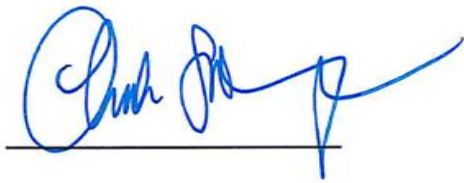


The Civil Aviation Authority of Thailand
(CAAT)
Aviation Enforcement Policy Manual

2015 - Edition

Foreword

The Aviation Enforcement Policy Manual has been prepared for the use and guidance of all the Civil Aviation Authority of Thailand (CAAT) personnel. The manual contains policies on the manner in which delegated enforcement duties and responsibilities are to be performed. All Inspectors are to employ the applicable policies contained in this Manual.



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GLOSSARY

Act - Air Navigation Act B.E. 2497 (1954) and its latest amendment

Administrative action - Deterrent action taken by or on behalf of the Director, including oral counseling, suspension or revocation of documents of entitlement.

Civil Aviation Authority of Thailand (CAAT) – Civil Aviation Authority of Thailand established by the Emergency Act on Civil Aviation of Thailand B.E. 2558 (2015)

Civil Aviation Document (CAD) - Any license, permit, accreditation, certificate or other document issued by the CAAT with respect to any airman or in respect of any aeronautical product, aerodrome, facility or service. A CAD includes virtually any document of entitlement that authorizes a person to perform functions on his or her behalf.

Compliance - Conformity with the provisions of Act and Civil Aviation Regulations

Comprehensive investigation - The follow-up to the initial violation and resulting Detection Notice, during which conclusive evidence as to whether or not a violation occurred is obtained, so that appropriate enforcement action can be taken.

Deterrent action - Administrative or judicial measures taken in response to a violation in order to encourage future compliance.

Director - Director of the Civil Aviation Authority of Thailand

Emergency Act - The Emergency Act on Civil Aviation of Thailand B.E. 2558 (2015)

Enforcement action - The steps, including deterrent action that must be taken from the moment a possible violation of the Act or Civil Aviation Regulations has been detected until the case is concluded.

Functional authority - Technical services within the CAAT grouped by aeronautical knowledge or skills (such as Airworthiness, Operations, Air Navigation and Aerodromes and Law) within which there may be further specialization (e.g., Personnel Licensing, Enforcement etc.) Functional authority includes the prerogative of a functional specialist to prescribe how the activity within the specialist's area of expertise should be carried out.

Functional direction - The exercise of functional authority through the issuing of and ensuring compliance with policies and procedures and through the provision of advice to line managers and subordinates.

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

Initial enforcement process - The immediate actions taken on observing or being apprised of a violation. Information is gathered concerning the occurrence and, if an infraction has occurred, a decision is made to conclude the case with oral counseling or to send the information to Legal Department further investigation.

Inspector - Any CAAT aviation official with appropriate authority under the delegation of authority document.

Offence-creating provision - A provision of the civil aviation Provisions that mandates a certain form of conduct or prohibits certain conduct and which, if contravened, can result in judicial or administrative deterrent action.

Operator - Any person or company engaged in or offering to engage in an aircraft operation

Reasonable grounds to believe - The knowledge of facts that would lead a reasonable person of ordinary intelligence and prudence to believe that an offence has occurred.

Regulation - Any Civil Aviation Regulation issued by the virtue of the provisions of Act including Royal Decree, Ministerial Regulation, Regulation of the Civil Aviation Board, Requirement of the Technical Committee, Announcement Department of Civil Aviation, Regulation of the Department of Civil Aviation and CAATs regulation.

Violation - The breach of any offence-creating provision of the Act and Civil Aviation Regulations. The terms *violation* and *contravention* are used interchangeably.

Chapter 1 – Policy Overview

1.1 General

CAAT promotes the goal of improved aviation safety by encouraging voluntary compliance with and through the enforcement of Thai aviation legislation and regulation. When necessary, CAAT investigates alleged violations of the legislation and regulation and when violations are established, repeat offenders and those who wilfully disregard aviation safety, are sanctioned.

