

**DEPARTMENT OF TRANSPORT
DEPARTEMENT VAN VERVOER**

No. R. 93

17 January 2003

AVIATION ACT 1962**PROPOSED AMENDMENT TO THE CIVIL AVIATION
REGULATIONS, 1997**

Under regulation 11.03.2(1)(a) of the Civil Aviation Regulations, the Chairperson of the Civil Aviation Regulations Committee (CARCOM) hereby publishes for comment the proposed amendments to the Civil Aviation Regulations, 1997, as set out in the schedules. Any comments or representations on the proposed amendments should be lodged in writing with the Chairperson of the Civil Aviation Regulations Committee, for attention Mrs. Juliana Roux or Mr. Herman Wildenboer, Private Bag X08, Waterkloof, 0145, fax: (012) 346-5979, or e-mail at rouxj@caa.co.za, or wildenboerh@caa.co.za, before or on 17 February 2003.

SCHEDULE**1. Proposal to amend Part 185 of the Civil Aviation
Regulations, 1997****Proposer:**

Civil Aviation Authority
Private Bag X08
Waterkloof
0145

Explanation of interest of the Proposer

The Proposer administers the Aviation Act, 1962 (Act No. 74 of 1962) and regulations and technical standards issued in terms thereof.

**1.1 Proposed insertion of new Regulation 185.00.0
'General':****" General**

185.00.0 This Part prescribes administrative penalties for the contravention of, or failure to comply with the Regulations

promulgated in terms of the Aviation Act of 1962 (Act No.74/1962) and provides procedures for its enforcement .”

1.2 Current regulation:

No current regulation exists.

1.3 Motivation:

To provide for an introduction to the Part.

2.1 Proposed insertion of new sub-Regulation 185.00.2(d):

“(d) evidence obtained through the use of any mechanical device by an officer appointed in terms of Section 5 of the Aviation Act (Act No. 74 of 1962) shall be accepted as *prima facie* proof.”

2.2 Current regulation:

No current regulation exists.

2.3 Motivation:

To provide for the legality of this kind of evidence gathered by the officer.

3.1 Proposed insertion of new Regulation 185.00.3 'Administrative Monetary Penalties':

“Administrative Penalties

185.00.3 The following administrative penalties and procedures, as contemplated in Section 22(4) of the Aviation Act of 1962 (Act No. 74 of 1962), shall apply:

- (1) An Officer appointed in terms of Section 5 of the Aviation Act may upon noting a non-compliance with the regulations and technical standards, issued in terms of the Aviation Act,

1962 (Act No. 74 of 1962) and administered by the Authority, impose an administrative penalty provided for in sub - Regulation (2) by issuing a Penalty Notice.

(2) The following administrative penalties may be imposed: -

	Offence	Minimum Penalty	Maximum Penalty
(i)	185.00.1(1)(a)	R1000,00	R30 000,00
(ii)	185.00.1(1)(b)	R1000,00	R30 000,00
(iii)	185.00.1(1)(c)	R1000,00	R30 000,00
(iv)	185.00.1(1)(d)	R5000,00	R75 000,00
(v)	185.00.1(1)(e)	R5000,00	R75 000,00
(vi)	185.00.1(1)(f)	R1000,00	R75 000,00
(vii)	185.00.1(1)(g)	R5000,00	R75 000,00
(viii)	185.00.1(1)(h)	R5000,00	R75 000,00
(ix)	185.00.1(1)(i)	R5000,00	R75 000,00
(x)	185.00.1(1)(j)	R5000,00	R75 000,00
(xi)	185.00.1(1)(k)	R1000,00	R30 000,00
(xii)	185.00.1(1)(l)	R5000,00	R75 000,00

(3) (a) A Penalty Notice issued by an Officer in terms of sub-Regulation 185.00.3(1) shall be in the appropriate form as prescribed in Document SA-CATS-OFF&PEN, which notice shall-

- (i) specify the non-compliance;
- (ii) disclose evidence of non-compliance;
- (iii) specify the rights and obligations of the offender;

