



Staff Instruction

Subject: **Safety Management Systems—Civil Aviation Non-Compliance Event Review**

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1.0 INTRODUCTION

1.1 Purpose

The purpose of this document is to:

- (a) support the policies specified in Civil Aviation Directive (CAD) 107-004;
- (b) identify the role and responsibilities of an enterprise manager when reviewing a non-compliance event involving an enterprise with a safety management system (SMS); and
- (c) detail the procedures to be followed when conducting activities related to the requirements set out in Appendix A to CAD 107-004—*Civil Aviation Safety Management System Enforcement Policy Supplementary Guidance*.

1.2 Applicability

This document applies to all Transport Canada Civil Aviation (TCCA) employees when exercising ministerial delegation of authority (DoA) related to performing oversight activities.

1.3 Description of Changes

- (1) In Section 2.1, reference to CAD 20 was replace with CAD SUR-008.
- (2) A note was added after Section 7.1(2) referencing procedures related to the acquisition of air traffic control (ATC) information.

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) *Aeronautics Act*;
- (b) Part VI, Subpart 02 of the Canadian Aviation Regulations (CARs)—*Operating and Flight Rules*;
- (c) Staff Instruction (SI) SUR-001, Issue 02, 2009-02-06—*Safety Management System Assessment and Program Validation Inspection Procedures*;
- (d) Civil Aviation Directive (CAD) 107-004, Issue 01, 2008-10-29—*Aviation Enforcement—Safety Management Systems*;
- (e) CAD SUR-008, Issue 01, 2009-01-22, RDIMS # 4678656—*Surveillance Policy*;
- (f) Transport Canada Publication, TP 13794, Revision 3, 2004-12-01—*Aviation Enforcement Policy Manual*;
- (g) TP 8606, Edition 02, 2005-09-30—*Inspection and Audit Manual*;
- (h) Transport Canada form number 26-0471, Version 0710-03—*Detection Notice*;
- (i) Transport Canada RDIMS # 1002469-V1—*Aviation Enforcement Procedures Manual*; and
- (j) Transport Canada RDIMS # 4236889-V1—*Procedural Protocol Between NAV CANADA and Transport Canada Civil Aviation*.

2.2 Cancelled Documents

Not applicable.

2.3 Definitions and Abbreviations

The following definitions and abbreviations are used in this document:

- (a) **Transitioning enterprise:** an enterprise without a fully developed SMS but diligently involved in the implementation of an SMS and that meets the minimum levels of SMS compliance established in Appendix C to CAD 107-004.

3.0 BACKGROUND

- (1) As TCCA and the aviation industry set out to implement SMS, TCCA has been proactive in developing a flexible approach to this evolving safety framework. To that effect, TCCA encourages enterprises and their employees to make use of internal reporting processes to report non-compliance situations that may impact safety, without fear of reprisal or punitive action.
- (2) While TCCA will neither compromise safety nor ignore any contraventions of the regulations, it does encourage developing a safety culture as an essential element of the SMS framework. In support of this philosophy, TCCA has developed a flexible enforcement approach to this evolving safety framework.
- (3) CAD 107-004 outlines the TCCA SMS enforcement policy. CAD 107-004 applies to all TCCA functions responsible for oversight or certification of the aviation industry, as well as to those responsible for enforcing and investigating regulatory contraventions.
- (4) When an enterprise with an SMS allegedly commits a contravention without intent, the specific event-review process described in this SI shall be used. This approach aims to nurture and sustain a safety culture in an enterprise with an SMS that supports effective internal reporting, analysis of the non-compliance event, and implementation of effective corrective measures.

4.0 ENTERPRISES AFFECTED BY THESE PROCEDURES

The procedures outlined in this SI pertain to the following types of enterprises only:

- (a) enterprises with an SMS as identified in section 107.01 of the *Canadian Aviation Regulations* (CARs), including their personnel; and
- (b) transitioning enterprises, including their on-duty employees.