1.2 Our Obligation

As a contracting State of the International Civil Aviation Organization (ICAO), the government of the Thailand has an obligation to oversee the safe and efficient operation of aviation activity for which it is responsible. Further, as a signatory to the ICAO *Convention on International Civil Aviation*, the Government has agreed to the application of Article 12 of the Convention, “Provisions of the Air,” which states in part:

Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with regulations relating to the flight and maneuver of aircraft there in force. . . . Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.

Accordingly, CAAT supervises and administers the enforcement mandate inherent in the international agreement. Enforcement and sanctioning powers, provided by a legal framework, have been delegated to CAAT Inspectors who have the responsibility and authority to conduct investigations.

As a result of international agreement and domestic legislation, enforcement is not an option, it is both a legal and social obligation. Vigorous enforcement action will be taken with respect to all deliberate breaches of the published aviation safety standards or requirements.

1.3 Voluntary Compliance

We recognize that voluntary compliance with the Act and regulations is the most progressive and effective approach to aviation safety.

Voluntary compliance is based on the idea that members of the aviation community have a shared interest, commitment, and responsibility to aviation safety, and that they will operate on the basis of common sense, personal responsibility, and respect for others.

1.4 Fairness and Firmness

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

CAAT promotes and applies a policy of fairness and firmness by:

- a) Encouraging open communication between alleged offenders and enforcement Inspectors, especially in cases where there are mitigating circumstances;
- b) Providing oral counselling for minor violations where there is no threat to aviation safety;
- c) Ensuring that repeat offenders and those who wilfully disregard aviation safety are dealt with firmly.

1.5 Conflict of Interest

Inspectors must take measures to prevent real, potential, or perceived conflicts of interest in accordance with the code of conduct specified in the regulation on the qualification, delegation, performance and oversight of competent official in accordance with ANA B.E. 2558 (2015)¹

If it becomes apparent that there could be a possible conflict of interest during an investigation, the aviation inspector shall inform his or her respective Director of Department and request to be removed from the case.

1.6 Handling of Complaints

Complaints by the Public or Civil Aviation Stakeholders, concerning the CAAT shall be recorded and passed to responsible department for response. Every complaint shall be responded to and the result shall be recorded.

1.7 Accessibility of Officials

CAAT officials will be accessible to the public to explain the Enforcement policy/procedure. Suggestions to improve this procedure are always welcome.

1.8 Amendment of the Aviation Enforcement Policy Manual

This Aviation Enforcement Policy Manual will be amended as required. All amendments to this Manual shall be issued by Legal Department who is the Office of Primary Interest (OPI) for this Manual.

¹ ระเบียบกรมการบินพลเรือนว่าด้วยคุณสมบัติ การมอบหมาย การปฏิบัติหน้าที่ และการกำกับดูแลของพนักงานเจ้าหน้าที่ตามพระราชบัญญัติการเดินอากาศ พ.ศ. 2479 พ.ศ. 2558)

Chapter 2 – Responsibilities

2.1 Delegation of Authority

Only person with valid and current delegation to exercise powers issued by Director under the Act may exercise the authorities. These authorities are delegated by the Director through the issuance of official credentials.

2.2 Responsibilities of the Delegate – General

The delegate is the decision-maker, and takes prime responsibility for the decisions whatever they may be. Although a delegate may be subject to general written directions regarding the manner in which he or she will exercise a power he or she is not subject to specific direction in relation to any particular decision. For example, a delegate cannot be directed to issue, or not to issue, a licence or certificate to a particular person. It is the delegate's personal judgement and belief that is relevant to the question of whether or not the grounds for the proposed action are sound.

2.2.1 Responsibilities of Technical and Operational Personnel

Without limiting the sorts of tasks which technical and operational personnel may be asked to perform in relation to variation, suspension or revocation action, it is the responsibility of technical and operational officers to

- a) Gather or receive the information and evidence, which supports a recommendation for an action
- b) As necessary, seek advice and input from Director of Flight Standards, Director of Aerodromes Standards, Director of Air Navigation Services Standards and Director of Legal Department in relation to the conduct of the operator/person in question
- c) Complete a non-compliance report and forward it to the appropriate Director recommending a proposed course of action
- d) Draft (in consultation with Legal Department) the relevant notice to the operator/person affected by the decision
- e) Prepare for and attend any show cause conference taken up by the operator or person affected by the decision
- f) As necessary, assist Director of Flight Standards, Director of Aerodromes Standards, Director of Air Navigation Services Standards and Director of Legal Department by providing information and advice.
- g) Serve or arrange for the service of the relevant notice to the person affected.
- h) Take any follow-up action that may be necessary (including the provision of technical and operational assistance to the Director of Legal Department in any administrative law litigation).

