





## MESSAGE

The Aviation Enforcement Policy and Procedures Manual provides enforcement measures with a wide range of procedures to match the regulatory action to the seriousness of a breach. The Manual will help ensure that justice is not only done but also seen to be done, through the application of consistent, transparent and systematic procedures.

This office believes that the vast majority of the industry is committed to working within the safety rules and procedures. The CAA needs to have the capacity to vigorously pursue those who choose to operate outside the rules and established procedures and thereby jeopardise both the lives of people and property. It is important that CAA is backed by adequate force in law and have sufficient authority to act quickly when there is a serious and imminent risk that could jeopardise safety. In such cases the community would expect nothing less but direct intervention by the law enforcement authority which in the case of aviation is the CAA. I am confident that these enforcement measures will strike the appropriate balance between enhancing natural justice and supporting the CAA's powers to take action on wilful safety breaches.

This series of measures will support the CAA as a safety regulator and enforcement authority, building on the strengths that it has established whilst assuring fairness and transparency in dealing with safety breaches or compromises.. This office believes it is imperative that industry and CAA work together in a spirit of mutual understanding and close cooperation and of realism to maintain high standard of aviation safety to benefit all.

This office is committed to ensuring that CAA uses its enforcement tools in an open, consistent and transparent manner so that the force of legal authority would be applied in a justifiable manner against errant persons or organizations. The enforcement policy determines the way that the CAA uses its powers to regulate industry. With limited resources, the CAA must ensure that it gives proper focus to the exercise of its powers in order to discharge the trust given to it by law. It must ensure that it uses its powers in a way that inspires the confidence of the travelling public and third party. It must also use its powers in a way that is, and is seen to be, fair, firm and consistent.

The Enforcement Manual introduces the CAA's philosophical approach to enforcement. That approach is, in essence:

- A person who reports making an honest mistake generally should not be prosecuted or fined, nor should they have their licence, certificate or authority suspended or cancelled for reasons of punishment
- There should be a measured response to less serious contraventions of the safety rules and procedures which should involve counselling, training or [infringement notices] rather than either criminal prosecution or the suspension or cancellation of licences, certificates or authorities or imposition of any monetary penalties.
- People who consciously choose to operate outside the rules or procedures and thereby put the lives of members of the public including the fare-paying

passengers or property at risk should be prosecuted and removed from the industry, no matter how powerful they are, or are seen to be.

[signed]

[Director General Civil Aviation]

28 October 2008

## FOREWORD

The Aviation Enforcement Policy and Procedures Manual provides details and guidance to CAA Inspectors about each of the existing enforcement tools available to the CAA and the circumstance under which these tools should be used. To be effective, the CAA's enforcement procedures must be fair, reasonable, transparent and consistent, and must be perceived as being fair by those subject to regulation. This does not, and should not, imply an unwillingness to apply the full force of statutory sanctions as and where warranted. It does encompass the right of a person to objective, even-handed consideration of all the circumstances surrounding any breach or compromise, before action is taken. It also requires CAA Inspectors to make every effort to understand a person's position and take it into account, as well as to let the person know the CAA's position. There should not be a rigid adherence to precedent without due regard to unusual circumstances.

Compliance and enforcement actions need to be applied as consistently as possible. However,. CAA Inspectors must consider each case individually in order to determine an appropriate compliance or enforcement action. They should feel free to recommend actions that, in their professional judgement, will appropriately serve the purposes of the CAA's safety mandate. It is essential that the CAAs compliance and enforcement program be conducted in as fair a as possible. A vital part of this aspect is to achieve uniformity, transparency and consistency of enforcement action. Similar conduct under similar circumstances should result in the same type of compliance or enforcement action and sanction

Many factors must be considered in choosing an appropriate course of action to ensure compliance and provide deterrence to breaches of regulatory requirements or procedures. The weight given to the various factors must often be left to the discretion of the individual inspector. The material in this Manual will provide inspectors with guidance in the proper exercise of that discretion. The success of the enforcement program set out in this Manual will depend on the good judgment of Inspectors who are able to:

- Earn the respect of the aviation community rather than expecting it merely by virtue of their office.
- Exercise objectivity and judicious restraint, since failure to do so may provoke disregard for compliance and safety.
- Promptly and precisely detect and investigate possible contraventions and report their findings to the appropriate supervisors.
- Determine whether a contravention has, in fact, occurred and whether it involved a risk to aviation safety.
- Consider mitigating factors present at the time of an incident or contravention.
- Ensure that the [rules/procedures] are fairly and equally enforced and that all persons and corporations are treated equally under the rules.
- Recommend or take effective enforcement action in the case of breaches of civil aviation rules, particularly when such breaches are deliberate, in order to protect the safety of air navigation.

[signed]

[Office responsible for this manual]

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## List of Amendments

Number (yyyy-nn)	Amendment	Date (yyyy-mm-dd)
1.1.1	1.1.2	1.1.3
1.1.4	1.1.5	1.1.6
1.1.7	1.1.8	1.1.9
1.1.10	1.1.11	1.1.12
1.1.13	1.1.14	1.1.15
1.1.16	1.1.17	1.1.18
1.1.19	1.1.20	1.1.21
1.1.22	1.1.23	1.1.24
1.1.25	1.1.26	1.1.27
1.1.28	1.1.29	1.1.30
1.1.31	1.1.32	1.1.33
1.1.34	1.1.35	1.1.36

## Abbreviations

**GLOSSARY**

## Chapter 2 — General

### 2.1 Manual Objectives

The objectives of this manual are to provide

- a) the CAA's enforcement policy and procedures
- b) A description of the roles and responsibilities of CAA Inspectors
- c) A description of the enforcement tools available
- d) A description of the aids to enforcement
- e) Guidelines and procedures for:
  - Appropriate use of enforcement tools
  - Reporting enforcement
  - Recording enforcement
  - Collecting and handling evidence
  - Investigations by inspectors
  - Gaining access
  - Note taking and interviewing
  - Detaining aircraft
- f) Precedent Documents

### 2.2 Target Audience:

The target audience or beneficiary of the Enforcement Manual is CAA Inspectors

### 2.3 Manual Amendment Process

#### 2.3.1 Office of Primary Interest

[Site office or position] shall be the Office of Primary Interest (OPI) for this Manual. All amendments to this Manual shall be issued by this office under the process and responsibilities for amendment of Enforcement Policy and Procedures Manual as provided in section 1.3.2.

This Manual will be amended as required; however, from time to time Enforcement policies will be revised or modified. These revisions will be presented in the form of an Aviation Enforcement Policy Letter (AEPL). The content and format of AEPLs is contained in AEPL No. 1. AEPLs will supersede the related policy as stated in this Manual. The OPI will issue an appropriate amendment to this Manual as soon as practical after an AEPL has been issued.<sup>1</sup>

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<sup>1</sup> Suggested practice: Include or delete this paragraph as appropriate

**2.3.2 Responsibilities for this Manual<sup>2</sup>**

DGCAA	<ul style="list-style-type: none"> <li>• Sponsors the manual</li> <li>• Considers suggested amendment to the manual and makes final decision on inclusion of amendments on his own or as recommended by DFS</li> </ul>
DFS	<ul style="list-style-type: none"> <li>• Considers the suggested amendment for its validity</li> <li>• Either sends to DGCAA for approval with his recommendations or returns suggested amendment to the concerned Directorate / Person with comments</li> </ul>
DLS	<ul style="list-style-type: none"> <li>• Vets the proposed amendment with reference to rules and</li> </ul>
DAW/D OPS	<ul style="list-style-type: none"> <li>• Recommend the amendment in their area of responsibility and send it to FSD after having it vetted by DLS</li> </ul>
CAA Inspectors (REVIEW Team)	<ul style="list-style-type: none"> <li>• Suggest changes that would improve the efficiency and effectiveness of procedures.</li> <li>• Review the amendment in accordance with CAA Rules, Regulations or established Procedures.</li> <li>• Forwards the vetted draft to DES</li> <li>• When Approved by DGCAA, arranges for incorporation in accordance with CAA document control procedures</li> <li>• Monitors compliance with procedures and gives feedback</li> </ul>

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<sup>2</sup> Replace offices and refine responsibilities in table as necessary

## Chapter 3 — Policy Overview

### 3.1 General

The Aviation enforcement program plays a vital role in the discharge of State's responsibility for the conduct of Safety Oversight of the operators functioning under its jurisdiction and promotes the goal of improved aviation safety by encouraging voluntary compliance with and through the enforcement of [state] aeronautics legislation. When necessary, the CAA will initiate investigation of alleged violations of this legislation or any published requirement made thereunder.

### 3.2 State Obligation

Being a contracting State to Convention on International Civil Aviation and a member of the International Civil Aviation Organization (ICAO), [state] has an obligation to oversee the safe and efficient operation of aviation activity for which [state] is responsible. Further, as a signatory to the ICAO *Convention on International Civil Aviation*, [state] has agreed to the application of Article 12 of the Convention, "Rules of the air," which states in part:

*Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. . . . Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable.*

Enforcement and sanctioning powers, provided by the legal framework on the CAA, are delegated to the CAA's inspectors who have the responsibility and authority to conduct investigations, depending on the nature and extent of such provisions in the legislations..

As a result of international obligation and domestic legislation, enforcement is not an option, it is both a legal and social obligation. Vigorous enforcement action will be taken with respect to all deliberate breaches of the published aviation safety standards or requirements.

### 3.3 Voluntary Compliance

CAA is of the firm belief that every person holding an aviation document issued by the Civil Aviation Authority after undergoing the initial entry certification process will commit himself, in excising the authority of such documents, to abide the applicable rules, procedures and best industry practices and work within such parameters ensuring safety. It also recognizes that voluntary compliance with the regulations is the most progressive and effective approach to aviation safety. Voluntary compliance is based on the idea that members of the aviation community have a shared interest, commitment, and responsibility to aviation safety, and that they will

operate on the basis of *common sense, personal responsibility, and respect for others in conformity with the best practices of the industry.*

Breaches of the civil aviation rules and published requirements may occur for many different reasons, from a genuine or innocent misunderstanding of that rule, to a blatant disregard for aviation safety. The CAA has a range of enforcement tools in order to effectively address its safety obligations in light of differing circumstances. These tools are<sup>3</sup>

- a) Counselling
- b) Remedial training
- c) Notices of Penalty including all possible deterrent actions
- d) Variation, suspension and cancellation of authorizations
- e) Recommending prosecution

These enforcement measures are explained in the following chapters, and the procedures and responsibilities for using them are also set out. The key focus of the CAA's enforcement will be to address safety by consistent and appropriate enforcement action.

**Note:**

It should also be noted that the CAA could require the holder of a civil aviation authorization to undergo an examination to test for competence. What generally happens in relation to an examination to test competence is that CAA discovers a deficiency which suggests that allowing the holder to continue to exercise the privileges of that authorisation may constitute an unacceptable risk to flight safety because the holder may not have the knowledge or due competence to be able to exercise those privileges to the expected standards. An examination is called for in order to confirm or dispel that feeling. Any such examination for competence is not considered to be an enforcement action.

### **3.4 Enforcement Policy — High-level Principles**

The 'Public Trust Doctrine' is based on the concept that the powers held by Government organs are, in fact, powers that originate with the people, and are entrusted to the government organs only as a means of exercising governance and with the sole objective that such powers will be exercised in good faith for the benefit of the people. Public power is not for personal gains or favour but always to be used to minimize harm or hazards and optimize the benefits to the People. To do otherwise would be to defy the objectives of this doctrine and betray the trust reposed by the people within whom, the sovereignty rests. Powers exercised contrary to the Public Trust Doctrine would amount to abuse of powers and in contravene the Rule of Law.

The aim of Aviation Enforcement System advocated in this document is to lead the aviation community in providing [state] with a world-class air safety environment,

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<sup>3</sup> Note: Sample list. Refine to reflect enforcement tools available under national legislation

which has public trust and confidence. To achieve trust and confidence from the aviation industry and the members of the public including air commuters the CAA must react appropriately and timely to intentional breaches or neglect of the [Site title of primary aeronautics legislation and rules]. These provide for :<sup>4</sup>

- a) A range of enforcement tools to match the regulatory action to the seriousness of the breach.
- b) Accountability by CAA for the making of its decisions.
- c) Impartiality in decision making by making some of CAA's powers subject to an order of a court
- d) While facilitating the aviation industry in its objectives of growth, of service to the community and so forth, also providing the CAA a balanced and very measured capacity to make decisions necessary to enhance aviation safety

These principles must be accompanied by explicit benchmarks and a capacity within CAA to demonstrate in a measurable and accountable way how they will be met. The CAA's enforcement policy determines the way the CAA uses its powers to regulate the aviation industry in the State. With limited resources, CAA must ensure that it gives proper focus to the exercise of these powers and adequate measures are in place to give effect to the rules of the law. Also a consistent and systematic enforcement process will enable the CAA to develop confidence level of the operators' compliance with the governing rules, which of course would be at varying degree. Gathering and maintaining systematic record of an operator's compliance with the applicable rules, regulations and approved procedures will not only help CAA make an opinion or perception of the track record of the operator's behaviour, but also will be a good method of persuading the operator to exercise caution in the conduct of operations to maintain a good name. For this purpose, assigning appropriate Blemished Stars in appropriate colour as explained in the Chapter 13 may help.

### **3.5 Fairness and Firmness**

The CAA is committed to enforcing the regulations in a fair, transparent and firm manner. Concern about potential political consequences or other form of undue interferences should not be taken into consideration when determining the appropriate enforcement action.