5.0 ROLES AND RESPONSIBILITIES

- (1) Under the Civil Aviation Integrated Management System (IMS), only one organization within Civil Aviation—and ultimately one accountable manager in the organization—is responsible for overseeing the activities of an enterprise with an SMS. The accountable manager identified by senior management is the enterprise manager.
- (2) The enterprise manager shall ensure that all contraventions reported to them that may have been committed by persons/enterprises with an SMS have been appropriately addressed by the enterprise.
- (3) The enterprise manager shall ensure that the process and procedures described in this SI are followed.
- (4) As determined by the enterprise manager, responsibilities described in this SI may be delegated to other TCCA personnel.
- (5) When requested, the Aviation Enforcement Division or the Transportation of Dangerous Goods Division will provide effective support to the enterprise manager by advising them on an

appropriate contravention response. Supporting the enterprise manager includes collecting or securing perishable evidence, as described in Section 7.2 of this SI.

- (6) The enterprise manager may consider enforcement action to promote regulatory compliance of the enterprises assigned to them. Therefore, the final decision on any enforcement action is the enterprise manager's responsibility.
- (7) Notwithstanding a decision to proceed with enforcement action in response to a single contravention or series of contraventions, it remains the enterprise manager's responsibility to evaluate whether suspension or cancellation of a CAD under Sections 7.1, or 7.1(1) of the *Aeronautics Act* is prudent or appropriate under the circumstances.

6.0 NON-COMPLIANCE EVENT-REVIEW PROCESS

- (1) When the enterprise manager becomes aware that a contravention may have taken place—other than one respecting the conditions stipulated in paragraph 602.105(c) of the CARs— the following event-review process should be followed. As illustrated in the attached flow chart, the event-review process has three basic phases:
 - (a) preliminary phase (refer to Section 7.0 of this SI);
 - (b) evaluation phase (refer to Section 8.0 of this SI); and
 - (c) corrective action phase (refer to Section 9.0 of this SI).
- (2) The event-review process shall be documented for each reported non-compliance event.

7.0 PRELIMINARY PHASE

The preliminary phase incorporates various steps to review the non-compliance event and associated data. The following process shall be used during this phase.

7.1 Preliminary Review of the Event

- (1) The enterprise manager may become aware of a non-compliance event through various sources of information, such as the Civil Aviation Daily Occurrence Reporting System (CADORS), TCCA personnel, enterprise employees, the public, law enforcement agencies, or others.
- (2) The enterprise manager shall conduct a preliminary review of the event to determine whether there has been a contravention. This review will be conducted based on the information received. The enterprise manager should not otherwise seek out information in a manner that would constitute the initiation of an investigation. The review is, however, intended to ensure that information at hand is reviewed.

Note:

Where the non-compliance event is related to the operation of an aircraft, it may be necessary to review ATC-related data in order to adequately evaluate and analyze the event. In these cases, the enterprise manager should request the ATC data directly from NAV CANADA using the process outlined in the Procedural Protocol Between NAV CANADA and Transport Canada Civil Aviation (RDIMS # 4236889). In addition, NAV CANADA has confirmed that its policy is to provide the information to an enterprise upon request. NAV CANADA has indicated that it would not object to providing ATC data directly to an enterprise, even in cases where the Transportation Safety Board of Canada (TSB) is investigating the event. Therefore, an enterprise may request the specific data directly from NAV CANADA or by requesting the assistance of the TCCA enterprise manager. In either case, the request for ATC data should be forwarded to NAV CANADA within 30 days of the event; otherwise, the data might not be available. Requests should be forwarded by e-mail to: OperationalSafety@navcanada.ca. For inquiries that cannot be

dealt with during normal office hours, customers are requested to contact the NAV CANADA National Operations Centre (NOC) duty manager by phone.

