



Aviation Enforcement Inspector's Handbook

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EFFECTIVITY

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Foreword

This Aviation Enforcement Inspector's Handbook is intended for the use and guidance of Civil Aviation Authority of the Philippines (CAAP) staff, involved in the administration of the Civil Aviation Act, Republic Act 9497 of 2008, Section 27 and the Civil Aviation Regulations of the Philippines (CARs). The Handbook contains information and instructions on the manner in which delegated duties and responsibilities are to be performed. All personnel concerned with regulatory enforcement activities, are to employ the applicable procedures contained in the Handbook.

INTRODUCTION

Aviation Enforcement (enforcement) is the process intended to ensure compliance with the Civil Aviation Authority Act (ACT), Republic Act No. 9497 and the Civil Aviation Regulations (CARs) of the Philippines. This process is mandated to the Civil Aviation Authority of the Philippines (CAAP), the Competent Authority, as part of its duty of regulatory oversight of the aviation industry.

The CAAP, as competent as well as jurisdictional authority and by delegation by the CAAP Board of Directors (Board) to the Enforcement and Legal Service (ELS), has the mandate to enforce the Act and CARs by conducting investigations into possible contraventions and, in the event of a proven contravention, taking administrative action or recommending criminal and/or civil action to the Board of Directors of the CAAP.

Administrative action includes but is not limited to suspension or cancellation of a CAAP issued licence, permit, authority or privilege or any other civil aviation document. The CAAP may also impose monetary penalties, ground or detain aircraft and deny takeoff clearance to a departing aircraft. The Inspector may use oral counselling when the alleged offender commits a minor, inadvertent violation, which does not have an immediate safety related impact.

Notwithstanding the above, it is right and indeed the responsibility of the CAAP and all its Inspector staff to whom regulatory oversight has been delegated, to take action, when deemed necessary, in order to prevent an unsafe situation from turning into a disaster. As a result of this statement, Inspectors are instructed to take immediate action upon detecting a real and present danger to aviation safety.

What is the overall mandate of ELS? To merely investigate contraventions and then to punish the perpetrators, would actually not achieve the greater goal of Aviation Safety, the CAAPs primary objective. Consequently there are other aspects to this segment of regulatory oversight, which must also be considered. Aside from regulatory investigations and field surveillance, the prime enforcement mandate of the Inspector, there are also the educational and promotional activities designed to maximize the industry's compliance with the Act and the CARs.

The priorities of enforcement activities are summarized as follows:

- 1) Education of the Industry wherever possible;
- 2) Promotion of compliant attitudes within the Industry;
- 3) Regulatory investigations and field surveillance and;
- 4) Enforcement of the Act and the CARs.

Inspectors shall conduct planned surveillance for the primary purpose of conducting regulatory investigations, i.e. where there are grounds to believe that violations are being committed. In the absence of such grounds, field activities of Inspectors should focus on the educational and promotional aspects as opposed to the simple detection of violations.



The Enforcement process and by design, this document, includes the following Parts:

1. Prevention
2. Surveillance
3. Detection
4. Investigation
5. Analysis of Legislative Provisions
6. Special Investigative Procedures
7. Deterrent Action
8. Appendix

Each of the above-mentioned Parts will be addressed in detail in this Handbook. The guiding principle of the enforcement process is that justice must be done and, it must-be-seen-to-be-done. As such it has to be timely, fair, consistent and without favour or prejudice. In addition it must be open, so that the result of the process is an example to others and consequently has a deterrent component.



Part 1 – Prevention

1.1 Inspection – General

Inspection involves the examination of Philippine aviation documents, aircraft, cargo, premises, aeronautical products such as appliances, parts and components and facilities related to aeronautics and aerodromes. The purpose of inspection is to determine whether compliance with regulations and standards is being maintained. It is part of the daily routine of CAAP employees and includes activities such as:

- a) Air Traffic Control (ATC) operators observing aircraft movement;
- b) Flight Operations Inspectors conducting company inspections, audits and flight tests and monitoring airside activities;
- c) Personnel Licensing Inspectors conducting examinations and flight tests of pilot licence applicants and instructors and performing inspections and audits and surveys of flying schools and flying clubs.
- d) Airworthiness Inspectors conducting audits, inspecting aircraft, conducting examinations and tests for the issue of aviation maintenance licences;
- e) Dangerous Goods Inspectors conducting audits and inspections of Dangerous Goods Freight Forwarding Agencies, Ground Handling Agencies/Operators and Dangerous Goods Training Facilities and;
- f) Aerodrome Inspectors conducting audits, surveys and inspections of aerodrome facilities and operations.

1.2 Inspection - Authority

An inspection may be conducted by the Director General (the Competent Authority) or his authorized representative, pursuant to the Delegation of Authority granted to the CAAP by virtue of Republic Act No. 9497, Implementing Rules, Section 31, Airworthiness Certificate, Sub Section b., Paragraphs (1), (2), (3) and (4) in which the Director General (DG) or his authorized representative has access to the places specified in the aforementioned paragraphs, and he has enforcement powers under the Act and powers to impose penalties pursuant to Rule VIII of the Implementing Rules and Regulations (IRR).

Entry for Inspection

An Inspector's authority to enter (by delegation from the DG), is summarized as follows:

The Inspector...shall be authorized access to civil aircraft registered in the Philippines...

...to aerodromes (within the Philippines), without restriction...

...to Philippine air operators at any place and at any time in order to conduct any tests or inspections in their facilities or offices.

For the purpose of this Handbook, the Competent Authority refers to the CAAP, the Representative of which is the DG, and the Appropriate Authority, which refers to the CAAP Board of Directors.

Consequent to the above mentioned delegated authority, Inspectors are deemed to be authorized to inspect aerodromes, aircraft, operator's facilities, buildings, equipment used to maintain aircraft, documents pertaining to aeronautical activities and any other thing or place, which would, in the



opinion of the Inspector, facilitate his delegated authority to conduct regulatory oversight and enforcement of the Act and the CARs

In addition to the abovementioned paragraph, the legislation reads as follows.

Section 28, General Powers and Functions of the Director General

Sub Section g.

Authority to prevent Flight - The Director General is authorized to direct the operator or the airman of a civil aircraft that the aircraft is not to be operated in situations where:

1. The aircraft may not be airworthy; or
2. The airman may not be qualified or physically or mentally capable of flight; or
3. The operation would cause imminent danger to persons or property on the ground;
4. The Director General may take such steps as are necessary to detain such aircraft

This statement in Section 28 of the Implementing Rules and Regulations of the Aviation Authority Act of 2008 (IRR) delegates to the Director General and by his delegation to the CAAP Inspectors and other personnel, the right and duty to stop any flight from departing, if the conditions for safe operation of the flight fails to meet the required standard. In other words, if there are any contraventions to the Act or the CARs detected, enforcement action must be taken.

Production of Documents

The authority to demand production of documents and the ability to seize them is derived from Rule VIII, Section 53. Power of the Authority to Investigate Violations, which says in part that:

...the Director General [and his delegates] at his own volition, or at the instance of a private person, or upon the initiative of the Board [of Directors of the CAAP], may conduct investigations based on the procedures that the Board may prescribe and using the *Rules of the Court* as its supplementary guidelines.

In fact, this provision enables the Director General to conduct all of the elements required in an investigation, including the powers to Investigate, Demand, Search [except personal dwelling places] and Seize. Since this ruling is tied to Section 36, ELS and in as much as this section provides *quasi* legislative and *quasi* judicial powers, the CAAP [ELS] may investigate, using all of the standards of a Police investigation. The Burden of Proof is on the CAAP, except in the case of failure to renew on medical grounds. The standard of proof for administrative action, that must be established, is Substantial Proof. However, as some cases may be tried later in a civil court, ELS policy is, that all investigations shall be conducted to the evidentiary requirements of Criminal Act.

Obstruction and Seizure of Evidence

The power to compel a person to comply with a demand is delegated by virtue of the Act, Section(a), Subsection 5, which says in part that

No person shall interfere, obstruct, hinder or delay the Director General or any person duly delegated by the Director General in the performance of his duties pursuant to public interest.



Consequently any person who *wilfully* [requires proof of mens rea, or proof of guilty mind, which is difficult to obtain] obstructs or impedes the Inspector during an inspection or investigation, contravenes the above mentioned Section of the Act and may be subject to severe penalties and/or may be proceeded against with a recommendation to the Board that the alleged offender be tried under the Revised Penal Code and other Special Laws of the Philippines.

The legislation empowers delegated Inspectors to seize anything found in any place entered for the purpose of inspection or investigation, if they believe on reasonable grounds, the thing seized will afford evidence with respect to a contravention. Anything seized must have been provided voluntarily by the alleged offender or his representative or must have been found by the Inspector without resorting to a search. [Forced searches may only be conducted by the Police]

Other Powers of the Director General

Ground and/or Detain an Aircraft

The Director General has the mandate to detain and /or ground aircraft, which are in contravention of the Act or the CARs. Inspectors may detain and/or ground any aircraft that 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 or grounding of the aircraft have been removed, the aircraft must be released.

Suspend or revoke a Philippine Civil Aviation Document (CAD)

The Director General has the power to suspend or revoke a CAD and/or forbid an airman from flying or working on any Philippine registered aircraft inside or outside of the Philippines and/or forbid an operator from operating Philippine registered aircraft inside or outside of the Philippines for a specified time or permanently.

1.2 Inspection - Procedure

When conducting routine inspections, Inspectors shall observe the following procedures:

1. Inspectors shall not enter any aircraft or premises which are locked or where the owner/operator or his 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 identify himself using his CAAP identification card and Inspector credentials.
4. The flight crew and/or owner/operator shall be informed that an inspection is being conducted;
5. A document produced for the purpose of an inspection should not be kept longer than is necessary to determine its validity;
6. Where the validity can not be readily determined, a photocopy, photograph or other accurate record or facsimile shall be made before returning the document;
7. Evidence may be seized with respect to a contravention discovered during the course of a routine inspection;



8. If an unsafe situation is discovered, the aircraft representative shall be informed and the Inspector shall decide whether or not immediate detention of the aircraft is required;
9. In the event of any obstruction to an inspection, the Inspector should politely inform the individual of the consequences of such obstruction. If the person persists, the inspection should be discontinued and charges should be laid under the provision of Rule VIII, Section 55, Penalties, Sub Section a. (5) of the Act and;
10. In the event of an immediate threat to aviation safety, the Inspector shall take whatever steps are necessary to prevent the threat from being carried out. If necessary, the Police should be requested to participate in the carrying out of such steps. The Inspector shall notify the Assistant Director General (ADG) FSIS at the earliest opportunity of any such acts.

1.2 Seizure, Retention and Return of Evidence

Where any evidence is seized, the Inspector shall insure that the following tasks are carried out:

1. The evidence is clearly marked in an identifiable manner;
2. The holder is given a receipt;
3. Reasonable care is taken to preserve and protect the evidence;
4. Continuity of possession is assured;
5. Where an aircraft log or other documentary evidence is seized, a photocopy of the seized log shall be made and certified by the Inspector as a true copy of the original. The photocopy shall be deemed to be a legal substitute of the original logbook, since the original logbook will have to be returned to the rightful owner. To make a true copy, the Inspector shall sign and date each required page and the first page identifying the document, in the upper right hand corner of the document. After the document has been marked, it may be copied. This has the benefit that the original document page can no longer be altered from the state in which it was found and that the copy becomes a legal copy.
6. Any evidence seized shall be returned to the person from whom it was seized or who has Lawful entitlement to it as soon as is practicable, when continued retention is not required for the purpose of the investigation, hearing or other such proceeding. Evidence shall be returned within 90 days of seizure if it is not going to be used, if return is not contrary to the public interest and if there is no dispute as to whom is Lawfully entitled.

