in the manner contemplated by sections 42 and 43 of the Act, and in such manner, by notice -

- (a) prevent the holder or participant from being part of any safety or security inspection, certification process or audit or from performing any of the functions that he or she or it is permitted to perform in terms of the Act and these regulations; or
- (b) proceed with an investigation or administrative actions leading to an administrative fine or criminal prosecution, as the case may be, after such participant or holder has been

Government Gazette 6763

given at least 14 days within which to comply with any directive issued by the Executive Director pursuant to the infringement notice.

(3) The Executive Director may, on good cause shown, in writing withdraw a notice of infringement issued under subregulation (2) and, send a copy of the withdrawal to the holder or participant cited in the infringement notice and to the designated inspector, authorised officer or authorised person or person concerned with the inspection report.

Notice of investigation of participant or holder of aviation document

13.01.5 (1) Pursuant to section 41 of the Act, the Executive Director must issue a notice of investigation to a holder or participant, as the case may be, similar in the form set out in the enforcement code which must at least -

- (a) indicate the particulars and address or addresses of the holder or participant being the subject of an investigation;
- (b) specify the nature of the alleged conduct or act with reference to the Act, these regulations, the technical standards or aviation directive that is the subject of the investigation;
- (c) include evidence being relied upon pertaining to the alleged conduct or act;
- (d) indicate the particulars, contact details and address of the lead investigator, if any;
- (e) indicate the expected commencement date and conclusion date of the investigation; and
- (f) invite the participant or holder to make representations either orally or in writing on the allegations within 30 days of the issue or service of the notice.

(2) Following the investigation, the Executive Director must, as part of the results thereof, including any recommendations required to be made pursuant to section 41(2)(b)(ii) of the Act, inform the holder or participant that the reasonable grounds identified require that further action be taken following the investigation regarding -

- (a) an alleged offence in terms of the Act;
- (b) contravention of, or failure to comply with, the Act or these regulations;
- (c) failure to comply with conditions as required by the Act, these regulations or the technical standards; or
- (d) the manner of careless or incompetent conduct with any aviation safety and security standard and practices,

and that the recommendations or actions as contemplated in sections 42 and 43 of the Act, where relevant will be taken, and, in addition, either -

- (i) that the prescribed process regarding court action to impose a fine or imprisonment or both such fine and imprisonment as

Government Gazette 6763

contemplated in section 54(2)(c)(ii) of the Act, read with regulation 13.03.2, will be pursued by the Authority;

- (ii) the imposition of an administrative fine as provided in Subpart 3, read with Part 185, by the Executive Director; or
- (iii) the taking of other action as in the discretion of the Executive Director is considered appropriate to meet the requirements as contemplated in section 66 of the Act.

(3) The results of an investigation may cause the Executive Director to reject the proposed action, report or recommendation, of a designated inspector, authorised officer or authorised person, as the case may be, and to allow the inspection or another or related inspection, on the alleged violation in issue, to be conducted afresh.

**SUBPART 2
DOCUMENTS, RECORDS AND EVIDENCE**

Service of documents and records

13.02.1 (1) Any notice or related documents served on an individual in terms of this Subpart must be served -

- (a) by giving it to the individual personally;
- (b) by leaving it at, or by sending it by registered mail to the address of the place of residence or business of the individual's last known to the Executive Director or designated inspector, authorised officer or authorised person;
- (c) by giving it, at the place of residence or business of the individual's last known to the Executive Director or designated inspector, authorised officer or authorised person, to an individual who is, or is reasonably believed to be, above the age of 16 years and apparently an occupant of, or employed at, the place; or
- (d) by sending it to the last known electronic communication address of the individual.

(2) Any notice served on a juristic person in terms of this Subpart must be served -

- (a) by sending it by registered mail to the head office, registered office, principal place of business or other postal address of the juristic person;
- (b) by giving it to an individual who is, or is reasonably believed to be, an officer of, or in the service of, the juristic person and above the age of 16 years, at the head office, registered office, principal office or other place of business of the juristic person; or
- (c) by sending it to the last known email or electronic communication address of the juristic person or a representative of the juristic person.

