



KENYA CIVIL AVIATION AUTHORITY

Order

CAA-O- AGA003

June 2010

ENFORCEMENT PROCEDURE

1.0 PURPOSE

This order describes the authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the Authority's compliance and enforcement program. The policies and procedures described in this order explain how the Authority intends to carry out statutory and regulatory enforcement responsibilities.

The Order also provides a clear, systematic, and consistent process for the investigation, notification, and conformance with Civil Aviation Regulations. The goal of enforcement is to seek voluntary compliance with the provisions of the Regulations, which provide for the provision of safe and secure aviation industry.

2.0 REFERENCE

Civil Aviation Regulations, on matters pertaining to safety

3.0 GENERAL INFORMATION

3.1 The Authority has established comprehensive aviation safety regulations for every aspect of aviation. The goal of the Authority is to maintain the highest possible standards of safety. The role of the Authority is to ensure compliance with all regulatory programs. The aviation industry is expected to strive to attain full compliance.

3.2 When a violation occurs, it is essential that the Inspector take action. That action can be administrative or legal, but should in each case be reasonably designed to promote future compliance by the Regulation in violation. The intent is to promote cooperation between the regulated industry and the Authority, and to achieve timely resolution of non-compliance matters.

3.3 Compliance and Enforcement principles

3.3.1 Civil aviation safety depends on voluntary adherence to legal requirements. Therefore, the KCAA administers programs to promote a clear awareness and understanding of the governing statute and regulations.

3.3.2 KCAA inspectors should take advantage of opportunities during their surveillance and inspection activities to strengthen a regulated person's understanding of the statutory and regulatory requirements. The KCAA also promotes education through public awareness programs and other special aviation educational efforts.

3.3.3 An important element of an effective compliance and enforcement program is the prompt discovery of noncompliance. Although the KCAA has programs to encourage self-disclosure, surveillance remains the primary method of detecting violations. Consistent with its statutory mandate, the KCAA maintains a high level of surveillance of air carrier operations.

3.3.4 In any situation where KCAA enforcement personnel identify a potential violation, they take appropriate steps immediately to notify a responsible person who can take appropriate action to prevent it.

3.3.5 KCAA inspectors must conduct investigations promptly. They must gather, and accurately and completely report all facts, and conduct their investigations in an unbiased and focused manner to enhance fair and responsive enforcement.

3.3.6 To be effective, the KCAA's compliance and enforcement program must be fair and reasonable and should be perceived as fair by those subject to regulation. It also requires good faith efforts to understand the apparent violator's position and take it into account, as well as to apprise the apparent violator of the KCAA's position in a timely manner.

3.3.7 The KCAA's discovery of, and response to, violations should be timely. However, the time needed for investigation and processing will vary depending on the complexity of each case.

3.3.8 The public interest in aviation safety is served in appropriate circumstances by positive incentives to promote and achieve compliance. To this end, the KCAA has established several programs to improve compliance and increase safety by offering incentives to regulated persons to disclose their own violations, other safety discrepancies, and general safety information to the KCAA and take corrective action to preclude future safety problems, if appropriate.

4.0 APPLICABILITY

- 4.1 This order applies to the compliance and enforcement programs and activities of KCAA.
- 4.2 This order guides KCAA enforcement personnel in the exercise of their discretion in handling compliance and enforcement matters. This order does not create any right or benefit, substantive or procedural, enforceable at law by any party against the KCAA, its officers, or its employees.
- 4.3 The compliance and enforcement program is applicable to all activities regulated or enforced by the KCAA.