1.3 Detention, Grounding and Return of Aircraft

When inspectors contemplate the detention or grounding of any aircraft they must, if possible, introduce themselves to the pilot 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 shall:

1. Again advise the pilot or owner/operator and specify the unsafe condition or unsafe operation and inform him of the consequences of failing to abide by the Inspector's advice (e.g. detention and/or enforcement action);



2. Where the pilot or owner is absent or 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 Detention Notice, specifying the unsafe condition or operation and;
3. If necessary, restrain the movement of the aircraft by requesting Air Traffic Control to deny start-up clearance, by blocking it with vehicles, by attaching immovable objects to it or in extreme cases, and with the assistance of a licensed Aircraft Maintenance Technician (AMT) by judicious and temporary disablement and by notifying the Appropriate Authority or Police. Any such action shall be notified to the ADG FSIS, the ADG ELS or the DG as soon as possible.

Whenever possible, an aircraft shall be detained or grounded without removing it from the custody and control of the owner/operator. This will permit the owner/operator to make repairs or otherwise remedy the unsafe situation. However, if no other measures are effective in alleviating the unsafe condition or operation, the aircraft may be taken into the custody and control of the CAAP. In such cases, reasonable care shall be taken to protect the aircraft in the condition in which it was first acquired. In order to protect the aircraft from unauthorized access, tampering, or other acts intended to circumvent the detention or grounding order, a security guard shall be arranged for the duration of the grounding order. Any costs involving the security of the aircraft shall be charged to the registered owner of the aircraft.

The aircraft should be released under the following circumstances:

1. If the aircraft is not to be operated; or
2. If the aircraft has been rendered airworthy prior to flight; and
3. the aircraft will not be operated in an unsafe manner; and
4. All fees, charges and monetary penalties arising out of the seizure have been paid.



Part 2 – Surveillance

2.1 Surveillance

The purpose of surveillance is to provide a regulatory presence in order to promote voluntary compliance and to reveal contraventions of the Act and CARs. It is an integral part of the CAAPs regulatory enforcement programme. The probability of being detected is one of the most powerful motivators to encourage the Industry to abide by the Act and the CARs. When a comprehensive and effective surveillance programme is in place, a higher degree of compliance and flight safety can be expected.

In the performance of their normal duties, CAAP Inspectors automatically and concurrently engage in routine surveillance. Their mere presence stimulates a positive attitude towards compliance, whilst activities commensurate with their duties sometimes lead to enforcement action.

Another way to conduct routine surveillance is whereby an Inspector does not hide the fact that he is an Inspector, but at the same time makes no overt effort to identify himself as a CAAP Inspector.

Covert surveillance is an activity, whereby the Inspector intentionally represents himself as being someone other than a CAAP Inspector. This however, is rarely done and only by the direct order of the ADG FSIS or the DG. The operation would be conducted in a meticulously planned and coordinated manner, where the objective is to catch the perpetrator in the act of committing a serious offence under the ACT or another National Statute. This activity is usually directed at specific areas, activities and events and would likely be in coordination and by request of other National authorities, such as the Police, Military or National Security personnel.

2.2 Annual Regulatory Surveillance Programme (ARSP)

The annual surveillance programme shall be conducted in concert with the inspectorial staff of the FSIS and as part of the FSIS routine audit functions. FSIS Inspectors are expected to act as the eyes and ears of the Legal and Enforcement Service and its Inspectors/Investigators. As such, during the in-briefings at the time of an inspector's routine audit function, a statement shall be made that if during the audit any non-compliance with the Act and/or the CARs were detected and recommended corrective action is not immediately accomplished, the audit would be changed into a regulatory investigation. This does not mean charges would automatically be laid, but merely that the focus of the audit would have changed. At this point ELS would be called in and the audit would change to the investigative process and its procedures.

2.3 Surveillance Objectives

The objective of the surveillance programme is, to have a presence in the aviation industry, which promotes voluntary compliance. When such surveillance is conducted openly, fairly consistently and with compassion towards the industry, surveillance is welcomed. Consequently all persons found to have contravened should be given the chance to explain the cause of the contravention and to correct the problem at hand. The person's attitude towards voluntary compliance and the degree of seriousness of the offence should be taken into consideration when making recommendations as to how the alleged offender should be dealt with.

2.4 Programme Responsibility and Reporting



Each inspector is responsible to conduct regulatory surveillance in the area assigned to him by the ADG FSIS and in accordance with this Handbook. The Inspector, in the course of his normal duties and when he becomes aware of a possible contravention, shall undertake to conduct a Preliminary Investigation, report his findings to his respective ADG and/or the ADG FSIS. The ADG FSIS shall review the Inspector's report and pass the Detection Notice and the report and evidence to ELS for comprehensive investigation and processing. The Detection Notice shall be used for all detections of possible violations, even if the first response was an oral counselling. This is required by ELS for tracking, advising the source of the outcome of the investigation and for statistical information.

When a change takes place from an audit or an inspection to a regulatory investigation, the required documentation also changes. In the situation of an audit, the audit is closed with a remark on the audit file of the respective organization, that the focus of the audit has changed to a regulatory investigation. A Detection Notice is then completed and processed as in the previous paragraph.

No further action shall take place unless instructed by at least the appropriate Chief of Section

Notwithstanding the above, all perishable evidence found at the time of detection should be secured to support a charge.

If a decision is made to abandon the investigation, a report of the occurrence shall nevertheless be filed and attached to the Detection Notice. A file number shall still be assigned to the case and an entry made in the Enforcement database.



Part 3 – Detection

3.1 Introduction

Detection is the discovery of a possible contravention. It may result from activities such as inspections, surveillance programmes, ATS monitoring of aircraft movements, Aerodrome inspections, regulatory audits, accident investigations, complaints from the Public, or Police reports. When a CAAP Inspector is apprised of, or observes a contravention, he must take action. At the very least, he shall complete a Detection Notice form and forward it without delay to the appropriate ADG for decision. Even when the matter does not normally require further action, as in an oral counselling, the Detection Notice provides the Authority an indication of a contravention and of Inspector activity. The information will also be used to compile statistics and will provide an indication if a particular alleged offender has a habit of minor transgressions.

3.2 Detection Notice (DN) and Preliminary Investigation

A DN shall be completed in all cases where an Inspector detects a contravention or when he has been apprised of such a contravention by another source. The DN provides a useful tool to guide the collection of information in the conduct of a Preliminary Investigation. All particulars should be entered in the DN and a decision should be recorded on the form. The decision to investigate or to orally counsel is at the discretion of the Inspector. There are a number of options available to the CAAP in the handling of the DN. If the contravention is serious, the Inspector must refer the DN to the appropriate ADG. The ADG then passes it to ELS for further action. ELS will then determine if a Comprehensive Investigation is warranted and will assign an ELS Investigator to the case. In the case of a serious contravention the Inspector who first detected the contravention shall conduct the Preliminary Investigation without delay. This is necessary to preserve any perishable evidence and to gather data and proof to facilitate a Comprehensive Investigation if so required. This Inspector may later be a resource to the Investigator conducting the comprehensive Investigation.

The Preliminary Investigation should include as many of the following facts as possible:

1. The act or omission constituting the contravention and the relevant provisions of the Act or the CARs;
2. The identification of the aircraft, the names of the people involved and the names and contact details of any possible witnesses;
3. The date, time and location of the contravention;
4. A description of the events preceding and following the contravention including whether oral counselling was given;
5. Other pertinent information such as weather reports and a list of all perishable evidence that has been collected such as flight plans and logs, fuel bills, bills of lading, mass and balance calculations etc.

3.3 Minor Contravention - Oral Counselling

Oral counselling provides the alleged offender with immediate counselling on the necessity for regulatory compliance. It is an option for the Inspector 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.

Inspectors should assess all the aspects of the contravention and the attitude of the alleged offender to determine whether oral counselling would secure future compliance. Oral counselling would be most appropriate in cases of ignorance or misinterpretations of the legislative provisions, provided aviation safety was not jeopardized, i.e. a minor contravention having little or no impact on safety and there was no wilful intent.

When oral counselling is determined to be the best course of action, the appropriate box on the DN shall be checked after counselling the alleged offender. This type of action does not become part of any enforcement record for the alleged offender. However, the details of the completed form shall be entered into the enforcement database to maintain a statistical record. If the alleged offender is an employee of a Philippine based operator, a copy of the form shall be placed upon the operator's file.

If the Inspector has doubts as to the effectiveness of an oral counselling, he shall conduct a preliminary investigation and proceed with the notification to the appropriate ADG.

3.4 No Further Action

Once a Comprehensive Investigation has commenced, only the Director General may direct that no further Action be taken.

3.5 Referral to a Foreign Authority

In the event that the CAAP becomes aware of an alleged offence by a foreign operator, the alleged offence should be forwarded to the National Civil Aviation Authority where the aircraft is registered. A preliminary investigation shall still be conducted and any perishable evidence collected. This includes the securing of ATS records and any aerodrome traffic movement records as well as loading information etc.

Once the preliminary Investigation has been conducted, the ADG FSIS shall be apprised of the situation. Any immediate threat to aviation safety (such as overload or airworthiness of the aircraft) shall be dealt with without delay. Once the situation is stabilized and the immediate threat has been mitigated, the ADG FSIS will apprise the ADG ELS of the situation, who will then notify the Authority of the State of Registry of the aircraft by letter, including copies of the relevant information, for their investigation and action.

3.6 Referral to the Board and the Judiciary

In the event that the detection resulted from a serious contravention such as one violating the Act, whether by a domestic or foreign operator, the Director General may decide to forward the information to the Board for action. In this case a comprehensive investigation must be conducted. It shall contain the following items:

1. A completed Detection Notice;
2. Records of a Preliminary Investigation;
3. A decision record by ELS to conduct a comprehensive investigation;
4. All details of the comprehensive investigation;
5. All evidence collected during the investigation;



6. A record of change of custody and control of any evidence obtained that was passed to the Inspector and all changes of custody and control to the point of hand-over to the Judiciary;
7. An analysis of the legislative provision which is alleged to have been contravened;
8. A document recommending an appropriate sanction and the reason for it, if the alleged offender is convicted and;
9. A receipt of the package, which is to be signed by the receiving member of the Judiciary to ensure continuity of possession of the evidence.

A complete legal copy of the package, except in the event that there is physical evidence such as an aircraft part photographs shall suffice, shall be kept within the secured storage of ELS.

3.7 Inspectors Flying as Paying Passengers

If Inspectors, whilst flying as paying passengers on an aircraft, detect a contravention which in their judgement must be brought to the attention of the flight crew (i.e. a major disregard of the CARs or an immediate threat to aviation safety) they shall contact the pilot of the aircraft by speaking to a cabin crew member, explaining the problem. If the contravention is not an immediate threat to aviation safety, the Inspector may wait until arrival at the destination. If there is an immediate threat to aviation safety, such as an imminent departure with ice, frost or snow adhering to the lifting surfaces of the aircraft, the Inspector shall as soon as possible identify himself to a crewmember and demand that the departure be discontinued until such time as the immediate threat to aviation safety has been mitigated. A report of such action and a Detection Notice shall be provided to the ADG FSIS as soon as possible after the event.

If the Inspector encounters the above mentioned situation on a foreign aircraft and in foreign airspace or at a foreign aerodrome, he shall certainly be obliged to deal with an immediate threat to aviation safety as described above.

3.8 Inspector's Liability and Off-Duty Actions

The inspector is held harmless in Tort and is protected by the Authority from liability for any actions he may conduct in the course of his assigned duty. It is recognized that the actions of CAAP Inspectors may have at times financial or other repercussions to the aviation industry.

