



COMPLIANCE AND ENFORCEMENT HAND BOOK

OCTOBER 2009

NCAA COMPLIANCE AND ENFORCEMENT HAND BOOK

This Compliance and Enforcement Hand Book contains policies, procedures, and guidelines for the Nigerian Civil Aviation Authority's compliance and enforcement programme. The Hand Book articulates the NCAA's philosophy for using various remedies, including education, corrective action, informal action, remedial training, administrative action and legal enforcement action, to address noncompliance with statutory and regulatory requirements regulated and enforced by the NCAA. It provides for the aviation industry and general public a written statement of the Director General's guidance for imposing sanctions for violations of such requirements.

The Hand Book is used at all levels by the NCAA personnel who are engaged in investigation, reporting, and processing of enforcement actions. It applies to all Directorates with enforcement responsibilities.

The Hand Book is presented in nine (9) chapters. Chapter 1 provides introductory information on the material and issues like applicability, distribution, amendments, definitions and abbreviations. Chapter 2 details the NCAA's compliance and enforcement mission, objectives and methodology, while chapter 3 explains the enforcement responsibilities of NCAA offices. Chapter 4 covers the spectrum of the investigation process while chapter 5 is entitled compliance and enforcement actions and responsibilities of the NCAA offices. Legal Enforcement Actions and the Legal Counsel Responsibilities are considered in chapter 6 while the Sanction Guidance Policies are highlighted in chapter 7. Enforcement Investigative Report (EIR) and Enforcement Information Database System (EIS) requirements are contained in chapters 8 and 9 respectively.

This Hand Book is issued pursuant to the provisions of Section 30(5) of the Civil Aviation Act 2006, which empowers the NCAA to develop and issue rules. This is the first issue of the Hand Book.

With the application of the policies and procedures contained in this Hand Book a measure of certainty, predictability, transparency, fairness and accountability would be achieved in the NCAA's compliance and enforcement programme.

Done in Lagos this12th.....Day ofOctober.....2009

DR. Harold Olusegun Demuren
Director General

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CHAPTER 1.

INTRODUCTION

1. Purpose of this Compliance and Enforcement Hand Book.
This Hand Book describes the authority, responsibilities, policies, guidelines, procedures, objectives, and legal aspects of the Nigerian Civil Aviation Authority's (NCAA) compliance and enforcement activities. The policies and procedures described in this Handbook explain how the NCAA generally intends to exercise its authority in carrying out statutory and regulatory enforcement and compliance responsibilities.
2. **Applicability:**
 - a. This Hand Book is applicable to all activities regulated or enforced by the NCAA.
 - b. This Hand Book applies to the compliance and enforcement activities of all NCAA personnel that have regulatory responsibilities. These include personnel in the Directorate of Airworthiness Standards (DAWS), Directorate of Operation and Training (DOT), Directorate of Licensing (DOL), Directorate of Aerodrome Standards (DAAS), Directorate of Air Transport Regulations (DATR), Legal Department and Aeromedical Department.
 - c. This Hand Book is intended only for NCAA enforcement personnel in the exercise of their authority in handling compliance and enforcement matters. It is not exhaustive, and there will be situations where departure is necessary, and NCAA enforcement personnel are expected to use their discretion and best judgment in carrying out their compliance and enforcement responsibilities.
 - d. This Hand Book does not create any right or benefit, substantive or procedural, enforceable at law by any party against the NCAA, its officers, or its employees.
3. Distribution. The Hand Book shall be distributed within NCAA, to all Directors, and Enforcement Personnel. A copy may be made available to the public upon written request to the DG. It could also be posted on NCAA website www.ncaa.gov.ng.
4. Changes and Authority to Approve Changes to this Hand Book.

The DG NCAA shall have the overall responsibility for the issuance, revision, control and distribution of the Hand Book. The DG may from time to time delegate the responsibility to revise and make changes to this Hand Book to the Company Secretary/Legal Adviser. Any NCAA personnel may forward proposed changes to the DG or Company Secretary/ Legal Adviser.
5. Forms. NCAA uses the forms contained in the appendix to this Hand Book in carrying out compliance and enforcement activities.
6. Hand Book Directives. The NCAA may issue short term or urgent Hand Book directives of a fixed duration or special emphases programmes.

7. Definitions.

For the purpose of this Hand Book, the following definitions and abbreviations shall apply:

Administrative Action: - Action taken against a violator including oral or written counseling, informal action, remedial training, warning notices and letters of correction.

Authority: Means Nigerian Civil Aviation Authority (NCAA)

Civil Aviation Law: - The Civil Aviation Act 2006, the Nigerian Civil Aviation Regulations, (Nig. CARS) and Orders, Directives and Circulars made pursuant thereto.

Compliance: - Conformity with the provisions of the Civil Aviation Act 2006, the Nigeria Civil Aviation Regulations (Nig. CARs), Orders and Directives made pursuant thereto.

Compliance & Enforcement Action: - The step that shall be taken by NCAA enforcement personnel from the moment a possible violation of the Civil Aviation Law has been detected until the case is concluded.

Enforcement Personnel: - Includes Aviation Safety Inspector, Legal Counsel, or any other person authorized by the Director General to carry out enforcement responsibility of the NCAA.

Flight Safety Group – Means Directorate of Airworthiness Standards, Directorate of Licensing, Directorate of Operations and Training, Legal Department and Aeromedical Department.

Investigative Personnel - Any Enforcement Personnel in charge of investigating a violation.

Legal Counsel: - The Company Secretary/Legal Adviser and other legal officers employed in the legal department of the Nigerian Civil Aviation Authority.

Legal Enforcement Action – Action taken against a violator including certificate actions, civil penalties, imprisonment and criminal referrals.

NCAA Investigative Personnel - means Inspectors, and any NCAA Personnel who conduct regulatory enforcement investigations.

Negligence: - Conduct falling below the standard required for the protection of others against unreasonable risks of harm.

Recklessness: - means a gross disregard for safety standards or norms for reasonably prudent conduct, considering the certification level of the individual and the type of operation involved.

Person - Any individual, firm, partnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative of these entities.

Violation: - The breach of any provisions of the Civil Aviation Law. The terms violation and contravention are used interchangeably.

ABBREVIATIONS AND ACRONYMS: -

ASI	-	Aviation Safety Inspector
CAA 2006	-	Civil Aviation Act 2006
CSLA	-	Company Secretary/Legal Adviser
DG	-	Director General
EDT	-	Enforcement Decision Tool
EIS	-	Enforcement Information Database System
HAGF	-	Honourable Attorney General of the Federation
IP	-	Investigative Personnel
IOP	-	Items of Proof
EIR	-	Enforcement Investigative Report
LOI	-	Letter of Investigation
MOR	-	Mandatory Occurrence Report
NAMA	-	Nigerian Airspace Management Agency
NCAA	-	Nigerian Civil Aviation Authority
NIG. CARs	-	Nigerian Civil Aviation Regulations

CHAPTER 2.

COMPLIANCE AND ENFORCEMENT AUTHORITY, MISSION, OBJECTIVES AND METHODOLOGY

1. NCAA's Authority and Mission.

- a. Under Section 30(2)(h) CAA 2006, NCAA has the overall responsibility for securing the safety, efficiency and regularity of air navigation in Nigeria. Section. 30(5) CAA 2006 provides for the NCAA to develop, make, issue and revise regulations, rules, orders, terms and conditions in respect to matters relating, incidental or supplementary thereto for the safety of air navigation and public interest. To achieve this, the NCAA establishes regulatory standards and requirements, under the Nigerian Civil Aviation Regulations 2006 as revised by Nigeria Civil Aviation Regulations 2009.
- b. The DG NCAA has powers under the CAA 2006 and Nig. CARs to exercise broad range of enforcement actions he considers necessary to ensure compliance with statutory and regulatory requirements by the industry. Under Section 27 CAA 2006, the NCAA has powers to carry out investigation into complaints and occurrences and to conduct hearing and if satisfied after hearing that any person is violating any provisions of the CAA 2006, Regulations, Rules or Orders to require the person to take such action which in the opinion of the NCAA that is necessary to prevent violations of the CAA 2006, Regulations, Rules, Orders, including to ground any aircraft and seal the premises of any air transport service provider or provider of allied aviation services, in order to secure compliance with the provisions of the CAA 2006, Regulations, Rules and Orders, Term, Condition and Authorization. Section 30(10) CAA 2006 allows the NCAA to provide for the imposition of penalties, for various offences against the regulations including but not limited to suspension and revocation of certificates, licenses, authorization and fines of various categories from N50,000 up to N10,000,000 depending on the type of offence, various terms of imprisonment from one month up to 5 years depending on the offence (Sections 36, (4), 42(3), 43(4) and 54 – 60 CAA 2006). Section 63 (2) CAA 2006 provides for the NCAA to initiate and undertake prosecution in its name of any person in respect of any offence committed under the CAA 2006 or regulations with the consent of the Attorney General of the Federation. Part 18 Nig. CARs 2006 as amended by Part 1.3 Nig. CARs 2009 contain detailed table of sanctions and procedures which NCAA may apply against non-compliance which include to review any reported violation, conduct investigations and hearings, issue subpoenas, take evidence and dispositions and require the production of any records, documents and property.

2. Objectives of NCAA's Compliance and Enforcement Activities.

- a. The primary responsibility for the safety of civil aviation operations rest with air carrier/ operator and service providers responsible for rendering such services. The NCAA's compliance and enforcement activities are designed to promote compliance with statutory and regulatory requirements. The NCAA exercises a wide range of options in addressing noncompliance by the industry.
- b. When violations occur, whether they involve operating an airport; performing aircraft maintenance; operating aircraft; or shipping dangerous goods, NCAA enforcement personnel must take that action most appropriate to promote safety and compliance with the CAA 2006 and Nig. CARs. The initial priority of NCAA enforcement personnel is to correct any ongoing noncompliance.
- c. NCAA enforcement personnel take compliance and enforcement action to prevent future actions that would violate the CAA 2006 and Nig. CARs (for example, immediate corrective action after counseling or a letter of correction). They also take enforcement actions for remedial purposes (for example, administrative remedial training, and comprehensive fixes under the mandatory occurrence reporting programme. They also take legal enforcement actions including civil penalties, suspension and revocation of certificate or license for a fixed or indefinite period, injunction and referral for criminal prosecutions.

