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1.0 INTRODUCTION

1.1 Policy Objective

To enable the Civil Aviation Enforcement Program to contribute to a smooth transition to a Safety Management System (SMS) framework, by allowing certificate holders to achieve future compliance through the effective use of internal reporting programs, the analysis of reported events, and the implementation of subsequent corrective measures.

1.2 Applicability

This directive applies to all Civil Aviation functions responsible for oversight or certification of the aviation industry, as well as to those responsible for enforcement and investigation of regulatory contraventions.

1.3 Description of Changes

Minor changes have been made to correct the contact information provided in section 5.0, Contact Office.

2.0 REFERENCES AND REQUIREMENTS

2.1 Reference Documents

It is intended that the following reference materials be used in conjunction with this document:

- (a) Staff Instruction (SI) SUR-006, Issue 02, 2008-10-29— *Safety Management Systems— Civil Aviation Non-Compliance Event Review*,

2.2 Cancelled Documents

As of the effective date of this document, the following document is cancelled:

- (a) CAD 39, Issue 01, 2005-12-16 — *Aviation Enforcement – Safety Management Systems*.

2.3 Definitions and Abbreviations

The following definitions and abbreviations are used in this document:

- (a) **CAD**: Civil Aviation Directive
- (b) **NCAMX**: National Civil Aviation Management Executive group
- (c) **SI**: Staff Instruction
- (d) **SMS**: Safety Management Systems
- (e) **TCCA**: Transport Canada Civil Aviation

3.0 BACKGROUND

- (1) As Transport Canada and the aviation industry set out to implement SMS, Civil Aviation must be proactive in developing a flexible approach to this evolving safety framework. To that effect, Transport Canada must encourage certificate holders and their employees to make use of internal reporting process to report non-compliance situations that may impact on safety, without fear of reprisal or punitive action.
- (2) Accordingly, the National Civil Aviation Management Executive (NCAMX) has agreed to develop this Civil Aviation Directive requiring the application of the Civil Aviation SMS Enforcement Policy and procedures established in Appendix A, B and C herein attached.

4.0 POLICY STATEMENT

- (1) Transport Canada agrees to promote voluntary compliance with regulatory requirements, without necessarily resorting to punitive action, by providing certificate holders governed by an SMS, the

opportunity to determine, by themselves, proposed corrective measures to prevent recurrence of a contravention, as well as the best course of action to help foster future compliance.

- (2) Although the development of a safety culture is encouraged as an essential element of the SMS framework, Transport Canada will not compromise safety, nor ignore any contraventions of the regulations.
- (3) The policy and procedures established in Appendix A and B shall be used in enforcement activities regarding all organizations governed by a current SMS, as well as those organizations that do not have a fully implemented SMS, or that are not yet required by regulations to have one, provided that the conditions established in Appendix C are met.

5.0 CONTACT OFFICE

For more information, please contact the:

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Suggestions for amendment to this document are invited, and should be submitted via the Transport Canada Civil Aviation Issues Reporting System (CAIRS) at the following Internet address:

www.tc.gc.ca/CAIRS

or by e-mail at: CAIRS_NCR@tc.gc.ca

Original signed by Martin J. Eley on August 21, 2009

Martin J. Eley
Director General, Civil Aviation

APPENDIX A— CIVIL AVIATION SMS ENFORCEMENT POLICY

As Transport Canada and the aviation industry set out to implement Safety Management Systems (SMS), Civil Aviation must be proactive in developing a flexible enforcement approach to this evolving safety framework. The policy will provide a means of promoting voluntary compliance with regulatory requirements, without necessarily resorting to punitive action by Transport Canada Civil Aviation. This can be done by providing enterprises with an SMS, the opportunity to determine, by themselves, proposed corrective measures to prevent recurrence of a contravention, as well as the best course of action to help foster future compliance. However, intentional contraventions of the Aeronautics Act, the Canadian Aviation Regulations, the Transportation of Dangerous Goods Act, 1992, and the Transportation of Dangerous Goods Regulations will still be investigated and may be subject to enforcement action.

When an enterprise with an SMS allegedly commits a contravention that is not intentional, other than a contravention respecting the conditions stipulated in paragraph (c) of Canadian Aviation Regulation 602.105, specific review procedures will be used. These procedures will allow the Transport Canada Civil Aviation manager, responsible for the oversight of the enterprise, the opportunity to engage in dialogue with the enterprise regarding the alleged contravention. This correspondence will provide the enterprise a reasonable opportunity to develop corrective measures and an action plan that will adequately address the deficiencies that led to the contravention. The purpose of this approach is to nurture and sustain a safety culture, whereby employees can confidentially report safety deficiencies without fear of subsequent punitive action. An enterprise can then, without apportioning blame, and without fear of enforcement action, analyze the event and the organizational or human factors that may have led to it, in order to incorporate corrective measures that will best help prevent recurrence.

