


CIVIL AVIATION AUTHORITY OF NEPAL



AVIATION ENFORCEMENT POLICY AND PROCEDURE MANUAL

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AVIATION ENFORCEMENT POLICY AND PROCEDURE MANUAL

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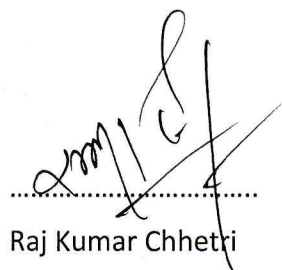
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FOREWORD

This edition of Aviation Enforcement Policy and Procedure Manual has been developed by the Civil Aviation Authority of Nepal (CAA Nepal) to regulate the civil aviation activities in flight operations, airworthiness, air navigation services, aerodrome operations, personnel licensing and safety management. It provides details and guidance to the CAA Nepal Inspectors about each of the existing enforcement tools available to the CAA Nepal and the circumstance under which these tools should be used. This edition of the manual has been issued by the Director General pursuant to the Rule 82 of Civil Aviation regulations 2002. Similarly, the just-culture principles adopted by the State Safety Programme and reflected in the State Safety Policy Statement have been supported by this Aviation Enforcement Policy and Procedure Manual.

This manual form guiding policy for the general enforcement actions in CAA Nepal classifying the offences in various categories depending on the severity of the offence committed by an individual/organization. The detailed enforcement action for the breach of individual requirement among various requirements of CAA Nepal has been removed and offences are now classified in accordance with the severity of outcomes. Adequate procedures are stipulated in the manual to deal with the different offences. This manual has introduced the provision of analyzing the human culpability factor with regards to the offences.

This manual will be reviewed periodically and amended if required. Any suggestion regarding the improvement of this manual is welcome and such suggestion shall be forwarded to the Aviation Safety and Security Regulations Directorate, CAA Nepal.



Raj Kumar Chhetri

Director General

Civil Aviation Authority of Nepal



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ABBREVIATIONS

ACT-	Civil Aviation ACT 1959 and Civil Aviation Authority of Nepal ACT 1996
ANSSD-	Aviation Navigation Services Safety Standards Department
ANS-	Air Navigation Services
ASSRD-	Aviation Safety and Security Regulation Directorate
ATC-	Air Traffic Control
ATCO-	Air Traffic Control Officer
ATS-	Air Traffic Services
CAA Nepal-	Civil Aviation Authority of Nepal
CAR-	Civil Aviation Regulation 2058 B.S. (2002 A.D.)
CATCO-	Check Air Traffic Control Officer
DDG-	Deputy Director General
DG-	Director General, CAA Nepal
FOR-	Flight Operations Requirements
FSSD-	Flight Safety Standards Department
ICAO-	International Civil Aviation Organization
IFR-	Instruments Flight Rules
NCAR-	Nepalese Civil Airworthiness Requirements
SMD-	Safety Management Division
SMS-	Safety Management System
SSP-	State Safety Programme
VFR-	Visual Flight Rules
VIRS-	Voluntary Information Reporting System
VMC-	Visual Meteorological Condition



GLOSSARY

Act - The *Civil Aviation Act 1959 and Nepal Civil Aviation Authority Act of Nepal 1996*.

Administrative Action- Deterrent action taken by or on behalf of the Director General, CAA Nepal including oral counselling, suspension or cancellation of documents of entitlement and imposition of a monetary penalty.

Authority – Civil Aviation Authority of Nepal (CAA Nepal).

Behavior– a human act or sequence of human actions. Behavior consists of a plan or intention (a goal plus the means to achieve it), a sequence of actions initiated by the plan, and the extent of success in achieving the goal as each action is performed.

Civil Aviation Rules / Regulations- the *Civil Aviation Act 1959, Nepal Civil Aviation Authority Act 1996*, Civil Aviation Rules 1995 and Civil Aviation Regulations 2002, related Civil Aviation Requirements, Manual of Standards and their subsequent amendments.

Compliance-Conformity with the provisions of the regulations. Compliance and enforcement can be used interchangeably.

Comprehensive Investigation- The follow-up to the initial violation process to obtain conclusive evidence as to whether or not a violation occurred so that appropriate deterrent action can be taken.

Consequence – the final, overall effect(s) or outcome(s) of an individual's behavior with respect to the situation or environment in which the behavior occurred.

Counsel - Government Counsel is any consultants or lawyer representing the interests of the government during criminal proceedings.

Culpability – the amount of blameworthiness that an individual's behavior merits based on the nature of the deviation from expected behavior, the outcomes of the deviation, and the responsibility and authority of that individual, in the context of the situation in which the behavior occurred.

Designated Provisions- Regulations specified in Civil Aviation Regulations, 2002 for which deterrent action is limited to administrative measures; judicial action cannot be taken. The majority of the offence-creating provisions of the CARs have been designated.

Deterrent Action- Administrative (or judicial) measures taken in response to a violation to induce future compliance.

Enforcement Action- The steps including deterrent action that must be taken from the moment a possible violation of the regulations has been detected until the case is concluded.

Error- an error is defined as —an action or inaction by an operational person that leads to deviations from organizational or the operational person's intentions or expectations. In the context of an SMS, both the State and the product or service provider must understand and expect that humans will commit errors regardless of the level of technology used, the level of training or the existence of regulations, processes and procedures. An important goal then is to set and maintain defences to reduce the likelihood of errors and, just as importantly, reduce the consequences of errors when they do occur. To effectively accomplish this task, errors must be identified, reported and analysed so that appropriate remedial action can be taken. Errors can be divided into the two following categories:

a) Slips and lapses are failures in the execution of the intended action. Slips are actions that do not go as planned, while lapses are memory failures. For example, operating the flap lever instead of the (intended) gear lever is a slip. Forgetting a checklist item is a lapse.

b) Mistakes are failures in the plan of action. Even if execution of the plan were correct, it would not have been possible to achieve the intended outcome.

Functional Authority- Technical services within CAA Nepal grouped by aeronautical knowledge or skills (such as personnel licensing, airworthiness, flight operations, air navigation safety and aerodrome safety). Functional authority



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includes the prerogative of a functional specialist to prescribe how the activity within the specialist's area of expertise should be carried out.

Functional Direction- The exercise of functional authority through the issuing of and ensuring compliance with policies and procedures and provision of instructions to supervisors and subordinates.

Hybrid Offence- An offence under *Act* that may be proceeded against by way of indictment, by summary conviction procedures or by administrative process.

Incompetent- Lacking knowledge, ability or fitness necessary for effective action; unable to meet specified requirements; not legally qualified.

Indictable Offence- An offence that is considered very serious, that carries with it the possibility of a severe penalty and that must be proceeded with by way of indictment. Some offences under the *Civil Aviation Act, Nepal Civil Aviation Authority Act/CARs* may be addressed by indictment.

Initial Violation Process - The immediate actions taken on observing or being apprised of a violation. Information is gathered concerning the occurrence and, if an infraction has occurred, a decision is made to conclude the case with an Oral Counselling or to send the information to Concerned Supervisor for further investigation.