3. Compliance and Enforcement Methodology.

- a. Voluntary Compliance. Civil aviation safety depends on voluntary adherence to legal requirements. Elements of the NCAA's compliance and enforcement programme seek to promote safety and greater compliance by encouraging regulated persons to voluntarily disclose their own violations and the circumstances surrounding those violations. Based on information provided through such disclosures, the Authority's compliance and enforcement action fosters the implementation of corrective measures to improve overall safety.
- b. Counselling. NCAA enforcement personnel take advantage of opportunities during their routine surveillance and inspection activities to enlighten a regulated person's understanding of the statutory and regulatory requirements. The NCAA also promotes education through public awareness programmes and other special aviation educational efforts.
- c. Education. The NCAA conducts activities including seminars, workshops to create awareness and promote understanding of the governing civil aviation laws and regulations. NCAA enforcement personnel then determine what action to take by evaluating, among other things, the seriousness and safety risk imposed by the noncompliance.
- d. Surveillance and Detection. An important element of an effective compliance and enforcement programme is the prompt discovery of noncompliance. Although the NCAA has programmes to encourage self-disclosure, surveillance remains the primary method of detecting violations. Consistent with its statutory mandate, the NCAA maintains a high level of surveillance of air carrier operations and air navigation facilities.

- e. **Notifying Persons of Potential Violations.** In any situation where NCAA enforcement personnel identify a potential violation, they take appropriate steps immediately to notify any person who has the responsibility to take appropriate action to correct the violations. In such situation, NCAA enforcement personnel may counsel the person and ensure that the person takes immediate action to correct violation and prevent further non-compliance or ground the aircraft when aircraft are not in condition for safe operation. Any NCAA personnel who receives information about air carrier or crew member's operation of an aircraft, airport operator, air navigational service provider and provider of aviation and allied services in violation of the CAA 2006 and Regulations must immediately contact and pass on that information to an NCAA enforcement personnel. The ASI must quickly notify the Management of all relevant information about the matter so the air carrier can take appropriate action to correct the violation. The ASI may request the air carrier to help the NCAA in its investigation, and if appropriate, to take action to prevent further violation.

- f. **Investigation and Reporting.** Under Nig. CARs Part 1,3.1.2, NCAA investigative personnel must conduct investigations promptly. They must gather, and accurately and completely report all facts, and conduct their investigations in an unbiased and focused manner. A violation report without all the facts only leads to delays that compromise the objectives of fair and responsive enforcement. An incomplete or inaccurate enforcement investigative report can mislead reviewing officials and NCAA legal counsel and result in wrong or inappropriate actions being taken.

- g. **NCAA Responses to Violations and Purposes for Compliance and Enforcement Actions.** NCAA enforcement personnel must investigate and appropriately address every apparent or alleged violation. The NCAA has a wide range of options available for addressing apparent violations, such as counselling including administrative action, remedial training; legal enforcement action including civil penalties, certificate actions and referral for criminal prosecution. Under Part 18 (1) NCARs 2006 as amended by Part 1. Nig.CARs 2009, NCAA investigative personnel issue an

administrative action in the form of either a warning notice or a letter of correction, remedial training, counselling for an apparent violation. NCAA legal counsel amends, suspends, modifies, or revokes certificates under section 35 CAA 2006 and Part. 1:3:3: Nig. CARs and seeks civil penalties primarily under Section 25 CAA 2006, detain aircraft under Section 53 CAA; and issues judicially enforceable orders. NCAA enforcement personnel also refer apparent violations to Ministry of Defence for appropriate handling and in cases where there is possible criminal conduct, to the Inspector General of Police for criminal investigation. Generally, under Section 27 CAA, 2006 NCAA enforcement personnel take actions believed necessary to carry out NCAA's statutory safety duties and responsibilities.

- h. **Fairness.** Chapter IV of the Constitution of the Federal Republic of Nigeria/ guarantees fundamental human right including, right to fair hearing and presumption of innocence. To be effective, the NCAA compliance and

enforcement activities must be fair and reasonable and should be perceived as fair by those subject to regulations. Under Part 1,3.3.3(3c) Nig. CARs, unless safety in air transport requires immediate action, NCAA shall provide a person to be affected, with an opportunity to be heard as to why certificate or licence should be amended, modified, varied, cancelled, withdrawn, denied, refused, suspended or revoked. This does not and should not imply an unwillingness to apply the full force of statutory sanctions where warranted. It does encompass the right of an apparent violator to be given objective, even handed consideration of all circumstances surrounding the allegations before final action is taken. 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 Authority's position in a timely manner.

- i. **Timeliness.** The NCAA's discovery of, and response to violations should be timely. Delays in investigation or processing of enforcement investigative reports can adversely affect the effectiveness of the Authority's compliance and enforcement programme in several ways. Delays may let an unsafe condition continue if prompt corrective action is not taken. Delays also may de-emphasize the seriousness of a given violation and lessen effect of any enforcement action taken. The quality of enforcement action, and effective linking of the enforcement sanction to objective change in compliance behaviour, can be best realized if the NCAA investigates diligently and promptly administers the appropriate sanction within a reasonable time period. If the allegations of violation are not sustained, any unwarranted delay in processing the case may impose an unjustified hardship. The time needed for investigation and processing will vary depending on the complexity of each case. Certain cases, because of their effect on safety, including the need for emergency action, will sometimes demand immediate involvement of the entire investigative and legal team to effect timely enforcement action, sometimes in only a matter of hours or a few days.
- j. **Recommendations of Aviation Safety Inspectors.** NCAA investigative personnel 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. If NCAA investigative personnel prepare an enforcement investigative report (EIR), legal counsel reviews it to determine consistency with NCAA's compliance and enforcement authority and mission. In this review, legal counsel considers the recommendation of NCAA investigative personnel, if they properly justify and explain their recommendations. NCAA legal counsel who reviews the EIR considers the recommendations of the investigative personnel.
- k. **NCAA Legal Enforcement Actions; Sanction Guidance Policy.** After determining that legal enforcement action is necessary, NCAA enforcement personnel consult the sanction guidance in Part 1:3:3 Nig. CARs and table of sanctions in Implementation Standard (IS) 1.3.3 to determine the appropriate sanction. NCAA enforcement personnel must fully explain and justify in the EIR deviations from the sanction guidance policy.

4. Responsibility for Determining Legal Enforcement Action.

a. Responsibilities of NCAA Investigative Personnel.

- i. All NCAA investigative personnel shall include a written analysis supporting the type of legal enforcement action, the sanction range and specific amount of sanction. In the written analysis, NCAA investigative personnel must explain the reasons why they recommend a type of legal enforcement action and for each violation address the factors described in Part 1.3.3 Nig. CARs that are relevant to that alleged violation. NCAA investigative personnel must explain how each of the relevant factors applies to each alleged violation and why it may warrant mitigation or aggravation of the sanction amount for the case.
- ii. To determine the type of legal enforcement action, NCAA investigative personnel first consult the sanction guidance table in (Part 1.3.3 Nig. CARs). The table provides the type of legal enforcement action that usually is taken for an alleged violation. If a particular violation is not listed in the table, NCAA investigative personnel refer to an analogous or similar violation for guidance.

b. Responsibilities of Regional and Headquarters Enforcement Personnel.

- i. Regional or NCAA headquarters enforcement personnel apply the sanction table in IS. 1.3.3 Nig. CARs in determining the specific amount of sanction for the case. Whenever necessary, Regional investigative personnel and Headquarters investigative personnel may collaborate with legal counsel in determining specific amount of sanction for cases before forwarding the EIR to legal counsel for processing. Regional and NCAA headquarters investigative personnel document in the EIR, their recommended specific sanction amount or the amount determined collaboratively with legal counsel and the reasons for that amount, in section B of the EIR
- ii. If the EIR does not contain a sufficient sanction analysis, legal counsel may then return the EIR to NCAA investigative personnel for further sanction analysis. The Investigative personnel returns the EIR to legal counsel with the further sanction analysis. Legal counsel then proceeds to process the EIR if the sanction analysis is found sufficient.

c. Responsibilities of Legal Counsel.

If legal counsel and the investigative personnel do not collaborate on determining a specific sanction amount before receipt of that case by the legal office, then legal counsel reviews the sanction recommendation of regional or headquarters' investigative personnel. If legal counsel believes the sanction sought should differ from the regional or NCAA headquarters recommendation, then legal counsel discusses the proposed change to the sanction type or amount with appropriate investigative personnel, if practicable. If legal counsel seeks a sanction type or amount different from the recommendation of regional or NCAA headquarters investigative personnel, then legal counsel documents in the EIR the reasons why legal counsel sought that sanction.

5. Voluntary Disclosure and Non-Punitive Reporting System.

- a. Regulated persons who have the ultimate responsibility for compliance is in a better position to monitor their own performance with regulatory requirements. The threat to regulated persons of incurring legal enforcement actions is a traditional and often effective incentive to promote compliance.
- b. Punitive actions have deterrent effect, they do not necessarily improve a person's ability to assure future compliance. Therefore NCAA encourages voluntary disclosure and non punitive reporting by regulated persons to disclose their own violations, other safety discrepancies and general safety information to NCAA, and to take corrective action to prevent future safety problems. In this way, voluntary disclosure and non punitive reporting by regulated persons serve an important role in achieving compliance and improving aviation safety.