2.2.2 Responsibilities of the Director of Legal Department

It is the responsibility of the Director of Legal Department to

- a) Provide legal advice to officers and the delegate in relation to actual or proposed variation, suspension or revocation action, or any part of the process;
- b) Assist officers in the preparation of show cause' and decision notices, in accordance with regulations:
- c) Conduct, or arrange for the conduct of, administrative law litigation arising out of variation, suspension and revocation decisions,
- d) Keep Director of Flight Standards, Director of Aerodromes Standards, Director of Air Navigation Services Standards advised of the progress and results of any civil court or administrative proceedings, and

- e) Represent CAAT in any proceedings before the Court, where the CAATs decisions have been challenged.

2.2.3 Responsibilities of the Director of Flight Standards, Aerodromes Standards and Air Navigation Services Standards

All the Directors within Department of Flight Standards, Aerodromes Standards and Air Navigation Services Standards are the senior delegates and are responsible to:

- a) Ensure that their directorate is organised, staffed and equipped to perform its functions as required by the Act and regulations; and the Director
- b) Amend the administration of the Inspectors in order to ensure their smooth and efficient functioning.
- c) Programme the operation of inspections per the guidelines laid down in inspectors manual
- d) Supervise the activities of the Inspectors
- e) Liaise with the operators to ensure smooth and efficient execution of the inspection programmes.
- f) Ensure that the activities of the inspections conform to rules and regulations laid down for the conduct of inspections.
- g) Submit periodic and other analytic reports to the Director of the results of the inspections
- h) Ensure that the Inspectors maintain the currency of their licences and carry out refresher training regularly.
- i) Liaise with the other Directorates of the CAAT and provide them with specialised advice on all operational manners.
- j) Advise the Director on all matters relevant to air safety and help in investigation of accidents/incidents involving aircraft
- k) Keep the Director informed of all important activities of their Directorate.
- l) Ensure that the objectives of the Inspections are met and that the system of inspection is optimised and institutionalised. Updating of the system to meet the changing situations is an imperative that must be pursued.

Chapter 3 – Inspection and Surveillance

3.1 Routine Inspections

Routine Inspections should normally be conducted before issuing or renewing a Thai Civil Aviation Document (CAD) in order to confirm compliance with applicable standards. These inspections involve the examination of aircraft, aeronautical products (appliances, parts, components, etc.) cargo, premises and facilities relating to aeronautics.

3.2 Inspection Authority

The Act and Emergency Act authorize the Director or his designate to conduct inspections for the purpose of enforcing the Act and regulations. It therefore authorizes designated Inspectors to inspect aircraft, operator facilities and aerodromes.

3.2.1 Entry for Inspection

For the purpose of inspections, Inspectors shall normally enter aircraft or premises with the owner, employee or other representative being present or giving consent. An Inspector's authority to enter aircraft, aerodromes, facilities or premises to conduct inspections shall be provided to each inspector, in accordance to his need to exercise his/her delegated authority and shall be listed upon the Inspector's personal Identification and Credential Card.

3.2.2 Inspection

The Inspector shall provide reasonable notice to the operator to make available, the aircraft, or facility for the purpose of inspection.

3.2.3 Production of Documents/Records

An Inspector's authority to demand the production of documents and records is derived from the provisions of Act and Emergency Act.

3.2.4 Obstruction

Any Person wilfully obstructing or impeding an Inspector during an inspection shall contravene the provisions of the Act and Criminal Code B.E. 2499 (1956).

3.2.5 Seizure of Evidence

Director or Inspectors have a power to seize the evidence for the purpose of investigation in accordance with the provisions of the Act.