A CAAP Inspector is not relieved of his obligation to act in his capacity and is indeed required to act, concerning any contravention the ACT and the CARs of which he becomes aware. He is obliged to act, upon becoming aware of any immediate threat to aviation safety, in order to mitigate such a threat, wherever he may be.



Part 4 – Investigation

4.1 Introduction

An investigation is a systematic search for documentation of the facts relevant to an event from which a decision to take action can be made. It is the most significant phase of the regulatory enforcement process since subsequent action that may affect both individual rights and public safety will depend on its thoroughness and adequacy. Consequently it is important that CAAP Inspectors know their investigative powers and know what constitutes proper evidence.

All Inspectors are responsible for conducting preliminary investigations when they detect a violation of the Act or the CARs and for recording the information on the Detection Notice (DN). On completion, the DN shall be forwarded to the appropriate AGD who will review it and then forward the DN to the Legal and Enforcement Section.

ELS will assign an Investigator to the case. Both, the reporting Inspector and the Investigator shall continue to coordinate their work as necessary, until the conclusion of the case. Investigators must be prepared to conduct thorough investigations from the initial complaint through the investigation, to the case report conclusion and resultant recommendation.

It must be stressed that no investigation is complete without the alleged offender being contacted, preferably by the ELS Investigator as the alleged offender may supply valuable evidence. Under no circumstance shall the alleged offender first find out that there is a case against him when he receives the Notice of Sanction.

4.2 Preliminary Investigation

The purpose of the Preliminary Investigation (PRI) is to preserve perishable evidence and to determine whether or not the alleged contravention warrants further investigation. The PRI is carried out as follows:

- a) Fill out a DN;
- b) Record the date, time and location of the contravention;
- c) Record the identification of the aircraft and the names of all persons involved, including witnesses that were present or that may have information relevant to the case;
- d) Preserve perishable evidence such as logbooks, load control sheets, damaged aircraft parts, maintenance records, and invoices. ATC records etc. Take photographs of all objects that can not be secured or moved;
- e) Record all possible contraventions, even those that are only partially applicable, and attach copies of the relevant sections of the contravened provisions;
- f) Take careful notes on the events immediately preceding and following the contravention and whether or not an oral warning was given;
- g) Obtain weather reports, ATS tapes, flight plans, or any other document pertaining to the alleged offence;
- h) Interview all witnesses on hand and record their statements on the Witness Statement Form. Attempt to get signed statements, if possible. Do this with all witnesses separately and in private, regardless if they all say the same thing or not. The reason for this is to freeze the evidence so that it cannot be changed later and so, that it may be used by the witness to refresh his memory at a future time. Where



a written statement is not possible, request permission to record the statement electronically and later have a transcript made;

- i) Approach any person you suspect of having committed an offence and attempt to obtain a signed statement;
- j) Keep an accurate set of notes with appropriate times and dates, setting out chronologically what you did;
- k) Obtain help from the Appropriate Authority or the Police if necessary, and;
- l) Hand over the entire package, including the physical evidence, if obtained, to the applicable ADG with your recommendation for follow-up action. Ensure that you sign a hand-over receipt for the evidence in order to preserve continuity of possession. Be prepared to justify your recommendation for follow-up action and to testify as a witness in possible subsequent legal action. In other words, make notes of everything that happens

4.3 No Investigation Conducted (NIC)

Sometimes it is evident from the original complaint or the Detection Notice that the case does not warrant a comprehensive investigation because it is a low-priority safety item, there is insufficient evidence, insufficient resources or other considerations. Nevertheless, the relevant information should be recorded in the database for possible future reference. In this case, a note, explaining the reason for the NIC should be attached.

4.4 Defenses

4.4.1 General

If, early on in the investigation, facts are discovered which point to the likelihood that an alleged offender could successfully argue that his actions were justified, the investigator may opt to recommend termination of the investigation with no further action.

In certain cases where wrongful conduct can be proven or is admitted to by the alleged offender, the alleged offender may be able to raise a defense based upon Necessity or Due Diligence. Where a defense of necessity is proven, the alleged offender cannot be found to have contravened the Act or the CARs because the contravention was necessary to avoid an immediate greater danger, particularly if the situation might have caused damage, injury or even death.

Where due diligence is proven, the alleged offender cannot be found in contravention of the Act or the CARs because all reasonable care to avoid the contravention was made.

In cases where the alleged offender can rightfully claim, that a member of the CAAP provided him with incorrect information, and this is proven, the alleged offender cannot be found to have contravened the Act or the CARs because of an officially induced error.

In all cases, where either necessity or due diligence or officially induced error is a consideration, the DG shall be consulted. The DG shall make a decision and issue a ruling based upon the facts of the case and the recommendations of the ADG ELS.

4.4.2 The Defense of Necessity

It is the policy of the ELS to consider all cases upon their own merit. In deciding whether the defense has been established, the ADG ELS carefully examines the facts to determine whether the following



conditions apply. All of the conditions must be satisfied in order for the defense of due diligence to be valid:

- a) The situation must have been so urgent and the dangers from inaction were so imminent that it was unreasonable to delay any action; and
- b) Compliance with the CARs was demonstrably impossible; 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
- c) The hazards to flight safety caused by the contravention were less serious than the hazard posed by complying with the CARs.

In addition it would be prudent for the ADG ELS to be satisfied on reasonable grounds that the urgent situation was not brought about by the alleged offender through negligence or another breach of the regulations. In other words, where the alleged offender created the danger, he cannot avoid liability for a contravention committed to escape that danger.

4.4.3 The Defense of Due Diligence

The defense of due diligence is found in a situation where the alleged offender took all reasonable care to avoid committing the contravention. What constitutes due diligence will vary from case to case depending upon the facts. The ADG's decision to accept such a defense or not, should be based upon his opinion that the alleged offender did all in his power to avoid the contravention, using good judgment and decision making and in fact exhausted all other options, before committing the act.

4.4.3 The Defense of Officially Induced Error

The defense of officially induced error is available where an alleged offender has reasonably relied upon erroneous opinion or advice of an official who is responsible for the administration or enforcement of the Act and/or the CARs. It must be proved that on a balance of probabilities the offender relied upon the erroneous opinion, direction or advice from the Official and that his reliance was reasonable. The defense however, is not applicable if the alleged offender failed to ascertain whether the official had any jurisdiction over the applicable situation, the advice given was reasonable and would not cause any clear and present hazard to aviation safety. In other words it is the alleged offender's task to prove this defense.

4.4.4 Application of the Defense

The alleged offender, during the investigation, can raise any of the above-mentioned defenses. If the ADG ELS is satisfied that a defense has been established, then he must find that no offense has been committed and close the case. If the defense has not been proven, a mitigating circumstance may still exist. In this case a variance from a standard sanction may be applied.

4.5 Comprehensive Investigation

If a preliminary Investigation reveals that a violation took place and further evidence is necessary to establish the facts, a comprehensive investigation must be conducted. The purpose of the comprehensive investigation is to obtain all the necessary evidence to disclose the truth and to support a charge under the Act and the CARs. The Investigator is not just trying to obtain evidence to prove that an alleged offense took place. He must also ensure that **all** the facts of the case are disclosed, so that Justice will be served. The procedure for conducting a comprehensive Investigation shall be as follows:



- a) Obtain a file number for the ELS database, open a file folder and begin the process of record-keeping/investigation;
- b) File all documentation already received from the preliminary investigation folder;
- c) Analyze the legislation allegedly contravened;
- d) Determine the evidence necessary to prove each element of a violation;
- e) Plan and initiate steps necessary to obtain such evidence, i.e. log books, witness statements, interviews etc;
- f) Obtain information from the alleged offender. A letter of investigation is mandatory, but he should first be contacted by telephone or in person, in order to:
 - (i) Advise the alleged offender that an investigation is in progress, and
 - (ii) Give the alleged offender an opportunity to offer voluntary information.
- g) Co-ordinate the investigation with other branches of the CAAP in order to prevent overlap of responsibilities, confusion and conflict with other branches or CAAP personnel;
- h) Establish the cause of the contravention i.e. weather, navigational hazard, airworthiness of the aircraft, overload, documents expired, inadvertent or deliberate action such as negligent or reckless operation of an aircraft;
- i) Record all actions, telephone conversations, visits and other information pertinent to the case in the enforcement file, including a narrative of the facts and circumstances of the event which led to the alleged contravention and all persons involved with the case;
- j) If the case is of such a nature, possibly requiring judicial action, prepare a case report and advise the appropriate ADG that the case may have to be notified to the ADG ELS for further action.

Contraventions, which may have National or Aerodrome Security considerations, shall be notified to the Director General immediately upon discovery.

Comprehensive investigations shall only be conducted by Investigators of the ELS. However, a contravention in progress, regardless of what area of competence the case may involve, shall be dealt with by any Inspector available, if no Inspector with detailed competence in the situation is available. The intent of this is, to ensure that all inspectors are obliged to stop an unsafe situation to the best of their ability.

Specialized investigations are to be conducted in the following manner:

- a) When a Flight Operations, Safety and Security, Personnel Licensing or Dangerous Goods Inspector becomes aware of a possible contravention concerning the airworthiness of an aircraft, he shall advise the Chief Airworthiness of the allegation and conduct a preliminary investigation. If he believes that there is an immediate threat to aviation safety, he shall undertake steps to mitigate such immediate threat.
- b) When an Airworthiness, Safety and Security, Personnel Licensing or Dangerous Goods Inspector becomes aware of a possible contravention concerning the operation of an aircraft, he shall advise the Chief of Flight Operations of the allegation and conduct a preliminary investigation. If he believes that there is an immediate threat to aviation safety, he shall undertake steps to mitigate such immediate threat.



- c) When a Flight Operations, Airworthiness, Personnel Licensing or Dangerous Goods Inspector becomes aware of a possible contravention concerning the safety and security of an aerodrome, he shall advise the Chief of Safety and Security of the allegation and conduct a preliminary investigation. If he believes that there is an immediate threat to aviation safety, he shall undertake to contact aerodrome security personnel or the police in order to mitigate such immediate threat. Any inspector who has not had training and is not competent to deal with matters of aerodrome safety and security shall not act without the benefit of being accompanied by either an authorized aerodrome Safety and Security person or a member of the Philippine National Police.
- d) When an Airworthiness, Safety and Security, Personnel Licensing or Safety and Security Inspector becomes aware of a possible contravention concerning the transportation of dangerous goods by air, he shall advise the Chief of Safety and Security or the Dangerous Goods inspector of the allegation and conduct a preliminary investigation. If he believes that there is an immediate threat to aviation safety concerning a shipment of dangerous goods, he shall, with the assistance of an authorized Safety and Security person or a member of a Philippine National Police, isolate the area. He shall then by the quickest means possible, notify the aerodrome's emergency response service of the hazard. Once the situation is under control and the hazard has been mitigated he shall notify the Chief of Safety and Security or the Dangerous Goods Inspector. Failing that he shall, by the quickest means notify the ADG FSIS of the situation. He shall then undertake to conduct a preliminary Investigation.
- e) When an Airworthiness, Safety and Security, Flight Operations or Dangerous Goods Inspector becomes aware of a possible contravention concerning the operation or maintenance of an aircraft, whereby the alleged offender is acting without benefit of being the holder of a valid Philippine Aviation Licensing document, he shall advise the Chief of Personnel Licensing of the allegation and conduct a preliminary investigation. If he believes that a licence document holder is about to exercise the privileges of a licence without the licence being valid, the inspector shall stop the individual from acting in accordance with such privileges. If such a contravention is discovered in flight, whilst the alleged offender is exercising the privileges of a document or licence, which is not in force, the inspector shall cause such person to stop exercising such privilege, except where such person is required to safely exercise such privilege to the next point of landing. He shall then undertake to conduct a Preliminary Investigation.