6. Enforcement Priorities.

- a. General. Enforcement case priorities focus NCAA enforcement efforts on those violations that have the greatest safety impact. The NCAA's highest priorities among enforcement cases are emergency actions, and generally those that involve certificate holder qualifications. Following those cases, the Authority's priority enforcement actions are those types of cases identified by investigative personnel as warranting aggressive and swift prosecution.

b. Legal Enforcement Case Reviews.

- i The CSLA and other legal counsels meet at least quarterly to review the status of cases referred for legal enforcement action. This review is a joint legal counsel and investigative personnel assessment of caseload management, with an emphasis on the timeliness and effectiveness of case selection, investigation, initiation, and processing. In addition, the review includes an analysis of: trends; inconsistent case handling; lack of uniform sanctions; repeat violations; and any other significant evaluative factors. At this review, legal counsel and investigative personnel consider the need to reprioritize and process cases warranting the greatest urgency.
- ii If an assessment shows that the investigative personnel are submitting more cases for legal handling than legal counsel can reasonably be expected to initiate and process, without a backlog, legal counsel and investigative personnel re-evaluate the cases that are backlogged and determine if any alternative enforcement action would be appropriate and warranted.
- iii The reconsideration or reassessment of a given sanction is not to be considered a weakening or lack of enforcement resolve. On the contrary, enforcement resolve is most evident when NCAA enforcement personnel take corrective actions in a timely manner. There is a wide range of effective tools available to NCAA legal counsel and investigative personnel, and they consider all of them in light of the circumstances of each individual case. Legal counsel and investigative personnel select the tool that most effectively

and timely serves to correct the noncompliance and prevent future violations.

- iv When EIRs are returned to investigative personnel, the investigative personnel carefully re-evaluate and quickly respond to each returned legal enforcement case in light of the explanation provided by the legal counsel. Investigative personnel consider the nature of the violation and other relevant mitigating and aggravating factors and elements, and whether safety and the public interest continue to require that legal enforcement action be taken. If the investigating personnel determines that the recommended legal enforcement action should be taken, then it coordinates this decision with the legal counsel.

7. Formal Complaints.

- a. Investigative and Enforcement Procedures. Under Section 27 CAA 2006 and Part 1.3.1.2 Nig.CARs, the DG NCAA, on his or her initiative, may investigate, if the DG NCAA determines that reasonable grounds exist regarding a person's violation. If the DG NCAA determines the complaint does not state facts that warrant an investigation or further action, the DG NCAA may dismiss the complaint without a hearing. The DG NCAA, after notice and opportunity for hearing, must issue an order to compel compliance with the Act, Regulations, Rules, Laws, Conditions and Orders.
- b. Procedures. Under Part 1.3.1(a) Nig. CARs any person may file a complaint with the DG NCAA about anything done or not done by any person in contravention of any provision of any Act or regulation or order issued under it about matters within the jurisdiction of the DG NCAA. This section however, does not apply to complaints against the DG NCAA or any employee of the NCAA acting within the scope of his or her employment.
- c. Contents of the Formal Complaint. Under Part 1.3.1.3(a) Nig. CARs Formal complaints submitted to the NCAA must be in a form and manner prescribed by NCAA, complaints shall be addressed to the Office of the Director General, Attention: Company Secretary/Legal Adviser (CSLA). The CSLA or his or her delegate reviews the complaints to determine whether the complaint meets the criteria for considering a formal complaint. Complaints that do not meet the criteria set forth below are not considered as a formal complaint. NCAA treats complaints which do not meet the criteria for formal complaint as reports. Complaints that meet the criteria set forth below are considered formal complaints and a copy is mailed to each person named in the complaint. Each formal complaint must:
 - i Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action.
 - ii Set forth the name and address, if known, of each person who is the subject of the complaint and, for each person, the specific terms of the statute, regulation, or order the person violated.
 - iii Contain a concise statement of the facts relied on to substantiate each allegation.

- iv State the name, address, and telephone number of the person filing the complaint. That person or a duly authorized representative signs the complaint.
- d. Response to the Complaint. Within 14 days after service of the complaint, the person named in the complaint must file an answer.
- i The CS/LA sends a copy of the complaint and answer to the appropriate investigative personnel with a request that the investigative personnel determine whether the complaint states facts that warrant further investigation or other action.
 - ii If the investigative personnel determines that no further action is warranted, the CS/LA after recommendation and approval to DG dismisses the complaint without a hearing and prepares a record of decision that informs the person who filed the complaint and the person named in the complaint of the reasons for the dismissal.
 - iii If the investigative personnel determines that reasonable grounds for investigating the complaint exist, an informal investigation may be initiated by the investigative personnel or an order of investigation may be issued by the DG. The CS/LA or his or her delegate informs each person named in the complaint of the name of the NCAA enforcement personnel who is conducting the investigation.
 - iv If the investigation substantiates the allegations set forth in the complaint, the NCAA may issue a notice of proposed order or may proceed with other enforcement action.
 - v The complaint, other pleadings, and official NCAA records involving the disposition of the complaint are maintained in the Office of the CS/LA in headquarters, Aviation House, MMA, Ikeja - Lagos. Interested persons may examine any investigative material at that office, during business hours, at any time after completion of investigation, except material that is ordered withheld from the public under applicable law or regulation. Interested persons may obtain a copy of the material upon paying for the cost of photocopying.
- e. Violation by Person under Another Nigerian Government Authority. Part 1.3.3.2(b) Nig. CARs provides for the NCAA to immediately report criminal violations of the Act 2006 by person under jurisdiction of another government Authority. The appropriate authority concerned, within 90 days of receipt of the report by NCAA, is required to inform the DG NCAA of the action taken on the report, including any corrective or disciplinary action.
8. Public Disclosure of Enforcement Action Documents. The public has a legitimate interest in the NCAA's enforcement programme and a general right to obtain records of the NCAA's enforcement actions, subject to established privileges and exceptions from required disclosure under Section. 36(2) CAA 2006.

9. Publicizing Enforcement Actions.

a. General.

- i Publicizing enforcement actions serves many interests. The public has a right to know how the NCAA is conducting its responsibilities on the public's behalf. In addition, enforcement information about a regulated person may be useful in making consumer choices. Publicizing enforcement actions also serves the government's strong interest in ensuring, through deterrence, compliance with the CAA 2006. Often the adverse publicity and concomitant public reaction to regulatory violations serve more effectively to deter future violations by an entity than the loss of funds caused by a civil penalty. And while an unpublicized civil penalty or certificate action operates to deter future violations by the entity subjected to the enforcement action, publicizing the action acts as a deterrent for others similar situations. The NCAA does not publicize the identity of individuals against whom it takes enforcement actions.
 - ii Because any publicity of an enforcement action alleging or finding statutory or regulatory violations has the potential to affect significantly the public's confidence in an entity's ability and commitment to comply with safety regulations, the NCAA takes care in ensuring the accuracy and fairness of the publicity it gives such actions. Such care is especially important when the publicity concerns enforcement actions that are not final determinations made by the NCAA or adjudicative bodies. The Authority may reframe from furnishing a statement in pursuant of Section. 36 of the CAA 2006 if it believes it has security implication.
- b. Providing Information to Media Relations Office. Under Section 36(3) CAA 2006, NCAA may publicise in such a manner as it thinks fit , particulars of, and its reasons for any for any decision taken with regards to licenses, permits, certificates or authorization including posting on the website through monthly reports, press release and journals.

CHAPTER 3.

ENFORCEMENT RESPONSIBILITIES OF NCAA OFFICES

1. Statutory Authority.

- a. Section 27(1) and 30 (4) (1) CAA 2006 empowers the DG NCAA to conduct investigation if reasonable ground exist that any person or air carrier, air travel agent, consumer of air transport service, other allied aviation service provider is violating the provisions of the Act, Regulations, rules or orders. Section 30(3)(a) and (4)(1) CAA 2006 authorizes the DG NCAA to inspect aircraft, aircraft manufacturers, maintenance facilities, or organization, training facilities including simulators and other appliance designed for use in air transport in Nigeria.
- b. Under Section 27(3), Section 30(3)(f), Section 35(2) the DG NCAA has powers to ground any aircraft and to seal the premises of any air transport service provider or provider of allied aviation services in order to ensure compliance with the provisions of this Act, Regulations, Rules and Orders, Part 1.3.3.3 Nig. CARs Section 30(3)(f) and Section 35(2)(3)CAA 2006 authorizes the DG NCAA to amend, vary, cancel, suspend, revoke maintenance organization certificate, production certificate, air worthiness approvals, air operator certificate, permit or other authorization for violation of the Act or Regulations, Rules and Order or as it considers appropriate to do so for safety of air navigation and public interest. Section 30 CAA 2006(10) and Nig. CARs 1.3.3.1(a) and (b) provides for the imposition of civil penalties for violations against the Act, Regulations, rules and orders against persons conducting commercial and non-commercial air transportation.
- c. Under Section 27 CAA 2006 and Nig. CARs 1.3.1.2, the DG NCAA is empowered to conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records and property and take evidence and deposition. Section 19 CAA 2006 requires the DG NCAA or any authorized officer of NCAA to request any person who undertakes the business of air transport including carriage of passengers or goods in an aircraft for reward to furnish any information in the form and manner as may be prescribed by NCAA.
- d. Authority for Dangerous Goods Investigation and Proceedings. Under Section 62 CAA 2006, the DG NCAA has the authority to monitor and enforce compliance with the provisions of Annex 18 to the Chicago Convention for the safe transportation of dangerous goods by air. Under Part 9.5 Nig. CARs 2009 and Part 15 Nig. CARs 2006, no person may transport dangerous goods unless done so in accordance with the conditions and manner prescribed by NCAA in the Act and Regulations. The NCAA is further authorised to designate dangerous goods Inspectors who may either inspect and search any aerodrome or hanger premises, aircraft, baggage, freight container or load device, consignment and request any person to produce or furnish all document for inspection in order to ensure compliance with the provisions of the Act and Regulations.