Inspector- Any CAA Nepal official with appropriate authority under the Delegation of Authority document.

Investigator – A CAA Nepal authorized Investigator.

Note: *Inspectors inspect; Investigators investigate.*

Line Authority- The prerogative of line managers to direct the activities of the staff and resources over which they are responsible.

Government- The Government of Nepal and all persons and institutions with delegated authority to act on its behalf in civil aviation matters.

Negligence - Conduct falling below, and/ or violation the standard required for the protection of others against unreasonable risk or harm.

Nepalese Civil Aviation Document- Any licence, permit, accreditation, certificate, authorization, approvals or other documents issued by the Director General, CAA Nepal under of the *Civil Aviation Act/CARs* to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service. A Nepalese Civil aviation document includes virtually any document of entitlement that authorizes a person to perform functions on his own behalf.

Nepalese Civil Aviation Official - Any officer of CAA Nepal whose duties on behalf of the Director General, CAA Nepal are related to the safe and lawful operation of the Nepalese air transportation system.

Manual – Manuals made by the CAA Nepal pursuant to rule 82 of Civil Aviation Regulations, 2002 and not to contradict the Act and Civil Aviation Regulations for the execution of the rule, manual and standard prescribed by the International Civil Aviation Organization.

Non-Designated Provisions- The CARs that have not been designated under *CAR* and therefore, if contravened, must be addressed by document suspension or through judicial action.

Offence-Creating Provisions - Provisions of the civil aviation rules that mandate a certain form of conduct or prohibit certain conduct and which, if contravened, can result in judicial or administrative deterrent action.

Reasonable Grounds to Believe - The knowledge of facts that would lead a reasonable person of ordinary intelligence and prudence to believe.

Recklessness - Conduct that shows deliberate disregard of, or indifference to, the consequences of one's actions under circumstances involving risk of harm to life or property.

Sabotage – behavior in which both the act and the damaging outcome were intentional.



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Substitutional Test - This test will momentarily take the specific individual out of the picture and replace him/her with another person, in order to give us further insight into the influence of the organization on the behavior of an individual in the situation being evaluated.

Summary Conviction Offence- An offence that is considered to be less serious than an indictable one and accordingly carries with it a less severe penalty.

Summary Conviction Procedure- There is no choice of court - the trial procedure takes place in a court or tribunal under the law of Nepal.

Violation- A violation is defined as “a deliberate act of willful misconduct or omission resulting in a deviation from established regulations, procedures, norms or practices. Nonetheless, non-compliance is not necessarily the result of a violation because deviations from regulatory requirements or operating procedures may be the result of an error. To further complicate the issue, while violations are intentional acts, they are not always acts of malicious intent. Individuals may knowingly deviate from norms, in the belief that the violation facilitates mission achievement without creating adverse consequences. Violations of this nature are errors in judgement and may not automatically result in disciplinary measures depending on the policies in place. Violations of this type can be categorized as follows:

a) Situational violations are committed in response to factors experienced in a specific context, such as time pressure or high workload.

b) Routine violations become the normal way of doing business within a work group. Such violations are committed in response to situations in which compliance with established procedures makes task completion difficult. This may be due to practicality/workability issues, deficiencies in human technology interface design and other issues that cause persons to adopt —workaround procedures, which eventually become routine. These deviations, referred to as —drift, may continue without consequence, but over time they may become frequent and result in potentially severe consequences.

In some cases routine violations are well grounded and may result in the incorporation of the routine violation as an accepted procedure after a proper safety assessment has been conducted and it is shown that safety is not compromised.

c) Organizationally induced violations may be considered as an extension of routine violations. This type of violation tends to occur when an organization attempts to meet increased output demands by ignoring or stretching its safety defenses.



1. INTRODUCTION

1.1 General

Flight Safety Standards Department (FSSD), ANS Safety Standards Department (ANSSSD) and Aerodrome Safety Standards Department (ASSD) of Civil Aviation Authority of Nepal (CAA Nepal) promote the goal of aviation safety by encouraging compliance with and through the enforcement of Nepal's Civil Aviation Rules and Regulations. Safety Management Division is responsible for the implementation of SSP in Nepal. When necessary, these regulatory Departments/Divisions investigate alleged violations of the rules and regulations and take necessary enforcement action to maintain aviation safety standards. Deputy Director General (DDG) of Aviation Safety and Security Regulation Directorate (ASSRD) has overall responsibility towards activities conducted by all safety departments/divisions. The chiefs of these regulatory Departments/Divisions are accountable to DDG, ASSRD.

1.2 Our Obligation

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

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.

Accordingly, the regulatory Departments/Divisions supervise and administer the enforcement mandate inherent in the international agreement. Enforcement and sanctioning powers, provided by a legal framework, and as reflected in the State Safety Policy Statement of Nepal, have been delegated to inspectors designated by CAA Nepal, who have the responsibility and authority to conduct investigations.

As a result of international agreement and national legislation, enforcement is not an option, it is an obligation. Vigorous enforcement action will be taken with respect to all deliberate breaches of the aviation safety standards, gross negligence, and willful deviation/ violations.

1.3 Voluntary Compliance

CAA Nepal recognizes that voluntary compliance with the regulations is the most progressive and effective approach to aviation safety.



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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. It is the reflection of positive safety culture of the aviation community.

1.4 Fairness and Firmness

CAA Nepal is committed to enforcing the regulations in a fair and firm manner. Concern about potential consequences should not be taken into consideration when determining the appropriate enforcement action.

CAA Nepal shall promote 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 mitigating circumstances;
- b) providing oral counseling for minor violations where there is no threat to aviation safety;
- c) allowing alleged offenders to give clarification regarding their action.
- d) informing offenders of their right to have penalties reviewed by the CAA Nepal; and
- e) ensuring that repeated offenders and those who willfully disregard aviation safety are dealt with firmly.
- f) ensuring that enforcement decisions are not influenced by personal conflict; personal gain; considerations such as gender, race, religion, political views or affiliation; or personal, political or financial power of those involved.

1.5 Implementation of SMS

CAA Nepal is committed to enforcing the regulations in a fair, transparent and firm manner and also to support the implementation of SMS. This will be achieved by;

- a) encouraging open communication between service providers and inspectors;
- b) no information derived from safety data collection and processing systems (established under an SMS) relating to report classified as confidential, voluntary or, equivalent category, shall be used as the basis for enforcement action. Every means shall be used to protect the source of information obtained from Voluntary Information Reporting System (VIRS).
- c) The safety data shall not be used or disclosed for purpose other than safety improvements.
- d) when a service provider operating an SMS unintentionally contravenes the Act and Regulations, specific review procedures will be used. These procedures will allow the inspector responsible for the oversight of the service provider the opportunity to engage in dialogue with the organization that it addresses the deficiencies that led to the contravention and to afford the service provider a reasonable time to implement them. This approach aims to nurture and sustain effective safety reporting, whereby service providers' employees can report safety deficiencies and hazards without fear of punitive



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action. A service provider can therefore, without apportioning blame, and without fear of enforcement action, analyze the event and the organizational or individual factors that may have led to it, to incorporate remedial measures that will best help prevent recurrence.