3.2.6 Return of Evidence

Any item seized during an inspection or investigation shall be returned to its rightful owner within 30 days of the seizure, unless the item is required during a comprehensive investigation. Upon conclusion of the Case Report, the item shall be returned to its rightful owner.

3.3 Urgent Action

An Inspector must take action without delay when encountering a situation where there is a threat to Aviation Safety. Most Inspectors are delegated the authority to detain an Aircraft.

3.3.1 Detention of Aircraft

The authority for detention is found in Section 67 of the Act. Inspectors may detain any aircraft when there is violation of the provisions of the Act with respect to Aircraft (There is a reasonable grounds

to believe that the aircraft is unsafe or is likely to be operated in an unsafe manner), and they may take reasonable steps to ensure its continued detention. Once the grounds for detention (e.g. unsafe condition) have been removed, the aircraft must be released.

3.3.2 Suspension of Civil Aviation Document (CAD)

The authority for the suspension is found in the Act and regulations. It authorizes the Director to suspend a CAD, provided that an appeal may be made within 15 days of suspension, to the Director in accordance with the Act on Administrative Procedure B.E. 2539 (1996). Once the Director has made a decision to suspend a CAD, he must notify CAD holder of his decision in writing. Suspension of a CAD shall come into effect immediately and remains in effect until such time as the aviation threat is removed. Reinstatement of a CAD is considered by the appropriate functional authority and is not considered to be an enforcement matter.

3.4 Surveillance

3.4.1 Presence

The most effective method of enhancing safety within the aviation community is to provide a regulatory presence aimed at promoting voluntary compliance with the Act and the regulations. These objectives can best be achieved by CAAT personnel participating in structured surveillance activities. Surveillance may either be routine or special-purpose.

3.4.2 Routine Surveillance

Routine surveillance, which includes audits, base inspections, CAD renewal inspections and ramp checks, is conducted in the normal course of the CAAT inspector's duties of monitoring day-to-day aviation activity. When contraventions of the Act or regulations are detected, Inspectors are responsible for completing a Detection Notice for submission to their respective Director of Department. These forms may reveal problems, trends or threats to aviation safety. Accordingly, this information can often provide the impetus for planned surveillance.

3.4.3 Special Purpose Surveillance

Special purpose surveillance is directed at specific areas, events and activities by the CAAT Inspectors. Most surveillance done by Inspectors is of an overt nature; that is, undisguised and designed to deter regulatory infractions and to encourage voluntary compliance through a visible presence. It is also designed to detect violations.

3.4.5 The Enforcement Surveillance Plan

The Surveillance Plan is a plan designed to establish a balanced and systematic approach to surveillance and makes the best use of available resources of the CAAT.

Chapter 4 – Detection

4.1 Introduction

Detection is the discovery of a possible violation of the Act or regulations. Sources of detection are diverse and may result from activities such as inspections, audits and surveillance. Sources of detection also include police reports and public complaints.

4.2 Initial Enforcement Process

CAAT Inspectors must take action on observing or being apprised of a contravention. All Inspectors are responsible for completing a Detection Notice Form and forwarding it without delay to their respective Director of Department. The inspector or Director of Department may address immediate operational considerations through the exercise of their delegated powers.

If the contravention is considered minor, the Inspector may simply orally counsel the CAD holder and fill out the detection notice form. If the contravention is of a more serious nature, the Inspector must as soon as practicable refer the incident and all the collected evidence to his/her Director of Department. The Director of Department shall review the information in the Detection Notice for his/her own information and pass it on to Legal Department for further action.

The decision to conclude the matter with an oral counselling is the Inspector's. In the event that the counselled person has received counselling concerning this matter before, or perhaps other members of an operator have also been counselled regarding the same matter, a comprehensive investigation may be mandated.

4.3 Oral Counselling

Oral counselling provides the CAD holder with immediate guidance on the need for future compliance. It is an option for Inspectors when the imposition of a sanction is not considered necessary and when all the following conditions are satisfied:

- a) The contravention is minor and inadvertent; and
- b) There is no direct flight safety hazard even though the violation is safety-related; and
- c) The CAD holder has no record of a similar type of violation and has a compliant attitude; and
- d) The CAD holder is not disputing the allegation.