4.6 Interviewing

Interviews occur routinely during an inspector's performance of his duties. They range from the informal questioning of a potential witness in an attempt to determine what useful information the individual may possess about a suspected contravention, to the formal interrogation of an alleged offender. Questions may be asked of any person, suspected or not, if it is deemed that useful information may be obtained. Persons to be interviewed are witnesses to an occurrence. An alleged offender himself or any other person, by having knowledge to any aspect of the investigation, may be able to reveal the facts of the case.

An *interview* is the questioning of a person who is believed to possess information relevant to the matter under investigation. Normally in an interview the person being questioned will be cooperative and furnish the desired information without hostility or evasiveness.

An *interrogation* is a form of interview using detailed questioning where the person, who is alleged to have committed an offence, or a witness, is reluctant to make a full and truthful disclosure of the particular information in his possession.



4.6.1 Objectives of the interview

The purpose of the interview or interrogation is to develop credible information relevant to the investigation and to record it for future reference. Specific objectives vary with the nature of the case, its facts and circumstances, the inspector is attempting to ascertain.

To prevent aimless questioning, the objectives must be formulated carefully and must be fully understood by the interviewer. If possible, the interviewer should, prior to the interview, have conducted a legislative analysis of the provision allegedly contravened. The analysis may provide the interviewer with the required evidentiary information necessary to obtain a conviction. He then has the ability to tailor the questions used in the interview towards the desired information.

As an investigation is a search for the truth, the investigator must utilize all the necessary investigative techniques available to him. The success of the investigation often depends on the proper and effective use of techniques and procedures in conducting the interview. Inspectors have no right to force testimony or admissions from witnesses or alleged offenders. This power is limited to courts and legislative bodies. The best technique is to systematically persuade the witness or alleged offender in a humane and friendly atmosphere to offer testimony or evidence. Using logic, the interviewer should subdue the interviewee's inhibitions, stimulate his natural inclination to cooperate and encourage a conclusion that truthfulness will benefit him in some manner. However, care must be taken not to utter any promises, which the interviewer may not be able to keep. Likewise the promise or threat of sanction uttered will place in doubt the veracity of any statement obtained under such promise or threat. The entire interview would then be worthless in any judicial proceedings.

To properly conduct the interview, the inspector should have as intimate as possible knowledge of the facts of the case, thus enabling him to distinguish truth from falsehood and fact from fiction. Knowledge of human nature enables inspectors to judge character and understand motivations. He must think clearly and without bias, and exercise good judgment, patience and self-control. He must never be angry or become emotionally involved. He must also realize that what a witness says he saw, many not always be what happened. Eyewitness identification and description is regarded as a most unreliable form of evidence and causes more miscarriages of justice than any other method of proof. This weakness has long been recognized by courts and was aptly described as follows:

"The carelessness or superficiality of observers, the variety of powers of graphic description, and the different force with which peculiarities of form or color or expression strike different persons, make recognition or identification one of the least reliable facts testified to by even the actual witnesses who have seen the parties in question."

A person may be a most cooperative witness and vividly describes in detail what he saw. However, before accepting the information, determine if the witness actually was in a position to see or hear what he is describing. Check the angle of view, look for any obstruction to the line of sight and determine if the information he is giving you could have actually been detected from his position at the time of the occurrence. These precautions are necessary because witnesses tend to augment their observations with what they believe occurred when there are gaps in those observations. In the case of alleged offenders, such verification may also reveal the veracity of their statements.

Optical illusions can also lead to misjudgments. Witnesses will often over-estimate heights and under-estimate breadth and width. Colours may also affect judgment of distance. A red object appears to most people to be larger than a blue one of equal size.

The factor of suggestions must also be considered. Separate the witnesses so that they cannot overhear one another. During the interview do not repeat a statement made by another witness. This precaution must be taken, as there is a tendency for people to conform to the opinion held by the majority. And lastly, do not suggest any particular idea to the interviewee, as people at times will



tell you what they have just heard from you in order to please you. Also accept the fact that sometimes people cannot remember at all what they might have seen.

A witness must be interviewed at the earliest time possible, because people have a tendency to forget, some more rapidly than others. Furthermore there is a danger that the witness will acquire additional information, which will displace or bias the original information in his mind.

In seeking the truth, the inspector must constantly inquire: WHO did WHAT, WHEN, WHERE, WHY and HOW. He must continue to inquire until all the essential facts are assembled.

Since questions are the tools of the interviewer, it is essential that questions be clear, communicative and designed to obtain information. The interviewer should always endeavour to ask questions in such a manner that the person being questioned understands what is being asked.

4.6.2 Techniques in the conduct of an interview

- a) At the beginning of a session, the inspector conducting the interview should put the witness at ease by introducing himself and then asking basic identifying data such as a name, address and telephone number.
- b) If there are language difficulties, an interpreter may be used in the conduct of the interview.
- c) It is desirable to use a tape recorder during interviews whenever possible. The witness must always be informed if he is being recorded. If no tape recorder is used, notes need to be taken to ensure that a reliable record is created that will have legal standing.

The following guide may be useful in taking witness statement:

- a) Have the witness describe everything he heard and saw relative to the time, place, person and event in question;
- b) Listen and make brief notes as a memory jogger;
- c) Ask questions to explore specific aspects of the story;
- d) Establish how the witness happened to be in the place where he made the observation and what was his exact physical position in relation to the location of the contravention;
- e) Present exhibits to the witness for identification and marking;
- f) Ask the witness to state any relationship, which may exist between himself and any other person concerned with the contravention or its circumstances.

Just prior to concluding the interview, the interviewer should attempt to resolve any minor conflicts, which may appear between the witness' story and the known circumstances of the contravention. To avoid the problem of being suggestive, this should be done in general terms without mention of specifics. For example "What colour did you say the aircraft was?" is better than asking "You said that the aircraft was yellow, are you sure of that?" Also lying to the witness or an alleged offender by introducing fictitious facts will invalidate the statement obtained.

4.6.3 Statement Preparation

In preparing a written statement the following procedures should be adopted:

- a) Use the statement form whenever possible. If a statement needs to be taken on short or no notice, use plain paper.
- b) Record the time, place and date of the interview on the top of the first sheet of paper.



- c) Record the witness' full name, date of birth, address, and telephone number at the beginning of the statement e.g. "This is the statement of _____" and then add the details.
- d) The narrative of the statement is next. Ask the witness to relate the events in chronological order, beginning far enough back that he feels comfortable by the time he reaches the point in the statement where there is specific interest.
- e) When the narrative is finished, ask questions to clarify it. Take your time in doing this by first writing the question down, then reading it to the witness. Record the answer exactly as the witness replies.
- f) When the statement is complete, ask the witness to read it back aloud.
- g) Make any corrections the witness requires and have the witness initial the changes. Do not correct spelling or grammar in a statement without the witness' consent and initials.
- h) Have the witness sign the last page of the statement, but do not pressure him if he is reluctant to do so.
- i) If the witness was interviewed through an interpreter, ensure that the interpreter's personal details are also recorded and ask him to initial and sign the statement wherever appropriate.
- j) At the end of the process the interviewer must sign and date the document and enter the completion time next to the date.



The following is a comparison of Witness and Alleged Offender interviews:

WITNESS	ALLEGED OFFENDER
<p>Why</p> <p>... to gather information and test its validity in order to determine the particulars of the matter under investigation.</p>	<p>Why</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>Who</p> <p>... witnesses who are willing to provide the inspector with any information they possess about the matter under investigation.</p>	<p>Who</p> <p>... persons suspected of offences as well as others who may have information but are reluctant to offer it.</p>
<p>When</p> <p>... 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 inspector to prepare for interviewing alleged offenders.</p>	<p>When</p> <p>... interviews of alleged offenders should take place ideally after the inspector has gathered enough information to enable him to make a judgment 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>Where</p> <p>... at a place convenient or 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>Where</p> <p>... an 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>How</p> <p>... 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 details and to jog the witness' memory.</p>	<p>How</p> <p>Basically the same method as with witnesses is used, but the atmosphere is more formal and the inspector is working towards the detection of culpability in the alleged contravention.</p>



Part 5 – Analysis of Legislative Provisions

5.1 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 the case is often based on the results of the analysis of legislation.

5.2 Construction of Legislative Provisions

5.2.1 Types of Legislative Provisions

Legislative Provisions in the Philippines result out of **Republic Act No. 9497, An Act Creating The Civil Aviation Authority Of The Philippines, authorizing The Appropriation Of Funds Therefore, and for Other Purposes** by the Senate and House of Representatives in Congress assembled. This Act is known as the **Civil Aviation Authority Act of 2008 (Act)**.

Out of this Act and its **Implementing Rules and Regulations (IRRs)** the Civil Aviation Authority of the Philippines (CAAP), the CAAP Board of Governors and the Director General of the CAAP received their mandate to conduct regulatory oversight of the Civil Aviation Industry of the Philippines. It also provided for the creation of the **Civil Aviation Regulations of the Philippines, the (CARs)**. Thus, the Act, its IRRs and the CARs, contain the guiding Legislative Provisions of the Philippines.

There are three types of Legislative Provisions; enabling provisions, administrative provisions, and offence creating provisions.

a) Enabling Provisions

Enabling provisions are those, which confer power on persons to make some other type of standard or policy. Some enabling provisions in the Act or CARs are those powers, which give powers to make regulations, orders, standards, policies and publications. They also convey powers upon the Director General to amend, suspend cancel and waive regulations. It does not provide powers to waive Sections of the Act.

b) Administrative Provisions

Administrative provisions confer a power or impose a duty on the Director General. They may provide criteria used in discharging these powers or duties. Although these provisions are public notice of what the Director General can do, their purpose is, to provide a statutory basis for administrative actions or procedures.

c) Offence Creating Provisions

Offence creating provisions are 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 action. Generally those contraventions which violate the legislative provisions of the Act are prosecuted under the judicial system, whilst contraventions to the CARs are dealt with administratively by the CAAP.



5.2.2 Elements of Legislative Provisions

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 express a unit of thought. Every element contributes to the meaning of the legislative provision. Core elements contain the subjects and verbs, whilst qualifying elements describe the core elements.

5.3 Identification of Possible Violations

Early during an investigation the inspector should list the possible violations but not necessarily in order of importance. All of the listed provisions should be analyzed. An early analysis should indicate what evidence is required and available, and provide clue as to what further evidence will be required to successfully prosecute an alleged offender. The analysis may however also reveal that there is no violation.

5.4 Analysis of Offence Creating Provisions (Interpretation)

Analysis for interpretation consists of the following steps:

- a) Divide the legislation into elements, e.g. (A person shall not) (act as a flight crew member) of a (flight crew) of (an aircraft) (unless) (that person) (is the holder) (of a valid licence) issued by ...
- b) Determine the significance of each element. If there are no pertinent regulatory definitions, use dictionary meanings.
- c) Determine the modifying effects of the elements.
- d) Summarize the results to arrive at the interpretation.

5.5 Analysis of Offence creating Legislative Provisions (Evidence)

Where a contravention is suspected, the pertinent legislative provision 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, which tend to establish those facts, must then be determined.

This is done by first classifying the elements as common or uncommon elements. *Common elements* are those that appear frequently in legislative provisions, e.g. (A person shall not), (aircraft), (Pilot-in-Command) (Certificate of Registration) etc.

Uncommon elements are those, which do not appear frequently, e.g. (not less than 1000 feet), (in formation flight) (reckless and dangerous) (on purpose, deliberately) etc.