- e) through the inspector responsible for the oversight for the service provider, will evaluate the corrective measures proposed by the service provider, and/or the systems currently in place to address the event underlying the contravention. If the corrective measures (including any appropriate internal disciplinary actions) proposed are considered satisfactory and likely to prevent recurrence and foster future compliance, the review of the violation would be concluded with no punitive enforcement action will be taken up by the CAA Nepal. In cases where either the corrective measures or the systems in place are considered inappropriate, inspector will continue to interact with the service provider to find a satisfactory resolution that would prevent enforcement action. However, in cases where the service provider refuses to address the event and provide effective corrective measures, CAA Nepal will consider taking enforcement action or other administrative action deemed appropriate.

1.6 Exceptions

In the following cases, the implementation of SMS policy shall not apply. These cases shall be dealt with vigorous enforcement action in accordance with the enforcement procedures.

This policy is not applicable,

- if there is evidence of a deliberate effort to conceal non-compliance.
- if the operator or service provider fails to maintain an acceptable SMS or its agreed safety performance.
- if the operator or service provider fails to provide confidence in its means of hazard identification and safety risk management.
- if the operator or service provider is a recurrent violator. A recurrent violator is a violator who, in the past one-year period has had the same or closely related violations.

In such circumstances, the applicable penalties established in the Act shall apply and the established enforcement procedures shall be applicable.

1.7 Conflict of Interest

An inspectors of CAA Nepal must take measures to prevent real, potential, or perceived conflicts of interest in accordance with the Code of Conduct specified in the regulation on the qualification, delegation, performance and oversight of competent official in accordance with the Act. If it becomes apparent that there could be a possible conflict of interest during an investigation, the CAA Nepal inspector shall inform his or her respective Chief of Department/Division and request to be removed from the case.



1.8 Handling of Complaints

Complaints concerning Civil Aviation personnel/inspectors shall be handled by Director General, CAA Nepal. In this instance, a complaint is a formal expression of dissatisfaction with a Civil Aviation service, procedure, application of policy, or staff member.

1.9 Accessibility of Managers

Chief of the regulatory Departments/Divisions or his/her representative shall be accessible to members of the public to explain the enforcement policy process. Suggestions for improvement of this process are always welcome.

1.10 Proportionality of Responses

Enforcement decisions shall be proportional to the identified breaches and the safety risks they underlie, based on three principles:

- a. CAA Nepal shall take action against those who consistently and deliberately operate outside Civil Aviation Regulations;
- b. CAA Nepal shall seek to educate and promote training or supervision of those who show commitment to resolving safety deficiencies; and
- c. CAA Nepal shall give due and equitable consideration to distinguish premeditated violations from unintentional errors or deviations.

1.11 Amendment of the Aviation Enforcement Policy and Procedure Manual

This manual will be reviewed every year by the SSP implementation team and amended as required.



2. RESPONSIBILITY AND AUTHORITY

2.1 Delegation of Authority

Only person with valid and current delegation to exercise powers issued by the Director General, CAA Nepal under the specific provisions of Act may exercise the authorities. These authorities are delegated by the Director General, CAA Nepal through the issuance of inspector credentials as per Rule 84 (2) and (3).

2.2 Responsibilities of the Inspector

The inspector with credential issued by the Director General, CAA Nepal is the decision-maker, and takes prime responsibility for the decisions whatever they may be.

The primary responsibility of the inspector is to determine the operational level of safety that the service provider is capable of achieving and does in fact achieve in actual operations. To do so, the major part of the inspector's work involves inspecting, assessing, reporting and making recommendations. Recommendations, as well as criticism, concerning operations observed are to be based on fact, not opinion, and are to be carefully and fully documented. Any deficiencies noted by the inspectors need to be immediately directed to the attention of the personnel involved. Should necessary corrective action not be accomplished within a reasonable time, as specified by the inspector, the matter should be reported to the Director General, CAA Nepal through appropriate chief of regulatory Department/Divisions for a decision regarding possible restrictions on operations or enforcement action against the operator.

The details regarding the responsibility and authority of inspectors have been included in the respective handbook or manuals for the inspectors.



3. SURVEILLANCE

3.1 General

Surveillance involves the audit and inspections of service providers (Air operators; Continuing Airworthiness Management Organization; Approved Training Organization; Approved Maintenance Organizations; Aerodrome Operators; ANS providers; Foreign Air Operators; CAA Nepal Licence holders; Designated/delegated organization or persons; examiners etc.) policy and procedures and its compliance with CAA Nepal rules, regulations and requirements. The purpose of surveillance is to determine whether compliance with regulations/ requirements and standards is being maintained. It is a part of the daily routine of CAA Nepal inspectors and includes activities such as:

- a) CAA Nepal Flight Operations Inspectors conducting inspection and audits of air operator; delegated organization and person; Ramp check of domestic and foreign organizations etc.

Note: Refer to *Flight Operations Administrative Manual and Surveillance Policy and Procedure Manual*; *AOCI Manual for various inspections conducted by Flight Operations Division*.

- b) CAA Nepal Personnel Licensing Inspectors conducting inspection of training organization; conducting examinations of pilot licence and instructors for issuance /renewal of Licence.

Note: Refer to *Personnel Licensing Manual and Surveillance Policy and Procedure Manual*; *AOCI Manual for various inspections conducted by Licensing and Examination Division*.

- c) CAA Nepal Airworthiness Inspectors conducting audits and inspection of air operators; Approved Maintenance Organizations; Continuing Airworthiness Management Organization; Maintenance Training Organizations; Designated/Delegated organization or person conducting examination; issuance/ renewal of licence to maintenance personnel; ramp check of domestic and foreign aircraft; conducting spot checks etc.

Note: Refer to *Airworthiness Inspector Manual; Airworthiness Inspector Handbook Part-I and Part-II; Surveillance Policy and Procedure Manual*; *AOCI Manual for various inspections conducted by Airworthiness Inspection Division*.

- d) CAA Nepal ANS inspectors conducting audits and inspections of ANS facilities and procedures.

Note: Refer to *ANS Regulatory Policy and Procedure Manual*.

- e) CAA Nepal aerodrome inspectors conducting inspection and audit of aerodrome facilities and procedures.



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Note: Refer to *Procedures for Continuing Surveillance and Inspection at Aerodromes; Aerodrome Inspector Handbook* for various inspections conducted by ASSD.

- f) CAA Nepal Safety Management Inspectors conducting SMS audits of service providers and evaluating their SMS implementation.

Note: Refer to *Procedure Manual for Safety Management Functions*.

- g) CATCO responsible for conducting examination and surveillance of ATCO.
- h) Any other person authorized by Director General, CAA Nepal.

3.2 Safety Powers

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

3.2.1 Detention

The authority for detention is found in Civil Aviation Act 1959 Section 6. Inspectors may detain any aircraft, equipment, facilities etc. 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 detained aircraft, equipment, facilities etc. must be released. Following a detention, the cause leading to the detention shall be investigated as per the provision of Chapter 4 of this manual.