- (3) When the information indicates that no contravention likely occurred, a notation to that effect should be documented. No further action related to this process is required.
- (4) In cases where the information indicates that non-compliance likely occurred, a notation to that effect shall be documented; the following event-review process shall be undertaken.

7.2 Perishable Evidence

- (1) There may be situations where the enterprise manager feels that adequate resolution of the event through the enterprise's SMS is unlikely and there is a reasonable probability that enforcement action will be used to address the event. In these cases, the enterprise manager shall determine whether perishable evidence must be secured. Perishable evidence is evidence that, if not secured, will not be available later, and its absence would compromise potential enforcement action.
- (2) Perishable evidence in the form of ATC communications and radar records are available from NAV CANADA within 30 days of the event. After that time, NAV CANADA disposes of these types of records and they would no longer be available if the enterprise manager were to decide that enforcement action is appropriate. When the enterprise manager decides that perishable evidence is required from NAV CANADA for potential enforcement action, they shall request that the Aviation Enforcement Division secure the available data. A request should be made as soon as possible, keeping in mind the 30-day time limitation mentioned above. The request may be made by e-mail; however, a record of the request should be kept.

7.3 Determining the Enterprise Status (SMS or Transitioning)

- (1) The enterprise manager shall review the applicable Civil Aviation database (e.g. National Aviation Company Information System [NACIS] or National Aerodrome Safety Database [NASD]) to determine the enterprise's SMS status.
- (2) If it is determined that the contravention has been committed by an enterprise with an SMS, a notation to that effect should be documented. Further action shall be taken, as identified in Section 8.0 of this SI.
- (3) If it is determined that the contravention has been committed by a transitioning enterprise, the enterprise manager shall evaluate the enterprise to ensure that the following conditions set out in Appendix C of CAD 107-004—*Civil Aviation Safety Management System Enforcement Policy Supplementary Guidance* are being met:
 - (a) The enterprise has an internal reporting program that is supported and promoted by the company's management.
 - (b) The enterprise has a reactive event-analysis process adequate for determining root cause and developing corrective measures.
- (4) In some cases, an enterprise may have the necessary SMS elements in place; however, they may not have been validated or assessed. In these cases, the enterprise manager must decide whether an enterprise should be subject to this event-review process. The decision may be based on the enterprise's history of compliance, previous efforts made to establish its SMS, and trust in its ability to satisfy this process.

Note:

The procedures specified in this SI are not intended to apply to any enterprise that, during investigation into a regulatory contravention, arbitrarily claims to be developing an SMS. They are intended to be used for enterprises that have been diligently involved in the development of an SMS and are following a "phase-in" process similar to that outlined in the Safety Management

Systems Implementation Procedures Guide for Air Operators and Approved Maintenance Organizations (TP 14343).

- (5) In cases where the enterprise manager determines that the transitional enterprise meets the above-mentioned conditions, a notation to that effect should be kept and include identification of the enterprise's current phase of compliance with SMS implementation (for those enterprises following the full SMS phase-in process outlined in TP 14343). For transitioning enterprises not following the phase-in process detailed in TP 14343, it is sufficient to note that the SMS elements required by Appendix C of CAD 107-004—*Civil Aviation Safety Management System Enforcement Policy Supplementary Guidance* are in place. Further action shall be taken, as identified in Section 8.0 of this SI.

8.0 EVALUATION PHASE

This section describes an evaluation process that the enterprise manager shall follow to determine an appropriate course of action after a contravention has been committed by an enterprise with an SMS or a transitioning enterprise, as the case may be.

8.1 Enterprise Internal Reporting Data

- (1) The enterprise manager shall confirm with the enterprise that the event was reported and documented through its SMS internal reporting system. Such confirmation may be obtained through any convenient means of communication, such as e-mail, phone, or fax; formal confirmation of the internal reporting by such means as a signed letter should not be necessary. Confirmation that the enterprise has reported the event internally should be documented for ease of future reference.
- (2) When the enterprise manager confirms that the enterprise is not in compliance with its internal reporting system, a notation to that effect should be documented. A detection notice (form number 26-0471) and all information relating to the contravention shall be forwarded to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division.