The CAA promotes and apply a policy of fairness and firmness by

- a) encouraging open communication between alleged offenders and enforcement inspectors, especially in cases where there are will be possible mitigating circumstances;
- b) providing oral counselling for minor violations or deviation from the requirements where there is no threat to aviation safety;
- c) informing offenders of their right to have penalties reviewed by the [site appeal body name]; and
- d) ensuring that repeat offenders and those who wilfully disregard aviation safety are dealt with firmly and CAA track records are appropriately updated facilitating creation of an overall impression of the operator

The Enforcement Manual describes the circumstances in which the enforcement can

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<sup>4</sup> Note: Sample list. Revise to provide meaningful national references

or must be used to deal with an identified breach of the Civil Aviation Rules, Regulations or approved requirements or procedures. The subject specific sections of the Enforcement Manual, and the Rules which govern the enforcement tools, are based on the following overarching principles

- a) Natural Justice and Accountability: Enforcement decisions must be:
  - i) Fair, and follow due process
  - ii) Transparent to those involved
  - iii) Consistent between like circumstances
  - iv) Subject to appropriate internal and external review
- b) Impartiality: Enforcement decisions must not be influenced by:
  - i) Personal conflict or agendas of CAA inspectors.
  - ii) Irrelevant considerations (such as gender, race, religion, political views or affiliation), or
  - iii) The personal, political or financial power of those involved.
- c) Proportionality: Enforcement decisions must be proportional responses to the identified breaches and the safety risk they give rise to in particular
  - i) the CAA's first priority is to protect the safety of the members of the public including fare-paying passengers:
  - ii) the CAA will take strong action against those who consistently and deliberately operate outside the Civil Aviation Rules, Regulations, Requirements or approved Procedures:
  - iii) the CAA will seek to educate and promote training or supervision of those who are observed to be lacking proficiency but have willingness to comply with the Civil Aviation Rules, Regulations, Requirements or approved Procedures,
  - v) the CAA will prefer the use of [cite name of administrative penalty notice] to licence action when dealing with private pilots who breach the Rules, Regulations, Requirements .

### 3.6 Conflict of Interest

Inspectors must take measures to prevent real, potential, or perceived conflicts of interest in accordance with the principles of conduct and measures in the [cite name of *Conflict of Interest and Post-Employment Code* for the CAA].

If it becomes apparent that there could be a possible conflict of interest during an investigation, the aviation inspector shall inform his or her supervisor and request to be removed from the case.

### **3.7 Handling of Complaints**

A complaint is a formal expression of dissatisfaction with a Civil Aviation service, procedure, application of policy, or staff member. Complaints concerning Civil Aviation personnel shall be handled in accordance with [state policy direction].

### **3.8 Accessibility of CAA officials**

[CAA] officials will be accessible to members of the public to explain the Enforcement policy process. Suggestions for improvement of this process are always welcome.

## Chapter 4 — Responsibilities

### 4.1 Delegation of Authority

Only officers/persons with valid and current delegation to exercise powers issued by [title] under [cite rule] may exercise the authorities, within the confines of instrument of authorization. These authorities are delegated by the [title] through the issuance of official credentials.

### 4.2 Responsibilities of the Delegate

The delegate is the decision-maker, and takes prime responsibility for the decisions whatever they may be. Although a delegate may be subject to general written directions regarding the mode and manner in which he or she will exercise a power, he or she is not subject to specific direction in relation to any particular decision. For example, a delegate cannot be directed to issue, or not to issue, a licence or certificate to a particular person. It is the delegate's personal judgement and belief that is relevant to the question of whether or not the grounds for the proposed action are sound. It is also necessary to bear in mind that action either taken or not taken due to contravening orders from a superior or because reliance upon another entity's or individual's discretion is deemed sufficient, is simply not a defence afforded to State institutions or State actors.

#### 4.2.1 Technical and Operational Personnel

Without limiting the sorts of tasks which technical and operational personnel may be asked to perform in relation to variation, suspension or cancellation action, it is the responsibility of technical and operational officers (usually those in the field) to

- a) Gather or receive the information and evidence, which supports a recommendation for an action
- b) As necessary, seek advice and input from [cite functional positions such as Director Flight Standards, Director Airworthiness, Director Legal Services, etc.] in relation to the conduct of the operator/person in question
- c) Complete a non-compliance report and forward it to the appropriate Director recommending a proposed course of action
- d) Draft (in consultation with the legal services) the relevant notice to the operator/person affected by the decision
- e) Prepare for and attend any show cause conference taken up by the operator or person affected by the decision
- f) As necessary, assist [cite functional Directors as above] by providing information and advice.
- g) Serve or arrange for the service of the relevant notice to the person affected.
- h) Take any follow-up action that may be necessary (including the provision of technical and operational assistance to the Director Legal Services in any administrative law litigation).
- i) Update the CAA track records in regard to the operator's allegiance with regulatory requirements.

#### 4.2.2 Responsibilities of the Director Legal Services (DLS)

It is the responsibility of the DLS to

- a) Provide legal advice to officers and the delegate in relation to actual or proposed variation, suspension or cancellation action, or any part of the process;
- b) Assist officers in the preparation of show cause' and decision notices, in accordance with Rules and Regulations:
- c) Conduct, or arrange for the conduct of, administrative process of law litigation arising out of variation, suspension and cancellation decisions,
- d) Keep [cite Director titles as appropriate] advised of the progress and results of any civil court or administrative proceedings, and
- e) Represent CAA in any proceedings before the Court of justice or any similar body, where the CAAs decisions have been challenged.

#### **4.2.3 Responsibilities of [cite positions relevant to CAA]**

All the Directors within [cite functional divisions] are the senior delegates and are responsible to:

- a) Ensure that their directorate is organised, staffed and equipped to perform the assigned functions and duties as required by the CARs and the DGCAA.
- b) Amend the administrative procedures of the Inspectors in order to ensure their smooth and efficient functioning.
- c) Programme the safety oversight activities as per the guidelines laid down in inspectors manual.
- d) Supervise the safety oversight activities of the Inspectors.
- e) Liaise with the operators to ensure smooth and efficient execution of the safety oversight functions which includes inspections.
- f) Ensure that the safety oversight activities conform to rules regulations and procedures laid down by the CAA.
- g) Submit periodic and other analytic reports to the DGCAA of the results of the inspections.
- h) Ensure that the Inspectors maintain the currency of their licences and carry out refresher training regularly.
- i) Ensure that Inspectors hold credentials, necessary authorizations and provided with handbook, checklists and all the tools and amenities needed.
- j) Liaise with the other Directorates of the CAA and provide them with specialised advice on all operational matters. The expertise of Inspectors is to be used liberally for this
- k) Advise the DGCAA on all matters relevant to air safety and help in investigation of accidents / incidents involving aircraft.
- l) Keep the DGCAA informed of all important activities of their Directorate.
- m) Ensure that the objectives of the Inspections are met and that the system of inspection is optimised and institutionalised. Updating of the system to meet the changing situations is an imperative that must be pursued.
- n) Update CAA records about the operator's allegiance with the compliance of applicable requirements

## Chapter 5 — Inspection

### 5.1 Inspection – General

Inspection which is a key part of State's Safety Oversight function, involves the examination of XXXXX (Insert State) observation of operator's actual performance, aviation documents, aircraft, cargo, premises, aeronautical products such as appliances, parts and components and facilities relating to aeronautics. The purpose of inspection is to determine whether compliance with regulations and standards is being maintained, in relation to the approved provisions in the Operator's Manual. It is a part of the daily routine of a XXXXX (Insert State) aviation official and includes activities such as:

- a) Civil Aviation Inspectors (Airline/Commercial) conducting company inspections, audits and flight tests;
- b) Civil Aviation Inspectors (General Aviation) conducting examinations and flight tests of pilot licence applicants and instructors and performing inspections and audits of flying schools and clubs;
- c) Airworthiness Inspectors conducting audits and inspecting aircraft;
- d) all inspectors using the air transportation system; and
- e) airport management personnel supervising air side activity.

### 5.2 Inspection Authority<sup>5</sup>

An inspection may be conducted by inspectors pursuant to the authority allowed by XXXXX (Insert Rule/Regulation) of the CARs and defined by the Delegation of Authority issued by the CAA. Depending upon their particular duties, inspectors may be delegated all or some of the following powers of the DGCA to inspect.

#### 5.2.1 Entry for Inspection

- a) aircraft, aerodromes, facilities or premises

An inspector's authority to enter aircraft, aerodromes, facilities or premises for the purpose of making inspections is found in XXXXX (Insert Rule) of the CARs. This is not only the authority to enter, but is also deemed to be authority for conducting an inspection.

- b) Dwelling-house (private residence or home) [NOTE: include this paragraph ONLY if there is a restriction on the preceding enter authority]

Entry to a dwelling-house for the purpose of performing any functions of the DGCA under the CARs (including inspection) can only be done under two conditions: with the consent of the occupant or, if entry is refused, under the authority of a warrant issued by a Court of Law. The entry warrant is not a search warrant

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<sup>5</sup> Samples: Insert relevant authority excerpts

### 5.2.2 Inspection

Inspection powers are derived from **XXXXX (Insert Same Rule if applicable)** of the CARs. Examples of other delegated authorities from the CAR's which assist inspection are:

**XXXXX (Insert Rule)** - to require an owner or operator to make an aircraft available for inspection; and

**XXXXX (Insert Rule)** - to give a pilot-in-command a signal to land.

### 5.2.3 Production of Documents

The authority to demand the production of documents is derived from **XXXXX (Insert Rule)** of the CAR's.

### 5.2.4 Seizure of Evidence

**XXXXX (Insert Rule)** of the CARs gives inspectors the power to seize anything found in any place entered for the purposes of inspection if they believe on reasonable grounds the thing seized will afford evidence with respect to a contravention. Anything seized must have been found by the inspector without resorting to a search or must have been provided voluntarily by a representative of the premises or aircraft being inspected. Items seized are usually those items which would be the subject of a normal inspection.

### 5.2.5 Obstruction

Any person wilfully obstructing or impeding an inspector during an inspection contravenes **XXXXX (Insert Rule)** of the CARs. This is viewed as a serious offence and one that will be pursued vigorously.

## 5.3 Safety Powers<sup>6</sup>

Every inspector is delegated the authority to exercise the following safety powers when encountering a situation where there is an imminent concern for aviation safety:

### 5.3.1 Detention of Aircraft

The authority for detention is found in **XXXXX (Insert Rule)** of the CARs. Inspectors may detain any aircraft which they believe on reasonable grounds is unsafe or is likely to be operated in an unsafe manner, and take reasonable steps to ensure its continued detention. Once the grounds for detention (e.g. unsafe condition) have been removed, the aircraft must be released.

See Detention and Return of Aircraft

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<sup>6</sup> Examples. Cite and summarize specific state safety powers

### 5.3.2 Suspend **XXXXX (Insert State)** Aviation Documents on the Grounds of an Immediate Threat to Safety

Inspectors may suspend a **XXXXX (Insert State)** Aviation Document on the grounds that an immediate threat to aviation safety exists or is likely to occur as a result of an act or thing having been, being or proposed to be done under the authority of the document. The authority for this type of suspension is found in **XXXXX (Insert Rule)** of the *CARs*. When a document is suspended, details of the suspension should be forwarded to the appropriate functional authority for inclusion in the document holder's file and for consideration by the functional authority when contemplating re-instatement of the document.

See [cite section of policy / procedures addressing the preparation of a Notice of suspension.]

## 5.4 Inspection Procedure

When conducting routine inspections for the purpose of determining compliance, inspectors shall observe the following procedures:<sup>7</sup>

- 1) Inspectors shall not enter aircraft or premises which are locked or where the owner/operator or appointed representative is not present;
- 2) An inspection should be conducted at a time that minimizes the inconvenience to flight crew, owner/operator and the travelling public;
- 3) The inspector shall use a credentials card for personal identification. They should also wear the airport access permit, if wearing such is required as per the approved Airport Security Programme;
- 4) The flight crew and owner/operator of an aircraft should be informed that an inspection is being conducted. Notifying the Pilot-in-Command or Station Manager is considered sufficient for this purpose. This can be done either by phone or by having met them in the aircraft;
- 5) A document produced for the purpose of inspection should be kept no longer than is necessary to determine its validity;
- 6) Where the validity of a document cannot be determined readily, a photocopy, photograph, accurate record or facsimile of the entries or endorsement on both sides of the document should be made before returning the document;
- 7) Inspectors may seize relevant and appropriate evidence with respect to a contravention discovered during the course of a routine inspection.
- 8) If an unsafe situation is discovered, the Pilot-in-Command or aircraft representative shall be informed and the inspector shall decide whether or not immediate detention of the aircraft is required. See Section 1.6 below;
- 9) In the event of any obstruction to an inspection, the inspector should politely inform the individual of the purpose of the inspection, the authority granted for performing the inspection, and that the individual is obstructing the conduct of this inspection. If this does not gain cooperation, state that obstruction is an offence, and that a charge could be laid under the *CARs* for obstructing an inspection. Should the individual

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<sup>7</sup> Note: If there are reasonable grounds to believe that a violation of the *CARs* has occurred, see Chapter [x] Investigation for relevant policy and procedures.

continue to obstruct the inspection, the inspection should be abandoned and legal assistance sought for the laying of charges under **XXXXX (Insert Rule)** of the CARs;

- 10) Where an inspector believes on reasonable and probable grounds that entry, search and seizure will be required to obtain evidence, the matter must be referred to the DGCA for acquisition of a Search Warrant and for conduct of an investigation. Under such circumstances, the inspector ceases the act of inspection and commences the act of investigation (see Chapter 4); and
- 11) Inspections should be completely documented with notes recorded sequentially in the Inspector's Handbook including dates and times.

### 5.5 Seizure, Retention and Return of Evidence

In accordance with CAR **XXXXX (Insert Rule)**, where evidence is seized, the inspector shall ensure:

- 1) the holder is given a receipt;
- 2) the evidence is clearly marked in an identifiable manner;
- 3) reasonable care is taken to preserve and protect the evidence;
- 4) continuity of possession of evidence can be assured;
- 5) where an Aircraft Journey Log is seized, a Temporary Aircraft Journey Log can be issued.<sup>8</sup> The temporary log must contain a statement that the original has been seized. Alternately, a photocopy of the log book properly identified as a certified true copy and signed by the owner, the inspector or the investigator is acceptable. The original is preferred in a court of law but a certified photocopy may be acceptable. Before making a photocopy, the original should be marked in a uniquely identifiable manner to preclude alteration or substitution; and
- 6) the evidence is returned to the person from whom it was seized or who has lawful entitlement to it as soon as practicable when continued retention is not required for the purposes of any investigation, hearing or other similar proceeding. Evidence must be returned within X days [Insert Number of days per state legal requirement] of seizure and the receipt mentioned above be cancelled if:
  - there is no dispute as to who is lawfully entitled to it;
  - return is not likely to affect aviation safety; and
  - it is no longer required.