For detail regarding detention and release refer to *Procedure for detention and release of aircraft, 2013*.

3.2.2 Suspend Nepalese Civil Aviation Documents on the Grounds of an Immediate Threat.

On the basis of report made available from the inspection, pursuant to Civil Aviation Regulations, 2002 (Rule 84) an inspector may suspend an 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 Civil Aviation Regulations, 2002 (Rule 6 and 40). 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 reinstatement of the document.

3.3 Seizure, Retention and Return of Evidence

Refer to Airworthiness Inspector Manual; Flight Operations Administrative Manual; Surveillance Policy and Procedure Manual and AOCI Manual for more details.



3.4 Reporting

Immediately after the detention, suspension activity a notification, either verbal or via e-notice, whichever is the quickest, shall be made to the Director General, CAA Nepal about the action taken. The notification shall be followed by a detailed report to the Director General, CAA Nepal through the chiefs of respective regulatory Departments/Divisions along with the copy of supporting documents, evidences seized/retained during the inspection. If other contraventions of the regulations have been observed, the report forwarded to the Director General, CAA Nepal shall include the same together with any evidence of contraventions that has been gathered.

This submission shall be made along with the recommendation for the formation of an investigation team in accordance with Chapter 4 of this manual. The investigation procedure shall be in accordance with the “Safety Investigation Procedure Manual, CAAN”.



4. SAFETY INVESTIGATION

4.1 Introduction

An investigation is a systematic search for and documentation of the facts relevant to an event from which a decision to take appropriate action can be made. It is the most significant phase of the enforcement process since subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. Safety Investigation is carried out for occurrences pursuant to Rule 83 (b) of CAA Nepal, Civil Aviation Regulations, 2058.

The purpose of a safety investigation is to identify contributing or causal factors, develop findings and recommendations, communicate findings and recommendations to avoid a repetition of the occurrence and communicate lessons learned from the investigations.

The investigation process is primarily triggered by a notification (report) submitted in accordance with the established safety occurrence reporting arrangements. Similarly, investigation process may be triggered by the findings/issues identified by inspections, audits, checks, surveys and also the trends as indicated by hazard reports except those received as voluntary or confidential reports.

4.2 Priorities for Investigation

Priority for investigation shall be determined based on the severity of the consequence of the occurrence or safety issue. For all such issues as mentioned in Para 4.1 above, the Chief of regulatory Departments/Divisions shall assign an investigation priority level based on safety impact and accordingly conduct investigation himself or request the Director General, CAA Nepal for the formation of investigation team.

4.3 Formation of investigation team

Based upon the nature of occurrence/ safety issue, the team may be constituted by inspectors from the regulatory Departments/Divisions of the ASSRD and any expert as nominated by the Director General, CAA Nepal. The member of the team must be capable of conducting, inter alia, root cause and human factor analysis.

The team thus formed shall conduct safety investigation in accordance with “Safety Investigation Procedure Manual, CAAN.”

To analyse the human culpability factor, the investigation team shall follow the decision tree as mentioned in Appendix-1 to reach to a decision regarding the need for further enforcement. Enforcement panel shall be formed in accordance to the Para 6.2 for the implementation of the Aviation Enforcement Policy and Procedure Manual.



5. DETECTION

5.1 Introduction

A detection is the discovery of a possible contravention of aviation-related rules, regulations and requirements. It may result from activities such as inspections and surveillance, and various reports. CAA Nepal Inspectors must take action on observing a contravention or when apprised of one. At the very least, an inspector should prepare the initial violation report and forward it without delay to the respective chief of regulatory Department/Division 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 report provides the respective chief of regulatory Departments/ Divisions with information which helps to shape the Aviation Enforcement Program.

5.2 Initial Report of violation

In all cases where an inspector detects a contravention or where information about a possible contravention is received, the inspector shall 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 report shall simply provide answers to the questions: WHO, WHERE, WHEN, WHAT, WHY and HOW. The information shall be recorded and passed to the chiefs of respective regulatory Departments/Divisions as soon as possible along with any notes or evidence such as photos, logs, tapes, etc.

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. 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 respective chief of regulatory Departments/Divisions for further action. The respective chief of regulatory Departments/Divisions will then determine if an investigation should be carried out.

5.3 Contraventions of Dangerous Goods Regulations

Within CAA Nepal, all inspectors are responsible for promoting compliance with and detecting contraventions of the 'Dangerous Goods Handling Requirements'. 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 Chief of FSSD of the



situation.

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

5.4 Inspectors Flying as Passengers

If inspectors, while flying as passengers on an airline, 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 completed.

After identifying themselves, inspectors shall 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 report shall be forwarded without delay to the Chief of FSSD. It shall contain sufficient detail including all available evidence to allow follow-up action.

The policy of post-flight notification does not apply where the contravention compromises flight safety. In such cases, direct and immediate action shall be taken by the inspector.

5.5 Expanded Description of the Initial Violation Report

The purpose of the initial violation report 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. This initial process of collecting information concerning a possible violation is often the only opportunity to preserve perishable evidence.

The initial violation process shall simply answer the questions: WHO, WHERE, WHEN, WHAT, WHY & HOW and, depending on the circumstances, may be expanded as follows:

- a. record all possible contraventions (even borderline offences);
- b. record date, time and location of the contravention;
- c. record the identification of the aircraft and the names, addresses and telephone numbers of all persons involved;
- d. preserve perishable evidence and documents such as logbooks, load control sheets, damaged aircraft or equipment 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.
- e. take photographs of all objects that cannot be secured or moved;



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- f. take notes on the events immediately preceding and following the contravention;
- g. 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);
- h. approach any person you suspect of committing a contravention and seek their account of the occurrence;
- i. contact the respective Chief of regulatory Departments/Division for assistance or direction as required.

NOTE: *It is important to keep an accurate set of notes detailing in chronological order of your actions with appropriate location, dates and times.*

Upon detection of a violation and the completion of the initial violation report, an inspector shall forward the same to respective Chief of respective regulatory Departments/Division. In accordance to Chapter 4, investigator (s) to the case shall be assigned.

5.6 Further Investigation

If in doubt about the appropriate action to take in a given circumstance, the inspector shall refer the matter to the respective Chiefs of regulatory departments/division for further investigation. Such investigation shall be in accordance to Chapter 4 of this manual.



6. ENFORCEMENT PANEL

6.3 Enforcement Panel – Introduction

CAA Nepal inspectors, when required, shall take necessary action on the spot during the inspection as specified in Rule 84 of Civil Aviation Regulations 2002. For minor offences, the administrative procedures like oral counseling, warning notice and remedial Training, shall be conducted by the inspectors with consent/approval from Chief of respective regulatory Departments/Division. However, if the risk associated with the offence is comparatively higher posing the hazard or could pose hazard to the safety of aircraft, its occupants and public and property on ground, the offence shall be considered as a serious offence. The investigation shall be carried out in accordance to the “Safety Investigation Procedure Manual, CAAN”.