Note:

There might be situations where the non-compliance event was not reported in the enterprise's internal reporting system. For example, the enterprise may not have been aware of the event. In cases where the enterprise manager determines there was a valid reason for not reporting and the internal reporting system is not at fault, no detection notice is required. The enterprise manager should then continue with this event-review process.

8.2 Determining If the Contravention Was Committed with Intent

- (1) The *Civil Aviation SMS Enforcement Policy* (Appendix A to CAD 107-004) does not apply to intentional contraventions. In these cases, enforcement action will be applied.
- (2) Most contraventions are strict liability contraventions; as such, evidence supporting intent is not relevant to the commission of the contravention. Intent in these cases is determined solely for the purpose of deciding the applicability of this non-compliance event-review process.
- (3) Based on the information received and the nature of the non-compliance event, the enterprise manager shall determine if the contravention appears to have been committed with enterprise intent. Because the enterprise's intent demonstrates its commitment to preventing future contraventions, it is the intent of the enterprise that should be considered in this assessment and not the intent of the individual who actually committed the contravention.
- (4) An intentional contravention can be either an act or an omission. A contravention may be considered intentional when:
 - (a) it appears to be premeditated, un-impulsive, fully considered, or voluntary; or

- (b) free will or a particular means is exercised to produce a particular result.
- (5) For example, a repeated contravention by enterprise personnel might be considered to show enterprise intent, since it may show the enterprise's disregard for the regulations or its management's promotion of non-compliant acts. Additionally, a contravention may be considered intentional if the enterprise appears to have considered the risk of having to pay a penalty as a cost of doing business or to have encouraged non-compliant behaviour for financial gain. The intent of the enterprise can be inferred from the actions of a principal—for example, if the chief pilot fails to respect approach or take-off minima or if an aircraft is scheduled for flight when basic scheduled maintenance activities are past due, the enterprise can be considered to be committing a contravention with intent.
- (6) An enterprise manager should be able to determine if a contravention was committed with enterprise intent based on the circumstances surrounding the contravention. Such determination need not be based on physical or documentary evidence. It may be circumstantial in nature and does not need to be the type of evidence that would be used to support the actual contravention or be admissible in a tribunal or court hearing. The purpose of evaluating enterprise intent at this stage is simply to determine whether or not to continue with this process as a means of addressing the contravention. In some cases, the act may speak for itself and would not need further evidence to make an assumption of intent.
- (7) The ultimate goal of the *Civil Aviation SMS Enforcement Policy* is to improve aviation safety by encouraging the enterprise to address non-compliance events through its SMS. In some cases, determining enterprise intent may be difficult; evidence to support an assumption that a contravention was committed with intent may not be obvious or apparent. The enterprise manager must not begin an investigation to determine if the contravention was committed with intent. If in doubt about whether there is or was intent by the enterprise, the enterprise manager should continue to encourage the enterprise to address the contravention through its SMS rather than request that the Aviation Enforcement Division or the Transportation of Dangerous Goods Division initiate enforcement action against the enterprise. A decision to proceed using the SMS process can be revised at a later date if evidence of enterprise intent is brought to the attention of the enterprise manager. In making a decision to proceed using the enterprise's SMS, the enterprise manager need not be absolutely certain that the contravention was committed without intent because there is a low risk associated with not proceeding with enforcement action if an SMS can adequately address a contravention—with or without intent. Should the enterprise manager uncover additional information after an event-review process has begun, they may reassess whether the contravention was committed with enterprise intent.
- (8) Following the determination of intent, the enterprise manager shall apply one of the two following options for determining an appropriate course of action:
 - (a) If the enterprise manager determines that the contravention was not committed with enterprise intent, they should continue with this event-review process.
 - (b) If the enterprise manager determines that the contravention was committed with enterprise intent, a notation to that effect should be documented. A detection notice (form number 26-0471) and all information relating to the contravention shall be forwarded to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division as soon as possible.
- (9) In cases where the non-compliance event relates to a serious contravention committed intentionally by an employee of an enterprise with an SMS—who has subsequently left the enterprise as a result of the event—and it is felt that enforcement action is appropriate against the individual, the enterprise manager may decide to forward a detection notice (form number 26-0471) and all information relating to the contravention to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division. This type of action against the individual who committed the contravention should not negate the enterprise's responsibility to develop