5.0 COMPLIANCE AND ENFORCEMENT RESPONSIBILITIES OF KCAAs

- 5.1 In carrying out Compliance and Enforcement Responsibilities the KCAA inspectors are empowered to:
- (1) inspect for safety compliance
 - (2) investigate any violation
 - (3) take certificate action or civil penalty action or issue orders for aviation safety violations.
 - (4) take required certificate action including revocation
 - (5) obtain evidence in aviation safety investigations

5.2 Role of KCAA Inspectors

KCAA inspector's role in an investigation is to gather *all* material, relevant evidence that either proves or disproves the potential violation that precipitated the investigation. After KCAA inspectors gather all the evidence, they analyze it using the guidance in this order and decide whether the evidence proves a violation. If the evidence is inadequate to establish a violation, KCAA inspectors recommend to appropriate Director responsible for safety that the investigation be closed *no action*. If the evidence is sufficient to support a violation, KCAA inspectors recommend informal action, administrative action, legal enforcement action, or other action, as appropriate, in accordance with the policy and guidance in this order.

The KCAA inspectors shall not disclose information contained in an EIR about an individual to third parties without prior written authorization from that individual or the Authority.

6.0 ENFORCEMENT PROCEDURE

6.1 Investigation

- 6.1.1 Upon receipt of information indicating a possible violation, the inspector should initially evaluate as much factual data as is readily available to determine whether there appears to be any basis for conducting an investigation.
- 6.1.2 Before initiating an investigation, KCAA inspectors consider the circumstances and the nature of the violation, and develop an investigative plan of action.
- 6.1.3 KCAA inspectors coordinate the plan with supervisors, supporting offices, and legal counsel, if necessary, and reevaluate the plan and revise as necessary as the investigation progresses.
- 6.1.4 It is the responsibility of the inspector to conduct appropriate investigations of all alleged violations which may be discovered from an inspection or be reported by other source. The following questions must be addressed:
- a) What section of the pertinent regulation is involved in this allegation?
 - b) What evidence is needed? What records and at what stage of the investigation are such records checked and which ones are needed to establish the violation? Are the records furnished voluntarily or is a subpoena necessary?
 - c) Where is the evidence and, what are the problems that may be encountered in obtaining it?
 - d) Who needs to be interviewed and what written statements need to be obtained?
 - e) Is there a need for immediate legal enforcement action, such as emergency suspension, in situations where delay for routine handling may jeopardize public safety?
 - f) Is the Inspector continually re-evaluating his/her activities to assure that the investigation will establish WHO, WHAT, WHERE, WHEN, WHY, AND HOW? It is imperative that the inspector carefully consider the circumstances of the allegation and the nature of the violation, and develop an appropriate investigative plan.
- 6.1.5 Safety Inspector's responsibility for investigation or enforcement shall be fair, objective, and courteous and shall carry out these responsibilities in a professional manner.
- 6.1.6 While investigation is underway the Inspector shall require the operator to establish procedures in order to immediately overcome deficiencies identified, even if such actions are temporary until such time as permanent actions can be put in place.

6.1.7 The report shall be submitted to the Director of Safety who shall forward to the Legal department to determine the type of enforcement to be instituted.

6.2 Letter of Investigation.

6.2.1 If evidence exists that a violation may exist, the Inspector shall notify the alleged violator in writing that an Authority's investigation is being conducted, and be provided an opportunity to present any pertinent information on the matter. A record of such notification shall be included in the file.

6.2.2 In preparing the Letter of Investigation (A sample is attached), the Inspector shall observe the following guidelines:

(a) Facts and circumstances which necessitate the investigation must be described in sufficient detail to identify the alleged violation. However, the letter is not intended to be a statement of charges. Specific sections of the Regulations should not be cited unless specific regulatory references are needed to identify the incident accurately. If facts and circumstances are adequately presented, the Letter of Investigation need only state that those facts and circumstances, if correct, indicate that there may have been a violation of the Regulations.

(b) An appropriate time limit for reply, not to exceed 10 days, must be specified.

(c) The letter may also request that specific documents be retained or made available.

6.3 Closing the Investigation

If, subsequent to issuance of a Letter of Investigation, it is determined that no violation occurred, the Inspector shall notify the alleged violator, with copies to all recipients of the Letter of Investigation, that the matter has been closed.

6.4 Responses to Violations

6.4.1 KCAA enforcement personnel must investigate and appropriately address every apparent or alleged violation.

6.4.2 The KCAA has a wide range of options available for addressing apparent violations, such as oral or written counseling; administrative action, including remedial training; legal enforcement action; and referral for criminal prosecution.