If the investigation team reaches a conclusion after analysis of probable causes, human culpability factor (**Appendix-1**) and recommends in the investigation report regarding the need for enforcement more intense than oral counseling, warning notice and remedial training, this may result in the formation of an enforcement panel by the Director General, CAA Nepal.

The enforcement action shall be implemented by the appropriate Safety Department after approval from Director General, CAA Nepal.

6.4 Composition of Enforcement Panel:

The Enforcement Panel shall be constituted as below:

Chief of concerned department or designee_____Coordinator
Subject matter inspector(s) of concerned department(s)_____Member
Administrative official as required_____Member
Legal official_____Member Secretary

The panel may take services of other experts including from other safety departments as required depending on the complexity of the event.

In case of offences related to multiple areas, the panel shall be led by the Chief of one of the concerned Departments or designee as appointed by the Director General, CAA Nepal.



6.5 Restriction in use of privileges of aviation documents

The concerned safety department, on request by the enforcement panel, may instruct the service provider to keep the individual and organization holding the civil aviation document not to utilize the privileges of the documents until such time as it may be deemed necessary for the purpose of completing the investigation related with any occurrences or breach of applicable rules and regulations.

6.6 Step by Step procedure for enforcement action in the event of offence

- a. The contravention is reported to relevant regulatory department/ Division.
- b. The event is investigated by the inspector/Investigation team to determine if it constitutes immediate threat to the safety of the occupants, aircraft and general public.
- c. If the inspector/ investigation team has enough reason to suspect that the use of the privileges attached with any of the civil aviation documents poses danger to the safety of the occupants, aircraft and general public, an immediate instruction will be issued not to exercise the privileges of such civil aviation documents.
- d. If such instructions are not followed by the holder of civil aviation documents, alternate means can be used like advising the air traffic unit not to permit the aircraft for take-off.
- e. Such instruction may be issued by the respective safety inspector or investigation team.
- f. Normally, period of restriction on privileges associated with aviation document will not be more than 30 days from date of first instruction from the inspector or investigator.
- g. If during investigation, it is deemed necessary, instruction can be issued not to use the privileges of civil aviation documents. Such instruction can be issued by the inspector/investigators.
- h. After obtaining complete report from the inspector or investigation team on the event, if it is recommended to investigate further for the enforcement purposes in serious offences, an enforcement panel will be formed by the Director General, CAA Nepal to review the case and recommend a penalty appropriate to the identified risk to safety.
- i. The enforcement panel will review the case and prepare the final report and submit it to Director General, CAA Nepal. The general format of the report is given in **Appendix-2**.
- j. The enforcement panel may, depending on the severity of offence, recommend to Director General, CAA Nepal to prolong the duration of restriction on privileges associated with aviation document pending its investigation/recommendation.
- k. Depending on the severity of the offences, the enforcement panel will recommend to the Director General, CAA Nepal the prescribed penalty including but not limited to the



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suspension of civil aviation document for specified time frame or the cancellation of such documents.

- l. The offender will be notified of the decision of CAA Nepal by the respective regulatory department/division with respect to the penalty imposed in relation to the offence committed. The enforcement data will be updated and maintained by the relevant regulatory department/Division unless the case is concluded as not requiring further action. In the latter case, only the investigation file will be maintained by the Department, and no record will appear in the file of document holder. The record of the enforcement action shall be maintained in the personal file of offender in case of individual offender or in office file of approval holder in case of offender being an organization holding civil aviation documents like approval or certificate.
- m. The offender can appeal against the CAA Nepal decision on enforcement action. The appeal has to be made to the Board of Directors of CAA Nepal.



7. DETERRENT ACTION

7.1 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 *Civil Aviation Act 1959/Civil Aviation Authority of Nepal Act 1996* or the *Nepalese civil Aviation Regulations 2002 or respective requirements*. 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 chapter of this manual is to promote fairness and uniformity in the selection of the appropriate deterrent action.

7.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- a. to protect the individual and the public from possible harm;
- b. to encourage future compliance; and,
- c. to deter others from contravening aviation legislation.

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

7.3 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 tribunals or courts and is only applicable to a few provisions of the *Civil Aviation Act 1959/Civil Aviation Authority of Nepal Act 1996* or the *Nepalese civil Aviation Regulations 2002 or respective requirements*.

Judicial Action shall be taken after court proceedings as per National law.

Administrative action comprises all other measures taken by the CAA Nepal pursuant to the provisions of the *Civil Aviation Act/Regulations/Requirements*.

7.3.1 Administrative Action

Six types of administrative action which may be taken where a service provider contravenes a provision of CAA Nepal Act/regulation/requirements:

- a. oral counselling



- b. Warning Notice
- c. Remedial Training
- d. monetary penalty
- e. suspension of an aviation document
- f. cancellation of an aviation document.

7.3.2 Emergency Action

Occasionally, the contravention of a regulation by service provider may pose an immediate threat to aviation safety. Two courses of action are available in such a situation as explained in Para 3.2 of this manual.

7.4 Sanction Determination in cases of Multiple or Continuing Violations

7.4.1 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:

a. 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 violation. Evidence to prove each individual infraction shall be secured so that in the case of a review/appeal the evidence can be presented.

b. 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 Nepal'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.

7.4.2 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



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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 Director General, CAA Nepal the following procedures shall apply in the disposition of such cases:

a. 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.

b. Provision for 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 Civil Aviation Regulations, 2002 (Rule 64) 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 Civil Aviation Regulations, 2002 (Rule 6) in addition to any enforcement action.

Similarly, the services of ANS and aerodrome service provider may be suspended or cancelled for immediate threat for civil aviation with an immediate effect by an instruction by ANSSSD and ASSD inspectors respectively pursuant to Rule 84 of CAR 2002.

7.4.3 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 FOR/ NCAR 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.

7.4.4 Assessment of Sanction

The assessment of the sanction in all administrative cases shall consider each count separately following the guidelines in Chapter 9. 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 Director General, CAA Nepal should record the reasons for the modification in the case file.



7.5 Disclosure of Deterrent Action

Disclosure of Deterrent Action will be done depending upon the severity and complexity of the offences and its likelihood of recurrences.

7.5.1 Disclosure to Employers

Employers of Nepalese civil 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 pilots and other licence holders affects their 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 or other licence holder who has been detected performing their duty while under the influence of alcohol. The question of whether or not to inform the employer must be addressed on a case-by-case basis. The Director General, CAA Nepal will decide if disclosure to the employer is appropriate.

7.5.2 Notification of Detection Source

The chief of regulatory department/division shall ensure that the detection source is advised of the outcome of the case and record this action.