(3) The Executive Director must ensure that -

Government Gazette 6763

- (a) proper records of all enforcement actions taken in terms of these regulations are kept in the premises of the Authority and with the Civil Aviation Registry; and
- (b) copies of all notices issued, reports written and decisions taken in respect of any alleged offence, violation or any inspection or investigation undertaken in terms of this Part are retained on the individual's or juristic person's file or holder's or participant's file with the Authority.

Evidence**13.02.2 (1)** In proceedings under this Part -

- (a) a written statement certified and signed by a designated inspector, authorised officer or authorised person that a licence, rating, certificate, permit, approval, authorisation or exemption, as the case may be, has been or has not been granted or issued to a specific person must, upon the mere production thereof, be accepted as *prima facie* proof of the facts mentioned therein;
- (b) a document certified and signed by a designated inspector, authorised officer or authorised person to be a copy of a licence, certificate, permit, approval, authorisation or exemption and signed by the Executive Director must, upon the mere production thereof, be accepted as *prima facie* proof of the fact that the person whose name appears as the holder of the licence, certificate, permit, approval, authorisation or exemption, as the case may be, on that copy, was the holder of the licence, certificate, permit, approval, authorisation or exemption at the time when the offence or violation was committed;
- (c) a document certified by a designated inspector, authorised officer or authorised person to be an extract or a copy signed by the Executive Director, of any register maintained in terms of the Act or these regulations must, upon the mere production thereof, be accepted as *prima facie* proof of the facts mentioned therein; and
- (d) evidence supplied by a designated inspector, authorised officer or authorised person and obtained by the use of specialised equipment, such as weighing scales, video recorders, small hand-held recording devices, cameras, smartphones, navigation and communication transceivers and secondary equipment, must be proved in terms of any law, including the common law rules relating to the admissibility and proof of evidence.

(2) The Executive Director must ensure that any evidentiary material that is the subject of any process of inspection, investigation, enforcement review or court action and that requires its detention and seizure as contemplated in section 47 of the Act, is deposited in a secure room or office separate from the CAR, but under the supervision of the head of the CAR referred in regulation 3.04.6(1), to ensure its retention status as evidence for purposes of any such process.

**SUBPART 3
ADMINISTRATIVE FINES****Administrative fines**

13.03.1 (1) Despite the provisions of sections 42 and 43 of the Act regarding the suspension and revocation, and imposition of conditions, including endorsement, of aviation documents, a designated inspector, authorised officer or authorised person may recommend to the Executive

Government Gazette 6763

Director to take action, after application of the procedures set out in this Part, which may result in the imposition of the appropriate category of administrative fine prescribed in regulation 185.01.3 where it is established, on a balance of probabilities, that the conduct or act of a holder or participant constitutes a violation.

(2) The power of a court to impose and provide penalties in the amounts similar to or lower than the administrative fine threshold provided for in subregulation (1) for various offences as contemplated in the Act, does not imply that the Executive Director may not impose an administrative fine for a violation based on the same set of facts that constitute the offence.

Process on imposition of administrative fine

13.03.2 (1) The Executive Director may, by way of process instituted in terms of this Part, seek the imposition of an administrative fine not exceeding N\$200 000 for any violation to the extent provided for, where appropriate, in the Act, these regulations, the technical standards or aviation directives.

(2) The criteria to be used on the imposition of administrative fines must be in the manner set out in Subpart 2 of Part 185.

Administrative fine notice

13.03.3 (1) A designated inspector, authorised officer or authorised person must prepare the administrative fine notice in writing and in the form set out in the enforcement code, for issuing by the Executive Director to the holder or participant, if the designated inspector, authorised officer or authorised person is satisfied, following an inspection in the manner provided under regulation 13.01.4 or investigation in the manner provided under regulation 13.01.5, that the holder or participant, as the case may be, has -

- (a) contravened or caused failure with regard to;
- (b) acted in a negligent, careless or incompetent manner with regard to; or
- (c) not complied with,

the Act, these regulations, the technical standards or aviation directive, to the extent indicated in the administrative fine notice.