2. Delegations of Authority. Under Section 30(7) CAA 2006 the DG NCAA may

exercise the authority to investigate and take enforcement action directly or through designated directorate or enforcement personnel responsible for compliance and enforcement.

3. Coordination and Delegation within NCAA.

- a. Cooperation and Communication within NCAA. All NCAA offices and personnel, including those that do not have primary responsibility in the compliance and enforcement activities, assist in executing the activities. To assure the highest possible degree of coordination and consistency in carrying out compliance and enforcement activities, NCAA offices that investigate or prosecute enforcement cases maintain communication with other NCAA offices whose responsibilities are or may be affected by such cases.
- b. Early NCAA Coordination in Emergency Actions. When an investigative personnel becomes aware of a case that might be appropriate for emergency action, that personnel immediately notifies the appropriate Director or regional Manager who, in turn, immediately notifies the legal counsel. With the earliest possible notification, these personnel can work together to expedite processing of the case.
- c. Participation by NCAA Legal Counsel – Experience with complex or controversial cases has demonstrated the importance of legal counsel's participation at the investigative stage. Rather than awaiting completion of the EIR, NCAA legal counsel takes the initiative early to advise investigative personnel in evidentiary matters and about pursuing only legally provable violations. Early involvement of legal counsel may reduce or eliminate the need to supplement an investigation after the investigative personnel has forwarded the EIR to legal counsel, and legal counsel has reviewed it.
- d. Coordination of an Investigation. The Flight Standards Group and Directorate of Aerodrome and Airspace Standards, have primary responsibility for investigations of alleged violations within the jurisdiction of the NCAA. When one of these offices encounters a possible statutory or regulatory violation within the jurisdiction of another office, it must coordinate with that office. In those cases, all responsible NCAA offices pursue the investigation and enforcement for all possible violations in a coordinated effort. Investigating offices also maintain coordination with other field offices that have an interest in the investigation, especially certificate holding offices. Coordination provides other offices the opportunity to furnish any information that may be relevant to the investigation and may provide the investigating office with access to information that is known or available to the NCAA but might not be included as part of the investigation and in the EIR.

4. Compliance and Enforcement Responsibilities of All NCAA Personnel. Any NCAA personnel who becomes aware of an apparent violation by, or apparent lack of qualification of, any regulated person must report such information to an appropriate NCAA office. NCAA employees must cooperate with any further investigation and provide testimony or other information. All NCAA enforcement personnel are responsible for identifying problems involving regulations or enforcement procedures that need correction.

5. Coordination with Other Agencies outside the NCAA.

- a. Some matters within the investigatory jurisdiction of the NCAA may also involve violations of statutes or regulations that are within the investigatory jurisdiction of another government Authority. In such a case, NCAA investigative personnel:
 - i. Immediately reports the matter to the Legal Counsel. The CS/LA with the approval of the DG, reports the matter to the appropriate government Authority. When the situation requires immediate action, NCAA investigative personnel may also directly contact the appropriate government Authority.
 - ii. Request the other government Authority to provide any information it has that may be relevant to the NCAA investigation.
 - iii. Handle possible criminal violations in accordance with Section 63 (2) CAA 2006, 1.3.3.2(a) &(b) Nig. CARs, 2009.

6. Liability of NCAA Personnel.

- a. Section 26 CAA 2006 provides the DG and personnel of NCAA with immunity from personal liability against any civil proceeding arising from the lawful discharge of any of the functions or the exercise of any of the powers conferred on NCAA by the Act, Regulations or any other enactment.
- b. If an NCAA personnel is sued in connection with his/her official duties, he/she should immediately contact NCAA Legal counsel.

CHAPTER 4.

INVESTIGATION OF VIOLATIONS

1. Role of NCAA Investigative Personnel.

a. Enforcement Investigations.

- i NCAA investigative personnel's role in an investigation is to gather all material, relevant evidence that either proves or disproves the potential violation that precipitated the investigation. The various types of evidence are discussed in this chapter. After NCAA investigative personnel gather all the evidence, they analyze it using the guidance in this Hand Book decide whether the evidence proves a violation. If the evidence is inadequate to establish a violation, NCAA investigative personnel recommend that the investigation be closed no action. If the evidence is sufficient to support a violation, NCAA investigative personnel recommend, administrative action, legal enforcement action including civil and criminal penalty and certificate actions or other action, as appropriate, in accordance with the CAA 2006 and Part 1.3.2, 1.3.3, 1.3.3.3 and 1.3.3.4 Nig. CARs 2009.
- ii Enforcement investigative report recommending legal enforcement actions are reviewed by appropriate NCAA Director, Legal Counsel and DG before final decision is made. The NCAA Legal Counsel will then initiate legal enforcement action and if initiated, the appropriate violation to allege and proposed sanction.

2. Authority to Conduct Inspections or Investigations on Private Property.

- a. General. Under Section 30(3)(a) CAA 2006, the DG NCAA may inspect at any time a civil aircraft, aircraft manufacturers, maintenance facilities, organizations, training facilities, including simulators, navigational and other appliances designed for use in air transportation or reexamine any airman holding a certificate issued under Part 2 of Nig. CARs. The DG NCAA also has broad authority under Section 27 of the CAA to conduct investigations necessary to carry out his or her duties and powers under the Civil Aviation Act 2006. When investigating a potential violation, NCAA investigative personnel may be required to enter private property to gather information, or, to determine compliance with statutory and regulatory requirements.
- b. Remedies if Access Denied: Under Section 19(2) CAA 2006, the NCAA shall have free and unrestricted access to all business premises, aircraft, structure and other facilities used by any operator for the purpose of air transport or related operations. If access is denied NCAA investigative personnel into any property or facility, NCAA investigative personnel must consult NCAA Legal Counsel for assistance in seeking alternative solutions such as certificate action or court warrant. Force or other self remedies must never be used to access a facility or property.

3. Planning and Coordinating the Investigation.

- a. **Planning the Investigation.** On receiving information indicating a possible violation, NCAA investigative personnel determine whether there is any basis for an investigation. Before initiating an investigation, NCAA investigative personnel consider the circumstances and the nature of the violation, and develop an investigative plan of action. NCAA investigative personnel coordinate the plan with supervisors, supporting offices, and Legal Counsel, if necessary, and re-evaluate the plan and revise as necessary as the investigation progresses. In preparing for an investigation, NCAA investigative personnel consider the following:
 - i What statutory or regulatory requirements are involved in the case? What are the elements of the statutory or regulatory provision violated?
 - ii What evidence is needed to prove those elements? Where is it located? How will it be obtained?
 - iii What records should be inspected? Will they be provided voluntarily? Will an administrative subpoena be needed?
 - iv Which witnesses, including the apparent violator, need to be interviewed? At what stage of the investigation should they be interviewed?
 - v Is there possible criminal activity?
 - vi Is there a need for immediate action? Will routine handling jeopardize public safety?
 - vii Does the evidence gathered establish who did or did not do what, where, when, why, and how?
- b. **EIR Number.** In all investigations, an EIR number (case code number) is assigned for processing the case. It provides a future reference for all matters relating to the case. When an investigative personnel conducts investigations, the Investigative personnel assigns a case code number for the investigation and prepares an EIR.
- c. **Communications with Legal Counsel.** NCAA investigative personnel share information and communicate as needed with legal counsel during an investigation and the processing of enforcement cases. For example, NCAA investigative personnel may need to discuss with legal counsel the sufficiency of evidence in a case or interpretations of regulations. Supervisors of personnel involved in compliance and enforcement should encourage open dialogue and sharing of information and opinions between those personnel and legal counsel. Open and informal communication between investigative personnel and counsel improves the effectiveness of, and promotes consistency in the enforcement action.

- d. Timeliness of Investigation. Unless circumstance of the case provides otherwise, NCAA investigative personnel should endeavour to complete an investigation and associated EIR within 90 days of the date they become aware of the apparent violation and the appropriate Director, legal counsel and DG strive to complete their review of an EIR within 21 days.

4. Principles for Applying Investigative Findings to Regulations Believed Violated.

- a. Enforceable Regulations. An enforceable regulation generally contains either mandatory language, that is, shall or must or prohibitory language, for example, no person may or a person may not. Regulations that contain words such as no person may, except or no person may, unless are enforceable only in instances that are not covered by exceptions. If the situation covered by the exception exists, the requirement or prohibition does not apply.
- b. Elements of Regulations. Regulations consist of multiple elements. To prove a violation of a regulation, there must be evidence to prove each of the individual elements. This makes the ability to identify the individual elements of a regulation a critical investigative skill. Appendix A-15 contains an example of how NCAA enforcement personnel establish a violation by proving each element of a regulation.
- c. Burden and Standard of Proof. – Under Section 135 (1) Evidence Act Cap 14 Laws of the Federation of Nigeria (LFN) 2004, whoever desires any court to render judgement as to any legal right or liability dependent on the existence of facts which he/she asserts must prove that those facts exist. In prosecuting both certificate actions and civil penalty actions, the NCAA has the burden of proof, by a preponderance of the reliable, probative, and substantial evidence, to establish all facts necessary to satisfy each element of a statutory or regulatory violation. The preponderance of evidence standard requires that the NCAA's evidence shows that it is more likely than not the respondent committed the violation. When a respondent asserts an affirmative defense at a hearing, the respondent has the burden of proof and must establish the elements of the defense by a preponderance of the reliable, probative, and substantial evidence.
- d. Relevance and Materiality. – Under Section 10 of Evidence Act, Laws of the Federation of Nigeria (LFN), relevant facts are facts necessary to explain or introduce a fact on issue or relevant factor which support or rebut or make probable or less probable the determination of existence of any fact. The NCAA as a matter of policy, must exclude irrelevant, immaterial or unduly repetitive evidence. Material evidence is evidence that has a natural tendency to influence or is capable of influencing a question at issue in legal dispute.