### 5.6 Detention and Return of Aircraft

When inspectors contemplate the detention of an aircraft they must, if possible, introduce themselves to the pilot-in-command or owner/operator and specify the unsafe condition or unsafe operation which they believe exists or is likely to exist. They should tactfully try to obtain voluntary compliance in correcting the situation. If they are unsuccessful, they should:

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<sup>8</sup> Temporary Aircraft Journey Log, form [insert form number]

- 1) again advise the pilot-in-command or owner/operator of the unsafe condition or operation and the consequences of failing to abide by the inspector's advice (e.g. detention and/or enforcement action);
- 2) where the pilot-in-command or owner/operator is unavailable or indicates an unwillingness to comply with the inspector's advice, attach to that part of the aircraft most likely to be seen by the flight crew a written notice of detention specifying the unsafe condition or operation;
- 3) if necessary, restrain the movements of the aircraft :
  - by requesting ATS deny taxi and take-off clearances;
  - by blocking it with vehicles;
  - by attaching it to an immovable object; or,
  - in extreme cases, and with the assistance of a licensed Aircraft Maintenance Engineer, by judicious and temporary disablement, a record of which must be made in the aircraft log.

Whenever possible, and in accordance with **XXXXX (Insert Rule)**, an aircraft shall be detained without removing it from the custody of its owners or operators. This will permit such persons to make repairs or otherwise remedy the unsafe situation. However, if no other measures have been or are likely to be effective in alleviating the unsafe condition or operation, the aircraft may be taken into the custody of the DGCA. In such cases, all reasonable care shall be taken to preserve and protect the aircraft in the condition in which it was first acquired. The aircraft should be released if it will not be operated or if it will be rendered airworthy before operation and will not be operated in an unsafe manner. Details concerning the detention should be forwarded to the appropriate supervisor for a decision on the release of the aircraft from detention.

## Chapter 6 — Surveillance Operations

### 6.1 Surveillance — General

The most effective method of performing State's Safety Oversight functions and enhancing safety within the aviation community is to provide a regulatory presence wherever possible, aiming at promoting voluntary compliance with the *Aeronautics Act* and the CARs. These aims can best be achieved by Civil Aviation personnel participating in structured surveillance activities. Surveillance may be either routine or special-purpose. The purpose of surveillance is to provide a regulatory presence to promote voluntary compliance and reveal contraventions of aviation regulations. The probability of being detected is one of the most powerful compliance motivators. When a comprehensive and effective surveillance program is in place, a higher degree of compliance and flight safety can be expected.

### 6.2 Field Operations

#### 6.2.1 Routine Surveillance

Routine surveillance, which includes surveys, audits, base inspections, CAD renewal inspections, and ramp checks, is conducted during the normal course of the Civil Aviation Inspectors' duties of monitoring day-to-day aviation activity. When contraventions of regulations are detected, inspectors are responsible for completing a detection notice (Refer to Chapter x) for submission to the appropriate [cite position]. These forms, collated and analyzed at the [cite position], may reveal problems, trends or threats to aviation safety. Accordingly, this information can often provide the impetus for planned surveillance.

Routine surveillance may be discreet. Discreet surveillance is conducted when an inspector does not publicize or hide the fact that he or she is a Civil Aviation Inspector attached to the civil aviation administration of [State]. No special authorization is required for this type of activity. Whether an inspection is overt or covert, the Inspector has the same authority and responsibility in dealing with the findings or detections.

#### 6.2.2 Special-purpose Surveillance

Overt or covert surveillance is directed at specific areas, events and activities by Civil Aviation inspectors in support of Regional surveillance operations. Most surveillance done by inspectors is of an overt nature; that is, undisguised and designed to deter regulatory infractions and encourage compliance through a visible presence in CAA inspector uniforms as much as it is designed to detect violations. There are, however, instances when covert surveillance may be appropriate or necessary to gather evidence, to detect intentional wrong doings of operators. See Chapter x.

#### 6.2.3 Planned Surveillance

Planned surveillance is directed at specific areas, events and activities by Civil Aviation Inspectors in support of a surveillance plan.

### 6.3 Objectives

The following objectives may be considered when planning surveillance activities:

- 1) the promotion of compliance by the establishment of regulatory presence;
- 2) the conduct of investigations;
- 3) the detection of contraventions;
- 4) promotional and educational activities;
- 5) liaison with detection sources;
- 6) information gathering; and
- 7) targeted surveillance.

### 6.4 Plan Responsibility

The [cite Positions responsible: e.g., Chief, Flight Standards (CFS) / Chief, Airworthiness (CAW) / Director, Flight Safety & Regulation (DFSR)] are responsible for the development and administration of the safety oversight surveillance plan in their area of responsibilities.

### 6.5 Implementation

The implementation of a safety oversight surveillance plan is concerned with satisfying the CAA objectives of regulatory presence, investigation, detection of contraventions, compliance promotion and education.

#### 6.5.1 Presence

Surveillance should be carried out whenever and wherever aviation activity is most likely, including weekends and evenings. It should to the extent possible cover a cross-section of all modes of operations taking place in the respective field.

(a) It should be ensured that each surveillance team is composed of inspectors whose specialty is pertinent to the type of surveillance activity.

(b) It should be ensured that each surveillance team is qualified, duly authorized, appropriately attired (preferably in inspector uniforms) and is properly briefed for the operation.

#### 6.5.2 Surveillance

Surveillance should generally be carried out overtly. By introducing themselves to the public, inspectors in CAA uniforms will be able to maximize the promotion of voluntary compliance. Covert operations may be used when there are reasonable grounds to suspect an open presence may not culminate in a successful investigation

#### 6.5.3 Initial Violation Process

Inspectors shall ensure the initial violation process is completed thoroughly when new infractions are detected.

### 6.6 Monitoring of Special Aviation Events

**CAA XXXXX (Insert State)** attendance at special aviation events is intended primarily to establish a regulatory presence and, as such, deter any contraventions from taking place. An

obvious **CAA XXXXX (Insert State)** presence during air shows, organized fly-ins, parachute-drops and events of similar nature underscores a definite interest in promoting safety in general aviation.

### 6.7 Procedure

Extensive written notes should be kept of all observations. Inspectors should make use of the CAA Inspector Handbook or similar document provided by the CAA for this purpose. Where appropriate, photographs should also be taken. Inspectors should be prepared to use authority pursuant to **XXXXX (Insert Rule)** of the CARs in detaining aircraft proceeding in a condition unsafe for flight.

Watch for any regulatory contraventions and where possible prevent a contravention by dealing with the cause beforehand. Usually a friendly approach emphasizing the safety element can bring about compliance with the regulations.

### 6.8 Reporting

At the conclusion of the surveillance activity, a detailed report is normally made to the [cite position e.g., CFS/CAW/DFSR]. If contraventions of the regulations have been observed, the report shall be forwarded to the DGCA and must include any evidence of contraventions that has been gathered as well as an account of all actions take

## Chapter 7 — Detection

### 7.1 Introduction

Detection is the discovery of a possible contravention of aviation-related rules and regulations. It may result from activities such as inspections and surveillance programs, and public complaints. A Civil Aviation official must take action on observing a contravention or when apprised of one relating to his/her area of speciality, without waiting for further instructions from the superiors, subject to the delegation of authority. It is also necessary that every Civil Aviation Inspector shall keep the appropriate division/section of the CAA informed if there is any information that the applicable requirements have not been adhered to or to be contravened. At the very least, an inspector should carry out the initial violation process and forward it without delay to the [cite ., position titles. e.g., CFS/CAW/DFSR] along with all evidence gathered in support of the allegation of a violation. Even when the matter does not require further action, as in the case of an oral counselling, the initial violation process provides the [cite positions] with information which helps shape the Aviation Enforcement Program.

### 7.2 Initial Report of a Violation

In all cases where an inspector detects a contravention or where information about a possible contravention is received, the inspector should attempt to gather as much information as possible regarding the incident. This is necessary to preserve perishable evidence and to provide sufficient information about the contravention to enable a complete and comprehensive investigation. The initial violation process should simply provide answers to the questions: WHO, WHERE, WHEN, WHAT, WHY and HOW. The information should be recorded and passed to the [cite position] as soon as possible along with any notes or evidence such as photos, logs, tapes, etc. Refer to Annex 1 to this Chapter<sup>9</sup>

The decision to conclude the incident with an oral counselling or to refer the matter for further investigation is entirely at the discretion of the inspector completing the form.

If the contravention is considered minor, the inspector may opt for oral counselling.

If the contravention is of a more serious nature, the inspector must refer the incident without delay to the [cite positions] for further action. The [cite positions] will then determine if a comprehensive investigation should be carried out.

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<sup>9</sup> NOTE: (CAAs may develop their own Initial Report of a Violation form)

## 7.2.1 Detection Record

### 7.2.1.1 Oral Counselling

Oral counselling provides the document holder with immediate counselling on the necessity for compliance. It is an option for inspectors when the contravention is minor and inadvertent or is a safety-related violation where there is no direct flight safety hazard and the imposition of a sanction is not considered appropriate. Refer to the factors affecting choice of sanction in the examples enumerated in Chapter 13 Administrative Action for guidance on determining whether or not oral counselling is appropriate.

Inspectors should assess all aspects of the contravention and the attitude of the document holder to determine whether oral counselling will secure future compliance. Oral counselling may be most appropriate in cases of ignorance or misinterpretation of the law, provided aviation safety was not jeopardized, i.e. a minor contravention having little or no impact on safety or where there was no indication of a wilful act. Oral counselling is not an option when the alleged offender disputes the allegation. In all cases, the Inspector should maintain a written record of such counselling, succinctly

## 7.2.2 Further Investigation

If in doubt about the appropriate action to take in a given circumstance, the inspector should refer the matter to the [cite positions] for further investigation.

## 7.3 Contraventions of Dangerous Goods Regulations

Within Civil Aviation Authority, all inspectors who have undergone relevant training programmes as approved by the CAA and been properly authorized, are responsible for promoting compliance with and detecting contraventions of the Transportation of Dangerous Goods Regulations. Because of the possible hazards involved in the transport of dangerous goods, all inspectors, upon detection or receipt of a reported violation, shall apprise the [cite positions] of the situation.

Inspectors should have a basic familiarization of how to identify dangerous goods and must not place themselves in positions that might jeopardize their safety.

### 7.3.1.1 Inspectors Flying as Passengers

7.3.1.2 If inspectors, while flying as passengers on an airline either on duty or off duty, detect a contravention which, in their judgement, must be brought to the attention of the flight crew (e.g. a major disregard of the CARs), they shall contact the pilot-in-command after the flight has terminated. After identifying themselves, inspectors should indicate to the pilot the nature of the contravention and advise the pilot that they will be making a detailed written report. An initial violation process form shall be forwarded without delay to the CFS/CAW/DFSR. It shall contain sufficient detail including all available evidence to allow follow-up action.

7.3.1.3 The policy of post-flight notification does not apply where the contravention compromises flight safety. An example of this would be contravention of CAR XXXXX (Insert Rule/Regulation) which forbids a flight to commence without an inspection for adherence of frost, ice or snow to any critical surface of an aircraft. In such a case, direct and immediate action shall be taken by the inspector.

**7.3.1.4 Expanded Description of the Initial Violation Process**

- 7.3.1.5 The purpose of the initial violation process is to gather information in a systematic and thorough manner when it is suspected that a regulation or provision has been violated by an act or omission that warrants further investigation. All inspectors are responsible for gathering pertinent information when they detect a violation of the regulations and for recording that information, preferably in the Initial Violation Process Form. This initial process of collecting information concerning a possible violation is often the only opportunity to preserve perishable evidence.
- 7.3.1.6 The initial violation process should simply answer the questions: WHO, WHERE, WHEN, WHAT, WHY & HOW and, depending on the circumstances, may be expanded as follows:
- 7.3.1.7 (1) fill out the Initial Violation Process Form;
- 7.3.1.8 (2) record all possible contraventions (even borderline offences);
- 7.3.1.9 (3) record date, time and location of the contravention;
- 7.3.1.10 (4) record the identification of the aircraft and the names, addresses and telephone numbers of all persons involved;
- 7.3.1.11 (5) preserve perishable evidence and documents such as log books, load control sheets, damaged aircraft parts, engineering records, invoices, etc. Obtain weather reports, etc. if it is suspected they may not be available at a later time. Give the unit manager of an ATS facility a written note requesting that information in the form of flight plans or ATS tapes be secured for later acquisition.
- 7.3.1.12 (6) take photographs of all objects that cannot be secured or moved;
- 7.3.1.13 (7) take notes on the events immediately preceding and following the contravention;
- 7.3.1.14 (8) record the names, addresses and telephone numbers of all witnesses that were present or that may have information and note the information each could provide whether there is duplication or not. (The reason for this is twofold: to freeze evidence so that it cannot be changed later and to enable witnesses to refresh their memory at a later date);
- 7.3.1.15 (9) approach any person you suspect of committing a contravention and seek their account of the occurrence;
- 7.3.1.16** (10) contact the [cite positions] for assistance or direction as required.
- 7.3.1.17 **NOTE:** It is important to keep an accurate set of notes detailing in chronological order your actions with appropriate location, dates and times.

Upon detection of a violation and the completion of the Initial Violation Process Form, an inspector should forward the same to [cite positions] who will assign an investigator to the case. Both the reporting inspector and assigned investigator shall continue to coordinate their work as necessary until the conclusion of the case.

## Chapter 8 — Analysis of Legislative Provisions

### 8.1 Introduction

This chapter provides a procedure for analyzing offence creating legislative provisions to obtain a precise interpretation and to determine the facts and evidence required for their enforcement. The decision to continue or terminate a case is often based on the results of the analysis of legislation. Investigators will complete an analysis of each provision that has been contravened for each case where a comprehensive investigation is conducted.

### 8.2 Construction of Legislative Provisions

#### 8.2.1 Types of Legislative Provisions:

Legislative provisions may be enabling, administrative, informative and offence creating. Only the latter can be the subject of enforcement actions.

(a) Enabling provisions are those which confer power on persons to make some other type of standard or policy. Some enabling provisions in the *Aviation Act* and *CARs* are those which give powers to make regulations, orders and publications. For example: XXXXX (Insert Rule).

(b) Administrative provisions confer a power or impose a duty on the DGCA; for example, to issue licenses. They may provide criteria used in discharging these powers or duties. Although these provisions are public notice of what the DGCA can do, their purpose is to provide a statutory basis for administrative procedures or actions. For example: *CAR* XXXXX (Insert Rule).

(c) Informative provisions are intended to guide the aviation community and assist individuals in complying with aeronautics legislation. For example: *CAR* XXXXX (Insert Rule).