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Figure 7-1 Table of Judicial and Administrative Action

Errors/ Violations/ Offences		Enforcement action	
		If created significant hazard to aircraft and its occupants:	If could have created significant hazard to aircraft and its occupants:
Errors	Slips/Lapses	Off rostering and/or warning notice	Oral counseling
	Mistakes	Off rostering and/or Remedial Training	Oral counseling and warning notice
	Repeated errors	Suspension of civil aviation document; Monetary Penalty and Remedial training	
Violations	Situational Violation	Suspension of Civil aviation document; Monetary Penalty and Remedial training	Warning notice; Remedial Training and Monetary Penalty.
	Recurrent Violation	Cancellation of Civil aviation document	Suspension of Civil aviation document; Monetary Penalty and Remedial training
Other Offences	Recklessness/ Gross Negligence	Cancellation of Civil aviation document	Suspension of Civil aviation document; Remedial training; Monetary Penalty
	Willful-misconduct / Illegal activity	Cancellation of civil aviation document and Legal action as per applicable law	Cancellation of civil aviation document

Note – off-rostering refers to the restriction of use of privileges of civil aviation documents.



8. ADMINISTRATIVE ACTION

8.1 Introduction

Administrative action comprises all deterrent measures, other than judicial action, taken by the Director General, CAA Nepal 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 CAA Nepal are administrative actions. They are usually resolved quickly yet give the offender access to a review and the full process of natural justice.

8.1.1 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.

a. Preventive Action

- Oral Counselling
- Warning Notice
- Remedial Training

b. Administrative Sanctions

- Administrative Monetary Penalties
- Suspension of Civil Aviation Documents
- Cancellation of Civil Aviation Documents

8.2 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 Civil 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 Director General, CAA Nepal, 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.



8.2.1 Oral Counselling

Oral counselling is primarily used when a Civil Aviation document holder commits a minor inadvertent violation where the imposition of a sanction is not considered appropriate. It 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. All CAA Nepal inspectors can provide oral counselling relevant to their respective delegation of authority.

Inspectors shall 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 willful act. Oral counselling is not an option when the alleged offender disputes the allegation.

Refer to the factors affecting choice of sanction in Chapter 9 for guidance on determining whether or not oral counselling is appropriate.

If a comprehensive investigation is concluded with an oral counselling, that fact is recorded, and the file is closed.

Examples of minor inadvertent violations requiring oral counselling:

- a. not carrying specified valid documents in flight/on duty as stipulated by the regulation.
- b. inadvertent omission to close a flight plan within the prescribed time period.
- c. inadvertent omission of making a required logbook entry.
- d. error causing loss of separation where desired safety margin was not attained (separation less than the standard, but not less than half of it).
- e. not briefing while handover, takeover of duty change.

Note: *The examples highlighted above are not the exhaustive list as those are kept as examples only, the administrative action may vary depending on various situations, circumstances.*

8.2.2 Warning Notice

- a) In case of investigation conducted within the regulatory department/ division, the Chief of regulatory Department/ Division will assign inspector(s) to investigate the issue and recommend the appropriate penalty appropriate to the nature of offence and frequency of offence.
- b) Upon recommendation of assigned inspectors(s) for Warning Notice, the Chief of regulatory Department/ Division will issue warning notice.

Example of minor inadvertent violations requiring warning notice:

- a. when violation that demands oral counselling is repeated.
- b. traffic information not provided by the ATC.



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Note: The examples highlighted above are not the exhaustive list as those are kept as examples only, the administrative action may vary depending on various situations, circumstances.

8.2.3 Remedial Training

Remedial training is primarily used when a Civil Aviation Document holder commits a minor inadvertent violation due to incompetence or lack of knowledge and where the imposition of a sanction is not considered appropriate. It provides the document holder with the opportunity to acquire the necessary knowledge or skill to ensure future compliance. All Civil Aviation inspectors can recommend remedial training relevant to their respective delegation of authority, however final decision on remedial training will be taken by chief of Regulatory Department/Division.

Examples of minor inadvertent violations requiring remedial training:

- a. not reporting the mandatory occurrence in the standard format and or within specified timeframe
- b. inadvertent erroneous logbook entry
- c. error causing loss of separation where near collision existed requiring traffic avoidance maneuver (separation less than half the standard separation)
- d. Not adhering to the prescribed traffic pattern in the vicinity of an aerodrome
- e. inadvertent entry on an active runway without authorization.
- f. flying or working with expired or invalid license/ratings
- g. near miss/ separation seized
- h. negligence
- i. when some violation subject to “warning notice” is repeated

Note: The examples highlighted above are not the exhaustive list as those are kept as examples only, the administrative action may vary depending on various situations, circumstances.

8.2.4 Administrative Monetary Penalties

Administrative monetary penalties may be assessed where there has been a contravention of a designated regulatory provision or requirements which may impact on safety. The monetary penalty procedures are set out in Nepal Civil Aviation Authority Act, 1996 (Rule 25)

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

- a) Enforcement Panel submits its report to Director General, CAA Nepal and recommends the amount of the penalty that is appropriate depending on the nature of offence and frequency of offence.
- b) After the approval of recommendation of enforcement panel report from Director General, CAA Nepal, the member secretary of the enforcement panel shall complete the Notice of Monetary Penalty. The Notice shall contain a clear description of the



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offence, and sufficient details of the contravention so the alleged offender can identify the incident or incidents constituting the contravention.

- c) With the Notice, the member secretary shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- d) The member secretary shall serve the Notice to the alleged offender following official proceedings. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- e) The monetary penalty may be paid by one of the methods acceptable to CAA Nepal by depositing in the bank account specified in the notice. An official receipt will be issued by CAA Nepal.

Examples for cases inviting the monetary penalty:

- a. when same violations are repeated after oral counseling or remedial training
- b. violating flight and duty time limitation knowingly
- c. repeated omissions if making required logbook entries
- d. operating a VFR flight in weather conditions below the prescribed VMC weather minima but still with visual references to the ground
- e. operating an aircraft below the prescribed minimum altitude
- f. Deviate from a flight plan without informing ATC
- g. Repeated Omission to make a mandatory position report
- h. Repeated Omission to contact ATC prior to entry in Controlled airspace
- i. Traffic Conflicts causing danger of collision like TCAS RA for IFR traffic/ Air Miss.

Note: The examples highlighted above are not the exhaustive list as those are kept as examples only, the administrative action may vary depending on various situations, circumstances.

The monetary penalties are set out as follows:

Monetary Penalties		
Offences	Individual	Organization
1st offence	NRs 5, 000.00	NRs 5, 000.00
2nd offence	NRs 7, 500.00	NRs 7, 500.00
3rd offence	NRs 10, 000.00	NRs 10, 000.00
Violation of instructions of CAA Nepal	NRs 25,000.00	NRs 25,000.00

8.2.5 Suspension of Nepalese Civil Aviation Documents

The suspension of a Nepalese Civil Aviation Document for contravention of a provision of the *Civil Aviation Act* or regulation made under *this Act or requirements, orders, directives, circulars and notices made under prevalent rules and regulations* the most severe administrative sanction the Director General, CAA Nepal 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.



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The offender will be given an opportunity to clarify his or her position why the civil aviation documents should not be suspended in the interest of safety. If the justification is not satisfactory then the civil aviation document may be suspended by a decision of Director General with recommendation from the enforcement panel.

Where a Nepalese civil aviation document has been suspended, the person to whom it was issued shall return it to the Director General, CAA Nepal and shall not exercise the privileges attached to that document until it is restored by the Director General, CAA Nepal. 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 procedure.