5. Letter of Investigation and Response

a. General.

- i. A Letter of Investigation (LOI) serves the dual purposes of notifying an apparent violator that he or she is under investigation for a possible violation

and providing an opportunity for the apparent violator to respond to fact. Learning the other side of the story early in the investigation is to everyone's advantage. Inviting input also helps to demonstrate the NCAA is conducting the investigation fairly and impartially. NCAA investigative personnel do not issue an LOI unless evidence shows that a violation may exist. If NCAA investigative personnel issue an LOI, they put a copy of it in the EIR. See sample letter of investigation in the Appendix A - 1.

- ii. An LOI usually identifies the activity being investigated. During the investigation, it is usually premature to cite specific regulations. The critical objective of the LOI is to advise the apparent violator of the subject matter of the investigation sufficiently so the recipient of the letter may respond to the facts giving rise to an investigation of an apparent violation.
 - iii. An LOI also may include a request for inspection of records. An LOI request for such documents includes a specific time limit for response to provide a firm basis for enforcement action if there is noncompliance.
 - iv. NCAA investigative personnel usually send an LOI even if they have previously discussed the activity with the apparent violator, and he or she has offered an explanation. In these instances, an LOI serves to formalize and document the process.
 - v. In emergency cases, an LOI response may be the only opportunity for the NCAA to learn of contradictory information or affirmative defenses the apparent violator may present at trial. Therefore, LOIs generally are sent in emergency cases and are specific and detailed in outlining the issues being investigated.
 - vi. Where NCAA investigative personnel discover additional violations during the investigation after they send the LOI, NCAA investigative personnel use judgment as to whether they should send another LOI. An investigation continues whether or not an LOI is sent. In cases involving companies with complex organizational structures, NCAA investigative personnel exercise care to address the LOI to the responsible official. NCAA investigative personnel may obtain advice on such matters from the legal counsel.
- b. Preparation of the LOI. NCAA investigative personnel use the following guidelines in preparing a letter of investigation:
- i. The LOI is not a statement of charges. It informs the apparent violator of the activities being investigated. The LOI contains enough factual details so that the apparent violator can provide a response that addresses the facts the NCAA believes are relevant. NCAA investigative personnel do not cite specific statutory or regulatory provisions they believe have been violated, unless specific regulatory reference is needed to accurately identify the incident. The LOI only states there may have been a violation.
 - ii. The LOI specifies a time for reply. This time normally is 7 days. Additional time may be necessary in cases involving apparent violators who reside or

have their principal place of business in foreign countries. Although NCAA investigative personnel consider any reply received after the 7 days, the investigation continues even without a reply. If NCAA investigative personnel have forwarded the EIR to the relevant Directorates, they forward the reply with an analysis, including a discussion of how the reply affects the analysis or changes their conclusions. NCAA investigative personnel include the LOI and any response to the LOI in Section C of an EIR as items of proof (IOP).

- iii. The LOI requests that specific relevant documents be retained or made available for inspection and copying.

c. Sending the LOI to the Apparent Violator.

NCAA investigative personnel send the LOI by regular mail, registered mail or courier to establish a record of notice to the party under investigation. If the party is a certificate holder, NCAA investigative personnel send the document to the current address of record. If the regular or registered mail is returned as undeliverable (because it is addressed incorrectly or the party has moved and left no forwarding address), then NCAA investigative personnel correct the address or obtain a new address and resend the LOI to the correct address by regular mail or registered mail.

d. Distribution of LOI.

NCAA investigative personnel send the original letter of investigation to the apparent violator and copies of the LOI to relevant Directorates.

6. On-Site Investigations

- a. General. The object of the investigation is to obtain evidence to establish whether a violation occurred. Evidence includes all the means by which any alleged fact tends to be proved or disproved. It is the means by which NCAA legal counsel proves the facts alleged in a complaint. If NCAA investigative personnel are unsure about the relevance of a piece of evidence, they secure and preserve the evidence and consult legal counsel. NCAA investigative personnel obtain evidence from any place or source where it is legally available. Conducting an investigation at the scene of a violation often will help NCAA investigative personnel in the collection of evidence. It affords NCAA investigative personnel the best opportunity to obtain physical evidence and interview and obtain statements from eye witnesses. NCAA investigative personnel also prepare a written statement of their personal observations as soon as possible, because such observations are in most cases key evidence. NCAA investigative personnel obtain evidence that proves each element of the apparent violation and prepare a report that clearly conveys such facts and circumstances.
- b. Hearsay Evidence. Hearsay evidence is evidence offered by a witness to prove a fact about which the witness has no personal knowledge. For example, an inspector's testimony that a first officer stated the pilot in command appeared intoxicated would be hearsay evidence if offered to prove the pilot was intoxicated. In administrative hearings, such as those before the Appeal Panel, hearsay evidence may be used to prove violations. NCAA investigative personnel report

any information that could be relevant to the case and could possibly be used as evidence, including information that might be hearsay evidence. Hearsay evidence can be helpful to NCAA investigative personnel, because it often leads to persons who have direct knowledge of the incident, or knowledge of important documents. Hearsay evidence may also be helpful to legal counsel in cross-examination of a hostile witness or the alleged violator. Despite the usefulness of hearsay evidence, NCAA investigative personnel should obtain direct evidence if it is available because Appeal Panels generally accord greater weight to it.

c. Types of Evidence. NCAA investigative personnel gather and prepare various types of evidence, including witness statements, photographs, charts, maps, diagrams, records, and physical evidence, to substantiate a violation.

i. Violation history and accident/incident records. NCAA investigative personnel obtain the violation history of the subject of the investigation from documented records available to NCAA and other organization.

ii. Witness interviews. Generally, NCAA investigative personnel interview all witnesses knowledgeable about an apparent violation and report the information gathered during the interview. Multiple witness statements may help in proving a case. NCAA investigative personnel select witnesses based on the likelihood of their knowledge about the incident and their competence to relate the information sought. NCAA investigative personnel find, or learn of, possible witnesses from sources such as:

- ◆ Passenger manifests.
- ◆ Air traffic controllers.
- ◆ Records and personnel of relevant organizations.
- ◆ Local restaurants or bars that may have served the apparent violator.
- ◆ Pilots and other aviation personnel who may have pertinent information.
- ◆ Persons who work or reside in the area of the incident.
- ◆ Health personnel who may have examined the apparent violator. (May be obtained by subpoena).
- ◆ Federal, state, or local law enforcement personnel.

iii. Conducting the Interview. NCAA investigative personnel interview witnesses in person or by telephone. NCAA investigative personnel may use the records of interview form in Appendix A-2 to document information obtained during the interview. NCAA investigative personnel state on the Record of Interview Form the name, address, and telephone number of the person interviewed. If two or more NCAA investigative personnel are present during the interview, each prepares a record of interview for inclusion in the Investigation report. The interviewing techniques of NCAA investigative personnel will vary depending on circumstances. The following general guidelines will facilitate an interview:

- ◆ Plan the interview to assure the interviewer is thoroughly prepared and that the best environment in which to hold the interview is selected.

- ◆ Put the person to be interviewed at ease.
 - ◆ Maintain control of the interview.
 - ◆ Assure from the outset the witness understands that any information provided may be used as evidence in subsequent enforcement actions. No promises of confidentiality may be given without prior consultation with NCAA legal counsel. However, if a witness requests immunity in exchange for information regarding safety, NCAA investigative personnel must immediately inform the Director General for his decision.
 - ◆ Do not discuss with witnesses any possible sanctions and do not raise the issue of immunity. Do not disclose sources of information, except where necessary.
 - ◆ Request a signed and dated statement.
 - ◆ Plan questions that will accomplish the objective. The broad or general question often is effective to open areas of discussion. Specific searching questions are good for getting specific information, clarification, and conclusions.
 - ◆ Be attentive and listen.
 - ◆ Take notes if practicable to do so. This will vary with circumstances, but if notes are not taken at the interview, make notes immediately after the interview and document the time and date the interview took place.
 - ◆ Summarize the interview with the witness to verify the interviewer's understanding and recollection of all relevant points. Give the witness an opportunity to make any additional comments.
 - ◆ Prepare a separate report of the interview, including the interviewer's own factual observations. The Record of Interview Form is a separate IOP in the EIR. The report of interview must not contain personal opinions of the interviewer.
 - ◆ Ask witness to prepare written statement.
 - ◆ When an essential witness refuses to cooperate, contact NCAA Legal counsel for an administrative subpoena or summons.
- iv. Interview of company employees. Often in NCAA investigations, the source of an allegation against a company is an employee or agent of that company. NCAA investigative personnel plan and conduct the investigation to assure these allegations are verified from other sources if possible before company officials are consulted. For example, if a certificate holder's ground engineer reports a violation, NCAA investigative personnel verify the allegation through interviews of the reporting and other ground engineers, personal observations, and inspection of company records before contacting company management to discuss the issue. When interviewing company officials, NCAA investigative personnel exercise care not to reveal the identity of the source.
- v. Content of witness statements. Where possible, NCAA investigative personnel obtain a written statement from each witness. The written statement contains a precise and complete account of those facts pertinent to the violation. It includes what the person said, did, or perceived by his or her senses and the how, when, what, why, and where of that perception. It should also include the witness's complete name, address, telephone number, occupation, and aeronautical experience. Any opinions are designated as such. A written, signed, and dated statement is especially important when

the information is complex, involves data, or is controversial, or when a significant aviation incident or an aircraft accident is involved.