6.4.3 KCAA investigative personnel shall issue an administrative action in the form of either a warning notice or a letter of correction for an apparent violation. KCAA Legal Department may upon review of the EIR recommend:

- i) amendment, suspension, modification, or revocation of certificates
- ii) civil penalties primarily;
- iii) seizure of aircraft; and
- iv) issuance of judicially enforceable orders.

6.4.4 KCAA enforcement personnel may also refer apparent violations to other CAAs for appropriate handling, and in cases where there is possible criminal conduct for criminal investigation.

6.4.5 KCAA enforcement personnel take compliance and enforcement action to prevent future actions that would violate the regulations, for remedial purposes and to deter future violations by the subject of the enforcement action and those similarly situated.

7.0 SELECTION OF ENFORCEMENT ACTION

7.1 KCAA inspectors recommend initially the appropriate type of response to address an apparent violation. Often, they are in the best position to evaluate various subjective considerations, such as the apparent violator's compliance attitude and whether an alternative to legal enforcement action may be sufficient to achieve compliance. The inspectors shall prepare an Enforcement Investigative Report (EIR) and forward it to the Director responsible for safety for reviews and to determine consistency with KCAA compliance and enforcement procedure.

7.2 In this review, the Director responsible for safety considers the recommendations of KCAA inspectors, if they properly justify and explain their recommendations and forward the report to the Legal Department.

7.3 KCAA legal Department considers the recommendations of the Director responsible for safety. The Director responsible for Safety/Legal Department shall take in account the prevailing circumstance before determining which enforcement action to be taken following the identification of findings in the report.

7.4 After perusal by the Legal Department and determining that legal enforcement action is necessary the report shall be forwarded back to the Director responsible for safety for implementation.

7.5 Action must be as uniform as possible, but of paramount importance is the requirement that the sanction selected in each case be sufficient to serve as a deterrent.

7.6 In cases which meet the applicable criteria, and in which a strong deterrent is not necessary or appropriate, the Director responsible for Safety/Legal Department will use administrative action in the form of a letter of warning or letter of correction incorporating specific corrective action is encouraged.

7.7 In circumstances which strong deterrent is required, action should include legal enforcement in the form of an imposition of a civil penalty, or suspension or revocation of the certificate.

7.8 To ensure that there is consistency in the imposition of civil penalty, there is a table in each set of Regulations stipulating what fine should be imposed to what offence.

7.9 **Administrative Action.**

7.9.1 It is the responsibility of the KCAA inspectors to determine whether administrative action is appropriate.

7.9.2 The Inspector shall institute administrative action in lieu of legal action only when all of the following elements are present:

- i. No significant unsafe condition existed.
- ii. Lack of competency or qualification was not involved.
- iii. The violation was not deliberate.
- iv. The alleged violator has a constructive attitude toward complying with the regulations and has not been involved in previous similar violations.

The Authority shall ensure that the operator establish procedures to overcome deficiencies previously identified or displayed, an attitude that does not reflect proper interest in achieving compliance, administrative action is not appropriate.

7.9.3 Two types of administrative action are authorized:

- a) Warning letter: The Warning letter is addressed to the alleged violator and:
 - i. States the facts and circumstances of the incident involved,
 - ii. Advises that on the basis of available information, such operations or practices are contrary to the regulations,
 - iii. States that the matter has been corrected and/or does not warrant legal enforcement action, and
 - iv. Advises that future compliance with the regulations will be expected.
- b) Letter of correction: The Letter of correction serves the same purposes as the warning letter, but is intended for use when there is agreement with the certificate holder that corrective action acceptable to the Authority will be taken within a reasonable time.

Samples of Warning letter and Letter of correction are attached.

7.9.4 Legal Action

7.9.4.1 The determination of the type of legal enforcement action and sanction to be taken in addressing a violation is the responsibility of the Legal Department.