(e) Offence creating provisions can be one of two types, first, those which mandate a certain form of conduct and, second, those which prohibit certain conduct. Non-compliance with these provisions is a violation that can result in judicial or administrative enforcement action. For example: *CAR* XXXXX(Insert Rule).

The legislative provisions of interest in this chapter are the “offence creating provisions” and are often referred to as safety regulations. They are easy to recognize as they contain words such as, “No person shall”, “an operator shall”, “the pilot-in-command shall”.

#### 8.2.2 A provision is composed of legislative elements.

Precise interpretation requires analysis of the various elements of a legislative provision. An element is a segment, either a single word or group of words, that expresses a unit of thought. Every element contributes to the total meaning of the legislative provision. Core elements contain the subjects and verbs while qualifying elements describe or modify core elements. Common elements are those which appear frequently in the legislative provisions

(e.g. "no person", "shall fly", "aircraft", "pilot-in-command"). Uncommon elements are those which do not appear frequently (e.g., "legal custody and control", "accredited representative", "influence of alcohol").

### **8.3 Identify Possible Violations**

During the early stages of a comprehensive investigation, investigators should list all possible violations, not necessarily in order of importance, then select the corresponding legislation that should be analyzed. A timely analysis will indicate what evidence is available and what further evidence may be required; it could also determine that there is, in fact, no violation.

### **8.4 Analysis of Offence Creating Legislative Provisions for Interpretation**

Analysis for interpretation consists of the following steps:

- 1) Divide the legislative provision into elements, (e.g., (No person) (shall fly) (a helicopter) (on a Sunday)).
- 2) Determine the applicability of each element.
- 3) If a meaning is unclear and there are no pertinent regulatory definitions, use dictionary meanings.
- 4) Determine the modifying effect of the qualifying elements.
- 5) Summarize the results to arrive at the interpretation.

### **8.5 Analysis of Offence Creating Legislative Provisions for Evidence**

Where a contravention is suspected, the pertinent legislative provisions should be divided into elements and analyzed for interpretation. The facts that need to be established to prove a contravention and the forms and sources of evidence that tend to establish those facts must then be determined.

This is done by first classifying the elements as common or uncommon elements. Standard forms of evidence are used to establish the facts concerning common elements. Special forms of evidence may be needed to establish the facts concerning uncommon elements.

#### **8.5.1 Standard forms of evidence**

Standard forms of evidence include witness statements, oral testimony, admissions, tape recordings, photographs, objects and documentary evidence such as journey logs, technical logs and business records.

#### **8.5.2 Special forms of evidence**

Special forms of evidence include voice-prints, x-rays, magnaflux, dyecheck, etc.

### **8.6 Sample Analysis**

The matrix on the following pages illustrates a method of analyzing the common elements of many legislative provisions and some uncommon elements for relevant evidence.

**8.6.1 Illustrative Analysis of Common Elements**

Elements	Facts To Be Established	Evidence
<p><b>#1</b></p> <p>[no person]</p> <p>-core element</p> <p>-sets out prohibition applying to all persons</p>	<p>8.6.2</p> <p>What person performed the prohibited act.</p>	<p>8.6.3</p> <p>“Standard forms” to identify the person: Log book, witness</p> <p>For a corporation, refer to registry office for legal name; obtain Certificate of Incorporation from Registrar of Companies.</p>
<p><b>#2</b></p> <p>[shall fly]</p> <p>-core element</p> <p>-describes the prohibited act</p>	<p>8.6.4</p> <p>The person acted as pilot-in-command, co-pilot, flight navigator or flight engineer; when and where.</p> <p>NOTE: The duties of these "flight crew members" are not defined. Conclusions must be drawn from expert knowledge.</p>	<p>8.6.5</p> <p>“Standard forms:” Log book, witness.</p>
<p><b>#3</b></p> <p>[attempt to fly]</p> <p>-core element</p> <p>- describes the prohibited act</p>	<p>8.6.6</p> <p>The person intended to fly or made an endeavour to fly; when and where.</p>	<p>8.6.7</p> <p>Evidence of overt acts showing intent or endeavour to fly, e.g. filing of flight plan, request for clearance.</p>
<p><b>#4</b></p> <p>[aircraft]</p> <p>[no aircraft]</p> <p>8.6.10</p> <p>-core or qualifying element</p> <p>8.6.11</p>	<p>8.6.8</p> <p>The object referred to was an aircraft as defined in <b>XXXXX (Insert Rule)</b> of CARs</p> <p>The aircraft must be identified.</p>	<p>8.6.9</p> <p>“Standard forms:” Log book, C of R; witness.</p> <p>C of A / C of R as required by the CARs</p> <p>-request that certificate indicate status on date of offence</p>

Elements	Facts To Be Established	Evidence
<p>[the pilot-in-command]</p> <p>-defined in <b>XXXXX (Insert Rule)</b>.of the CARs</p> <p>-usually a core element</p>	<p>The suspected violator was the "pilot-in-command".</p>	<p>"Standard forms:" Log book, witness.</p>
<p>[operate]</p> <p>-core element</p> <p>-not defined in CAR <b>XXXXX (Insert Rule)</b>.</p> <p>- "to work or use a machine" (dictionary definition)</p>	<p>The act of operating was performed by the suspected offender.</p> <p>8.6.12</p> <p>With respect to an aircraft, "operate" includes "fly" as a pilot.</p>	<p>"Standard forms:" Log book; witness; Flight Plan; ATS record</p>

**8.6.13 Illustrative Analysis of Uncommon Elements**

For common elements see the previous page:

#1 [no person] #2 [shall fly] #3 [or attempt to fly] #4 [an aircraft]

Uncommon Elements	Facts To Be Established	Evidence
<p>#5 [unless a flight authority issued under the CARs is in effect in respect of the aircraft]  - qualifying element</p>	<p>(a) no such flight authority has been issued.  (b) if issued, flight authority was not in effect at the time.</p>	<p>For fact (a): use C of A / C of R's Certificate under Rule <b>XXXXX (Insert Rule)</b> of CARs.  For fact (b): show that the standard for a flight authority to be in effect was not met at the time.</p>
<p>#6 [or unless a flight authority issued under the laws of the country in which the aircraft is registered is in effect in respect of the aircraft]  - qualifying element</p>	<p>(a) no such flight authority has been issued.  (b) if issued, flight authority was not in effect at the time.</p>	<p>For fact (a): Affidavit from the proper authority of the country.  For fact (b): Same as (a) and expert testimony.</p>
<p>#7 [and unless all conditions upon which the certificate or permit was issued have been complied with]  - qualifying elements</p>	<p>Such conditions were not met at the time.  NOTE: Conditions of issue are inscribed on the flight authority.</p>	<p>Produce a true copy of respective flight authority certified by the <b>XXXXX (Insert Designation)</b> as required under the CARs.</p>

**8.6.15 Analysis Matrix - CAR XXXXX (Insert Appropriate Rule or change text if necessary).**

**CAR XXXXX (Insert Rule).**

No person shall operate an aircraft in flight unless

- a) a flight authority is in effect in respect of the aircraft;
- b) the aircraft is operated in accordance with the conditions set out in the flight authority; and
- c) subject to subsections (X) and (X), [insert as applicable] the flight authority is carried on board the aircraft.

Elements	Facts To Be Established	Evidence
<p>#1 [no person]</p> <ul style="list-style-type: none"> <li>- a common element and a core element</li> <li>- the prohibition applies to all persons</li> </ul>	<p>What person performed the prohibited act.</p>	<p>“Standard forms” to identify the person.</p> <p>8.6.16</p>
<p>#2 [shall operate...in flight]</p> <ul style="list-style-type: none"> <li>- a common element and a core element</li> <li>- specifies the prohibited action</li> </ul>	<p>A flight took place</p>	<p>“Standard forms” - journey log, eye witness, ATS record, etc - showing that the aircraft was operated in flight</p>
<p>#3 [an aircraft]</p> <ul style="list-style-type: none"> <li>- a common element and a core element</li> <li>- augments the prohibited action</li> </ul>	<p>The object referred to was an aircraft as defined in <b>XXXXX</b> <b>(Insert Rule)</b> of the CARs.</p> <p>The specific aircraft must be identified.</p>	<p>“Standard forms” - Journey log, C of R, eye witness - to identify the particular aircraft.</p>
<p>#4 [unless a flight authority is in effect in respect of the aircraft]</p> <ul style="list-style-type: none"> <li>- a common element and a qualifying element</li> </ul>	<p>a. Flight authority was not issued.</p> <p>b. Flight authority was not in effect.</p>	<p>a. C of A / C of R as required under CARs</p> <ul style="list-style-type: none"> <li>- request that certificate indicate status of aircraft on date of offence</li> </ul> <p>b. Documents or expert evidence showing why flight authority was not in effect</p>
<p>#5 [and unless the aircraft is operated in accordance with the conditions set out in the flight authority]</p> <ul style="list-style-type: none"> <li>- an uncommon element and a qualifying element</li> </ul>	<p>c. The manner of operation that was not in accordance with the flight authority.</p> <p>b. A manner of operation prescribed by the flight authority that was not carried out.</p>	<p>Standard forms - journey log, eye witness, flight plan. - showing deviance from conditions of the flight authority</p>
<p>#6 [and unless the flight authority is carried on board the aircraft subject to subsection (X) and (X)]</p> <ul style="list-style-type: none"> <li>- a common element and a qualifying element</li> </ul>	<p>a. Flight authority was not carried on board the aircraft.</p> <p>b. Show subsections (X) and (X) do not apply <i>(the subsections are not addressed in this example)</i></p>	<p>Standard forms - eye witness - showing the flight authority was not carried on board the aircraft.</p>

Elements	Facts To Be Established	Evidence
8.6.17		

## Chapter 9 — Investigations

### 9.1 Introduction

An investigation is a systematic search for and documentation of the facts relevant to an event from enforcement process since which a decision to take appropriate action can be made. It is the most significant phase of the subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. In order for investigators to conduct thorough investigations from the initial complaint through to the case report, it is imperative that they have a thorough understanding of their delegation of authority and a sound knowledge of their inspection and investigative powers. Inspectors must also know what constitutes relevant evidence if **CAA XXXXX(Insert State)** is to bring an action against an alleged offender because the only means available to prove that the violation has taken place is through obtained evidence.

### 9.2 Priorities for Investigation

Priority shall be given to violations received from any Government request. For all other violations the [cite positions. e.g., DGCA/CFS/CAW/DFSR] shall assign an investigation priority level based on safety impact.

### 9.3 Cockpit Voice Recorder (CVR) / Flight Data Recorder (FDR)

CVR/FDR recordings shall not be used by Civil Aviation Authority **XXXXX (Insert State)** in any enforcement matters. Their use is limited to aircraft accident investigations to assist in determining the cause of accidents and incidents. Should courts of law subpoena CVR/FDR tapes, counsel for the CAA in liaison with Justice Department will handle the matter.

### 9.4 No Investigation Conducted (NIC)

Sometimes, it is evident from the original complaint or the Initial Violation Process that the case does not warrant a comprehensive investigation because of: lack of evidence; referral to a foreign or **XXXXX(Insert State)** agency; statutory limitation; low safety item; insufficient resources; etc. Nevertheless, the relevant information should be recorded for the type of action taken.

### 9.5 Exemption from Application of Civil Aviation Rules

Certain sections of the CARs provide for the granting of specific exemptions from the application of all or part of the offence-creating provisions. Usually the onus is on the alleged offender to provide proof of such an exemption.

## 9.6 Warning and the [cite National charter or rights and freedoms]

In order to comply with the [cite National charter or rights and freedoms], an investigator has the duty to advise and warn an alleged offender. To ensure that the rights of an alleged offender are not violated, a warning similar to the following should be given:<sup>10</sup>

“You may/will be charged with the offence of \_\_\_\_\_”.

“It is my duty to inform you that you need not say anything, you have nothing to hope from any promise of favour and nothing to fear from any threat whether or not you say anything; however, anything you do say may be used as evidence”.

“Do you understand?”

“It is my duty to inform you that you have the right to retain and instruct counsel without delay”.

“Do you understand?”

“Do you wish to contact counsel?”

“Do you wish to give a statement?”

## 9.7 Defences - Necessity, Due Diligence, Officially Induced Error

If early in an investigation, facts are uncovered which point to the likelihood that an alleged offender could successfully argue the actions taken were justified, the investigator may opt to terminate the investigation with a recommendation for no further action. In certain cases where wrongful conduct can be proven or is admitted, the alleged offender may still be able to raise a defence based on necessity, due diligence or officially induced error. These defences are available in both judicial and administrative proceedings.

### 9.7.1 The Defence of Necessity

The defence of necessity has its origins in common law and remains available to alleged offender. In deciding whether the defence has been established, the [cite positions – e.g., CFS/CAW/DFSR] should carefully examine the facts to determine whether all of the following conditions apply:

- 1) the situation was so urgent and the dangers from inaction were so imminent that it was unreasonable to delay any action;
- 2) compliance with the law was demonstrably impossible as the violation was inevitable or unavoidable in that there was no opportunity for an alternative course of action that did not involve a contravention of the regulations; and
- 3) the hazards to flight safety caused by the contravention were less serious than the hazard posed by complying with the law (e.g. breaking the law is less serious than any accident that might result from complying with it in the particular circumstances).

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<sup>10</sup> Note: Sample. Insert text as appropriate to national legislation

In addition, the [cite positions – e.g., CFS/CAW/DFSR] must be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or a breach of the regulations. In other words, where the alleged offender created the danger, the alleged offender cannot avoid liability for a contravention committed to escape from that danger.

Where the defence of necessity is proven, the alleged offender cannot be found to have contravened the law because the contravention was necessary to avoid an immediate greater danger (in particular, death or injury).

### **9.7.2 The Defence of Due Diligence**

**XXXXX (Insert Rule and Retain if Applicable)** provides for the “defence of due diligence” in an alleged contravention of the CARs. In order to establish this defence, the alleged offender must show that due diligence was exercised (all reasonable steps were taken) to avoid committing the contravention. Where due diligence is proven, the alleged offender cannot be found in contravention of the law because all reasonable steps to avoid the contravention were taken. What constitutes due diligence will therefore vary from case to case depending on the facts.