Uncommon elements are difficult to prove. For example, if an aircraft is observed to fly dangerously low over a crowded beach and a witness says that the fellow deliberately flew only at 50 meters over a family on the beach, the uncommon (not often encountered) element is the height i.e. 50 meters, (or roughly 150 feet) and the statement that he did it "deliberately". In the case of "deliberately", the investigator has to prove (*mens rea*) or guilty mind. It is difficult as the alleged offender is not likely to say that he did it deliberately. However, if he conducted aerobatics over the group at low level and the group turns out to be his family or girlfriend, it may be inferred that he let testosterone interfere with his judgment and he may truly have done the deed deliberately and thus have "guilty mind".

To summarize, whilst 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. In the Example above, If the witness were to say that "the



aircraft flew by at twice the height of that telephone pole over there”, and nothing further happened, then all we have to do is to measure the height of the pole, multiply by two and arrive at the approximate height of the aircraft.

Standard forms of evidence include witness statements or oral testimony, journey or technical logbooks, business records, tape recordings, photographs, objects and admissions to a contravention. Special forms of evidence include ATC tape transcripts, Radar printouts, x-rays, magnaflux reports, dye checks, weather records, etc.

Non-standard forms of evidence might be circumstantial evidence such as the relationship between the alleged offender and the family at the beach or to put it in other terms; anything that reasonably indicates that the alleged offender had other options but chose the offending one for a reason. The evidence (linked to the alleged offender) of the offending reason would then constitute the evidence for the mens rea offence.



5.6 Sample Analysis

The following legislative provision is used for the analysis:

CARs Part 8, Operations I, Subpart 8.4.1.4

No person may act as PIC or in any other capacity as a required flight crew member of a civil aircraft of:

(1) Republic of Philippines registry, unless he or she carries in their personal possession the appropriate and current license for that flight crew position for that type of aircraft and a valid medical certificate.

5.7 Illustrative Analysis

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE
No person...	The alleged offender's identity	Photo ID, passport, driver's licence, company ID etc.
...may act ...	That the alleged offender acted as PIC or other required flight crew member of the aircraft	Alleged offender's statement, witness statement, log book entry, flight plan form, maintenance release etc.
...as PIC...	That he/she was the PIC	As above
...or in any other capacity as a required flight crew member...	That the alleged offender acted in another position, i.e. F/O, F/E etc.	As above
...of a civil aircraft of Republic of Philippine registry...	That the aircraft is registered in the Philippines and that it is a civil aircraft	Cof R
...unless he or she carries in their personal possession...	That the alleged offender did not have in his/her personal possession at the time when it was demanded by the Inspector...	Inspector's statement, alleging that the alleged offender did not have the required document in his personal possession, when the Inspector demanded it.
... and current licence...	That the licence was not current by virtue of the fact that it was expired, that required training was not done etc.	The pilot licence, the company's flight training record for the alleged offender, the CAAP Personnel Licensing file.
...for that flight crew position...	That the flight crew position for that aircraft required a licence for its operation (flight engineer etc.)	Aircraft type certificate, company flight operations Handbook etc.
...for that type of aircraft...	As above	As above
...and a valid medical certificate.	That the alleged offender did not have a valid medical certificate	The alleged offender's medical document, the CAAP medical file for the alleged offender.



Part 6 – Special Investigative Procedures

6.1 Contraventions detected during an Audit

An audit conducted to determine the degree of compliance with the CARs may on occasion reveal contraventions of the CARs or in some instances even the Act. If serious offenses, such as when bogus parts are found or when a falsification of documents occurred, an air operator's certificate may be provisionally suspended in whole or in part, depending on the seriousness of the finding, until corrective action is taken to eliminate the hazard. In this instance the audit is stopped and a comprehensive investigation is started. If the offence is of a minor nature, the audit may continue with no immediate action and the offence is dealt with after the completion of the audit.

Notwithstanding the above, all contraventions found are subject to regulatory enforcement. It is the Director General's (DG) discretion to take not only corrective action to ensure regulatory compliance but punitive administrative measures as well. In addition he may withdraw for a time or cancel air operator's Certificates and, if the situation suggests, pass the file to the Board for judicial action.

6.2 Contraventions found by other means

When a CAAP employee other than an Inspector detects a contravention, such as a licensing clerk discovering the falsification of a document by an applicant whilst applying for a licence or permit, he/she shall conduct a preliminary investigation to record the essential facts. A Detection Notice form is filled out and submitted to the appropriate ADG as soon as possible, who will pass it to the Enforcement and Legal Services Section for comprehensive investigation.

In the event that the information is brought to the CAAP by a public complaint, the person taking the complaint shall fill out the Detection Notice and pass it to his or her ADG who will deal with it as above.

Any detection from whatever source, which by its nature may represent an immediate threat to aviation safety, must be brought to the attention of the DG or his delegate immediately, by the most expeditious means possible.

Whenever an inspector becomes aware of an incident involving the carriage of Dangerous Goods by air, the Inspector shall conduct a preliminary inspection and if a dangerous situation is deemed to exist, isolate the place where the dangerous goods risk exists, by use of police and/or the fire department, if necessary. After the situation is stable and all persons at risk are removed from immediate harm, the Inspector shall contact by the best means possible the CAAP Dangerous Goods Inspector and advise him of the situation. After that, and only after the Dangerous Goods Inspector has taken control, the Inspector shall fill out a detection notice, provide a report of his actions and submit both to the ADG FSIS for further action. Under no circumstance is the Inspector to attempt to rectify the situation without having expert help available. Such expert help shall be only from a source, which has the necessary experience and is authorized to deal with dangerous goods.

6.3 Contravention of Foreign Aeronautics Legislation by Philippine document holders

These procedures apply whenever a Philippine document holder is alleged to have violated foreign legislation.

If the allegation concerns a legislative provision having direct CARs or Act equivalent, the investigation shall proceed as if the contravention was committed within the jurisdiction of the CAAP.



In cases where the allegation relates to a provision, which has no CARs or Act equivalent, the case may be closed with no further action or passed to the Board for possible judicial action. The alleged offender may also be counseled concerning to the incident.

The National Civil Aviation Authority where the alleged offence took place shall be notified officially of the investigation's outcome.

6.4 Special Cases involving Philippine State Aircraft

In the event that a Philippine State Aircraft is involved in an allegation made by a foreign agency, the normal investigative process is to be followed. However, prior to the release of any information to any foreign agency, the Department of Foreign Affairs shall be consulted for guidance concerning any CAAP response.

6.5 Treatment of Gross Navigational Errors, Transponder, RNP-5 or other ATS related violations.

ATS related violations shall be reported to the ADG FSIS by completing a Detection Notice. The Chief FSIS or his delegate shall conduct a preliminary investigation and when warranted, forward it the ELS for further action. ELS shall then conduct a comprehensive investigation with the assistance of an ATS specialist.

In the event that ATC has denied a clearance to an aircraft on the ground at a Philippine International Airport due to lack of compliance with the minimum equipment required to operate within the Philippine Flight Information Region (FIR) or associated Oceanic airspace, the assigned Inspector shall ensure that the aircraft is equipped as appropriate prior to authorizing its release back to service.

In the event of a repeat or continuous contravention by an operator, enforcement action, including prohibition to enter or leave Philippine airspace, may be imposed.

Gross Navigational Error is the term commonly used to describe the deterioration in the performance of equipment used by aircraft to fly in oceanic airspace. Current development of the RVSM airspace in the Philippine FIR will include an enforcement process; these matters are outlined in ICAO Doc 4444, PANS ATS.

6.6 Contraventions involving Foreign Civil Aircraft in Philippine airspace.

Contraventions to provisions of the CARs or the Act by a foreign operator shall be brought to the attention of the Director General as soon as possible by the most expeditious means. A Detection Notice must be completed, a preliminary investigation conducted and the package forwarded to the ADG FSIS, who will advise the ADG ELS of the occurrence. The DG shall be advised at the earliest opportunity.

6.7 Content and Preparation of the Case Report

6.7.1 Introduction

A Case Report is a series of documents, which relate the facts of a case following an investigation into an allegation of a contravention of the Act or the CARs. It is created to allow the Director General to quickly become familiar with all the details of the case. It also serves as a checklist for both the Inspector and possibly the prosecuting attorney of the judiciary to ensure that all necessary steps have been completed and nothing further remains to be done. It must of necessity be accurate and as complete as possible.



The case report is thus the result of a complete investigation and serves as the legal tool to prosecute alleged offenders and to issue sanctions or make recommendations for judicial actions. Whichever process is used, it stands or falls on the quality of the case report

6.7.2 Content and Preparation of the Case Report

The cover sheet of the case should contain the identity of the alleged offender by name and licence number, as well as the allegedly contravened legislative provisions. It should also contain the name and title of the investigator. This should be followed by a case synopsis, which should describe as accurately as possible what is alleged to have taken place. Next is a sheet fully identifying the alleged offender. It must include any documentation such as copy of his passport, driver's licence, aviation document held, full address and phone numbers, employer's address and phone numbers and any other documentary evidence of the person's identity. After that is a sheet identifying the aircraft involved. It should include copies of the Certificate of Registration, Certificate of Airworthiness, maintenance release, true copies of the various logbooks of the aircraft and any photographs, which would aid the prosecution.

The next item in the Case Report is the analysis of the legislative provisions. The analysis should have another column added in which the required and obtained exhibits or evidence are listed. It should look something like this:

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE OBTAINED

6.8 Sample Case Report

6.8.1 In the following sample case report a number of contraventions were detected following a complaint from the public that a small aircraft had been observed buzzing a family who were conducting recreational activities on a local beach near the city.

An inspector was sent to the airport to wait for the airplane's arrival and to interview the pilot. When the airplane arrived, the inspector approached the aircraft. There were two persons on board.

After having introduced himself to the people, he asked who was the Pilot in Command (PIC) of the aircraft. The pilot in the left seat said that the other person was the PIC, because he is an instructor, the person in the right seat said that the person in the left seat was the PIC, because this was a recreational flight.

The inspector made notes of the date, time and location and registration markings of the aircraft, and recorded the individual's statements. He then asked them to get out of the airplane and demanded personal identification, Pilot licenses, Medicals and the aircraft documentation from the persons on board. (For the purpose of this exercise the persons are identified as "Ace McCool" for the person in the left seat, and "Bob Fairweather" for the one in the right seat. The aircraft was registered as RP-C123.

During the review of the documentation it was discovered that McCool's pilot licence had expired 43 days before the incident and Fairweather did not carry his pilot licence with him.

A review of the aircraft documents revealed that the Certificate of Airworthiness had expired three days previously.

The Inspector asked the people to make a log entry in the technical log. After some argument among the pilots, the person in the left seat made the log entry. Then the inspector then seized all



the documents and asked the people to accompany him to the office of the CAAP. Both persons claimed that they were unable to accompany the Inspector just then and an appointment was made for the next day to meet at the CAAP office in town.

The Inspector took all documents with him and advised the pilots that charges could be laid against them and if they continued to fly there might be further contraventions. He also told them that the airplane was not airworthy and was consequently grounded.

Upon arriving back at his office, the Inspector filled out a Detection Notice, photocopied all documents seized and recorded in red pen the following statement upon each document:

Certified True Copy
Date: April 09, 2009
Signature
Inspector's name, printed

Then he marked each document as "Exhibit 1, 2, 3 etc." giving each a sequential number and put the original documents aside to be returned during next day's meeting.

Next he photocopied his notes, and put them together with the documentary evidence into an envelope. He then opened a file and requested a file number from the Enforcement and Legal Service. He wrote a brief memo providing the details of the complaint, including the witness' phone name and phone number and gave it to the Chief FSIS for his consideration. He also passed the physical evidence and obtained a receipt, thereby ensuring continuity of possession for the evidence

Upon reviewing the case the ADG FSIS passed the file and associated evidentiary material to Enforcement, again signing the evidence over to the new possessor to ensure continuity of possession. The ADG, ELS assigned an Investigator to the case. The evidence was then placed in the evidence locker into secure storage.