- vi. Preparation of witness statements. The best statement is one prepared by the witness. When necessary, however, NCAA investigative personnel help the witness in drafting and framing a statement. NCAA investigative personnel do not dictate the content of the statement. They advise the witness to make an accurate and complete statement. If the interviewee refuses to give a signed statement, NCAA investigative personnel prepare a statement based on information provided by the witness and ask the witness to review the statement and indicate if he or she agrees to the substance. If the witness agrees, but continues to refuse to sign, NCAA investigative personnel make a note of that on the statement and date and sign it along with any witnesses. NCAA investigative personnel provide their contact information to a witness. In addition, they ask the witness to keep them informed of any changes in the witness's' address or telephone number.
- vii. Written statements of NCAA investigative personnel. If NCAA investigative personnel witness a violation, they prepare, sign, and date a written statement covering all the relevant facts of which they have personal knowledge. Such statements are factual opinions, conclusions and analysis to be included in the Investigation Report.
- viii. Interviews and written statements of apparent violators. Normally, NCAA investigative personnel interview the apparent violator, even though he or she may have provided written information. If the interview is not possible or necessary, NCAA investigative personnel indicate the reasons why it was not accomplished. Apparent violators are interviewed mainly to give them an opportunity to tell their side of the story and to help establish all pertinent facts and circumstances. The time for interviewing the apparent violator can be a critical decision. At times, it is best first to gather solid evidence with which to interview the apparent violator. At other times, an early interview will develop investigative leads. Good judgment dictates when the interview should be conducted.
- ix. Assistance with interviews in Regional Offices. If the apparent violator or other witnesses are located in any of the regional offices, NCAA investigative personnel obtain assistance for the interviews from those regional offices. NCAA investigative personnel make the request to regional manager and give full details of the assistance and information required. If the assisting regional office encounters delays, it immediately notifies those NCAA investigative personnel seeking assistance. Cooperation is stressed between offices; NCAA investigative personnel alert the appropriate regional office to any problems faced in obtaining assistance or information. When the regional manager of the assisting regional office has assigned NCAA investigative personnel to comply with the request, the investigative personnel of the requesting and assisting regional offices communicate directly.
- x. Records and other documents. Records and other documents are perhaps the most common type of evidence gathered by NCAA investigative

personnel. They not only serve as evidence but also as an investigative tool to use for cross-reference, and confirmation of oral and written witness statements. NCAA investigative personnel promptly review and obtain necessary records and other documents before they are lost, destroyed, or modified. NCAA investigative personnel gather and obtain all documents that are relevant to matters that are being investigated. For example, in cases involving maintenance violations they get copies of all relevant maintenance records. In addition, where the witness statement contains information about a record, they get a copy of that record. Records and other documents that might provide evidence in an NCAA enforcement action include weather reports, load manifests, manual pages, communication logs, and aircraft logs. This type of evidence may be essential to prove the case or may provide backup or background information. If it is clear that documentary evidence will not be provided voluntarily, NCAA investigative personnel consult with NCAA legal department to arrange for an administrative subpoena or summons. NCAA investigative personnel specifically identify, account for, and protect from loss, damage, or alteration all documentary evidence. If they have doubt about the relevance of particular records or other documents, NCAA investigative personnel first secure and preserve the records or other documents and then consult the legal counsel.

- xi. Retention of records. NCAA investigative personnel make appropriate arrangements for retention of records when necessary. They promptly notify the organization or person holding the records that specified records are to be held for inspection. Notice may be written or oral, followed up by writing. If the records might not be retained as requested, NCAA investigative personnel make immediate arrangements, in coordination with legal counsel, for their preservation.
- xii. Copying of records and authenticity of records. Any record, regardless of form, containing information, is admissible evidence if relevant, material, unprivileged, and properly authenticated. Authentication generally only requires a witness to testify as to what the record is or represents and how it was obtained or prepared. If the record is a copy of the original, the witness must also testify that the copy is a true/correct/accurate copy of the original. NCAA investigative personnel indicate at the time the document is obtained when, where, and from whom the document was obtained, and who from the NCAA obtained it. This may be done with a stamp or other statement placed on the reverse side of the document so that it does not obscure or alter any part of the material on the document relevant to the case. The content of the statement will vary according to the circumstances. NCAA investigative personnel secure one copy of a document from the source and then can reproduce additional copies with the appropriate certification statement (examples of Documents Authentication Statements can be found in Appendix A-4). When documents such as company manuals, NCAA-approved aircraft flight manuals, or manufacturer's service bulletins contain information necessary to a case, NCAA investigative personnel reproduce relevant portions of those documents and include those copies in the EIR. NCAA investigative personnel exercise care to assure that documentary evidence obtained is current and applicable to the time of the violations in

question and that prior or later versions of documentary evidence that may be important to a case are also included in the EIR.

- xiii. Company records. NCAA investigative personnel make requests for records of organizations, such as an air carrier, manufacturer, or airport operator, to the official custodian of the record or a company officer.
- xiv. Airmen and aircraft information. NCAA investigative personnel are to obtain relevant airman certificate and aircraft information from the Directorate of Licensing, Operations and Training or Directorate of Airworthiness Standards.
- xv. Criminal-related information. NCAA investigative personnel obtain criminal history or other criminal-related information through the legal counsel from the Aviation Security (AVSEC) or the Police.
- xvi. Airman Medical Records. NCAA investigative personnel obtain airmen medical records from the Aeromedical Department.
- xvii. Logbooks. There are aircraft logbooks and airman logbooks. Typically an aircraft logbook contains the more recent maintenance records applicable to the aircraft including an AD compliance record. Depending on the age of the aircraft, there may be additional historical aircraft maintenance records kept at a separate location. Taken together, these records contain the history of the aircraft, including inspection, maintenance, and AD compliance records. Airmen logbooks typically contain their flight time, including the hours flown, the type and registration number of the aircraft flown, and the flight conditions in which the time was flown. Depending on the alleged violation, these logbooks may provide valuable documentary evidence to prove or disprove a violation.
- xviii. Flight and maintenance publications. Aircraft flight manuals and aircraft maintenance manuals or instructions for continued airworthiness exist for most types of aircraft. Typically, the aircraft flight manual contains any information necessary for safe operation because of its design or handling characteristics, including operating limitations, loading information, performance data, and emergency procedures. Typically, maintenance manuals or instructions for continued airworthiness contain airworthiness limitations, maintenance instructions, troubleshooting information, instructions on parts replacements, and other general instructions. Also, there may be various structural, overhaul, repair, or other manuals that provide insight into an apparent violation.
- xix. Diagrams. Depending on the complexity of the case, a diagram prepared by NCAA investigative personnel or an eyewitness may be helpful to those who review an Investigative Report. A diagram may be hand drawn. It only needs to be clear, legible, and reflect the relevant details as they were on the date of the violation. It is not required to be drawn to scale but, if it is not, that fact should be stated on the diagram. The cardinal compass headings should be marked on geographic diagrams, and the diagrams should be oriented generally such that the top of the diagram is "North." All relevant features

should be pointed out on the diagram and marked clearly. It should contain a descriptive heading of the depicted scene. Approximate or measured distances may be helpful. The preparer should sign and date the diagram. All information on a diagram prepared by NCAA investigative personnel must be consistent with the other evidence in the EIR with any differences explained.

- xx. Charts and maps. NCAA investigative personnel obtain charts, maps, and other similar documents that are current on the date of the violation, to show features, such as airports, terrain, congestion, flight paths, and obstructions. They may be useful when interviewing witnesses. With the document, NCAA investigative personnel document in the EIR its source and the name and contact information for any individual who made any notations on the document (such as a depiction of a flight path on a chart). NCAA investigative personnel include a copy of the document current as of the date of the violation in the EIR, including the front page of the document showing its effective date. NCAA investigative personnel are to explain this in the EIR and how the documents help to prove the violation.
- xxi. Digital and non-digital photographs. Photographs relevant to the investigation are persuasive evidence, but Inspectors often overlook taking them during the investigation, resulting in the need for extensive testimony at trial to describe what a photograph could easily depict. When either digital or non-digital photographs are obtained during an investigation, NCAA investigative personnel must be prepared to demonstrate that the photo is a fair and accurate depiction of the object or scene at the relevant time. Any person who can testify about the fairness and accuracy of the photograph can authenticate the photograph. When photographs have been enhanced, changed, or touched up, or additional information added to the photograph, NCAA investigative personnel keep and preserve the original file or photograph, complete with all surrounding shots, and explain in the EIR why the enhancement or change was necessary. NCAA investigative personnel include in the EIR both photographic prints, and negatives or digital files of those prints. When photographs are used instead of physical evidence, NCAA investigative personnel document information as to the location and security of the physical evidence, if known.
- xxii. Air traffic recorded data. Air traffic organization (Nigeria Airspace Management Agency) NAMA is responsible for prompt notification to the DG NCAA of any aircraft accident, aircraft incident, or air traffic incident. The purpose for this initial contact is to convey to the DG NCAA the essential facts as they are known at the time, and from which a decision may be made about the need for further investigation. If the determination has been made that an aircraft incident, or air traffic incident has occurred, the air traffic organization keeps all data about the incident in accordance with NCAA Regulations. This includes keeping air traffic control voice tapes, transcripts, radar data and other relevant air traffic records. When requesting records on data on aircraft incident or air traffic incident, the NCAA investigative personnel can refer to the incident by the aircraft call sign, date of occurrence, time, place and transponder code if known.