Transport Canada Civil Aviation will then evaluate the proposed corrective measures, or the systems currently in place to address the event. If these are considered appropriate and likely to prevent recurrence, the review of the alleged contravention will then be concluded with no enforcement action. In cases where either the corrective measures or the systems in place are considered inappropriate, Transport Canada Civil Aviation will continue to interact with the enterprise to find a satisfactory resolution that would prevent enforcement action. However, in cases where the enterprise refuses to address the event and provide effective corrective measures, Transport Canada Civil Aviation will consider taking enforcement action or other administrative action regarding the certificate.

In order to support the implementation of Safety Management Systems, Civil Aviation safety inspectors will maintain open communications with those enterprises proactively engaging in safety management systems. Therefore, this policy shall also apply to enterprises that are transitioning to an SMS, and who meet the criteria established in Appendix C of Civil Aviation Directive 107-004.

To encourage employees of SMS enterprises to internally report safety hazards, Transport Canada Civil Aviation will not make use of information derived from an internal reporting system or from a flight data monitoring process for any measures or in any proceedings against an enterprise or their employees for a contravention.

Transport Canada will not compromise safety, nor ignore any contraventions of the regulations, but will encourage the development of a safety culture as an essential element of the SMS framework.

APPENDIX B — SAFETY MANAGEMENT SYSTEMS – CIVIL AVIATION NON-COMPLIANCE EVENT REVIEW PROCESS

As stated in CAD 107-004, specific procedures have been developed in order to provide Civil Aviation safety inspectors with guidance on how to identify their roles and responsibilities when reviewing a non-compliance event (contravention) involving an enterprise with a safety management system (SMS), and to detail the procedures to be followed when conducting activities related to the requirements set out in Appendix A to CAD 107-004-Civil Aviation SMS Enforcement Policy. Following is a link to Civil Aviation Staff Instruction SUR-006 titled: Safety Management Systems—Civil Aviation Non-Compliance Event Review.

<http://www.tc.gc.ca/CivilAviation/IMSdoc/IMSDocuments/SUR/SUR-006.htm>

APPENDIX C – CIVIL AVIATION SAFETY MANAGEMENT SYSTEM ENFORCEMENT POLICY SUPPLEMENTARY GUIDANCE

(1) Objective:

This document provides guidance for determining which enterprises may benefit from the *Civil Aviation Safety Management System (SMS) Enforcement Policy*, normally applied to contraventions committed by enterprises with an SMS.

(2) Background:

The current Civil Aviation SMS Enforcement Policy stipulates that special review procedures are to be used when contraventions are committed by enterprises with an SMS. These procedures are described in Staff Instruction SUR-006: Safety Management Systems—Civil Aviation Non-Compliance Event Review.

Prior to the implementation of the SMS regulations in all sectors of the civil aviation industry, and during the “phase in” stage of the enterprise’s SMS, Transport Canada Civil Aviation (TCCA) will apply the Civil Aviation SMS Enforcement Policy to enterprises that do not have a fully implemented SMS, or that are not yet required by regulations to have one, provided that certain conditions are met.

(3) Supplementary Guidance:

Where enterprises have demonstrated the willingness to adopt an SMS framework approach for their operations, the procedures specified in Staff Instruction SUR-006 may be used in respect of alleged contraventions committed by those enterprises that, although they do not have an approved SMS, do have in place some essential core elements of an SMS.

TCCA does not intend to apply the procedures to any enterprise that, subsequent to the initiation of an investigation into a regulatory contravention, arbitrarily claims to be developing an SMS. It is however, intended to allow these procedures to be used for enterprises that have been diligently involved in the development of an SMS, which would eventually meet the requirements of the new SMS regulations, and are following a “phase in” process similar to the one outlined in TC published advisory material such as *TP 14343 - Implementation Procedures Guide for Air Operators and Approved Maintenance Organizations*.

(4) Approach:

TCCA will require, as a minimum, that the three following criteria be met before the TCCA SMS Enforcement Policy may be applied:

- (i) the enterprise has an internal reporting program supported and promoted by the enterprise’s management;
- (ii) the enterprise has a reactive event analysis process adequate for determining root cause and developing corrective measures;
- (iii) the information derived from the process referred to in paragraph (ii) is communicated upon request to the enterprise manager.

(5) Determination:

For the purpose of determining whether an alleged contravention should be handled using the event review procedures described in SI SUR-006, it will be necessary for the enterprise manager to determine the SMS status of any specific enterprise in respect of whether or not the enterprise’s SMS meets the above-mentioned criteria.

NOTE: *This approach may also apply to U.S. or foreign air enterprises that have aviation safety programs containing similar components to those required for SMS under the CARs, and are meeting the conditions mentioned above. Foreign Inspection Division shall determine whether the U.S. or foreign enterprise’s safety program warrants the application of this policy, and then only following a specific request to that effect by the foreign enterprise.*