corrective measures aimed at addressing the event, where the enterprise manager considers such measures appropriate.

8.3 Evaluation of the Non-Compliance Event

- (1) The enterprise manager must evaluate the nature of the non-compliance event in order to determine whether the enterprise should submit a formal, detailed corrective action plan as described in Section 9.2 of this SI. Not every non-compliance event requires submitting a formal description of corrective measures. For some repetitive contraventions that are relatively minor in nature, a brief description of the reactive process or system currently in place to address the event is acceptable. The decision to accept a brief description does not negate the enterprise's requirement to develop and implement corrective measures in accordance with its SMS.
- (2) Contraventions or events of a complex or complicated nature—such as contraventions involving death or injury, significant structural damage, abnormal or irregular operations, high-risk situations, high-media-profile situations, or more serious repetitive events—require that the enterprise submit a formal description of the corrective action plan.
- (3) Once the enterprise manager has determined the type of description required for the purpose of addressing TCCA's concerns, the decision should be communicated to the enterprise and a reasonable timeline for submission established. Depending on the circumstances and the complexity of the non-compliance event, it is recommended that the time limit for submitting the corrective action plan not exceed 90 days.

Note 1

No proceedings under Sections 7.6 to 8.2 or by way of summary conviction under this Act may be instituted after twelve months from the time when the subject-matter of the proceedings arose (s.26 of the Aeronautics Act).

Note 2

Proceedings by way of summary conviction may be instituted at any time within, but not later than, two years after the day on which the subject-matter of the proceedings arose (s. 35 of the Transportation of Dangerous Goods Act).

9.0 CORRECTIVE ACTION PHASE

The corrective action phase incorporates various steps to review the enterprise's corrective action plans and implementation processes. Depending on the type of response requested from the company, the enterprise manager shall evaluate the corrective measures using one of the following procedures.

9.1 Evaluation of Brief Description of Corrective Measures

- (1) Upon receiving a brief description of the corrective measures used by the enterprise to address the non-compliance event, the enterprise manager shall evaluate the corrective measures (or system) and determine whether they adequately address the event. The description of the corrective measures should include a brief outline of the immediate short- and long-term action or a brief description of the system currently in place that adequately addresses the event.
- (2) When the enterprise manager is satisfied with the enterprise's corrective measures, a notation to that effect should be documented. The enterprise manager shall request that the enterprise notify them once the corrective measures have been implemented. Upon confirmation that the corrective measures have been implemented, a notation to that effect shall be documented and the event-review process is terminated.
- (3) When the initial proposal is not completely appropriate, the enterprise manager should continue to interact with the enterprise to find a satisfactory resolution to prevent enforcement action.

When reasonable interaction with the enterprise fails to produce appropriate corrective measures or corrective measures are not proposed, a notation to that effect should be documented. A detection notice (form number 26-0471), and all information relating to the contravention, shall be forwarded to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division as soon as possible.

9.2 Evaluation of Formal Description of Corrective Measures

Upon receiving a formal, detailed corrective action plan developed by the enterprise to address the non-compliance event, the enterprise manager shall evaluate the corrective plan and determine whether it adequately addresses the event. The corrective action plan should include at least the following sections:

- (a) a factual review of the non-compliance event;
- (b) an analysis of the non-compliance;
- (c) proposed corrective measures;
- (d) implementation; and
- (e) approval.