- (1) Enforcement Panel submits its report to Director General, CAA Nepal and recommends the appropriate duration of suspension by considering the Table of judicial and Administrative Action in Chapter 7 depending on the nature of offence and frequency of offence.
- (2) After the approval of recommendation of enforcement panel report from Director General, CAA Nepal, the member secretary of the enforcement panel 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 member secretary shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- (4) The member secretary shall serve the Notice of suspension to the alleged offender following official proceedings. 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 within 30 days of the receipt of the suspension notice, to the Director General, CAA Nepal and applies for a stay of suspension pending its decision, The Director General, CAA Nepal shall forward the request to the Board of Directors. Until the decision of the review, the suspension shall remain valid.

Examples of cases inviting Suspension of a Civil Aviation documents.

- a. Conducting a VFR flight in IMC condition.
- b. Cause to operate or operate flight with overloaded condition like exceeding maximum takeoff mass
- c. Operating a flight over-populated areas at an altitude below the minimum prescribed by regulations or requirements
- d. Performing non authorized aerobatic maneuvers
- e. Reckless aircraft operations
- f. Performing assigned duties like Flight Operations, Maintenance or ANS Operations duties while under the influence of a psychoactive substance



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- g. Unsafe acts like altercation in cockpit during flight
- h. Three violations resulting in imposition of monetary penalty

Note: *The examples highlighted above are not the exhaustive list as those are kept as examples only, the administrative action may vary depending on various situations, circumstances.*

8.2.6 Cancellation of Nepalese Civil Aviation Documents

The cancellation of a Nepalese Civil Aviation Document for contravention of a provision of Civil Aviation requirements, orders, directives, circulars and notices made under CAA Nepal Act or regulations is the most severe administrative sanction the Director General, CAA Nepal can impose. Cancellation action is taken where a suspension 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.

Cancellation of Civil Aviation document is warranted by following,

- a) a monetary penalty would be inadequate to achieve compliance; or
- b) the document holder is a repeat offender against whom monetary penalties have previously been assessed;
- c) Repetitive violations amounting to enforcement action of suspension of civil aviation document. The decision will be taken in case to case basis depending on the severity of violations.
- d) the suspension of civil aviation document is inadequate and risk still persists.
- e) Gross negligence or willful violation endangering the safety of aircraft, occupant and general public.

The offender will be given an opportunity to clarify his or her position why the aviation documents should not be revoked in the interest of safety. If the justification is not satisfactory then the civil aviation document may be revoked by a decision of Director General, CAA Nepal with recommendation from the enforcement panel.

Where a Nepalese Civil aviation document has been cancelled, the person to whom it was issued shall return it to the Director General, CAA Nepal and shall not exercise the privileges attached to that document.

The following paragraphs outline the Cancellation procedure.

- a. Enforcement Panel submits its report to Director General, CAA Nepal and recommends cancellation of Civil Aviation Documents by considering the Table of judicial and Administrative Action in Chapter 7 depending on the nature of offence and frequency of offence.
- b. After the approval of recommendation of enforcement panel report from Director General, CAA Nepal, the member secretary of the enforcement panel shall complete the Notice of Cancellation. 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.



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- c. With the Notice, the member secretary shall enclose an information sheet describing the informal meeting procedure and offering the alleged offender an opportunity to discuss the sanction.
- d. The member secretary shall serve the Notice of cancellation to the alleged offender following official proceedings. The date appearing on the Notice shall be the date on which the Notice is to be served or sent.
- e. Where the alleged offender requests, a review within 30 days of the receipt of the Cancellation notice, to the Director General, CAA Nepal and applies for a stay of Cancellation pending its decision, the Director General, CAA Nepal shall forward the request to the Board of Directors. Until the decision of the review, the cancellation shall remain valid.

Examples for cases inviting the cancellation of civil aviation documents:

- a. operating flight with lesser number of flight crew than required by regulations
- b. conducting or cause to conduct repeated flight with overloaded condition like exceeding maximum takeoff mass
- c. flying or cause an aircraft to fly with expired certificate of airworthiness
- d. commercial operation of aircraft with expired AOC
- e. 3 violations resulting in imposition of suspension of license in past.

Note: *The examples highlighted above are not the exhaustive list as those are kept as examples only, the administrative action may vary depending on various situations, circumstances.*



9. SANCTIONS

9.1 General

The list of examples which follows shall be used as a guideline by a CAA Nepal inspector when recommending a sanction and by the Director General, CAA Nepal 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 later. To that effect, the examples 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:

- a. The sanction may be moderated in light of mitigating circumstances, (events which were inadvertently caused by misunderstanding, misconception or an honest mistake).
- b. The highest category of document related to the contravention would be the document suspended as a sanction for the contravention.
- c. 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, which is normally one year).
- d. Sanctions for all subsequent contraventions should be raised from previous sanctions.

9.2 Factors Affecting the Choice of Sanction

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;
- c. were there mitigating circumstances not amounting to a defense?

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?

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?

Personal characteristics to be considered - what is the offender's:



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- 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 Nepalese Civil aviation documents; and
- f. financial position in regard to the ability to pay a fine or penalty?

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?

Punishment

- a. what is the range of sanctions available?

Deterrence and public safety

- a. would the recommended sanction contribute to public safety; and
- b. will the sanction act as deterrent to others?

Rehabilitation

- a. will the sanction promote future compliance on the part of the offender?

9.3 Judicial process

Any person,

- a) Knowingly making any false representation for the purpose of obtaining an aviation document or any privilege accorded thereby;
- b) Willfully destroying any document required to be kept;
- c) Making or cause to be made any false entry in a record required to be kept with intent to mislead or willfully omit to make any entry in any such record;
- d) Willfully obstructing any person who is performing duties under the authority of Director General, CAA Nepal;
- e) except as authorized under the applicable regulations, willfully operating or otherwise dealing with an aircraft that has been detained under the national regulations;
- f) willfully doing any act or thing in respect of which a Nepalese aviation document is required except under and in accordance with the required document; or
- g) willfully doing any act or thing in respect of which a Nepalese aviation document is required where,
 - (i) the document that has been issued in respect of that act or thing is suspended, or
 - (ii) an order issued by the authority prohibits the person from doing that act or thingshall be prosecuted through the applicable law.

9.4 Administrative process

Refer to Para 8.3 for details on sanctions based on administrative actions.