### **9.7.3 Officially Induced Error**

The defence of officially induced error is available where an alleged offender has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. It must be proved, on a balance of probabilities, that the alleged offender relied on the erroneous legal opinion or advice of the official and that this reliance was reasonable. The reasonableness will depend on several factors, including the efforts made by the alleged offender to ascertain the proper law, the complexity or obscurity of the law, the position of the official and the clarity, definitiveness and reasonableness of the advice given. The defence may at times overlap with the defence of due diligence, but it is separate and distinct.

### **9.7.4 Application of Defences**

Any one of the previously mentioned defences can be raised by the alleged offender during the investigation or at any time before a decision to impose a sanction has been made. If the [cite positions e.g., CFS/CAW/DFSR] is satisfied that a defence has been established and therefore no offence has been committed, then the case must be closed. When a defence of due diligence or necessity has not been proven, a mitigating circumstance may still exist that may be taken into consideration. If an informal meeting is requested by the document holder, the procedures as laid out in **XXXXX (Insert Rule)** shall be followed. If the alleged offender insists the defences are valid, the situation becomes a matter for the DGCA/Government or the court to decide.

### **9.7.5 Comprehensive Investigations**

If the initial violation process indicates that a contravention took place and further evidence is necessary to establish the facts, a comprehensive investigation must be commenced. The purpose of the comprehensive investigation is to obtain all the evidence necessary to establish the truth. The investigator’s objective is not only to obtain sufficient evidence to prove an alleged offence occurred, but also to ensure that all the facts of the incident are

disclosed so that natural justice will be served. The procedure for conducting a comprehensive investigation follows:

- 1) identify all provisions that were possibly contravened;
- 2) analyze the regulations allegedly contravened;
- 3) determine the evidence necessary to prove each element of a violation;
- 4) plan and initiate the steps necessary to obtain such evidence; e.g. interviews, resource personnel, expert witnesses, log books, records, search warrant, etc.;
- 5) obtain information from the alleged offender. The alleged offender must be contacted in person, by telephone or by mail and be advised **that**:
  - a. an investigation is in progress; and,
  - b. there is an opportunity for the document holder to offer voluntary information.

**NOTE 1:** It is mandatory to advise the alleged offender that an investigation is in progress. The case file must be annotated to record the notification. An alleged offender may be able to provide evidence valuable to the investigation. Under no circumstances should the imposition of Monetary Penalty or the Notice of Suspension be the alleged offender's first indication of an enforcement investigation.

**NOTE 2:** A **warning** shall be given advising the alleged offender that this information may be used as evidence.

- 6) co-ordinate the investigation to prevent overlap or conflict with other personnel;
- 7) establish the cause of the violation. e.g. weather, navigation hazard, equipment, deliberate, inadvertent;
- 8) record the relevant information, including a narrative of the facts and circumstances of the event which lead to the alleged violation;
- 9) prepare a personnel or company enforcement case file incorporating the results of the foregoing activities and including the Initial Violation Process Form, a legible activity log and a case report;

#### 9.8 Case Closure - No Further Action (NFA)

A case should terminate with no further action if:

- (a) the alleged offender's identity cannot be ascertained;
- (b) the evidence does not provide reasonable grounds to believe the violation took place;
- (c) an un-correctable technical or other flaw in the case precludes further action;
- (d) an exemption had been granted which negated the contraventions; or
- (e) a defence of necessity, due diligence or officially induced error is established.

Enforcement correspondence relating to a case in which no further action was taken is recorded but the case shall not be considered a contravention.

## 9.9 Disclosure of Information

The [state] policy is one of full disclosure to the document holder or his or her representative. The responsible CAA official shall disclose all evidence that may assist the document holder, even if [ciste CAA] does not propose to adduce it. However, file notes containing personal opinions as well as internal correspondence outlining how to proceed with sanctions shall not be disclosed.

If a review hearing is scheduled, the dispatch of the disclosed information should be arranged so that the document holder receives the information at least 30 calendar days before the hearing date or as soon as practicable if the hearing is to be held before 30 days. Full disclosure must be made at least seven days before the hearing. Full disclosure can occur at any earlier time on the request of subject of the investigation.

The purposes of the full disclosure policy are listed below:

- a) to ensure that the document holder knows the case to be met and is able to make full answer and defence;
- b) to encourage the resolution of facts at issue; and
- c) to encourage the resolution of the case prior to the hearing.

## 9.10 Full Disclosure

Full disclosure means that the CAD holder will be given at least the following, as relevant to the case:

- 1) particulars of the circumstances surrounding the case;
- 2) copies of relevant written statements (these may include witness statements, investigative notes, and summaries);
- 3) an appropriate opportunity to examine electronic statements and/or other medium, i.e., air traffic service (ATS) tapes;
- 4) a copy of relevant electronic evidence, where such taped evidence exists;
- 5) particulars of the CAD holder's enforcement record, if applicable;
- 6) copies of relevant expert witness reports—caution should be exercised so that privileged information is not released or that it is not released to the wrong parties;
- 7) copies of relevant documents and photographs that the case presenting officer (CPO) intends to introduce into evidence during the hearing;
- 8) a copy of any search warrant obtained and executed during the investigation—caution must be exercised where privileged information is at issue, i.e., in-camera hearing;
- 9) copy of the Notice of Suspension or Notice of Assessment of Monetary Penalty;
- 10) particulars of relevant evidence intended to be relied on at the hearing and any information known to the CPO that the CAD holder may use to impeach the credibility of a Department witness in respect of the facts at issue in the case;
- 11) if applicable, a copy of the flow chart relating to an airworthiness matter; and
- 12) the names of witnesses, their employment and their address, unless there is evidence to indicate that the witness will be harassed or intimidated prior to the hearing. The witnesses should be informed of the action, and inquiries should be made as to whether there is any problem anticipated.

The information that is disclosed should be sent to the CAD holder by registered mail.

### 9.11 Exceptions to Full Disclosure

Certain information that is related to items of public interest may be exempt from the disclosure policy. This information includes but is not limited to the following:

- 1) information concerning a confidential informant, an ongoing investigation, or investigative techniques;
- 2) information that may be considered a confidence of the [cite government body]; and
- 3) information that cannot lawfully be disclosed or that would be injurious to international relations, national defence or security if disclosed.

### 9.12 Search Warrants—Investigations

During the course of an investigation, the powers of entry and seizure available to an inspector conducting an inspection are no longer applicable (Chapter x — Inspections).

- 1) If entry or surrender of evidence is refused by the occupant or there are grounds to believe that entry or surrender of evidence will be refused, authorization for entry, search and seizure must be obtained through a search warrant issued pursuant to [cite sections of the national *Criminal Code*];
- 2) The approval of the [cite position] shall be obtained prior to requesting a search warrant;
- 3) The authority for the use of force is inherent in a search warrant. Any use of force shall be carried out by a peace officer. The investigator shall not use force;
- 4) The assistance of a peace officer is not required if the use of force is not necessary; and
- 5) A search warrant is only used by the DGCA to support Enforcement investigations and, as a result, its use is limited to Enforcement staff.

### 9.13 Return Of Evidence—Investigations

Because a search warrant is obtained under the *Criminal Code*, anything seized during the search is subject to the provisions stipulated under section 489.1, *Restitution of Property or Report By Peace Officer*, and/or section 490.1, *Detention of Things Seized*, of the *Criminal Code*.

Evidence that was obtained with the consent of the owner shall be returned in the same manner as items seized under paragraph 8.7(1)(d) of the *Aeronautics Act*. CAR 103.09 details the procedure to be followed.

COMPARISON OF INTERVIEWS OF WITNESSES AND ALLEGED OFFENDERS	
Witness	Alleged Offender
<p><b>AIM</b> ...to gather information and test its validity in order to determine the particulars of the matter under investigation.</p>	<p>...to gather information and test its validity in order to determine whether the subject was responsible for or involved in the matter under investigation.</p>
<p><b>WHO</b> ...witnesses who are willing to provide the investigator with any information they possess about the matter under investigation.</p>	<p>...persons suspected of offences as well as others who may have information but are reluctant to offer it.</p>
<p><b>WHEN</b> ...interviews should take place as soon as possible after the event has occurred so that statements by witnesses are not affected by memory loss, influence of talking to others, etc. Immediate gathering of information enables the investigator to prepare for interviewing alleged offenders.</p>	<p>...interviews of alleged offenders should take place ideally after the investigator has gathered enough information to make a judgement on how truthful the subject is. An alleged offender interview is more fruitful after witnesses have been interviewed and physical evidence has been located and evaluated.</p>
<p><b>LOCATION</b> ...at a place convenient and familiar to the subject or in a neutral setting. The subject's home, place of business or any place where privacy is assured is preferred.</p>	<p>...the interview room at the office is best since it enables the inspector to manage the security of the subject and to control other factors which might tend to be distracting.</p>
<p><b>TECHNIQUE</b> ...a low-pressure, informal atmosphere is preferred to allow the subject to relate his information in narrative style. Specific questions should be used to gather more detail and to jog the witness' memory.</p>	<p>...basically the same method as with witness interviews, but the atmosphere is more formal and the investigator works toward a more specific purpose.</p>

## Chapter 10 — Covert Operations

### 10.1 Introduction

Most surveillance done by Civil Aviation Authority **XXXXX (Insert State)** officials is of an overt nature, that is, staff is in uniforms, undisguised and designed to encourage compliance through a visible presence, to deter regulatory infractions and to detect infractions. There are however instances where covert operations may be appropriate or necessary in order to gather evidence. Covert operations are surveillance activities during which inspectors intentionally represent themselves as being someone other than a Civil Aviation official.

### 10.2 Covert Operations Policy

Covert operations may be conducted in order to gather evidence of continuing wilful violations of the aviation safety regulations. Covert operations shall be conducted only when a threat to aviation safety exists and when normal investigative means have been ineffective or are likely to be ineffective to stop the unsafe activity.

The decision to conduct a covert operation shall be made by the DGCA on the advice of the [cite positions e.g., CFS/CAW/DFSR]. Should the DGCA be satisfied that a need exists for inspectors to conduct a covert operation, the [cite positions e.g., CFS/CAW/DFSR] will be granted the authority by the DGCA. The DGCA should advise the Government of the particulars of the case (if considered necessary).

### 10.3 Definitions

"Criminal Activity" - is any act that is illegal under the *Criminal Code* of **XXXXX (Insert State)** and is clearly outside the scope of responsibility of **CAA XXXXX (Insert State)**.

"Joint Covert Operation" - is a covert operation involving Civil Aviation officials in cooperation with another agency.

"Third Party Agents" - are persons employed specifically for the purposes of a covert operation excluding police officers, other agency personnel or Civil Aviation inspectors.

### 10.4 Principles of Covert Operations

The following principles should be considered when planning or conducting covert operations:

- 1) all covert operations shall be approved by the DGCA;
- 2) DGCA shall be responsible for the conduct of covert operations.
- 3) the [cite positions e.g., CFS/CAW/DFSR] shall ensure adequate command, control and communications are exercised during each operation;
- 4) where Civil Aviation Authority contemplates involvement in a joint covert operation, the agency in charge of the operation will be identified prior to the start of the operation;

- 5) Civil Aviation Authority may provide technical advice but will not participate actively in a joint covert operation where it is anticipated activity that is likely to place an inspector in physical danger will be encountered during the operation;
- 6) during the planning stage of a joint covert operation, a contingency plan shall be developed that will permit Civil Aviation Inspectors to withdraw from active participation in the operation if there is a likelihood that the inspectors personal safety may be jeopardized;
- 7) no inspector shall obtain employment in an aviation company for the purpose of gaining access to information or evidence otherwise unavailable;
- 8) care must be taken to ensure that the associated investigation is not construed as entrapment; and,
- 9) the [cite positions e.g., CFS/CAW/DFSR] shall ensure inspectors are thoroughly briefed for the covert operation and are aware of the guidelines for inspectors.

### **10.5 Guidelines for Inspectors**

Inspectors engaged in covert operations shall be bound by the following guidelines:

- 1) in no case shall an inspector counsel or facilitate the commission of an offence;
- 2) if other illegal acts are detected during an operation, the appropriate enforcement agency shall be notified;
- 3) if activity that is likely to place an inspector in physical danger is detected, the operation shall be abandoned rather than place inspectors at risk. In joint covert operations, the contingency plan developed to withdraw the inspectors from the operation will be activated, ensuring the operation or other operatives are not compromised. Inspectors may continue to provide technical advice and support;
- 4) inspectors conducting an operation are to respect the rights of individuals;
- 5) inspectors conducting covert operations must not allow a flight to take place if, in the opinion of the inspector, a condition exists that is an immediate threat to the safety of the flight.

## Chapter 11 — Special Investigative Procedures

### 11.1 Contraventions by Military Aircraft

The XXXXX (Insert State) *Civil Aviation Regulations* do not apply to:

- 1) XXXXX (Insert State) Armed Forces aircraft operating under the authority of the Minister of XXXXX (Insert Appropriate Minister); and
- 2) foreign military aircraft.

The [cite positions e.g., CFS/CAW/DFSR/DATS] shall forward a detection report to concerned Military / Air Headquarters for any incident involving XXXXX (Insert State) military aircraft or for any incident involving foreign military aircraft operating in XXXXX (Insert State) Domestic Airspace.

### 11.2 Contraventions by XXXXX (Insert State) Aviation Companies

#### 11.2.1 Contraventions Detected during an Audit or Base Inspection

When audit or inspection team members detect an apparent contravention of the regulations, they shall follow the initial violation process including the seizure of relevant evidence. The Audit Manager shall identify all contraventions of the regulations detected during the audit and will determine whether the related information should be forwarded to the Convening Authority during the audit or held for inclusion in the audit report. If the Audit Manager is of the opinion that a contravention discovered during an audit requires immediate action, the Audit Manager shall inform the [cite positions e.g., CFS/CAW/DFSR] of the details and request a comprehensive investigation.

On receipt of the audit report, the Convening Authority, the [cite positions e.g., CFS/CAW/DFSR] will jointly determine which contraventions require comprehensive investigation and deterrent action. If, at the completion of a comprehensive investigation, suspension of an Air Operators Certificate (AOC) or Approved Maintenance Organization (AMO) Approval appears to be the most appropriate sanction, the [cite positions e.g., CFS/CAW/DFSR] should consult with the DGCA before issuing the suspension. See Chapter 13 Administrative Action for other deterrent action considerations.