Later that day, the newly assigned inspector, after having read the brief in the file, visited the site of the alleged offence and met with the complainant, who had used his mobile phone to contact the authorities.

The complainant was still on the beach with his family. There were also a number of other people on the beach, an ice cream vendor and a jogger who had also observed the incident. The inspector, after having introduced himself took written statements from all three people separately. This is what he produced.

Complainant's witness statement (1)

April 09, 2009 Such n' Such Beach 15:45 local time
Name: John Doe
Address: Super Duper Building, Flat 121, Malate
Phone No.: 02 567 1234

Narrative:

We were on the beach playing football when this airplane swooped out of the sky and flew directly over us. It was so low that we had to fall down on the ground because we thought it would hit us. The plane came back and did this three times and then I called you on my mobile to complain. After that he flew away really low and did the same to some other people along the beach.

Question: What time did this happen?
Response: About 10:30 this morning.



Question: Did you see the color of the airplane?

Response: Yes, it was white with a blue strip down the middle.

Question: How many engines did it have?

Response: One.

Question: Where in relation to the body of the airplane was the wing, top or bottom?

Response: Top.

Question: Did you see any identifying marks on the airplane?

Response: Yes, there were big letters on the side of the body. It started with "RP" something, but it went by so fast I couldn't really see it so well.

Question: How high did the airplane fly, in comparison to that building over there, the one with the coffee shop in it?

Response: It was lower than that.

Question: Do you wish to add anything else to this statement?

Response: No.

Signature of the witness, April 09, 2009 16:00 local time.



Witness Statement (2)

April 09, 2009 Such n' Such Beach 16:10 local time

Name: Jose dela Cruz (Ice cream Vendor)

Address: Very Nice Ice Cream Company, 1542 MH del Pilar Street, Malate, Manila

Phone No.: 02 582 6789

Note: The witness did not wish to be interviewed at first but then consented to answer a few questions.

Question: Did you see something unusual this morning?

Response: I saw an airplane fly over these people. They fell onto the ground. He came back again and one more time, then he left.

Question: What time did this happen?

Response: Today, morning.

Question: Did you see the color of the airplane?

Response: It was white.

Question: How many engines did it have?

Response: Don't know.

Question: Where in relation to the body of the airplane was the wing, top or bottom?

Response: Top.

Question: Did you see any writing on the airplane?

Response: No.

Question: How high did the airplane fly, in comparison to that building over there, the one with the coffee shop in it?

Response: About the same height.

Question: Do you wish to add anything else to this statement?

Response: No.

The witness did not wish to sign the document, April 09, 2009 15:00 local time.



Witness statement (3)

April 09, 2009 Such n' Such Beach 15:45 local time
Name: Joy Bautista, (Jogger)
Address: Apt. 1104, 3354 Ayala Avenue, Makati, Manila
Phone No.: 05 655 3044

Narrative:

I was taking a rest from my jogging on the beach road, when this little airplane came by and flew really low over these people, who were also on the beach. The plane was so low that everybody dived for cover. Then he came around again for another pass. I always keep my little digital camera with me and so I took a picture of the plane when it came around for the third time. It came out really well too. I actually took a short video clip too. After that it carried on down the beach to another group of people. Then it disappeared behind the buildings further down the beach.

Question: What time did this happen?

Response: About 10:30 this morning.

Question: Did you see the color of the airplane?

Response: Yes, it was white with a blue strip down the middle.

Question: How many engines did it have?

Response: One.

Question: Where in relation to the body of the airplane was the wing, top or bottom?

Response: Top.

Question: Did you see any identifying marks on the airplane?

Response: No, I didn't notice any, but they should show on the pictures if there were any.

Question: How high did the airplane fly, in comparison to that little building with the coffee shop in it?

Response: It was lower than that.

Question: Do you wish to add anything else to this statement?

Response: No.

Signature of the witness, April 09, 2009 15:00 local time.

After the Inspector took the witnesses' statements, he returned to his office. By the time he arrived there the third witness had emailed him the pictures and the video clip he had taken.

The Inspector printed out the pictures and added them with the witness' email to the exhibits having marked them appropriately.

The following day the two persons in the airplane came to the Authority's office and were directed to the investigating inspector. After introductions the Inspector asked the individuals to be interviewed separately. They agreed. He first interviewed the person identified as A. This is the statement he provided:



Alleged Offender (1)

April 10, 2009 CAAP headquarters 08:00 local time
Name: Ace McCool
Address: 9932 Better Place, Metro Manila
Phone No: 0921 778 4378
Pilot Licence: Private Pilot Licence N.o. 12345

Question: Were you the pilot in command of an aircraft bearing the registration RP-C123 on or about April 09, 2009 at or near Such n' Such Beach, Manila, at or about 10:30 local time?

Response: No.

Question: Who was the pilot in command at that time?

Response: My Instructor.

Question: Please tell me what happened that day.

Response: We were flying along the beach on a flight experience mission. Suddenly my instructor said "Simulated engine failure", so I pulled out the throttle, looked for a place to land and chose the beach as an emergency landing place. After I had the place made, I went around to circuit altitude. Then the instructor took the controls and showed me how I should do it better. I did it one more time and then we left. That's all that happened.

Question: How low did you go?

Response: We never went any less than 200 feet.

Question: What happened then?

Response: Nothing, we went back to the airport.

Question: Did you do a preflight inspection of the aircraft prior to the flight?

Response: No, I think the instructor did that.

Questions: Did you check the aircraft documents before going flying?

Response: No, I never saw the documents.

Question: Is there anything else you wish to add to this statement?

Response: No.

Signature of the alleged offender, April 09, 2009, 08:50 local time.



Alleged Offender (2)

April 10, 2009 CAAP headquarters 09:00 local time.
Name: Bob Fairweather (Passenger/Instructor)
Address: Superior Flying School, Manila International Airport
Phone No.: 0918 512 3456
Pilot Licence: Commercial Pilot Licence N.o. 45678

Question: Were you the pilot in command of an aircraft bearing the registration RP-C123 on or about December 15, 2002 at or near Such n' Such Beach, Manila at or about 10:30 local time?

Response: No.

Question: Who was the pilot in command at that time?

Response: Ace McCool.

Question: Are you Ace's Instructor?

Response: No, he is a licensed pilot and invited me to go on a joyride with him.

Question: Did you know that the airplane's Cof A was not valid?

Response: No, he was supposed to check that during his pre-flight inspection. I was only a passenger on this flight.

Question: Did you ever instruct him before?

Response: Yes, about three years ago.

Question: Please tell me what happened that day.

Response: We went flying about 10 o'clock. We went eastbound out of the city. After a while we did a little air work and then suddenly Ace pulled out the throttle and said "Simulated engine failure". He descended towards a beach, where he picked out a place as his target landing spot. He came down a little low and couldn't make the spot. So he overshot and went around. Then I asked him to let me show him how to do it. I did one and gave the controls back to him. He did one more and this time he made a spot further down the beach. Then we left to go back to the airport.

Question: Did he deliberately aim at the group of people on the beach?

Response: I don't know.

Question: Is there anything else you wish to add?

Response: No.

Signature of the alleged offender, April 10, 2009, 09:25 local time.

The Inspector thanked the two persons and advised them that they would be notified of further developments. He returned the seized documents to them and obtained a receipt from Mr. Ace McCool for the documents.

After the two alleged offenders left, the Inspector sorted all the information he had and reviewed the case as it developed so far. He reviewed the Civil Aviation Regulations and determined that there may be contraventions under the following sections:

- 1) CARs Part 8, Subpart 4, Section 1.4, Paragraph (a) (1), which states in part;



- (a) No person may act as PIC or in any other capacity as a required flight crew member of a civil aircraft of:
 - (1) Republic of the Philippines registry, unless he or she carries in their personal possession the appropriate and current pilot licence for that flight crew position for that type of aircraft and a valid medical certificate.
- 2) CARs Part 8, Subpart 4, Section 1.8, Paragraph (b), which states in part:
 - (a) Each pilot shall carry his or her logbook on all general aviation flights.
- 3) CARs Part 8, Subpart 4, Section 1.11, Paragraph (a) (1), which states in part:
 - (3) No person may act as PIC of an aircraft type certified for a single pilot unless, since the beginning of the 24 calendar months, he or she has passed a proficiency check with an authorized representative of the Authority.
- 4) CARs Part 8, Subpart 3, Section 1.3 (c) (1), which states in part:
 - (c) No person may operate an aircraft unless, within the last preceding 12 calendar months, the aircraft has had:
 - (1) An annual inspection in accordance with Part 5 and has been completed by an AMT/A&P or an AMO.
- 5) CARs Part 8, Subpart 5, Section 1.3, which states:

1.3 No person may operate an aircraft in a negligent or reckless manner so as to endanger life or property of others.
- 6) CARs Part 8, Subpart 8, Section 1.5 (a) (2)
 - (a) Except when necessary for take-off or landing, no person may operate an aircraft below the following altitudes:
 - (2) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open-air assembly of persons, an altitude of 300 meters (1000 feet) above the highest obstacle within a radius of 600 meters (2000 feet) of the aircraft.

The Inspector, having familiarized himself thoroughly with all matters concerning the case, advised the CAAP - FSIS Airworthiness Section of the investigation in progress and asked them to undertake steps to ground the aircraft pending renewal of the CofA.

He then proceeded to conduct a legislative analysis of each of the elements to be proven. The format he used was as follows:



Legislative Analysis: Charge 1

CARs Part 8, Subpart 4, Section 1.4, Paragraph (a) (1), which states in part;

- (b) No person may act as PIC or in any other capacity as a required flight crew member of a civil aircraft of:
- (1) Republic of the Philippines registry, unless he or she carries in their personal possession the appropriate and current pilot licence for that flight crew position for that type of aircraft and a valid medical certificate.

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
No Person...	The alleged offender's identity	Photo ID, passport, drivers licence, company ID, etc	Drivers licence, social security system card
...may act as PIC...	That he was the PIC at the time of the occurrence	Alleged offender's statement, witness statement, logbook entry flight plan form	Passenger's statement, technical log entry, the alleged offender was seen to exit the aircraft from the left seat, the seat normally occupied by the PIC.
... or in any other capacity as a required flight crew member...	This is not relevant as the aircraft is certified for only a single pilot	None required	The passenger stated that he was acting only as a passenger.
...of a civil aircraft of Republic of Philippine registry...	That the aircraft is registered on the CAAP registry.	Copy of the CofR	Copy of the CofR
...unless he or she carries in their personal possession the appropriate... (pilot licence)...	That the pilot did not carry on his person at the time of the alleged offence, an appropriate pilot licence.	Statement by the attending Inspector, that the alleged offender was unable to provide the Pilot licence upon demand.	Statement by the attending Inspector, that the alleged offender was unable to provide the Pilot licence upon demand.
...and current (pilot licence)...	That the pilot was unable to prove that it was current	Personal log book that shows currency.	Copy of the logbook indicating that the pilot had not met the currency requirements
For that flight crew position...	That the aircraft need to be operated by a single, licensed pilot.	Type Certificate for the aircraft shows the need for a single pilot	Type Certificate
...and a valid medical certificate.	That the alleged offender did not have a valid medical certificate on his person at the time of the offence	Statement by the Inspector, that the alleged offender was unable to provide the medical upon demand.	Statement by the Inspector that the alleged offender was unable to provide the medical on demand



Legislative Analysis: Charge 2

CARs Part 8, Subpart 4, Section 1.8, Paragraph (b), which states in part:

- (a) Each pilot shall carry his or her logbook on all general aviation flights.