APPENDIX-1

Human Performance Culpability Evaluation

Decision – Tree

A tool to be applied for the purpose of deriving to a decision regarding culpability of individuals in an organization. *(This tool is basically based on the idea of culpability decision tree given by Dr. James Reason in his book "Managing the Risks of Organizational Accidents" published in 1997.)*

Using Procedure:

- Every test should start from **START** box and flow down (↓) or side (→) as indicated by arrow and as leaded by the decision (YES or NO).
- Boxes are only identified by either the question or outcome that they contain;
- Regarding the arrangement of the tree, it is normally considered that the severity of outcome of culpability diminishes from left of right. As is evident, the degree to which the individual is culpable for the actions being scrutinized diminishes as one progresses further and further through the tree with each question that leads to another question, rather than to an outcome or conclusion;
- This diagram sketches out the basic essentials of a decision tree for discriminating the culpability of an unsafe act (behavior) of an individual. The main assumptions of use of this tool are:
 1. the actions under scrutiny have contributed either to an accident, a serious incident or equivalent degree of impact of safety consequences.
 2. in an organizational accident, there are likely to be a number of different unsafe acts, and the decision tree is intended to be applied separately to each of them;
- Conclusions like system induced violation and error are more organization related and should be dealt with accordingly.

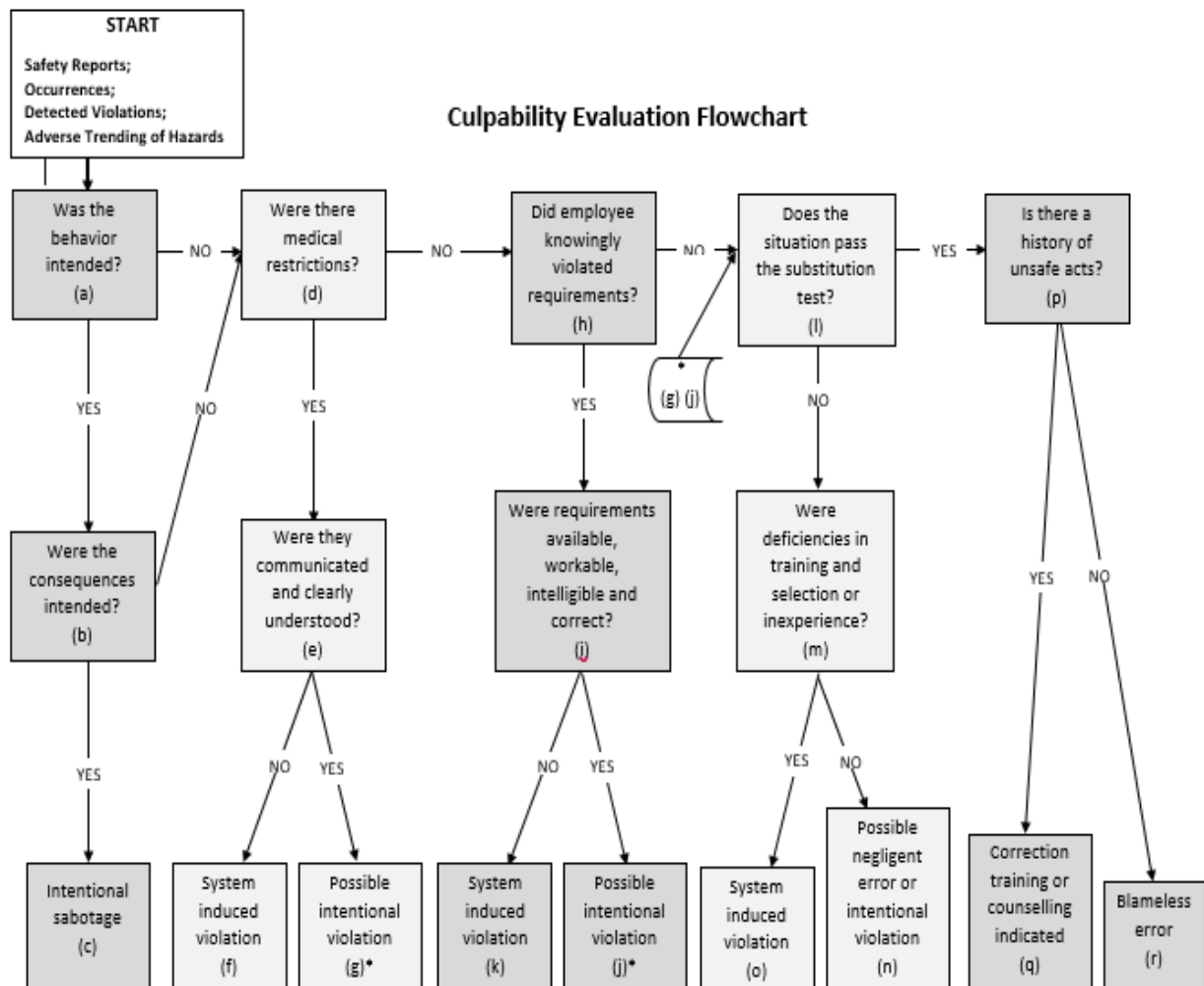
Definition:

1. Culpability – the amount of blameworthiness that an individual's behavior merits based on the nature of the deviation from expected behavior, the outcomes of the deviation, and the responsibility and authority of that individual, in the context of the situation in which the behavior occurred
2. Behavior – a human act or sequence of human actions. Behavior consists of a plan or intention (a goal plus the means to achieve it), a sequence of actions initiated by the plan, and the extent of success in achieving the goal as each action is performed.
3. Consequence – the final, overall effect(s) or outcome(s) of an individual's behavior with respect to the situation or environment in which the behavior occurred.
4. Sabotage – behavior in which both the act and the damaging outcome were intentional.
5. Violation – the intentional deviation from expected behavior as specified in operational procedures, rules, or standards, but in which the consequences were not intended.
6. Substitutional Test - This test will momentarily take the specific individual out of the picture and replace him/her with another person, in order to give us further insight into the influence of the organization on the behavior of an individual in the situation being evaluated.
7. Error – an unintentional deviation from expected behavior.



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- Skill-based Error – an error associated with highly-practiced actions in a familiar situation usually executed from memory without significant conscious thought or with little attention. In terms of failing to achieve the intended goal, the plan was adequate, but the action(s) failed to go as planned
- Rule-based Error – an error associated with behavior based on selection of stored rules derived from one's recognition of the situation;
- Knowledge-based Error – an error associated with behavior in response to a totally unfamiliar situation (no skill, rule or pattern recognizable to the individual). Usually arises as a problem-solving situation that relies on personal understanding and knowledge of the system, the system's present state, and the scientific principles and fundamental theory related to the system. In terms of failing to achieve the intended goal, actions conformed to the plan, but the plan was inadequate to achieve its intended outcome due to an inaccurate mental picture.





APPENDIX-2

General Format of the Enforcement Panel Final Report

1. Cover Page

Cover Page shall detail the event, location, date of incident and date of submission of report, details on whom the report was submitted by and details on whom report was submitted to.

2. Foreword

Short description of event; when and by whom the enforcement panel was formed; what are the measures taken by enforcement panels and enforcement committee members name.

3. Background

Brief background on event.

4. Review of Findings and it's categorization

Reviews the findings raised by Investigation Committee and it's categorization for deterrent action.

5. Deterrent Action

Proposed Deterrent Action with justification.

6. Sanctions on identified violations

Propose sanctions on identified violations with justification.

7. Recommendations

Propose recommendation to Director General, CAA Nepal for enforcement action.

8. Composition of Enforcement Panel

Enforcement Panel Team member name; designation and signature.