#### 11.2.2 Contraventions Detected by Other Means

A Civil Aviation Inspector detecting a contravention by an air carrier crew member or employee must follow the initial violation process to record essential facts. A report must then be made to CFS/CAW/DFSR who has responsibility to investigate the matter and recommend to the delegated authority to impose a penalty. The inspector or the [cite positions e.g., CFS/CAW/DFSR/DGCA] may address immediate operational considerations through the exercise of functional or safety powers under XXXXX (Insert State), (e.g. the suspension of an AOC to avoid an imminent threat to aviation safety), but the matter must be referred for investigation and punitive action for the contravention. An investigator must coordinate a comprehensive investigation involving any air carrier contravention or

airworthiness elements with the specialty functions before making a recommendation on the final case disposition to the [cite positions e.g., CFS/CAW/DFSR].

Any violation committed by an air carrier employee during other than air carrier business shall be processed as described in Chapter x.

### **11.3 Contraventions of Foreign Aeronautics Legislation by XXXXX (Insert State) Aviation Document Holders**

These procedures apply whenever a XXXXX (Insert State) document holder is alleged to have violated foreign Aviation legislation.

If the allegations concern a regulation having a direct XXXXX (Insert State) equivalent, the investigation should proceed normally.

In cases where allegations relate to a regulation without XXXXX (Insert State) equivalent and where the contravention is confirmed, the [cite positions e.g., CFS/CAW/DFSR] may proceed administratively or judicially under XXXXX (Insert Rule)

### **11.4 Special Cases Involving XXXXX (Insert State) Registered Aircraft**

Where XXXXX (Insert State) operators are involved in contraventions which may have certification implications, the [cite positions e.g., CFS/CAW/DFSR] shall advise the operational authority for that operator.

### **11.5 Treatment of Gross Navigational Errors (GNE) - Oceanic or Domestic Airspace**

Gross Navigational Error is the term used to describe the deterioration in the performance of equipment used by aircraft authorized to fly in oceanic airspace.

From an Enforcement point of view, any deviation outside the vertical and horizontal limits associated with a clearance may be considered to be a violation, whether due to equipment degradation, to crew error or to another cause. Airspace violations are subject to investigation in the same manner as any other contravention would be investigated. All GNE should be investigated to determine which FEW of them actually constitute equipment degradations as opposed to the majority of GNE which are the result of actual violations - non-adherence to clearances, finger-trouble on the part of the crew, incursions into MNPS airspace by unqualified crews or aircraft.

### **11.6 Contraventions Involving Foreign Civil Aircraft**

Where foreign civil operators are involved in contraventions which may have certification implications, the [cite positions e.g., CFS/CAW/DFSR] shall advise the operational authority for that operator through proper CAA Channels.

International Civil Aviation Organization (ICAO) rules and agreements, various bilateral agreements between XXXXX (Insert State) and other countries impact on the manner in which XXXXX (Insert State) deals with contraventions involving foreign civil aircraft. Timely branch-to-branch consultations are mandatory to ensure expedient and effective enforcement actions.

While in **XXXXX (Insert State)**, pilots and operators from foreign countries are expected to comply with the ICAO Standards.

#### **11.7 Requests From Foreign Civil Aviation Authorities**

Requests for assistance from foreign civil aviation authorities are normally received in headquarters and are relayed to the appropriate department for action. Direct requests from other foreign agencies shall be referred to headquarters. In any event, full **CAA XXXXX (Insert State)** cooperation is expected in keeping with the intent of Article 12 of the ICAO convention.

#### **11.8 Contraventions by XXXXX (Insert State) Employees**

Contraventions committed by CAA employees, including Headquarters personnel, shall be handled in the normal manner. Departmental employees shall not be treated different from any other individual.

## Chapter 12 — Investigation Reports

### 12.1 Introduction

An investigation report is an abridged relation of the facts of a case drawn up by the investigator for use by the [cite positions e.g., CFS/CAW/DFSR]. It is inserted as the first section of a case file. The investigation report provides a method of systematically compiling and summarizing all information pertinent to the case so that the [cite positions e.g., CFS/CAW/DFSR] can quickly become as familiar and conversant with the case as possible without the need to review in detail the complete contents of the file. After reading the case report, the [cite positions e.g., CFS/CAW/DFSR] should have a sufficient understanding of the case to be able to determine with confidence the appropriateness of the action recommended by the investigator. The investigation report also serves as a checklist for the investigator to ensure that all necessary investigative steps have been completed and nothing further remains to be done. It should be as accurate and comprehensive as possible.

### 12.2 Content and Preparation of Investigation Reports

The cover sheet of the investigation report should contain the identity of the alleged offender by name and licence number, if appropriate, as well as the alleged contraventions and the name of the investigator. This should be followed by a case synopsis, which could be described as a thumbnail sketch of the case, providing the [cite positions e.g., CFS/CAW/DFSR] with a quick overview of the situation. Next is a sheet fully identifying the alleged offender by name, address and date of birth, and setting out licensing details and details of the aircraft involved. An analysis of legislation follows breaking down the alleged contraventions into their elements, listing the facts to be established and identifying the evidence to be used to prove those facts. A list of evidence which may be entered as exhibits if the case were to progress to the DGCA should be followed by the exhibits, e.g. copies of statements, diagrams, photographs and Certificates. The exhibits should be flagged with a letter to ensure quick and easy location. Originals of the items can be placed in the case report. If applicable, the alleged offender's enforcement history is indicated next. The package is rounded off with the inspector's recommendation in which any mitigating or aggravating circumstances may be outlined based on Chapter x of this manual. While preparing An investigation report demands much work, a case cannot be expediently concluded without a properly prepared case report. In some instances, many man-hours may have been expended in investigating the offence. A successful and thorough investigation should not be jeopardized by the use of a poorly prepared or inadequate case report.

**An example case report follows.**

## Sample Investigation Report

File Reference No. \_\_\_\_\_

**INVESTGATION REPORT**

1. Alleged Offender's Name : 12.2.2  
12.2.1
2. Civil Aviation Document : 12.2.4  
Number held by the  
alleged offender  
12.2.3
3. Address : 12.2.7  
12.2.5  
12.2.6
4. List the Provisions in the : 12.2.12 12.2.13  
CA Act or Regulations  
contravened by the  
alleged offender  
12.2.8  
12.2.9  
12.2.10  
12.2.11
5. Name of the Investigating : 12.2.15  
Officer  
12.2.14
6. Position held by the : 12.2.17  
Investigator  
12.2.16
7. Signature and Date : 12.2.18

**CASE SYNOPSIS**

*(This summary of the case is intended to provide the [cite positions e.g., CFS/CAW/DFSR]with an overview of the situation)*

**IDENTITY OF THE ALLEGED OFFENDER**

Name: *(Offender’s Name)*  
 Address: *(Offender’s Address)*  
 D.O.B.: *(Offender’s DOB)*  
 License: *(Offender’s License - Type and Number)*

**AIRCRAFT**

Identity: *(Aircraft Type, Model, Registration)*  
 Owner: *(Aircraft Owner)*  
 Address: *(Aircraft Owner’s Address)*

**ANALYSIS OF LEGISLATION**

ALLEGATION: Contravention of **XXXXX(Insert State)** *Aviation Regulation (Regulation Number)*

Regulation Text

ELEMENTS	FACTS TO BE ESTABLISHED	EVIDENCE	EXHIBIT
Reg Element	Reg Fact	Evidence	12.2.19
12.2.20	12.2.21	12.2.22	12.2.23

ANALYSIS:

**JURISPRUDENCE**

**INVESTIGATOR’S RECOMMENDATION**

Investigator’s comments

**SUPERVISOR’S COMMENTS**

**CFS/CAW/DFSR DETERMINATION**

**DGCA DECISION**

**LIST OF EXHIBITS**

## Chapter 13 — Deterrent Action

### 13.1 Introduction

The most important decision in the enforcement process is determining the appropriate deterrent action to impose when the evidence indicates that an individual has contravened a provision of the *Aviation Act* or the **XXXXX(Insert State)** *Civil Aviation Regulations*. This decision may significantly affect the individual's attitude towards aviation safety and towards compliance with the rules in the future. The intent of the procedures in this chapter and the other chapters in this part is to promote fairness and uniformity in the selection of the appropriate deterrent action. It sometimes helps to develop a systematic trail of history of document holder's compliance with the applicable legal provisions so that a snapshot of the holder's attitude towards safety regulations can be gauged. Such a system will also deter document holders to defy the safety regulations as it will affect their image and reputation.

### 13.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- 1) to protect the individual and the public from possible harm;
- 2) to encourage future compliance; and,
- 3) to deter others from contravening aeronautics legislation.

Achieving these objectives will contribute to the advancement of aviation safety, the primary aim of aviation regulation.

### 13.3 Types of Deterrent Action

There are two types of deterrent actions: **judicial** and **administrative**. Judicial action involves the prosecution of an alleged offender in the criminal courts and is only applicable to a few provisions of the *Act* and the *CARs*. Administrative action comprises all other measures taken by the DGCA pursuant to the provisions of the *Aviation Act* and Rules/Regulations include oral counselling, the suspension of documents and the assessment of monetary penalties. Administrative action is described in [Chapter x](#).

### 13.4 Selection of Appropriate Deterrent Action

The type of deterrent action permitted in response to an offence depends on the specific offence. [To determine which deterrent action is available it is essential to first ascertain whether a particular offence is one of the hybrid offences, summary conviction offences or the designated provisions. See illustration of the judicial and administrative actions that may be taken in respect of the various classes of offences. This illustration is based on the regulations of a Western State. **States may use this illustration to develop their own, based on their National Regulations**]

### 13.4.1 Designated Provisions

A designated provision is a regulation that has been listed. Designated provisions may be enforced only by administrative action in the form of a monetary penalty or a suspension; no prosecutions may be commenced in respect of the contravention of a designated provision.

### 13.4.2 Hybrid and Summary Conviction Offences

Where a person has contravened a non-designated provision, the DGCA must decide whether to take administrative action by way of suspension or to take judicial action. All alleged contraventions of the *Aviation Act* or the *CARs* shall be dealt with by taking administrative deterrent action except where the criteria for judicial action are satisfied. The presumption is that a minimum enforcement sanction will be sufficient to achieve compliance. Stringent sanctions for a first offence are more likely to cause resentment than encourage future compliance. Moreover, administrative measures are usually more expeditious than prosecutions. (Criminal procedure is lengthy and expensive and courts are often unfamiliar with the significance of aeronautics offences.) Offenders may wish to have matters resolved with a minimum of delay while retaining the option for a review by a body that has expertise in aeronautics.

Where the alleged offender has been suspended in the past or has seriously jeopardized aviation safety, administrative action may be insufficient. In these cases judicial action may be more appropriate, particularly in light of the heavier sanctions normally imposed.

### 13.4.3 Joint Judicial-Administrative Deterrent Action

Judicial action and administrative action may be taken simultaneously where evidence discloses that a person has contravened two or more different provisions arising from the same incident provided that each provision violated does not rely on the same facts. For example, if a charge of reckless and negligent flying under **XXXXX (Insert Rule)** of the *CARs* relied in part on the fact that the pilot was low flying, the pilot could not also be proceeded against for low flying under **XXXXX(Insert Rule)**

A prosecution for one offence may be accompanied by suspension for another offence only where common facts are not relied on. Judicial and administrative deterrent action shall not be taken in respect of the same contravention. Either one or the other shall be selected depending upon the facts of the particular case.

## 13.5 Limitation Period

**XXXXX(Insert Rule/Provision)** of the *Aviation Act/ CARs* which expressly provides calendar limitation period on institution of proceedings under **XXXXX(Insert Rule/Provision)** of the *aviation Act/CARs* or by way of summary conviction. The period begins on the date of the infraction.

- 1) The limitation period only applies to the two following types of proceedings:
  - a) the imposition of a monetary penalty for contravention of a Designated Provision; and,
  - b) court action by way of summary proceedings for the contravention of a summary conviction offence or dual procedure offence

- 2) For purposes of calculating the extent of the limitation period, "instituting a proceeding" means:
  - a) in the case of the imposition of a monetary penalty, the issuance of a Notice of Monetary Penalty; and,
  - b) in the case of a summary proceeding, the laying of an information.
  
- 3) The limitation does not apply to proceedings brought by way of indictment or to administrative suspensions which address contravention of any provision. It is normally inappropriate, however, to impose a suspension instead of a monetary penalty on an alleged offender simply because the passage of time has made the limitation period rule applicable. In certain cases where the infraction is discovered long after the event and where the contravention is serious, it is appropriate to take deterrent action even though Calendar Period has passed. For example, Safety Board Investigations are often prolonged and information concerning a contravention may be late in being received by CAA of XXXXX(Insert State); contraventions involving airworthiness matters are often not discovered until long after the violation occurred but deterrent action remains appropriate.

### **13.6 Deterrent Action: Air Carriers**

Different considerations apply regarding deterrent action for contraventions committed by air carriers than apply to contraventions committed by pilots and others. This is because sanctions imposed in respect of a contravention affect not only the carrier but also the carrier's employees and the public the carrier serves. Safety remains the overriding factor. Deterrent measures must impress upon the carrier that unsafe operation at the risk of public safety will not be tolerated.

#### **13.6.1 Administrative Action**

Four types of administrative action which may be taken where an air carrier contravenes a provision or regulation are:

- 1) oral counselling;
- 2) a monetary penalty;
- 3) a suspension of an aviation document; or,
- 4) a cancellation of an aviation document.

Suspension or cancellation of an aviation document would be appropriate where the carrier had repeatedly contravened the regulations even though the safety implications were minimal. Cancellation would also be appropriate where suspensions or monetary penalties are not having the desired effect. The systematic tracking with appropriate grading of carrier's non compliance history would help the CAA determine deterrent actions against the carrier

#### **13.6.2 Judicial Action**

Prosecution of an air carrier for a contravention of a non-designated provision is recommended in all cases where, in the opinion of the DGCA, the contravention is such that it would be appropriate to seek a significant fine in court.

### 13.6.3 Emergency Action

Occasionally, the contravention of a regulation by an air carrier may pose an immediate threat to aviation safety. Two courses of action are available in such a situation.

#### (1) Aircraft Detention for Immediate Threat to Aviation Safety

Where the threat arises from a particular aircraft that is unsafe or likely to be operated in an unsafe manner, that aircraft may be detained pursuant to XXXXX(Insert Rule) of the CARs. The detention shall remain in effect until the unsafe condition is corrected.