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
Each Pilot...	The alleged offender's identity	Photo ID, passport, drivers licence, company ID, etc	Drivers licence, social security system card
...shall carry his or her logbook...	That the alleged offender failed to carry his log book during the flight.	Statement by the Inspector that the alleged offender did not produce his log book upon demand.	Statement by the Inspector that the alleged offender did not produce his log book upon demand.
On all general aviation flights.	That he did not have it on this particular flight,	As above	As above



Legislative Analysis: Charge 3

CARs Part 8, Subpart 4, Section 1.11, Paragraph (a) (1), which states in part:

- (2) No person may Act as PIC of an aircraft type certified for a single pilot unless, since the beginning of the 24 calendar months, he or she has passed a proficiency check with an authorized representative of the Authority.

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
No person...	The alleged offender's identity	Photo ID, passport, drivers licence, company ID, etc	Drivers licence, social security system card
may act as PIC...	That he was the PIC at the time of the occurrence	Alleged offender's statement, witness statement, logbook entry flight plan form	Passenger's statement, Technical log entry, the alleged offender was seen to exit the aircraft from the left seat, the seat normally occupied by the PIC. Sign-out sheet from the school.
Of an aircraft type certified a single pilot...	That this aircraft required only a single pilot.	Type Certificate	Type Certificate
unless...	That there had been no exemption from this CAR.	Search of his file, indicating that there was no such exemption.	Statement by the Investigator that a search was accomplished and no exemption was found on the file.
...since the beginning of the 24 calendar months, he or she has passed a proficiency check...	That the alleged offender did not have a proficiency check within the last 24 months.	Search of his file that there is no evidence of a proficiency check accomplished within the last 24 months of the flight .	Statement by the investigator that a search was accomplished and no evidence of a proficiency check was found.
...with an authorized representative of the Authority	That no Inspector of the CAAP or a Designated Examiner conducted a PPC on the alleged offender	As above	As above



Legislative Analysis: Charge 4

CARs Part 8, Subpart 3, Section 1.3 (c) (1), which states in part:

- (c) No person may operate an aircraft unless, within the last preceding 12 calendar months, the aircraft has had:
- (3) An annual inspection in accordance with Part 5 and has been completed by an AMT/A&P or an AMO.

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
No person...	The alleged offender's identity	Photo ID, passport, drivers licence, company ID, etc.	Drivers licence, social security system card
...may operate an aircraft...	That the alleged offender operated the aircraft	A document indicating that the alleged offender took custody and control of the aircraft from the Owner/Registrant	Copy of the dispatch sheet of the flying school; approved flight plan with the pilot's name on it; maintenance release.
...unless within the last 12 months, the aircraft has had:	That the flight took place within 12 months of the last annual inspection.	Copy of the tech log	Copy of the up-dated tech log, including the current flight.
An annual inspection in accordance with Part 5 and has been completed by an AMT/A&P or an AMO.	That no annual inspection was accomplished.	No sign-out of an annual inspection was accomplished in the 12 months preceding this flight	Tech log for the aircraft going back to the last 12 months. Statement of the AMO, who maintained the aircraft.



Legislative Analysis: Charge 5

CARs Part 8, Subpart 5, Section 1.3, which states:

- 1.4 No person may operate an aircraft in a negligent or reckless manner so as to endanger life or property of others.

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
No Person...	The alleged offender's identity	Photo ID, passport, drivers licence, company ID, etc.	Drivers licence, social security system card
...may operate an aircraft...	That the alleged offender operated the aircraft	A document indicating that the alleged offender took custody and control of the aircraft from the Owner/Registrant	Copy of the dispatch sheet of the flying school; approved flight plan with the pilot's name on it; maintenance release.
In a negligent (manner)...	That the pilot was negligent.	That the act was lacking care or concern for the people's safety, when he over flew them at such a low level.	Both pilot's statements did not indicate a care or concern for the peoples' safety.
...or reckless manner...	That the pilot was reckless.	That the pilot showed no regard for the danger or consequences of his actions in the event of an emergency.	Both pilot's statements did not include any concern or consideration of what they would do in the event of the engine's possible failure at this low altitude.
...so as to endanger life...	That the pilot did not consider the danger to the people on the beach	Evidence that the pilot acted without care or concern for the people's safety.	The Inspector's notes concerning the pilot's state-of-mind during the interview.
...or property of others...	That the pilot did not consider the danger to the buildings and property on the beach.	Evidence that the pilot acted without care or concern for the buildings and property on the beach	As above



Legislative Analysis: Charge 6

CARs Part 8, Subpart 8, Section 1.5 (a) (2)

- (a) Except when necessary for take-off or landing, no person may operate an aircraft below the following altitudes:
- (2) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open-air assembly of persons, an altitude of 300 meters (1000 feet) above the highest obstacle within a radius of 600 meters (2000 feet) of the aircraft.

ELEMENTS	FACTS TO BE ESTABLISHED	REQUIRED EVIDENCE	EVIDENCE ALREADY OBTAINED
Except when necessary for take-off or landing,...	That the aircraft was not taking-off or that it was not landing.	That the place where the incident took place, was not suitable to be an aerodrome or that the alleged offender did not have a permission to use the place as an aerodrome	Statement by the Inspector that the area is used as a public beach area and is physically not usable to maneuver aircraft on the ground. City plan identifying the place as public use, not for motor vehicles.
...no person...	The alleged offender's identity	Photo ID, passport, drivers licence, company ID, etc	Drivers licence, social security system card.
...may operate an aircraft...	That the alleged offender operated the aircraft	A document indicating that the alleged offender took custody and control of the aircraft from the Owner/Registrant	Copy of the dispatch sheet of the flying school; approved flight plan with the pilot's name on it; maintenance release.
...below the following altitudes:	That the alleged offence took place below the heights mentioned below.	Witness' statements; Measurements against what the witnesses have said.	Witness' statements; measurements against known heights; Inspector's statement of findings
Over any congested areas of a city, town or settlement,...	That the alleged offence took place over a city, town or settlement	City plan indicating the city limits	The city plan included the beach area within the congested area of the city. Copy obtained.
... or over any open-air assembly of persons,...	That the alleged area had an open air assembly of persons	Evidence that there was an open-air assembly of persons	Photos of the beach area at the time of the alleged offence shows numerous people on the beach
...an altitude of 300 meters (1000 feet) above the highest obstacle...	That the alleged incident took place within a height of less than 300 meters or 1000 feet above the people on the beach	A measure that gives confidence that the aircraft was less than 300 meters or 1000 feet above the people on the beach	Witness' statements that indicate the aircraft had been approximately level with a building that is four stories high, or about 40 feet.



<p>Within 600 meters (2000 feet) of the aircraft.</p>	<p>That the aircraft was less than 600 meters or 2000 feet from the persons on the beach.</p>	<p>A measure that gives confidence that the aircraft was less than 600 meters or 2000 feet away from the people on the beach</p>	<p>Witness' statements that indicate the aircraft had been approximately level with a building that is only about 100 feet away from the people on the beach.</p>
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When the inspector completed the analysis, he had a better understanding of what took place, who the guilty party was and what legislation was actually contravened.

The inspector also became aware that the investigation into this allegation revealed contraventions by the operator, in this instance the flying school that rented the airplane to the alleged offender. As they and their AMO had prior custody and control of the aircraft they were in fact vicariously liable for segments of the offence. However, for the purpose of this exercise we shall leave that aspect for another investigation concerning the airworthiness of the aircraft.

Once the Inspector collected all the evidentiary exhibits, the legislative analysis documents and the alleged offender and witness statements, he numbered and referenced them. He typed up a list, mentioning each item by assigned reference number in the Case Report. Then he prepared a case report conclusion and recommendation as follows:



CASE REPORT CONCLUSION

Cessna 172M, RP-C123

Such 'n Such Beach, Malate, Manila

April 19, 2009
Juan delaCruz

It is alleged that, on April 19, 2009, at or near Such 'n Such Beach, in the city of Malate, Manila, at or about 10:30 local civil time, the alleged offender, Mr. Ace McCool of 9932 Better Place, Metro Manila, Private Pilot Licence N.o. 12345, acted as pilot in Command of the Cessna 172M, RP-C123, in contravention of the below-listed legislative provisions, by flying low over an assembly of persons, to wit, he was buzzing a family on the beach twice and again a group of other people a distance further down the beach. He did so whilst being unqualified to operate the said aircraft and to have operated it in an un-airworthy condition.

Count 1

CARs Part 8, Subpart 4, Section 1.4, Paragraph (a) (1), in that the alleged offender acted as Pilot in command of the said aircraft whilst not in possession of his pilot licence.

Count 2

CARs Part 8, Subpart 4, Section 1.8, Paragraph (b), in that the alleged offender failed to carry his log book on the general aviation flight, of which he was the Pilot in Command.

Count 3

CARs Part 8, Subpart 4, Section 1.11, Paragraph (a) (1), in that the alleged offender did not pass a proficiency check within 24 months of the conducted flight.

Count 4

CARs Part 8, Subpart 3, Section 1.3 (c) (1), in that alleged offender did operate the aircraft on a flight when the aircraft did not have had within the preceding 12 months an annual inspection by an AMT/A&P or an AMO.

Count 5

CARs Part 8, Subpart 5, Section 1.3, in that the alleged offender operated the aircraft in an negligent and reckless manner by virtue of the fact, that he failed to give due care and consideration for the safety of people and property on the ground, over which he operated the aircraft and the possible ramifications in the event of a failure of the aircraft's engine.

Count 6

CARs Part 8, Subpart 8, Section 1.5 (a) (2), in that the alleged offender did fly the aircraft at a height of less than 300 meters or 1000 feet above the highest obstacle within a radius of 600 meters or 2000 feet of the aircraft.

Investigation, analysis of the pertinent legislation and the evidence collected suggests that it is possible to charge the alleged offender with all six counts. However Count 4 is considered a Hybrid Offence in that Rule VIII, Section 55 a. (1), of the Act, says in part that *...Any person who operates any aircraft without the current airworthiness certificate... is in violation of the rule and is punishable*



by 20 000 to 50 000 Peso fine and /or a three months suspension of his licence. As a result of this and the fact that under the reasonable rules of court procedures, an alleged offender may not be charged under two provisions for the same violation, a decision needs to be made about which charge to apply.

During the interview Mr. Mc Cool was evasive and not truthful. Consequently there are no mitigating circumstances that might cause a softening of recommended sanctions, although charges under the Act are not recommended. This is based upon the opinion that, as this is the alleged offender's first offence, the sanction is recommended to be a combination of education/punishment. The sanction under the Act is not recommended as this should be reserved for the more notorious re-offenders or the more serious offences.

Recommended sanctions are as follows:

- Count 1: Not carrying his pilot licence in his personal possession during a flight.
Sanction: 20 000 Peso
- Count 2: Not carrying his pilot log book during the flight.
Sanction: 20 000 Peso
- Count 3: Acted as PIC whilst not having had a proficiency check within the 24 months preceding the flight.
Sanction: 20 000 Peso
- Count 4: Operated an aircraft with an expired CofA, by virtue of not having had an annual inspection within 12 months of the flight.
Sanction: 50 000 Peso
- Count 5: Negligent or reckless operation of an aircraft.
Sanction: 50 000 Peso
- Count 6: Low flying near an obstacle, within 600 meters or 2000 feet of the aircraft
Sanction: No sanction may be applied, as joint judicial action concerning two legislative provisions dealing with the same subject, as in low flying and negligent or reckless operation, prohibits the application of a penalty.

Total recommended sanction: 160 000 Peso, plus a suspension of the pilot's pilot license for a period of 3 months.