- (iv) invite the alleged offender to pay to the Civil Aviation Authority the admission of guilt fine as stipulated by the Officer in the Penalty Notice within 30 (thirty) days of the issue and service of the Penalty Notice;
 - (v) invite the alleged offender to make representation on the allegation/s within 30 (thirty) days of the issue and service of the Penalty Notice;
 - (vi) provide for an opportunity for the alleged offender to obtain assistance in making representation; and
 - (vii) specify any possible action that may follow.
- (b) The Officer who has issued a Penalty Notice in terms of sub-Regulation 185.00.3(1) shall submit to the Commissioner within 3 (three) working days after the issue and service of a Penalty Notice, a copy of the penalty notice.
- (c) Service of a Penalty Notice shall be effected by way of a personal service, registered mail or facsimile, provided the latter is acknowledged by the recipient.
- (d) Payment of the fine stipulated in the Penalty Notice shall be followed by a Notice of No Further Action in the appropriate form as prescribed in Document SA-CATS-OFF&PEN, which shall finalise the matter.
- (e) Representation to the Commissioner by the alleged offender shall be in writing, or any other form that may be requested by the Commissioner.
- (f) If representations are made within the prescribed period, the Commissioner shall adjudicate the matter and make a Final Decision on the appeal in the appropriate form as prescribed in Document SA-CATS-OFF&PEN, which Final Decision may include withdrawal, confirmation or amendment of the Penalty Notice, as the case may be.
- (g) A copy of the Penalty Notice, Final Decision and/or proof of payment and the Notice of no Further Action shall be placed on the Civil Aviation Authority file of the individual or organization, as the case may be, which shall form part of his/her/its formal record.

(4) Nothing in this Part-

- (a) prevents the service of a Penalty Notice on an individual or organization for repeating a prescribed offence; or
- (b) limits the amount of the fine that may be imposed by a court on an individual or organization convicted of a prescribed offence; or
- (c) limits the Commissioner or an Authorised Officer in the exercise of any other powers granted to him or her elsewhere in these Regulations."

3.2 Current regulation

No current regulation exists

3.3 Motivation

To introduce penalties for the contravention of, or failure to comply with the Regulations made in terms of the Aviation Act of 1962 (Act No.74 of 1962) and to determine the mode of enforcing and appealing against such penalties.

3.4 Technical Standards

Proposals for the Technical Standards referred to in schedule 3.1 are published on the CAA website www.caa.co.za

4.1 Proposed amendment of Part 1 'Definitions and Abbreviations'

(1) Insert the following definitions:

- (a) "alleged offender" means an individual or an organization accused of an offence listed in Regulation 185.00.1(1);";
- (b) "officer" means an Authorised Officer, an Inspector, or an Authorised Person, as contemplated in Regulation 185.00.3(1);";

- (c) "final decision" means a written verdict issued in writing by the Commissioner in terms of Regulation 185.00.3(3)(f);";
- (d) "notice of no further action" means a notice served in terms of Regulation 185.00.3(3)(d);";
- (e) "penalty notice" means a notice issued and served in terms of Regulation 185.00.3(3)(a) and (c), the intention of which serves as a notice of enforcement action;";
- (f) "prescribed offence" means an offence under these Regulations;";
- (g) "prescribed penalty for a prescribed offence" means the administrative monetary penalties in terms of Regulation 185.00.3(2);".

4.2 Motivation:

The proposed amendment follows the introduction of administrative monetary penalties in Part 185.

5.1 Proposed amendment of Part 13 'Enforcement Procedures'

- (a) Add to Regulation 13.00.1 a new sub-regulation (l) before the proviso:
 - "(l) may assess and impose the Administrative Monetary Penalties prescribed in Part 185.00.3;";

Note: because of this amendment the word 'and' following sub-regulation (j) needs to be placed behind sub-regulation (k).

- (b) Add to Regulation 13.00.3 a new sub-regulation (g) before the proviso:

“(g) may assess and impose the Administrative Monetary Penalties prescribed in Part 185.00.3;”;

Note: because of this amendment the word 'and' following sub-regulation (e) needs to be placed behind sub-regulation (f).

5.2 Current regulation:

No regulation currently exists.

5.3 Motivation:

To provide for the powers granted in terms of amendments to Part 185.