- (2) An administrative fine notice must -
- (a) specify the nature of the alleged act or conduct committed;
 - (b) include evidence being relied upon pertaining to the alleged act or conduct;
 - (c) specify the administrative fine payable for the act or conduct;
 - (d) invite the alleged infringer to make representations either orally or in writing on the allegations or pay the administrative fine within 30 days of the issue or service of the notice; and
 - (e) specify the rights and obligations pertaining to the notice.

Government Gazette 6763

(3) If the holder or participant pays the administrative fine referred to in subregulation (2), any liability specified in the notice is considered as discharged.

(4) Despite the provisions on the administrative fines in subregulation (3), the Executive Director may require the holder, participant or a person designated by the Executive Director to -

(a) complete or submit any rectification required that led to the imposition of the administrative fine; and

(b) submit the acceptance of a corrective action plan.

(5) The Executive Director may withdraw the administrative fine notice -

(a) prior to the payment of the fine, upon a favourable outcome of enforcement review representation as set out in Supart 4;

(b) prior to conclusion of court proceedings, if any, on good cause shown by the Executive Director; or

(c) on the resolution of the matter on appeal by the High Court.

Use of information regarding administrative fines

13.03.4 (1) The imposition of an administrative fine in terms of this Part does not constitute a previous conviction by the holder or participant and is not for criminal record purposes.

(2) The records on the information on inspections and investigations set out in this Part are part of the records required under section 52 of the Act and may not be made available for public scrutiny, except by way of a court order.

(3) Nothing in this regulation prevents the service of an administrative fine notice by the Executive Director on an individual or juristic person for repeating an offence based on the records held by the Authority.

**SUBPART 4
INTERNAL REVIEWS****Administrative review of decisions of designated inspectors, authorised officers and authorised persons**

13.04.1 (1) A holder or participant whose rights have been detrimentally affected by an administrative action taken in terms of this Part by a designated inspector, authorised officer or authorised person under delegation in terms of the Act, may, after payment of the nonrefundable application fee prescribed in Part 187, apply to the Executive Director to seek an internal review of such a decision.

(2) An internal review referred to in subregulation (1) must be lodged on the appropriate form similar to the form set out in the enforcement code, within 30 days after receipt of the infringement notice referred to in regulation 13.01.4(2) in terms whereof the applicant becomes aware of the decision or recommendation of the designated inspector, authorised officer or authorised person.

Government Gazette 6763

(3) If, on receipt of an application for review made under subregulation (1), the Executive Director decides that further investigations or inquiries must be carried out before he or she makes a decision on the application, the Executive Director must ensure that -

- (a) the designated inspector, authorised officer or authorised person whose decision or recommendation is the subject matter of the review;
- (b) any person who was responsible for supervising the designated inspector, authorised officer or authorised person who made the decision or recommendation; and
- (c) any other person who was in any way involved in the making of the decision or recommendation,

does not in any way participate in the further investigation or inquiry or the determination of the matter on review.

(4) The Executive Director must within 14 days of receiving the application for review confirm, amend or withdraw the decision or recommendation in writing.

(5) The Executive Director must, upon the request by the person in relation to whom a decision or recommendation is confirmed, amended or withdrawn under subregulation (4), within 14 days of the application furnish written reasons for the decision.

(6) The Executive Director may after the provision of the reasons in terms of subregulation (5), proceed to institute an investigation in terms of regulation 13.01.5.

(7) An application for review in terms of this regulation must be considered finalised if upon compliance with either of the actions set out in subregulation (3), (4) or (5), the applicant takes no further action within 30 days of any written notice of such actions.

Administrative review of decisions of Executive Director

13.04.2 A holder or participant may exercise the rights on review of a decision of the Executive Director based on remedies available under the laws of Namibia.