- xxiii. Air traffic control voice tapes and transcripts. Whenever NCAA investigative personnel identify pertinent particular of ATC tapes are relevant to an incident under investigation, ATC personnel make a transcript of the pertinent particular and submit to NCAA. A determination will need to be made about whether the transcript needed will be a partial or a full transcript. A partial transcript involves communication between air traffic and the subject aircraft and a full transcript involves all recorded communications regardless of the source. Requests for transcripts are made through the Nigerian Air Space Management Authority (NAMA) Headquarters.
- xxiv. Radar data. Radar data provides altitude, speed, heading, transponder codes, airspace boundaries, airport locations, intersections and latitudes and longitudes of aircraft being tracked by radar. The use of this data can provide valuable information for enforcement purposes. This information may be used to corroborate other available evidence or to resolve conflicting evidence present in a given case. When the determination has been made that an aircraft accident, aircraft incident, or an air traffic incident has occurred, the facility personnel retain the appropriate data.
- xxv. Other ATC records. ATC personnel may keep other records about the accident or incident including: personnel statements from facility personnel who have direct knowledge about the accident or incident, flight progress strips from the facilities that use paper flight progress strips, daily logs, position logs, near midair collision reports (NMACs) and other related air traffic charts and maps.
- xxvi. Weather records. NCAA investigative personnel carefully analyze the case to determine the extent to which weather is involved and obtain certified copies of relevant data from the Nigerian Meteorological Authority (NIMET). Weather data may also be available from Air Traffic, eye witnesses, or other sources. The EIR should contain appropriate weather analysis. NCAA investigative personnel identify a person who can provide witness testimony to authenticate the weather records. NCAA legal counsel may request authenticated copies of the records for use in the legal proceeding.
- xxvii. Aircraft flight data recorder tapes. If a decision is made to use the flight recorder material in enforcement proceedings, NCAA investigative personnel must obtain a certified readout of the tape. To request readout, NCAA investigative personnel obtain a release for the tape from the owner or that owner's designated representative; obtain the calibration tape, pack the flight recorder and calibration tapes to prevent damage.
- xxviii. Medical records. Medical records by a doctor, hospital, or other health care provider about treatment or tests of a person involved usually are privileged and generally cannot be obtained without the consent of the individual. Where possible, NCAA investigative personnel obtain a written consent for release from the person whose medical records are sought. If consent is not given, NCAA investigative personnel consult NCAA legal counsel to discuss issuance of a subpoena or summons.

- xxix. Electronic evidence. Electronic evidence may be admissible as long as it is properly authenticated. Electronic evidence consists of photographs, documents, mail messages, internet pages, and signatures that are created, stored, or maintained on electronic media. Portions of the electronic evidence relevant to the investigation are printed out on discovery and included in the EIR. As with other forms of evidence, electronic evidence must be authenticated to be admissible at a hearing.
- xxx. Electronic documents. For electronic documents, NCAA investigative personnel identify a witness who can testify the printout in correct reflection of the information contained in the electronic format and obtain a signed statement from that witness to include in the EIR as an item of proof.
- xxxi. Electronic mail messages. For e-mail messages, NCAA investigative personnel identify as a possible witness the recipient of the e-mail and include in the Investigative Report as an item of proof a signed statement from that witness stating the circumstances under which the e-mail message was received. When putting in an e-mail message as an item of proof, NCAA investigative personnel obtain the entire e-mail, including the original message and all replies, as well as the routing information.
- xxxii. Internet webpage documents. For documents obtained from an internet webpage, NCAA investigative personnel must be prepared to testify the printout is an accurate depiction of what appeared on the webpage on a certain date.
- xxxiii. Electronic signatures. During an investigation, NCAA investigative personnel may need to gather evidence to prove the authenticity of an electronic signature. The most common enforcement action that might involve an electronic signature is falsification of an application for a certificate. In these cases, NCAA investigative personnel include as items of proof a printed copy of the application with the electronic signature, as well as written statements from all witnesses who had a role in processing the application (for example, recommending flight instructor, designated examiner). NCAA investigative personnel also identify as a possible witness a representative from the office responsible for the electronic application system to explain the process and the security of the system. NCAA investigative personnel obtain a written statement from this representative and include it in the EIR as an item of proof.
- xxxiv. Other government records. A state, local, or federal law enforcement Authority may have information that would be useful to the NCAA investigation. Such information might include the names of witnesses whom NCAA investigative personnel should interview. If there has been any court proceeding, NCAA investigative personnel obtain a certified copy of relevant court records. They also may obtain copies of foreign court records through the legal counsel. When a violation of a foreign law or regulation is being reported, NCAA investigative personnel include in the EIR a copy of the law or regulation that was in effect at the time of the violation if available.

xxxv. Physical evidence. Physical evidence consists of objects or items relevant to the violation, such as a cracked propeller, defective spare, or worn engine parts or cables. Investigative personnel exercise care in handling physical evidence. They must be able to explain any damage, loss, or alteration to the object that has occurred since they obtained it during their investigation. The best procedure for ensuring safe conducting of physical evidence is for NCAA investigative personnel to lock the evidence in a safe place at the headquarters or regional office until the time of hearing. If the physical evidence is not in NCAA possession, NCAA investigative personnel determine and record in the Investigative Report the names of individuals who have taken possession of the piece of evidence and its location. They should include photographs of the physical evidence in the EIR.

xxxvi. Evidence of apparent violator's attitude. NCAA investigative personnel obtain, and include in the EIR, any evidence of an apparent violator's attitude. Evidence of a constructive attitude might include documentation showing an apparent violator's completion of any of the following (including recency of the attendance):

- ◆ NCAA-sponsored accident prevention programme, safety seminars on the subject(s) implicated in the apparent violation;
- ◆ NCAA-sponsored, industry-conducted safety seminars on the subject(s) implicated in the apparent violation; and
- ◆ Other similar programmes, acceptable to the NCAA.

d. Evidence that Cannot be Used in an Enforcement Action.

- i. Cockpit voice recorder. The use of a cockpit voice recorder record as evidence in any civil penalty or certificate action is prohibited by the Regulations.
- ii. Non- Punitive Reporting. Non- punitive Reports are not used in any enforcement action except information concerning accidents or criminal offenses which are excluded from the Non Punitive Report.

e. Submission of Additional Evidence before Final Disposition of Enforcement Action.

The responsibility to report the facts and provide evidence that either proves or disproves the apparent violation does not end with the submission of an EIR to NCAA legal department. It is a continuing requirement to forward relevant evidence that comes to the attention of NCAA investigative personnel. To have a fair enforcement programme, all relevant material must be considered, no matter how late it may come to the NCAA's attention. Therefore, NCAA investigative personnel immediately forward to legal counsel any information or evidence acquired, with an evaluation and recommendations about the material even after an EIR has already been forwarded to legal department for processing. Legal counsel may also request additional investigation. The distribution for any supplemental material is the same as for material initially included in the EIR.

f. Analysis of Careless or Reckless Operation.

In a case in which NCAA investigative personnel believe a violation of section 55 CAA 2006 has occurred, they document the factors on which determination is based in the statement of case portion of the EIR. NCAA investigative personnel provide a brief explanation of why the conduct was careless or reckless, and the potential or actual danger involved. Potential or inherent danger may occur when a pilot deviates from an assigned altitude, even in clear weather with no other aircraft shown to be close by. Such an operation is found to be potentially dangerous, in that actual danger might have developed in the ordinary course of events. A finding of actual danger may be appropriate if the altitude deviation caused the aircraft to be operated so close to another aircraft as to cause a collision hazard.

7. Special Enforcement Consideration--Immunity for Persons Who Provide Information about Violations.

- a. Background. In relation to enforcement matters, individuals occasionally offer information about regulatory violations to NCAA investigative personnel or legal counsel with a request that, in exchange for the information, the NCAA grant immunity from prosecution to the individual making the offer for his or her participation in the violations. Because the phrase immunity from prosecution normally refers only to criminal matters, the individual in effect is usually seeking an assurance the NCAA will not take civil enforcement action against him or her for admitted violations in exchange for information about violations by his or her employer or other members of the aviation community. The term special enforcement consideration is used to describe this assurance instead of the term immunity from NCAA civil enforcement action. Special enforcement consideration covers mitigation of sanction as well as a determination that no enforcement action will be taken.
- b. Policy. Persons subject to statutory and regulatory requirements are expected to comply with those rules, even in the face of economic or similar pressures to disregard them. Employer pressure is not an excuse for an employee's failure to comply. At the same time, there is a strong public interest in discovering violations that result from such pressures or that otherwise have been encouraged, condoned, or accepted within a company that holds an NCAA certificate. It is the NCAA's general policy to encourage individuals to disclose information regarding safety violations or other circumstances affecting aviation safety. Therefore, the Authority may, under certain circumstances, grant special enforcement consideration to individuals who, incident to their report of another's violations, voluntarily disclose their own participation in the same or related violations. Such special enforcement consideration may range from a mitigation of sanction to a determination that no enforcement action will be taken. NCAA generally does not invite or suggest special enforcement consideration, unless it is apparent the informant would not provide the information or testimony without such consideration. A primary objective of the NCAA is to achieve statutory and regulatory compliance to promote safety in civil aviation and air navigation. Because a grant of special enforcement consideration is, in essence, an agreement to forbear, at least to some extent, enforcement for statutory or

regulatory violations, the NCAA reserves use of such grants for cases where the testimony or information offered concerns the commission of safety violations or is essential to take remedial action in cases where a certificate holder lacks qualifications or to achieve effective compliance and deterrence. The public interest benefits obtained by granting special enforcement consideration must outweigh the public interest benefits to be derived from prosecution of the informant to the fullest extent.

- c. Factors to be considered. The extent of special enforcement consideration to be given in a particular case will depend on a weighing of public interest factors. The NCAA considers the following factors in any such determination:
 - i. Whether the NCAA could reasonably be expected to discover or prove the violations without the informant's cooperation.
 - ii. The seriousness of the violations disclosed by the informant and the importance of the enforcement action against his or her employer or other members of the aviation community.
 - iii. The informant's relative culpability and violation history.
 - iv. The informant's credibility.
 - v. Whether the informant's testimony or information may reasonably be expected to contribute significantly to either an investigation of, or enforcement action against, an employer or other action in the interest of safety.
- d. Criminal Violations. Violations of some regulatory requirements (for example, falsification of records) may also involve violations of criminal laws. Immunity from criminal prosecution can be granted only on approval of the Attorney General of the Federation. In general, the NCAA seeks such approval only where testimony or other information from an individual may be necessary to the public interest and such individual has refused or is likely to refuse to testify or provide information on the basis of his or her privilege against self-incrimination. The immunity sought in such cases is limited by law to use immunity; that is, an assurance that testimony or information so provided by an individual will not be used against him or her in a criminal prosecution.
- e. Receipt of Request for Special Enforcement Consideration or Immunity. When any NCAA personnel receives a request for special enforcement consideration or immunity, he or she tries to determine the following:
 - i The identity of the informant;
 - ii The position the informant holds in the organization, if any;
 - iii The degree of involvement of the informant in the violations;
 - iv The reliability of the informant;
 - v The informant's violation history;
 - vi The identity of the individual or organization about whom or which the informant has offered information on the violations;
 - vii The nature of apparent violations, including type, dates, period of occurrence, seriousness, whether continuing, and safety implications; and
 - viii The NCAA's ability to discover or prove the apparent violations without the informant's testimony or assistance. The NCAA personnel promptly

advises his or her supervisor of the request for special enforcement consideration and the basis for such request. The supervisor advises the legal counsel.