7.9.4.2 Formal legal action is intended to --

- a) prevent future actions which would violate the regulations;
- b) impose punitive sanctions, after the act, to deter violations.

7.9.4.3 In determining the appropriate type and measure of sanction to be applied, the Enforcer shall take into account the following factors:

- a) the nature of the violation and whether deliberate or inadvertent
- b) the potential or actual hazard to the safety of others created by the violation
- c) the operator's level of experience and responsibility
- d) the violator's history of previous violations
- e) the violator's attitude regarding the violation, including whether the violator voluntarily disclosed the violation, and actions taken to correct it
- f) The impact of a proposed sanction on the violator and its value as a deterrent to others similarly situated.

7.9.4.4 The two types of legal enforcement action are:

Civil Penalty Action. After determining that a civil penalty is the appropriate type of enforcement action, the legal officers shall prepare a brief report, and coordinate with the Inspector. The violators will then be notified of the same.

Certificate Action. The types of certificate action that can be considered are as follows:

- a) Certificate suspension
- b) Certificate revocation

7.10 No action to suspend, revoke or terminate a suspension of a certificate, or to initiate legal action, shall be taken without the prior approval of the Director General.

Appendix A. Sample Documents

Letter of Investigation.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Date]
EIR Number

ABC Airlines, Incorporated
P.O Box
Dar es Salaam

Attention: Mr. John F. Johnson
Vice President, Engineering and Maintenance

Dear Mr. Johnson:

During a recent spot check of ABC Airlines, Inc.'s maintenance facilities, the CAA discovered irregularities concerning ABC Airlines, Inc.'s maintenance procedures and records. Specifically, the CAA found that ABC Airlines' B-727 aircraft, N-89760, was operated beyond a Number 2 check (165-hour periodic inspection) by zero hours and 41 minutes. The CAA also discovered that ABC Airlines' L-1049H aircraft, N-59231, exceeded a Number 2 check by 11 hours and 3 minutes.

This is to inform you that the CAA is investigating this matter. We wish to offer you an opportunity to discuss the incident in person or submit a written statement within days following receipt of this letter. Your statement should contain all pertinent facts and any mitigating circumstances you believe may have a bearing on the incident. If we do not hear from you within the specified time, we will process this matter without the benefit of your statement.

[Insert the following paragraph if information is needed to determine whether an alleged violator that is a business is a “small business concern:”]

As part of our investigation, we must determine whether [Name of Alleged Violator] is a small business concern under applicable law. To assist us in making this determination, please advise us of **[insert the appropriate language based on the guidance “the number of employees at” or “the annual receipts of”]** [Name of Alleged Violator].

Sincerely,
[Name]

Aviation Safety Inspector

Sample Warning Notice.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[Date] EIR Number

Mr. Fred Smith
P.O Box
Dar es Salaam

Dear Mr. Smith:

On May 26, 2004, you were the pilot in command of a that landed at the Airport. At the time of your flight, it appears that you did not have in your personal possession a pilot certificate or photo identification in your possession or readily accessible to you in the aircraft. This conduct is allegedly in violation of Regulation.....

After a discussion with you concerning this matter, we have concluded that the matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter which will be made a matter of record for a period of two years, after which, the record of this matter will be expunged.

If you wish to add any information in explanation or mitigation, please write me at the above address. We expect your future compliance with the regulations.

Sincerely,

Aviation Safety Inspector

Sample Letter of Correction.

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

[Date]

ABC Repair Station Company
P.O Box
Dar es Salaam
Attention: Mr. J. A. Jones, President

Dear Mr. Jones:

From June 14-18, 2004, the CAA inspected your repair station's organization, systems, facilities, and procedures for compliance with Regulation
At the end of that inspection, we advised you of the following findings:

[State Findings].

This is to confirm our discussion with you on June 18, 2004, at which time immediate corrective action was begun.

[State corrective action taken].

We have considered all available facts and concluded that this matter does not warrant legal enforcement action. In lieu of such action, we are issuing this letter of correction which will be made a matter of record.

Sincerely,

Aviation Safety Inspector