

Chapter 11 Administrative Action

11.1 Introduction

Administrative action comprises all deterrent measures, other than judicial action, taken by the DG CAAN pursuant to the provisions of the *Civil 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 CAAN are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

11.1.1 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 3 for details). If a comprehensive investigation is concluded with an oral counselling, that fact is recorded and the file is closed as an NFA.

(2) Administrative Sanctions

(a) Administrative Monetary Penalties

Administrative monetary penalties may be assessed where there has been a contravention of a designated provision. The monetary penalty procedures are set out in Nepal Civil Aviation Authority Act, 1996 (Rule 25) of the *Aviation Act/CARs*.

(b) Suspension of Civil Aviation Documents

A punitive suspension may be taken in respect of any contravention of a provision of Civil Aviation Regulations, 2002 of the *Aviation Act* or the *CAR's*

11.2 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 which 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 DG CAAN, 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.

11.2.1 Procedures for Administrative Monetary Penalties

When the DG CAAN receives a case report from the investigating inspector, the DG CAAN 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 Director, Flight Safety Standard Department (FSSD) shall determine and recommend the amount of the penalty that is appropriate, considering the Table of Sanctions set out in Chapter 12.
- (2) The Director, Flight Safety Standard Department (FSSD) 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 Director, Flight Safety Standard Department (FSSD) shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (4) The Director, Flight Safety Standard Department (FSSD) 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 CAAN and may be (sent by mail or) brought personally to the Director, Flight Safety Standard Department (FSSD) (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 Director, Flight Safety Standard Department (FSSD) shall send a copy of the Notice to the DG CAAN within fifteen days following the due date.

11.2.2 Suspension Procedure

The suspension of a Nepalese Civil aviation document for contravention of a provision of the *Civil Aviation Act* or *CAR's* is the most severe administrative sanction the DG CAAN 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 Nepalese Civil aviation document has been suspended, the person to whom it was issued shall return it to the DG CAAN and shall not exercise the privileges attached to that document until it is restored by the DG CAAN. 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 director, Flight Safety Standard Department (FSSD) shall determine and recommend the appropriate duration of suspension by considering the Table of Sanctions in Chapter 11 and the recommendation of the investigator.
- (2) The Director, Flight Safety Standard Department (FSSD) 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 Director, Flight Safety Standard Department (FSSD) shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (4) The Director, Flight Safety Standard Department (FSSD) shall serve the Notice on the alleged offender personally or send it by registered mail or by any electronic media/devices. 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 DG CAAN and applies for a stay of suspension pending its decision, the *Director, Flight Safety Standard Department (FSSD)* shall not oppose the application unless it appears that a threat to aviation safety would result. In such a case, the Director, Flight Safety Standard Department (FSSD) or his designate shall present the Department's position to the DG CAAN.
- (6) Where the alleged offender does not ask for a review by the DG CAAN within thirty (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 Civil Aviation Regulations, 2002 (Rule 6). Prior to laying charges, the document holder should be contacted to confirm the situation.

11.2.3 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 Civil Aviation Regulations, 2002 of CARs has been delegated to the DG CAAN, not to Director, Flight Safety Standard Department (FSSD).

11.3 Review

The alleged offender who has received a Notice of Monetary Penalty or a Notice of Suspension, requests to review the sanction. Keeping in mind that the objective of the sanction is to obtain future compliance and provide deterrence to others, the DG CAAN may review the decision and can 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 DG CAAN obtains the assurance, during the discussion, that the alleged offender will comply in the future. DG CAAN may conduct informal meetings with alleged offenders in person, or other electronic medium, or through written submissions. During an informal meeting, DG CAAN 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 DG CAAN.

11.3.1 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.