9.2.1 Factual review of the non-compliance event

Factual review of the non-compliance event should include:

- (a) a detailed synopsis of the non-compliance event, including a description of relevant factual information related to the event; and
- (b) the identity of individuals, groups, or departments involved in the event.

9.2.2 Analysis of the non-compliance

Analysis of the non-compliance event should include a summary of any causal factors that may have contributed to the non-compliance event.

9.2.3 Proposed corrective measures

Proposed corrective measures should contain a detailed description of planned or implemented measures, including:

- (a) a detailed description of measures that address the causal factors determined during the analysis of the event;
- (b) a detailed description of measures intended to eliminate hazards or mitigate risks associated with potential reoccurrence of similar events, when applicable; or
- (c) a detailed description of a system currently in place that adequately addresses the event or causal factors determined during the analysis of the event.

9.2.4 Implementation

This section should include a description of a timeline for implementing each proposed corrective measure. (The timeline should aim to implement the corrective measures in the shortest reasonable time period.)

9.2.5 Approval

The corrective action plan must be approved (signed) by an individual in the enterprise's management structure who has the authority to commit the necessary resources required to fulfill the plan.

9.3 Acceptance of Corrective Action Plan

- (1) When the enterprise manager is satisfied with the enterprise's corrective action plan, the enterprise should be advised accordingly and a notation to that effect should be documented. Following their acceptance of the corrective action plan, the enterprise manager should then comply with the follow-up procedures listed in Section 9.4 of this SI.
- (2) When the enterprise manager is not satisfied with the corrective action plan, they should continue to interact with the enterprise to find a satisfactory resolution that would prevent enforcement action. Where reasonable interaction with the enterprise fails to produce appropriate corrective measures or corrective measures are not proposed, a notation to that effect should be documented. The enterprise manager shall then notify the enterprise in writing that the corrective measures are considered to be inadequate, which elements are unacceptable, and the reason they have been deemed inadequate. When notifying the enterprise, the enterprise manager shall also specify that a notification will be forwarded to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division, as applicable, for further action. The enterprise manager shall then forward a detection notice (form number 26-0471) and all information relating to the contravention to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division as soon as possible.

9.4 Implementation and Follow-Up

- (1) The purpose of the follow-up activities is to confirm that the corrective action plan has been implemented and completed, as specified in the approved plan.
- (2) The enterprise manager may monitor the implementation of the corrective action plan at any stage. The enterprise manager shall verify that the corrective measures have been implemented within the prescribed timeline. These follow-up activities shall be carried out in accordance with the guidelines outlined in the *Inspection and Audit Manual (IAM)* (TP 8606) and *Safety Management System Assessment and Program Validation Procedures* (SI SUR-001).
- (3) When all the corrective measures have been implemented, the enterprise manager may close the case. No further action need be taken.
- (4) When the implementation is not completely appropriate, the enterprise manager should continue to interact with the enterprise to find a satisfactory resolution that prevents enforcement action. If reasonable interaction with the enterprise fails to result in the implementation of the corrective action plan, a notation to that effect should be documented. A detection notice (form number 26-0471) and all information relating to the contravention shall be forwarded to the Aviation Enforcement Division or the Transportation of Dangerous Goods Division as soon as possible.

10.0 RECORD-KEEPING (GENERAL)

All information and documents relating to an event review conducted in accordance with this SI shall be retained in an appropriate RDIMS file.

11.0 CONTACT OFFICE

For more information, please contact the:
Standards Co-ordinator (AART)

Phone: 613-990-3787
Fax: 613-996-9178
E-mail: CAIRS_NCR@tc.gc.ca

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 D. B. Sherritt on 2010-03-17

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Civil Aviation

APPENDIX A— SAFETY MANAGERMENTS SYSTEMS

**Safety Management Systems
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