This type of deterrent action does not become a part of the CAD holder's record. However, a completed copy of the Detection Notice is required to ensure that the event is recorded in the Enforcement Data Base.

4.4 Contraventions concerning the Transportation of Dangerous Goods by Air

Within CAAT, all inspectors are responsible for promoting compliance with and detecting contraventions of the regulations on Transportation of Dangerous Goods by Air. Because of the possible hazards involved in the transport of dangerous goods, all inspectors, upon detection or receipt of a reported violation, shall apprise their respective Director of Department of the situation.

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

4.5 Inspectors Flying as Passengers

Inspectors flying as passengers have, due to their knowledge of Aviation and the Law concerning Aviation, a Duty of Care to speak up, when they become aware of an immediate threat to aviation safety or a situation that if not stopped, would in their opinion, become an immediate threat to

aviation safety. In this event, they should identify themselves to a member of the cabin crew as a Civil Aviation Inspector and apprise the crewmember of the immediate threat to aviation safety.

4.6 Inspector's Off-Duty Actions

Inspectors are not expected to conduct surveillance during times when they are not working. However, if an inspector becomes aware of a contravention or an immediate threat to aviation safety, he/she is obliged to act. Once the situation is stable and no longer represents an immediate threat to aviation safety, a Detection Notice shall be filled out and an initial investigation conducted. The normal procedure for follow-up may then be used.

4.7 Analysis of Legislative Provisions

Analysis of legislation provides a procedure for examining offence-creating provisions to obtain a precise interpretation of a regulation and if the facts and evidence support an allegation of a contravention. The decision to continue or terminate a case is often based upon the results of the analysis of legislation. Enforcement Inspectors shall complete an analysis of each provision that has been contravened for each case where a comprehensive investigation is conducted.

Chapter 5 – Investigation

5.1 Introduction

An investigation is a systematic search for documentation of the facts relevant to an event. All CAAT Inspectors are responsible for detecting and reporting alleged violations by implementing the initial enforcement process. All investigations must be thoroughly and meticulously completed, since the resulting action may both affect individual rights and public safety.

5.2 Priorities for Investigation

Priority shall be given to violations received from any Government request. For all other violations the Director shall assign an investigation priority level based on safety impact.

5.3 The rights of the alleged offender

When the inspectors detected any alleged violations, he/she shall report the alleged violations to their respective Director of Department. The Director of Department shall designate the inspector to conduct comprehensive investigation and the inspector is responsible for investigate the fact and places as well as collect the relevant evidence to determine if there is any violation of the provision of Act.

A designated inspector shall inform an alleged offender the detail of the offences and advise them the rights to defence the allegation with supporting evidences before concluding a case report to their respective Director of Department.

5.4 Co-ordination between CAAT Divisions and Outside Agencies

Co-ordination between the various CAAT Divisions, the Royal Thai Police and other external organizations, concerned with Aviation Safety is encouraged, in order to maintain technical accuracy and perspective and to expedite the collection of relevant facts.

5.5 Case Reports

A case report is a summary of the facts drawn up by a designated inspector for use by the Legal Department. It is mandatory that a case report be prepared for each file, whether a sanction is recommended or not.

The content and preparation of case report are described in Regulation of Department of Civil Aviation on Criminal Procedures²

5.6 Disclosure of Information

The CAAT Civil Aviation Policy is one of full disclosure to the CAD holder or his/her representative. The Legal Department shall disclose all evidence that may assist the CAD holder, even if the evidence will not be used in any proceedings. However, file notes containing personal opinions as well as internal correspondence outlining how to proceed with sanctions shall not be disclosed.

The purpose of the full disclosure is as follows:

- 5.6.1 To ensure the CAD holder knows the case to be met and is able to make full answer and defence;
- 5.6.2 To encourage the resolution of facts at issue, and
- 5.6.3 To encourage the resolution of the case prior to the hearing.