#### (2) Air Operator Certificate Suspensions for Immediate Threat to Aviation Safety

Where the threat arises from the operations of the carrier (instead of a single aircraft), the DGCA may decide to suspend the Air Operator Certificate under XXXXX(Insert Rule) of the CARs. This sort of suspension must be viewed as a last resort to be carried out with extensive consultation among the various branches as appropriate. The DGCA must be satisfied that the immediate threat to aviation safety exists or is likely to occur as a result of an actor thing having been, being or proposed to be done under the authority of the document to be suspended. The DGCA would usually be the suspending authority. The AOC suspension shall come into effect immediately and remain in effect until such time as the threat to aviation safety is removed.

### 13.6.4 Punitive Suspension or Cancellation of an Air Carrier Air Operator Certificate Under XXXXX(Insert Rule) of CARs

The authority for cancelling an Air Operator Certificate under XXXXX(Insert Rule) of CAR rests with the Director General, Civil Aviation at Headquarters.<sup>11</sup>

A punitive suspension of an AOC should only be considered when the carrier has a history of repeat offences (two or more significant offences) and when, in the opinion of the suspending authority other measures (e.g., monetary penalties) would not promote future compliance. The suspending authority is responsible for reviewing the factors affecting the choice of sanction before the decision is made to suspend an Air Operator Certificate. The suspending authority should consult with various branches, as appropriate, to discuss:

- 1) the technical accuracy of the evidence and findings;
- 2) the coordination of concurrent regulatory actions, if applicable; and,
- 3) the severity of the sanction as a response to the violation;

Once a final decision to suspend has been made, the suspending authority is responsible for following the procedure in Chapter 13 Administrative Action . Standard practice is to provide an opportunity for an informal meeting with the carrier. The suspending authority may involve the [cite positions e.g., CFS/CAW/DFSR] in the meeting with the air carrier representative. See Chapter 13 Administrative Action for guidelines on the informal meeting process.

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<sup>11</sup> [This authority may vary with States; insert as applicable]

The imposition of a punitive cancellation of an AOC should follow the same procedure as that for a suspension.

### **13.7 Sanction Determination in Cases of Multiple or Continuing Violations**

#### **13.7.1 Multiple Violations**

Multiple violations involve a series of distinct and separate contraventions of a particular regulation or regulations over a period of time. Each time, the circumstances of the offence may be different. For example, an aircraft could be operated in an overloaded condition each time it was flown during a certain period. Each time, the amount of overload could be different but there would be a violation every time. The contravention was not caused by something "inherent" in the aircraft, rather by factors present during the preparation of the flight.

In cases of multiple violations, the following procedures shall be used:

##### **(1) Administrative Action**

For multiple violations of the Designated Provisions, the Notice of Suspension or of Monetary Penalty shall state in the statement of offence the particulars of each offence including the dates and times of each flight in violation, and the sanction proposed in respect of each. Evidence to prove each individual infraction shall be secured so that in the case of a review by the Government the evidence can be presented.

##### **(2) Prosecution**

In the case of a summary conviction offence involving multiple violations, where prosecution is the desirable option, the Government shall be advised of CAA's intention to lay charges in respect of each flight conducted in contravention of the regulations, that is, each flight should be set out as a separate count in the information.

#### **13.7.2 Continuing Violations**

There are a number of offences which could be repeated over a period of time as the result of a continuing condition or state of affairs. These generally relate to aircraft or personnel aviation document requirements, modifications or additions to aircraft equipment outside of airworthiness specifications and entries made in a log.

In view of the fact that separate acts which are successive and cumulative, comprising a continuous series, can be considered as one offence at the discretion of the DGCA/Government the following procedures shall apply in the disposition of such cases:

##### **(1) Administrative Action**

In all cases of suspension or monetary penalty determination, each separate flight conducted in violation of the regulations shall be considered as a separate offence. The Notice shall provide the dates and times of each flight during the period of non-compliance, together with particulars and the sanction in respect of each offence.

##### **(2) Termination of a Continuing Violation**

A continuing violation which was the subject of enforcement action, but has not ceased, may need further action to secure compliance. If the violation was in respect

of provisions not affecting airworthiness requirements, detention of an aircraft pursuant to **XXXXX(Insert Rule) of CARs** may not be possible. When the violations involve an air carrier, a viable option is to suspend the Air Operator Certificate relating to the particular aircraft operation under **XXXXX(Insert Rule) of CARs** in addition to any Enforcement action.

### **13.7.3 Flights with Intermediate Stops**

Flights involving intermediate stops made on a scheduled or unscheduled basis should, where circumstances warrant, be treated as one flight. Where the facts giving rise to the violation remain the same on a flight with intermediate stops, (e.g., a commercial aircraft is operated in violation of **XXXXX(Insert Rule)** on a flight ABC-JKL-XYZ), it is appropriate to lay charges in respect of the entire flight, as opposed to considering the flight as two separate offences. A submission may be made in speaking to sentence, emphasizing the fact that during each segment of the flight there was a decision to operate in violation of the regulations.

### **13.7.4 Assessment of Sanction**

The assessment of the sanction in all administrative cases shall consider each count separately following the guidelines in [Chapter x](#). A brief reason for sanction shall be recorded for each count. The total amount of monetary penalty or period of suspension shall be the sum total of the sanctions imposed for each count. Where exceptional circumstances warrant, the final sanction may be modified. The DGCA should record the reasons for the modification in the case file.

## **13.8 Disclosure of Deterrent Action**

### **13.8.1 Disclosure to Employers**

Employers of **XXXXX (Insert State)** aviation document holders should be advised of the deterrent action taken if the contravention took place while the alleged offender was on company business. If the alleged offender was not on company business at the time of the contravention, the disclosure of deterrent action to their employer is prohibited unless an exception under the regulations applies. An exception may exist where the deterrent action taken against a professional pilot affects the pilots employment, (e.g., suspension of licence privileges). An exception may also exist where it would definitely be in the public interest, usually in terms of aviation safety, to inform the employer, (e.g., a pilot who has been detected flying while under the influence of alcohol). The question of whether or not to inform an employer must be addressed on a case-by-case basis. The DGCA will decide if disclosure to the employer is appropriate.

### **13.8.2 Notification of Detection Source**

**The [cite positions e.g., CFS/CAW/DFSR] shall ensure that the detection source is advised of the outcome of the case and record this action.**

## Chapter 14 — Administrative Action

### 14.1 Introduction

Administrative action comprises all deterrent measures, other than judicial action, taken by the DGCA pursuant to the provisions of the *Aviation Act and CARs*. Administrative action in the form of a suspension or oral counselling can be used not only for designated provisions offences but also for summary conviction and hybrid offences. Almost all deterrent actions taken by **CAA XXXXX (Insert State)** are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

#### 14.1.1 Administrative Action Options

There are two categories of administrative actions which may be taken when a contravention has occurred. Determination of the appropriate action depends upon policy considerations, the detection source and the circumstances of each contravention.

##### (1) Preventive Action

Oral counselling (see Chapter x for details). If a comprehensive investigation is concluded with an oral counselling, that fact is recorded and the file is closed as an NFA. The document holder can be assigned with a yellow blemished star<sup>12</sup> for each such occasion.

##### (2) Administrative Sanctions

###### (a) Administrative Monetary Penalties

Administrative monetary penalties may be assessed where there has been a contravention of a designated provision. The document holder may be assigned with appropriate number of blue blemished stars for each such occasion. The monetary penalty procedures are set out in XXXXX (Insert Regulation/Rule) of the *Aviation Act/CARs*.

###### (b) Suspension of XXXXX (Insert State) Aviation Documents

A punitive suspension may be taken in respect of any contravention of a provision of XXXXX (Insert Rule) of the *Aviation Act* or the *CAR's*. The document holder may be assigned with appropriate number of black blemished stars for each such occasion.

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<sup>12</sup> Blemished stars are meant to maintain a trail of document holder's non-compliance with the published regulatory requirements. Then number and colour of them may appropriately determined that by looking at the Blemished stars chart, a general opinion of the document holder's track record about non-compliance with the safety regulations. Air carriers may wish to maintain a clean record as a commercial tool and hence it will be a useful and effective tool to mitigate non-compliance with safety regulations.

## 14.2 Administrative Action: Selection and Process

Contraventions of designated provisions may be dealt with either by suspension or by assessment of an administrative monetary penalty. When contraventions of non-designated provisions are dealt with administratively the only sanction that may be imposed is suspension of an aviation document.

Simultaneous administrative and judicial enforcement action under the *Aviation Act* may be taken for different contraventions arising out of the same circumstances, but this is very rare. For the limited number of offences where there is an option, administrative and judicial enforcement action shall not be taken in respect of the same contravention; one or the other shall be selected depending upon the facts of the particular case.

When, in the opinion of the DGCA, aviation safety is an issue, or, in the case of an air operator, the violation was associated with the “cost of doing business” or was a way of reducing operating costs, the minimum penalty imposed shall be the penalty recommended in the Table of Sanctions.

### 14.2.1 Procedures for Administrative Monetary Penalties

When the DGCA receives an investigation report from the investigating inspector, he may assess an administrative monetary penalty as a sanction, whether or not a monetary penalty is recommended in that report.

The following procedures apply in all cases where an administrative monetary penalty is assessed.

- 1) The [cite positions e.g., CFS/CAW/DFSR] shall determine and recommend the amount of the penalty that is appropriate, considering the Table of Sanctions set out in Chapter 11. He may also recommend appropriate number and nature of blemished stars to be assigned.
- 2) The [cite positions e.g., CFS/CAW/DFSR] shall complete the Notice of Monetary Penalty. The Notice shall contain a clear description of the offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
- 3) With the Notice, the [cite positions e.g., CFS/CAW/DFSR] shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- 4) The [cite positions e.g., CFS/CAW/DFSR] shall serve the Notice on the alleged offender personally or by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- 5) The monetary penalty may be paid by one of the methods acceptable to **CAAXXXX(Insert State)** and may be sent by mail or brought personally to the [cite positions e.g., CFS/CAW/DFSR] or appointed delegate. An official receipt will be issued. (Procedures may vary with States)
- 6) Should the monetary penalty not be paid by the due date (a minimum of 30 days not counting the day the Notice is served), the [cite positions e.g., CFS/CAW/DFSR] shall send a copy of the Notice to the DGCA within fifteen days following the due date.

### 14.2.2 Suspension Procedure

The suspension of a XXXXX(Insert State) aviation document for contravention of a provision of the *Aviation Act* or *CAR's* is the most severe administrative sanction the DGCA can impose. Suspension action is taken where a monetary penalty would be an inadequate deterrent or continued use of the document would create a hazard to aviation safety and judicial action is either not available or inappropriate.

Where a XXXXX(Insert State) aviation document has been suspended, the person to whom it was issued shall return it to the DGCA and shall not exercise the privileges attached to that document until it is restored by the DGCA. Suspensions for contravention are punitive in nature and are in effect for a specified time period.

Note: Suspensions on other grounds may be corrective in nature and may be accompanied by conditions for restoration.

The following paragraphs outline the suspension process.

- 1) The [cite positions e.g., CFS/CAW/DFSR] shall determine and recommend the appropriate duration of suspension by considering the Table of Sanctions in [Chapter x](#) and the recommendation of the investigator.
- 2) The [cite positions e.g., CFS/CAW/DFSR] shall complete the Notice of Suspension. The Notice shall contain a clear description of the offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.
- 3) With the Notice, The [cite positions e.g., CFS/CAW/DFSR] shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- 4) The [cite positions e.g., CFS/CAW/DFSR] shall serve the Notice on the alleged offender personally or send it by registered mail. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- 5) Where the alleged offender requests a review by the DGCA and applies for a stay of suspension pending its decision, the [cite positions e.g., CFS/CAW/DFSR] shall not oppose the application unless it appears that a threat to aviation safety would result. In such a case, the [cite positions e.g., CFS/CAW/DFSR] or his designate shall present the CAA's position to the DGCA.
- 6) Where the alleged offender does not ask for a review by the DGCA within thirty (period may vary with States) days and then fails to deliver the suspended document, after giving due consideration for delay in the mail, charges shall be laid against the alleged offender under XXXXX (Insert Rule). Prior to laying charges, the document holder should be contacted to confirm the situation.

### 14.2.3 Cancellation

Cancellation of a document of entitlement because of incompetence, lapse in qualifications of the document holder or lack of medical fitness is within the purview of licensing and certification authorities. Authority to cancel a document for enforcement reasons

under XXXXX(Insert Rule) of CARs has been rested with DGCA and it has not been delegated to any of the CAA staff including [cite positions e.g., CFS/CAW/DFSR]<sup>13</sup>.

### 14.3 Informal Meeting

The informal meeting offers the alleged offender who has received a Notice of Monetary Penalty or a Notice of Suspension, the opportunity to discuss the sanction. Keeping in mind that the objective of the sanction is to obtain future compliance and provide deterrence to others, the DGCA may modify or amend the original decision. This may be done when new evidence of a statutory defence or mitigating factors come to light, or when the DGCA obtains the assurance, during the discussion, that the alleged offender will comply in the future.

DGCA may conduct informal meetings with alleged offenders in person, or other electronic medium, or through written submissions. During an informal meeting, DGCA may enter into penalty negotiations with a view to reaching a settlement in the case, thereby closing the file. Any discussions during the informal meeting are predicated on the fact that the alleged offender or the alleged offender's representative will not question the finding of the investigation

The alleged offender normally has thirty days from the date the Notice is served or sent to accept the offer and meet with the DGCA.<sup>14</sup>

#### 14.3.1 Penalty Negotiation Considerations

The following factors shall be considered in deciding whether to enter into penalty negotiations or not:

- 1) evidence of mitigating factors not previously identified during the investigation;
- 2) the alleged offender's enforcement record;
- 3) the seriousness of the offence;
- 4) the attitude of the offender toward future compliance;
- 5) whether deterrence can still be achieved through a negotiated settlement;
- 6) the financial burden on the alleged offender of costs associated with Legal proceedings; and
- 7) whether negotiations with a particular alleged offender would bring the enforcement program into disrepute.

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<sup>13</sup> Note: This may vary from State to State, State should ensure delegation of authority while framing this.)