Note: In this example the Inspector/ Investigator should consider that the operator of the aircraft, a flying school from which the candidate rented the aircraft on the day of the alleged offence. Although the operator did not himself cause the contraventions, he is vicariously (also guilty) of some of the offences. He is being held accountable for dispatching the aircraft without a valid CofA. As a result FSIS should check what the systemic problem is in this organization. He should also be held accountable for giving the aircraft to a pilot without having looked at his licence (seeing that he did not have it with him) and that he was not current at the time of the flight.

The enforcement process, to use a metaphor, is like peeling an onion. As the Investigator discovers the details of a contravention, it becomes clear that there is much more to this story than first meets the eye. Consider this; what if the Investigator had talked to the people on the beach and found out



that the pilot was the son of the group and he let his testosterone get the better of him and showed them "look what I can do". How would that bit of information have affected the outcome of the investigation and indeed the case itself.

To put that into the context of a real occurrence; A farmer was on a flight with his own crop-spraying airplane. On the way back to his field, he spotted his brother and his brother's son in another field. The son, a youngster of 14 years of age, was driving the tractor. His uncle, in the airplane, decided to buzz his brother and the kid on the tractor, just for the fun of it. During the pass, when he pulled up the nose of the airplane sharply, the tail wheel of the airplane struck the child under the chin and decapitated the boy. Yes, we can be sorry for this family but one cannot help but wonder how many times he buzzed other people before, thinking that it was just innocent fun.

To go back to the case study, how would the fellow feel, if on the application of power for the overshoot, because of his incompetence and because he failed to apply carburetor heat during the descent, the engine failed to respond and he stalled the airplane right into his family on the beach. And how would you, the Inspector/Investigator feel about your part in this affair if you did not try to stop this kind of behaviour and, what is the hoped-for-effect of sanctions? Read on in Part 7, Deterrent Action!



Part 7 – Deterrent Action

7.1 Introduction

The most critical decision to be made in the enforcement process is in the deterrent action to take when the evidence indicates that a person has violated a provision of the Act or the CARs. The decision may significantly affect the person's attitude towards compliance and safety in the future. The intent of the procedures in this and other chapters is to promote fairness, firmness and uniformity in the selection of appropriate sanctions

7.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- a. **Protection of the public and the individual from harm;**
- b. **Encouragement for future compliance; and**
- b. **Deterrent of others from contravening the legislation.**

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 Civil Court. This is accomplished by the CAAP Board of Directors referring the case to the Judiciary and usually involves serious contraventions under the Act that involve prison terms, and other Special Laws or contraventions that have a criminal component.

Administrative actions comprise all other deterrent measures taken by the Director General or his Delegate. Deterrent action for Hybrid offences, those that are dealt with under both the Act and the CARs, shall either be brought to the court or dealt with by administrative action to avoid double jeopardy.

7.4 Administrative Action

Administrative action may comprise of sanctions taken from the various applicable Sections of the Act, Rule VIII- Penalties, or from Section 56. General Penalty, likewise of Rule VIII of the Act. Section 56 speaks is summarized such; Any violation of the provisions of this Act, or any order, rule or regulation issued thereunder... for which no penalty is expressly provided...". Administrative action may be taken in respect of contraventions of the CARs and their Implementing Standards

A subjective judgment needs to be made as to which process to follow. For a first offence a warning letter might be appropriate, whereas an offence conducted twice or more may require a multiple of the recommended sanction or perhaps a revocation of a Philippine Civil Aviation Document.

In deciding the degree of deterrent action required, any possible defense or mitigating circumstance should be considered, such as:

- a. What was the role of the offender – perpetrator or accomplice;
- b. Was there any pressure or undue influence exerted by an employer or another employee;
- c. Were there mitigating circumstances such as weather, improper ATC instructions etc.;



- d. Was there an actual threat to aviation safety;
- e. Was there any actual harm done;
- f. Was there careless or reckless conduct;
- g. Was there any premeditation or deliberateness in the offence and/or the offender;
- h. What was the offender's attitude towards the future compliance;
- i. Did the offender have any prior record.
- j. Is the offender's competence in question;
- k. What would be the minimum sanction required to achieve future compliance;
- l. Is there an element of punishment required;
- m. Will public safety be ensured by the application of a sanction;
- n. Will the sanction act as a deterrent?

In summary, the sanction needs to fit the severity of the offence. It must be applied **fairly, consistently** and **with compassion**.

Note: One may wonder why suddenly the term "alleged Offender" has changed to "offender". This is because when the Case Conclusion has been produced and the issue of a sanction is contemplated, the charges against the, so far, alleged offender, have been proven. Consequently the DG may, if he agrees with the Investigator, deal with the person concerned as an offender. It is to be remembered that every person is considered innocent until proven guilty. Likewise the offence is only alleged to be an offence, until such time that the required evidence proves that the offence actually occurred.



Part 8 – Appendix

8.1 Quality Control

The quality control process is mandatory for every enforcement case file and is described as follows:

The policies in this Handbook and the resulting enforcement process of each file shall be audited prior to the issue of any sanctions. Each person handling the file shall sign out the results of such audits.

The first signature indicates that the process up to the sanction recommendation is complete. It is the investigating Inspector's signature. The next signature shall be an intermediate step by the Senior Investigator. This person checks the file to ensure that all steps necessary were complete, the correct legislative provisions were used and that the case has legal standing. His signature also indicates that he agrees with the recommendation.

The next signature is that of the ADG ELS. His signature likewise indicates that he also checked the file and agrees with the sanction. He will then direct the Investigator/Inspector to prepare the sanction for the DG's signature. When all is complete, he will pass the entire file to the DG for final approval and signature.

If at any time the audit process reveals a flaw, the file is passed to the Senior Investigator, who will instruct the Investigator/ Inspector to make appropriate changes.

In the event of a Hybrid Offence, or a simple contravention of the Act, the DG passes the file to the CAAP Board of Directors, who will then pass it on to the Judiciary for further action.

In the event that the file is sent to the Board for further action, only a certified true copy of the file and the evidence is sent to ensure continuity of possession. Once the Judiciary requests the original file and prior to the original file being sent, a true copy shall be made. This file shall bear the same tracking number and shall bear the words "TRUE COPY" upon the front cover. In addition this file shall bear the signature of the recipient of the original file.

After each file is complete, with sanctions applied, or file closed with no further action, the ADG ELS shall review the file and sign it off as being complete prior to archiving it.

8.2 Sample letters and forms

- 8.2.1 Detection Notice
- 8.2.2 Letter of Investigation
- 8.2.3 Letter of No Further Action
- 8.2.4 Notification of Results to the Detection Source
- 8.2.5 Transfer of Possession Form
- 8.2.6 Sample Statement Form
- 8.2.7 Notice of Suspension or Cancellation of an CAAP issued Document
- 8.2.8 Aircraft Detention/Grounding Notice
- 8.2.9 File Control Form

DETECTION NOTICE

Date of Detection	Date of Violation	Time of Violation	Place of Violation

Details of Alleged Offender

Name: _____

Address: _____

Phone: _____; Fax: _____; Cell: _____;

Email _____

Aircraft Details:

Aircraft _____ type: _____;

Registration: _____

Narrative

Alleged Violations

Details of Witnesses

Name: _____

Address: _____

Phone: _____; Fax: _____; Cell: _____;

Email _____

Preliminary Investigation Findings/Action Taken

Recommendation: Comprehensive Investigation No Further Action

Inspector: _____; Signature: _____;

Date: _____

Decision: Comprehensive Investigation No Further Action

Assigned to: _____; Case file number: _____

ADG ELS: _____; Date: _____

File:

Date:

Name and address block

Dear Mr/Ms,

Subject: LETTER OF INVESTIGATION

I am investigating a possible violation of the Civil Aviation Regulations (CARs) and/or the Civil Aviation Authority Act of 2008 (Act).

An aircraft bearing the Philippine National Registration PR-CXXX was observed to ... (Narrative).

It is alleged that you were the Pilot in Command of this aircraft at the time of the occurrence.

It is requested that you present yourself at the CAAP headquarters, Enforcement and Legal Service, where you will be given an opportunity to explain what took place.

You are not obliged to assist in this investigation, however if you chose not to provide a statement, a ruling will be made without your participation.

Yours truly,

RUBEN F. CIRON, PhD
Director General
Civil Aviation Authority of the Philippines

DATE



Date:

Name and address block

Dear Mr/Ms,

Subject: NO FURTHER ACTION

An investigation into an allegation of a contravention of (appropriate Provision) was conducted.

All available evidence was reviewed. As a result it was determined that no violation took place.

In the interests of aviation safety, a copy of the appropriate section of the CARs or the Act has been enclosed for your information.

This matter is now closed.

Best regards,

RUBEN F. CIRON, PhD
Director General
Civil Aviation Authority of the Philippines

DATE

Date:

Name and address block

Dear Mr/Ms,

Subject: NOTICE OF INVESTIGATION RESULTS

This is in response to your occurrence report dated xxxxx, concerning xxxxx, at xxxx.

An investigation was carried out concerning the (alleged) incident and revealed that a contravention (was or was not) committed. The document holder has been (suspended/ referred to the courts/found to be not guilty) for/of having committed an offence.

Therefore, with the interest of promoting aviation safety in mind, we thank you for having brought this incident to our attention.

This matter is now closed.

Best regards,

RUBEN F. CIRON, PhD
Director General
Civil Aviation Authority of the Philippines

DATE

Date:

Name and address block

Dear Mr/Ms,

Subject: NOTICE OF SUSPENSION

An investigation into an allegation that you contravened certain provisions of the Civil Aviation Act of 2008 or the Civil Aviation Regulations of the Philippines revealed the following:

It was proven that you violated (applicable Provision), in that you did operate aircraft (registration), a (aircraft type and model, on or about (date of violation), at or about (time of violation), at or near (location of violation, to wit, you (narrative of the violation).

As a result of your actions, the Director General has decided to suspend your (Aviation Document) for a period of (sanction). This period is in effect immediately.

You are hereby directed to surrender your (Aviation Document) to the Civil Aviation authority of the Philippines, where it will be kept upon your personnel file until such date and time that the suspension expires.

Failure to surrender the document within a period of thirty days from receipt of this Notice of Suspension will result in additional sanctions. In the event that you should be found to be operating an aircraft whilst your (Aviation Document) is suspended, your case will be forwarded to the judiciary for civil prosecution.

Yours truly,

RUBEN F. CIRON, PhD
Director General
Civil Aviation Authority of the Philippines

DATE

Date:

Name and address block

Dear Mr/Ms,

Subject: AIRCRAFT DETENTION/GROUNDING NOTICE

As a result of an investigation concerning an allegation that your aircraft, registration), (aircraft type and model) does not meet the requirements of (legislative Provision) and consequently does not have a valid Certificate of Airworthiness (CofA), the Civil Aviation Authority of the Philippines (CAAP), hereby detains/grounds the said aircraft effective immediately until such time as all conditions are met to ensure the validity of its CofA.

The aircraft's CofA is not valid because (Narrative).

In order to rescind this detention/grounding order, you are required to produce Proof Positive that the condition leading to this grounding order has been rectified.

In the event that you should be found to be operating this aircraft whilst the aircraft's CofA) is invalid, your case will be forwarded to the Judiciary for civil prosecution.

Yours truly,

RUBEN F. CIRON, PhD
Director General
Civil Aviation Authority of the Philippines

DATE

File Control Form, Case No. _____

A check of this form was conducted to ensure legislative applicability. All elements have been proven, the evidence supports the charge(s) and the file is complete.

I agree with the recommendation(s)

I do not agree with the recommendation(s)

Reasons:

ADG, Enforcement and Legal Service

Date

INSTRUCTIONS/RECOMMENDATION:

DECISION:

RUBEN F. CIRON, PhD
Director General
Civil Aviation Authority of the Philippines

DATE