²ระเบียบกรมการบินพลเรือนว่าด้วยมาตรฐานการควบคุม ตรวจสอบ เรงรัดการดำเนินคดีอาญา พ.ศ. 2556

5.7 Full Disclosure

Full disclosure means that the CAD holder will be given at least the following information, as relevant to the case:

- 5.7.1 Particulars of the circumstances of the case;
- 5.7.2 Copies of relevant written statements (these may include witness statements, investigative notes and summaries)
- 5.7.3 An opportunity to examine electronic statements and/or other medium such as air traffic control tapes;
- 5.7.4 Particulars of the CAD holder's enforcement record, if applicable;
- 5.7.5 Copies of relevant documents and photographs that the Investigator intends to introduce into evidence during a hearing;
- 5.7.6 A copy of the notice of suspension of the CAD;
- 5.7.7 Particulars of relevant information intended to be relied upon at the hearing and any information known to the Investigator that the CAD holder may use to impeach the credibility of a CAAT witness in respect of the facts at issue in the case;
- 5.7.8 If applicable, a copy of the flow chart relating to an airworthiness matter; and
- 5.7.9 The names of witnesses, their employment and their address, unless there is evidence to indicate that the witness will be harassed or intimidated prior to the hearing. The witness should be informed of the action, and inquiries should be made whether there is any problem anticipated.

The information that is disclosed should be sent to the CAD holder by registered mail or courier.

5.8 Exceptions to full Disclosure

Certain information that is related to items of the public interest may be exempt from the disclosure policy. This information includes but is not limited to the following:

- 5.8.1 Information concerning a confidential informant, an ongoing investigation, or investigative techniques;
- 5.8.2 Information that may be considered confidential by the Government of the Thailand;
- 5.8.3 Information that cannot lawfully be disclosed or that would be injurious to international relations, national defence or security if disclosed.

5.9 Medical and Optometric Information

Medical information provided by a CAD holder is confidential and shall only be disclosed with the permission of the CAD holder, except that the information may be released to the court, by direction of a judge; and it may also be used as evidence in an investigation by the CAAT.

5.10 Electronic Recordings of Interviews and Conversations

Covert recording of Interviews and conversations is not authorized. A witness, alleged offender or CAD holder must consent to a recording being made. A recorded telephone conversation with a witness or CAD holder may be used as evidence in circumstances where a personal interview cannot be arranged.

5.11 Cockpit Voice Recorder and Flight Data Recorder

Cockpit voice recorder and flight data recorder information shall not be used in any enforcement matters

5.12 ATS Data

Recordings of ATS radio communications, transcripts of the recordings and Radar Data Examination Records (CDRS) may be used in any proceedings but shall not be used in surveillance or to detect contraventions.

5.13 Cases with Certification Implications

Where Thai Air Operators are involved in contraventions that may have certification implications, such as AOC, AMO, AMD, etc., the Legal Department shall consult with responsible Department concerning any possible sanction.

5.14 Special Investigations

5.14.1 Contraventions by Military Aircraft

The Act and regulations do not apply to Thai military aircraft operating in military service and foreign National military aircraft.

5.14.2 General Contraventions

During a routine visit, inspection or audit or any other occasion, when a CAAT Inspector becomes aware of a contravention by an air carrier crew member or employee, the Inspector is obliged to make note of it and to report the essential facts. The Detection Note is the vehicle for reporting. Pertinent evidence must also be seized and forwarded with the Detection Notice. The Inspector may orally counsel an alleged offender but only the Director may take punitive action.

5.14.3 Contraventions Detected during an Audit or Inspection

When during an Audit or Inspection a contravention is discovered, the Audit or Inspection shall be stopped and the manager of the organization briefed concerning the finding. The focus of the audit or Inspection shall be changed to an Investigation.

5.15 Contravention of Foreign Legislation by Thai CAD holders

When a Thai CAD holder is alleged to have violated foreign aeronautics legislation that has a direct Thai equivalent, the investigation shall proceed under the applicable Thai provision as if the contravention had occurred in Thailand. Where the allegations relate to a regulation without a direct Thai equivalent and where the contravention is confirmed, the Director may proceed administratively or judicially under the provisions of the Act.

5.16 Contraventions involving Foreign Civil Aircraft Operators

Whilst in Thailand, airmen and operators from foreign countries must comply with the applicable sections of the Act and regulations. Aeronautical operations by foreigners in Thailand are predominantly commercial operations and all of those operations require the operator to hold an AOC from their countries of registry. Where contraventions of the Act or regulations are involved, CAAT shall conduct a comprehensive investigation and report its conclusion to the foreign operator's National Civil Aviation Authority.