<sup>14</sup> Note: This provision may vary with States; insert as applicable

## Chapter 15 — Table of Sanctions

### 15.1 General

The Table of Sanctions which follows shall be used as a guideline by a Civil Aviation Official when recommending a sanction and by the DGCA when imposing a sanction. Nevertheless, each case must be judged on its own merits and every sanction shall be justified. This step is crucial in the event the decision is reviewed by the Government. To that effect, the tables should be adhered to as closely as possible to ensure uniformity in the levying of sanctions and any deviation from the recommended sanction, given the circumstances of the case, must be justified based on the following factors:

- 1) The sanction may be moderated in light of mitigating circumstances, (events which were inadvertently caused by misunderstanding, misconception or an honest mistake).
- 2) The highest category of document related to the contravention would be the document suspended as a sanction for the contravention.
- 3) A second offence is considered to take place when the record of a previous similar but not necessarily identical offence is still on the offender's file. (i.e within a reasonable period, to be defined by the authority.)
- 4) Sanctions for all subsequent contraventions should be raised from previous sanctions.

### 15.2 Factors Affecting the Choice of Sanction

- 1) The facts surrounding the commission of the offence
  - a. what was the role of the offender;
  - b. was there any pressure or undue influence exerted by an employer or an employee; and
  - c. were there mitigating circumstances not amounting to a defence?
- 2) The gravity of the offence
  - a. was a threat to safety posed;
  - b. was there any actual harm done;
  - c. did the violation result in an incident or accident;
  - d. was there careless or reckless conduct; and
  - e. what is the maximum punishment available?
- 3) The premeditation or deliberateness of the offence and attitude of the offender
  - a. while "the mental element" is not relevant to guilt in strict liability offences it may be indicative of the offender's attitude;
  - b. was recklessness involved or plain negligence;
  - c. what is the offender's attitude toward safety; and
  - d. what is the offender's attitude toward future compliance?
- 4) Personal characteristics to be considered - what is the offender's:
  - a. age;
  - b. experience level, knowledge and skill in Aviation;
  - c. training record;

- d. employment - is a licence required to hold employment;
  - e. work in relation to any **XXXXX (Insert State)** aviation documents; and
  - f. financial position in regard to the ability to pay a fine or penalty?
- 5) The record of the offender
- a. are there any prior sanctions on record;
  - b. is this an isolated act or is this person a repeat offender;
  - c. are there any related or similar offences on record; and
  - d. is there any question of competence or qualification involved?
- 6) Punishment
- a. what is the range of sanctions available?
- 7) Deterrence and public safety
- a. would the recommended sanction contribute to public safety; and
  - b. will the sanction act as deterrent to others?
- 8) Rehabilitation
- a. will the sanction promote future compliance on the part of the offender?

### **15.3 Air Operator Certificate Suspension**

According to the current Civil Aviation Regulations the DGCA has the authority to suspend/cancel an Air Operator Certificate as a punitive measure.

Table of Administrative and Judicial Action<sup>15</sup>

<b>CLASS OF OFFENCE</b>					
		<b>Designated Provisions</b>	<b>Non-Designated Provisions</b>		
<b>Optional Actions</b>	<b>Oral Counselling</b>				
	<b>Administrative Suspension of XXXXX (Insert State) Aviation Document</b>				
<b>Chapter 16 —</b>	<b>Chapter 17 —</b>	<b>Summary Conviction Offences</b>	<b>Hybrid Offences</b>		
		<b>Administrative</b>	<b>Court Prosecution</b>	<b>Court Prosecution</b>	
<b>Proceedings</b>	<b>Chapter 19 —</b>	<b>By Way of Summary Conviction</b>	<b>By Way of Summary Conviction</b>	<b>By Indictment</b>	
<b>Punishment</b>	<b>Individuals</b>	19.1.2	19.1.5	19.1.8	
		Maximum Fine	Maximum Fine	No Maximum Fine	
	19.1.1	\$ 5,000	\$ 5,000	19.1.9	
	Maximum Monetary Penalty	19.1.3	19.1.6	19.1.10	
	\$ 5,000	<b>No Imprisonment</b>	<b>Imprisonment</b>	<b>Imprisonment</b>	
		19.1.4	up to one year	up to five years	
		19.1.4	19.1.7	19.1.11	
		<b>Prohibition</b>	<b>Prohibition</b>	<b>Prohibition</b>	

<sup>15</sup> Note: This is a sample table, established according to the actions available to address different classes of offences according to the primary aeronautics legislation in one country. It must be modified or replaced with information relevant to the State in question. The sanctions table that follows has been taken from an enforcement document of a CAA in the Western Hemisphere. The number of days and monetary amount indicated may need revision based on your rules and regulations. The heftiness of the amount would be indicative of the gravity of the offence. CAAs may like to bear this in mind when working out their sanctions.

19.1.12 Corporations	19.1.13 Maximum Monetary Penalty \$ 25,000	19.1.14 Maximum Fine \$ 25,000	19.1.16 Maximum Fine \$ 25,000	19.1.18 No Maximum Fine
		19.1.15 <b>Prohibition</b>	19.1.17 <b>Prohibition</b>	19.1.19 19.1.20 <b>Prohibition</b>
Commercial Services	Air	Wilful misuse of documents -		<b>Forfeiture</b>
19.1.21	19.1.22	19.1.23	19.1.24	19.1.25
19.1.26 <i>Recourse</i>	<b>Review by</b> - Director General Civil Aviation - Government	19.1.27 - Appeal to a Higher Authority	19.1.28 - Appeal to a Higher Authority	19.1.29 - Appeal to a Higher Authority

**14.5 Table of Recommended Sanctions<sup>16</sup>**

The following matrix is to be used in conjunction with the Table of Administrative and Judicial Action, and the [cite legislation establishing offences subject to administrative penalty]. The maximum listed in the left column is listed as the point of reference for establishing recommended penalties.

<b>Maximum Administrative Penalty</b>	<b>Recommended Penalty</b>		
	<b>Individual / Corporation</b>		
<i>Individual / Corporation</i>	<i>First Offence</i>	<i>Second Offence</i>	<i>Subsequent Offence</i>
\$5,000 / \$25,000	14 – 30 Days \$1,000 / \$5,000	30 – 60 Days \$2,500 / \$12,500	60 days or more \$5,000 / \$25,000
\$3,000 / \$15,000	10 – 21 Days \$750 / \$3,750	21 – 35 Days \$1,500 / \$7,500	35 days or more \$3,000 / \$15,000
\$2,000 / \$10,000	7 – 14 Days \$500 / \$2,500	14 – 21 Days \$1,000 / \$5,000	21 days or more \$2,000 / \$10,000

<sup>16</sup> Note: This table establishes the recommended penalties, and should be should be created and used in conjunction with the Table of Administrative and Judicial Action.

\$1,000 / \$5,000	3 – 7 Days	7 – 14 Days	14 days or more
\$750 / \$3,750	\$250 - \$1,250 2 – 5 Days	\$500 / \$2,500 5 – 10 Days	\$1,000 / \$5,000 10 days or more
\$500 / \$2,500	\$150 / \$750 1 – 3 Days	\$400 / \$2,000 3 – 7 Days	\$750 / \$3,750 7 days or more
\$250 / \$1,250	\$100 / \$500 1 – 3 Days	\$250 / \$1,250 3 – 7 Days	\$500 / \$2,500 7 days or more
\$100 / \$500	\$100 / \$500 1 – 2 Days	\$150 / \$750 2 – 7 Days	\$250 / \$1,250 7 days or more
	\$100 / \$500	\$100 / \$500	\$100 / \$500

## Chapter 20 — Records Management

### 20.1 Removal of Notation of Sanction

Pursuant to Section 8.3 of the *Aeronautics Act*, any notation of a suspension by the Minister of a Canadian aviation document, or of a penalty imposed in accordance with sections 7.6 to 8.2 shall, on request from the person affected by the suspension or penalty, be removed from the record if:

- 1) At least two years have transpired since the date the suspension expired or the penalty amount was paid;
- 2) No additional suspension or penalty has been recorded against that person after that date; and
- 3) The removal of the record would not be contrary to the interest of aviation safety or security; if that person is subject to an investigation under the *Aeronautics Act* or its related Regulations (*CARs*) at the time of the request, it could be considered contrary to the interest of aviation safety or security.

Other records such as "No Investigation Conducted" (NIC) and "No Further Action" (NFA) must be retained for two years in accordance with the Privacy Act, but may be removed earlier with the consent of the individual to whom the record pertains.

An individual, who has requested the removal of a notation of sanction that has been denied by the [State cite position] for just cause, may request a review.

A denied request cannot be resubmitted until an additional two years have expired from the date of the original application. If an individual makes an application for the removal of notation of sanction within a reasonable time before the two-year waiting period has expired, the application will be retained and acted on when the two-year limit has been reached.

The decision to remove a notation of sanction from an individual's record shall be made on behalf of the [cite position] by the [cite position]

Removal of a notation of sanction means destroying the enforcement file that refers to the sanction, as well as all documents referring to the notation of sanction, from any other record. The circumstances of the infraction will remain in the EMS for statistical purposes.

### 20.2 Pardons — Custody of records and Action

The Solicitor General may notify Aviation Enforcement in writing that a pardon to an individual pursuant to [cite provision] for a violation of the [aeronautics legislation] or an aeronautics-related offence under the *Criminal Code*.

Any record of a conviction in respect of which a pardon has been granted that is in the custody of Aviation Enforcement, shall not be disclosed to any person, nor shall the

existence of the record or fact of the conviction be disclosed to any person without prior written permission of the [cite position].

### 20.3 Retention of Records

Aviation Enforcement case files shall be retained for the minimum time required by law.

### 20.4 Destruction of Files

Aviation Enforcement staff at Headquarters shall review EMS case files on a regular basis to identify and list case files that are eligible for destruction. The lists will be forwarded to the Regions for re-examination. RMAEs who have dissenting opinions on the case files in question may make their concerns known to the CAE who shall make the final determination.

### 20.5 De-identification of Electronic Files

Only Headquarters shall de-identify EMS files. Regions are to advise Headquarters of the record(s) requiring de-identification.

### 20.6 Control of Enforcement Records<sup>17</sup>

All Enforcement records and official shall be treated as **protected documents**. Enforcement personnel shall ensure that these documents and records are secured when work areas are left unattended.

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<sup>17</sup> NOTE: Suggestion. Use appropriate terminology to comply with State requirements

## Chapter 21 — Sample Forms

Where there exists an official form it shall be used whenever practicable.

NOTE: The section should contain a sample of relevant correspondences, official Notices and forms.

## Chapter 22 — Addresses

## Chapter 23 — Miscellaneous

### 23.1 Minimum Equipment List

It is the responsibility of the [cite positions e.g., Chief, Flight Standards/ Chief, Airworthiness/Director, Flight Safety and Regulations] to ensure Civil Aviation Inspectors have possession of, or access to, the following documents and materials. A number of the documents are available on CD-ROM and/or via the Intranet.

- 1) Aeronautical Legislation and Enabled Documents
  - a. a gazetted copy of the *Aeronautics Act* and the **XXXXX(Insert State)** Aviation Regulations;
  - b. Annex 1, 2, 6, 8 of the ICAO Convention.
- 2) **XXXXX (Insert State)** Civil Aviation Policy and Reference Material
  - a. Aviation Enforcement Policy and Procedures Manual,
  - b. *Flight Operations Inspector Manual*,
  - c. *Air Carrier Certification Manual*,
  - d. *Dangerous Goods Inspector's Manual*,
  - e. *Manual of Regulatory Audits*,
  - f. *Air Regulations* and complete *Air Navigation Orders*,
  - g. *Engineering and Inspection Manual*,
  - h. *Personnel Licensing Handbooks*.
  - i. Airworthiness Inspector Manual,
  - j. MMEL/MEL Policy and Procedures Manual
  - k. *DCP Manual*
- 3) Aeronautical Publications and Information
  - a. *A.I.P.* **XXXXX(Insert State)**
  - b. **XXXXX(Insert State)** *Flight Supplement*;
  - c. *Water Aerodrome Supplement*;
  - d. *Enroute High and Low Altitude Charts*;
  - e. *NOTAM, Aeronautical Information Circulars, and Aviation Notices*; and,
  - f. *Air Almanac*;
- 4) Miscellaneous Materials
  - a. Conflict of Interest Guidelines.
  - b. Delegation of Authority document;
  - c. **XXXXX(Insert State)** Official Credentials card;
  - d. ICAO Doc 9375-AN/913, Book 3, Dangerous Goods Training Programme, Passenger Handling Staff and Flight Attendants
  - e. ICAO Doc 8335 - Manual of Procedures for Operations Certification and Inspection
  - f. ICAO Doc 9376 - Preparation of an Operations Manual
  - g. ICAO Doc 9642 - Continuing Airworthiness Manual
  - h. ICAO Doc 9625 - Manual of Criteria for Qualification of Flight Simulators
  - i. ICAO Doc 9481 - Emergency Response Guidance for Aircraft Incidents involving Dangerous Goods.

- j. an Oxford Concise dictionary
- k. rubber stamp inscribed:

	<b>Civil Aviation Authority <u>XXXXX(Insert State)</u></b>	<b>23.1.1</b>		
<b>23.1.2</b>	<b>certified true copy of</b>	<b>23.1.3</b>		
<b>23.1.4</b>	<b>23.1.5</b>	<b>23.1.6</b>		
<b>23.1.7</b>	<b>23.1.8</b>	<b>23.1.9</b>		
Date	<b>23.1.10</b>	Signature	<b>23.1.11</b>	<b>23.1.12</b>
<b>23.1.13</b>	<b>23.1.14</b>	<b>23.1.15</b>	<b>23.1.16</b>	<b>23.1.17</b>

**23.2 Field Requirements**

When in the field, Civil Aviation Inspectors should have the following items available:<sup>18</sup>

- 1) an office consolidation of the *Aeronautics Act* and a copy of the CARs;
- 2) their inspector credentials card;
- 3) Inspector uniforms
- 4) inspector notebook and CAA briefcase or folder
- 5) an airport airside authorization pass;
- 6) a supply of business cards;
- 7) a bound notebook with numbered pages (Inspector Notebook);
- 8) a still or movie camera with ample film or cassettes, batteries and a means of photo illumination;
- 9) a small tape recorder, with ample batteries and tape;
- 10) a temporary aircraft journey log book
- 11) a flashlight (preferably spark-proof);
- 12) a tape measure (25-ft. recommended);
- 13) receipt book.
- 14) personal protective equipment
- 15) portable global positioning system

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<sup>18</sup> Note: Sample list.