5.17 Foreign Private Aircraft

Foreign private aircraft include corporate aircraft and those operated by recreational flyers. These aircraft do not require an air operator certificate but are required to meet all of the requirements of their National Civil Aviation Authority and at a minimum, the ICAO SARPs.

5.18 Contraventions in Thai controlled Oceanic Airspace

Alleged contraventions of Thai and foreign aircraft will be investigated in the normal manner. Reports of contraventions by military aircraft are investigated to the degree possible and the information forwarded to the appropriate and competent military authority of Thailand.

5.19 Requests from foreign Civil Aviation Authorities

Full cooperation shall be provided to foreign civil aviation authorities that request assistance from the CAAT.

Chapter 6 – Deterrent Action

6.1 Introduction

When a violation of the Act or the regulations is confirmed at the conclusion of a comprehensive investigation, the proper deterrent action to impose is determined. This is a critical decision in the enforcement process since it may significantly affect an individual's attitude towards aviation safety and towards compliance with the Provisions in the future.

6.2 Objectives of Deterrent Action

The major objectives of deterrent action are:

- 1) to protect the individual and the public from possible harm;
- 2) to encourage future compliance; and,
- 3) to deter others from contravening aeronautics legislation.

Achieving these objectives will contribute to the advancement of aviation safety, the primary aim of aviation legislation and regulation.

Administrative action comprises all other measures taken by the Director pursuant to the provisions of the Act and regulations such as oral counselling and the suspension of documents.

6.3 Types of Deterrent Action

There are two types of deterrent actions:

6.3.1 Judicial Action refers to the prosecution of an alleged offender in the criminal courts and is available only for offences specified under the Act. The actions that may be taken by the courts include fines and prison terms. For some offences under the Act, the Director, inquiry official or offense settlement committee shall settle the penalty with the offender, in accordance with section 120 of the Act.

6.3.2 Administrative Action comprises all measures taken by the Director or inspectors pursuant the provisions of the Act and regulations, other than judicial action, includes the suspension and/or revocation of Civil Aviation Documents, prohibitions, oral counselling and orders for additional training.

6.4 The periods of prescription

The periods of prescription for offences under the Act shall be specified in Criminal Code B.E. 2499 (1956).

6.5 Joint, Direct and Vicarious Liability

Joint deterrent action may be taken against the person directly liable for a contravention and the person vicariously liable for the contravention. This may be done when both parties are responsible for causing the contravention to occur.

6.6 Disclosure of Deterrent Action

Employers of CAD holders should be advised of the deterrent action taken if the contravention took place whilst the alleged offender was on company business at the time of the contravention. Although aero-medical information should normally be suppressed, if the contravention involved flying whilst under the influence of alcohol or prohibited drugs, in the interest of public safety, such finding shall be disclosed to the employer.

Employers of foreign document holders may be advised of deterrent action taken if the contravention took place whilst the alleged offender was on company business. The foreign country's cultural/political situation should be taken into consideration. The Director will decide on a case-by-case basis.

6.7 Notification of Detection Source

The Director of Flight Standards, Director of Aerodromes Standards and Director of Air Navigation Services Standards shall ensure that the detection source is advised of the outcome of the case and record this action.

6.8 Liaison with the Office of the Attorney General

Legal Department should provide advice on case specifics, such as particular charges, to the Director, prior to approaching the Office of The Attorney General. It is clear that once the case has been turned over to the Office of The Attorney General, it becomes the responsibility of the Office of The Attorney General and that the CAAT will act as a resource and provide expert advice only. Communication with the CAAT is strictly at the discretion of the Office of The Attorney General.

6.9 Sanctions

6.9.1 General

The following will be considered in the interpretation and use of administrative sanctions:

- (a) The sanction may be moderated in light of mitigating circumstances (events that were inadvertently caused by misunderstanding, misconception or an honest mistake);
- (b) In some circumstances, the pilot-in-command, registered owner, operator or operator of an aerodrome or other facility, may be proceeded against for the actions of another person;
- (c) A second offence is considered to have taken place when the record of a previous similar offence is still on the offender's file; and
- (d) Sanctions for a second and all subsequent offences should be higher than previous sanctions.

6.9.2 Factors Affecting Sanctions

- (a) What was the role of the Offender, perpetrator or accomplice?
- (b) Was there any pressure or undue influence exerted by an employer or an employee?
- (c) Were there any mitigating circumstances such as poor weather, improper air traffic control instructions etc.?
- (d) Was there threat to safety?
- (e) Was there any actual harm done?
- (f) Was there careless or reckless conduct?
- (g) Are there any prior sanctions on record?
- (h) Are there any related offences?
- (i) Is there a question of competence or qualification involved?
- (j) Would the recommended sanction achieve public safety?
- (k) Will the sanction act as a deterrent?
- (l) Will the sanction promote future compliance on part of the offender?

6.9.3 Burden of Proof

The Burden of Proof is on the CAAT, 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 Court of Law, Legal Department policy is, that all investigations shall be conducted to the evidential requirements of Criminal Law.

6.9.4 Case Presenting Officer (CPO)

The CPO represents the Director. He/she presents evidence and makes representations on behalf of the Director and may act as expert witness in judicial proceedings. The CPO would normally be one of the legal staff of the Legal Department but may also be the Inspector who is responsible for conduct an investigation of the case.

6.9.5 Role of the CAAT Inspector

Any CAAT Inspector may be called to give testimony as either an eyewitness or expert witness. Eyewitnesses attempt to reconstruct a series of events that occurred at a particular point in time. Expert witnesses, on the other hand, give opinion evidence based upon their education and experience and attempt to assist the Director or a court to understand the evidence or to make a finding of fact, based upon the Expert's opinion.

Chapter 7 – Records Management

7.1 Retention of Records

Aviation enforcement files shall be retained for the minimum time required by the regulation of Office of the Prime Minister on the official document B.E. 2526 (1983)³

7.2 Destruction of Files

The procedure to destruct files is specified in the regulation of Office of the Prime Minister on the official document B.E. 2526 (1983)

7.3 Control of Enforcement Records

All aviation enforcement records and CADs shall be treated as controlled documents. CAAT personnel shall ensure that these documents and records are secured when work areas are left unattended.

³ ระเบียบสำนักนายกรัฐมนตรีว่าด้วยงานสารบรรณ พ.ศ. 2526

Chapter 8 – Miscellaneous

8.1 Communications with the Media

In instances where communications with the public and news media arise, inspectors shall refer to the current CAAT policy.

8.2 Access to Information

Alleged offenders have the right to obtain any information concerning their own person or the allegations against them. Any other request must be made in writing to the Director.

8.2.1 Personal Information

Personal information is protected under the Constitutional of the Kingdom of Thailand and may only be released with the written consent of the individual to whom the information relates. However, that information may be disclosed to an investigative body specified under the Act, for the purpose of enforcing any law of Thailand whilst carrying out a lawful investigation. Prior to releasing any such information Legal Department shall be consulted.

8.2.2 Corporate Information

The names of corporate offenders may be published if the Director believes it to be in the public interest.

8.2.3 Police / the Office of Attorney General/ Foreign Agency Reports

Information contained in Police, the Office of Attorney General or a foreign agency investigation reports received by the CAAT, shall not be released without the approval of the referring authority

8.2.4 Public Release – Enforcement Action

Court trials are a matter of public records. However summary convictions and sanctions imposed by the CAAT on individuals are protected information under the Constitutional of the Kingdom of Thailand and are not to be disclosed except by permission of the individual concerned. De-identified cases may be published in the interest of aviation safety.

8.2.5 Matters before the Courts

Matters before the courts shall not be discussed with the public until conclusion of the case and then only concerning matters that are considered of public interest.

8.2.6 Third Party Interests

Request from purchasers of aircraft, parties repossessing aircraft, trustees in bankruptcy etc., to obtain aircraft logbooks or other CADs should be referred to CAAT.

8.2.7 Criticism of the CAAT

When the CAAT comes under criticism during the course of an Inspector's duties, the Inspector should calmly acknowledge the comments and pass them along to his or her respective Director of Department.