- f. **Role of Legal Counsel.** The legal counsel evaluates the request for special enforcement consideration in accordance with the factors in chapter 4, subparagraph 8.(c). If the request appears to warrant special enforcement consideration, the legal counsel and a representative of the involved directorate meet with the informant or his or her attorney or other representative, if appropriate. If the request appears not to warrant special enforcement consideration, the legal counsel either seeks further information or denies the request. The legal counsel prepares the term and scope of agreement to grant enforcement consideration in writing by both parties. The CSLA executes a memorandum of record setting forth the reasons for the grant or denial of the request which will be made part of the case file

8. Investigation of Crewmembers for Operating Under the Influence of Alcohol or Drugs.

- a. **General.** When an NCAA personnel receives seemingly reliable and credible information that a crewmember may operate a civil aircraft in violation of the alcohol- and drug-related regulations contained in Part 1.2.1.4 to 1.2.1.8 and Part 2.11.1.7 to 2.11.2.8 of the Nig. CARs, he or she immediately contacts the Aeromedical personnel and transmits that information. The Aeromedical investigates these allegations to the fullest extent possible with the highest priority as prevention of these violations is critical to flight safety. NCAA enforcement personnel use all available NCAA resources to prevent any person from acting as a crewmember while that person is under the influence of alcohol or drugs. Accomplishing this fundamental objective sometimes requires ingenuity and quick thinking, especially when time is short. For air carrier crewmembers, prompt notification of Aeromedical personnel and the air carrier, using the resources of the NCAA usually is the best way to get quickly the assistance needed to prevent operation of an aircraft in violation of the NCAA's regulations. To the extent possible, NCAA Aeromedical personnel fully coordinate all actions with NCAA legal counsel in advance.
- b. **Applicable resolutions.** Nig. CARs, Part 2.11.1.7 prohibits the exercise of the privileges of licences and related ratings holders under the regulation from the use of psychoactive substances which might render them unable to safely and properly exercise those privileges.
- c. **Notifications.** NCAA investigative personnel use the most expeditious means available to communicate with NCAA personnel and air carrier management.
 - i. **Notification to air carrier officials.** If the crewmember is an employee of an air carrier, NCAA investigative personnel at once notify an appropriate management official of the air carrier who is immediately accessible by telephone of all relevant information to enable an air carrier to conduct its own investigation and of the steps that NCAA investigative personnel intend to pursue based on the information. NCAA investigative personnel g i v e

the air carrier all available information, to enable the air carrier to take appropriate action. NCAA urge the air carrier to assist the NCAA in its investigation and, if appropriate, to take action to ensure the flight crewmember does not serve on the flight. NCAA investigative personnel remind the air carrier official of the provisions of part.1.2.1.8 of Nig.CARs and the authority of the NCAA to prohibit, where warranted, the operation of the aircraft if the air carrier fails to take action on its own.

- ii Notification to Aeromedical personnel and NCAA Legal Counsel. If NCAA investigative personnel do not receive a response from the air carrier that resolves satisfactorily NCAA safety concerns, NCAA investigative personnel immediately notify Aeromedical, who in turn notify the legal counsel. Notification is elevated to the highest NCAA management official (up to and including the DG NCAA) necessary to contact air carrier management to eliminate the NCAA's concern for flight safety.
 - iii Notification to state or local law enforcement. Whether the crewmember is an employee of an air carrier or is conducting either commercial or general aviation operations, NCAA investigative personnel as soon as possible notify state or local law enforcement personnel, when appropriate, and request their assistance in the investigation or other appropriate action.
- d. Conducting the Investigation on the Scene. If NCAA investigative personnel encounter a crew member who they have reasonable grounds to believe (such as by personal observation or credible witnesses) is violating or has violated the alcohol or drug rules, NCAA investigative personnel follow the procedures in chapter 4, subparagraphs 8(d)(i–vi).
- i. Request identification. Request the crewmember to present his or her NCAA airman certificate and medical certificate. If the crewmember does not have either of these certificates, request another form of official identification, for example, a state driver's license. Advise the individual not to fly or perform crewmember duties in violation of the alcohol or drug rules. If the individual refuses to present identification, try to identify the individual by contacting the local base operator or other airport personnel and determine the name and address of the registered owner of the aircraft to help in identifying the individual.
 - ii. Contact local law enforcement. Contact the local law enforcement office with jurisdiction where the incident took place. Ask the officer whether he or she has authority to conduct alcohol or drug tests or have tests conducted for violations of state or local law concerning the operation of an airplane while under the influence of alcohol or drugs, and inform the officer of the NCAA regulations. If the officer says that he or she has authority to obtain the test, suggest that he or she investigate the incident and obtain the test. If the officer does not have authority to obtain the test, request that he or she investigate the incident and provide a statement about his or her observations regarding the crewmember. In either event, NCAA investigative personnel conduct a full investigation and collect all relevant evidence about the violation.

- iii The law enforcement officer's investigation might involve a field sobriety test, which might be followed by a confirmation breath test or blood test. The confirmation test might be conducted at a hospital or police station.
 - iv If the crew member is taken to a hospital or other medical facility for a blood test, the law enforcement officer will have the test conducted under state or local law. NCAA investigative personnel can obtain the results from the appropriate local law enforcement office, or request the crew member to provide the test results.
 - v If an individual refuses to consent to the alcohol test when asked by the law enforcement officer, NCAA investigative personnel initiate emergency or normal enforcement action depending on the circumstances and severity of the incident. Emergency action is appropriate in cases where the airman may exercise the privileges of the certificate.
 - vi If the individual tries to leave the scene, NCAA investigative personnel do not try to physically detain him or her. They call airport security or local law enforcement to take action under their authority and provide a description of the individual and any vehicle used, including license plate identification. If on a controlled airport, NCAA investigative personnel notify air traffic control so they can attempt radar tracking if the individual takes off in the aircraft.
- e. Conducting the Investigation Not on Scene. An NCAA office may receive a telephone notification or other complaint of someone operating or attempting to operate under the influence. If NCAA investigative personnel are unable to go to the scene, they call the law enforcement office nearest to the scene for assistance. If the test is conducted, the evidence is obtained as in chapter 4, subparagraph 8(d) above. It is important to determine if the individual consumed any more alcohol between the flying and the test.
- f. Gathering Evidence. NCAA investigative personnel gather and preserve all evidence, regardless of whether an alcohol or drug test was conducted. Such evidence may include statements of witnesses, the records of conversation with witnesses, police reports, hospital records, and test results. This list does not identify all evidence that may be appropriate for an EIR, nor would the omission of one or more of these items necessarily preclude enforcement action. NCAA investigative personnel include the following evidence in the EIR:
- i. The time and date the crew member acted or attempted to act as a crew member.
 - ii. The identity of each person (NCAA investigative personnel, controller, police, other witness) who observed the crew member's behavior, including both those whose observations do support a finding that the crew member violated the regulations and those whose observations do not support a finding that the crew member violated the regulations. NCAA investigative personnel interview each person who observed the questioned behavior and obtain a witness statement from each.
 - iii. The reasons why the person believed the crew member was under the influence of alcohol or drugs, for example, observed the drinking, stumbling

- gait, slurred speech, odor, difficulty dealing with ATC, or believed the crew member was not under the influence of alcohol or drugs.
- iv. The time and date when the belief was formed.
- v. Any action taken by the witness.
- vi. The details of any police investigation, for example, field sobriety test, confirmation test.
- vii. The time any alcohol or drug test was done.
- viii. Information whether the crew member had an opportunity to drink between the apparent violation and the time the alcohol test was taken.
- ix. The qualifications of the person who conducted the test, for example, verbal statement from the police officer that he or she had been trained.

g. Making Evaluations and Recommendations.

- i In all cases, the investigative personnel consults Aeromedical specialist and NCAA legal counsel as soon after the incident as possible, in case emergency action is necessary, and to assist in identifying what evidence should be obtained.
- ii NCAA investigative personnel evaluate whether to recommend that violations of Part 1.2.1.8(a) of NCARs, or 1.2.1.8.(b) or a combination, should be charged. If the evidence does not prove an alcohol concentration of .02 percent or more, it may still support a charge of violating (a) or (b). If the crewmember has refused to take a test, NCAA investigative personnel evaluate whether to recommend charging a violation of 1.2.1.8(c) (1).
- iii If an individual operated or directed the operation of an air carrier while under the influence of alcohol or drugs, NCAA investigative personnel consult with legal counsel to determine whether to refer the case for criminal prosecution.

9. Violations by Unruly Passengers.

- a. General. Violation by Unruly Passengers. Under Section 58 CAA 2006, the NCAA is empowered to prohibit certain acts which constitute unruly or indecent behaviour on board aircraft in or over Nigeria. Unruly passengers are those who engage in any of the following conduct:
 - ◆ Assault, threaten, intimidate or interfere with crewmembers in the performance of the crewmembers' duties while an aircraft is being operated;
 - ◆ Physically assault, threaten to physically assault any individual on board an aircraft (including any crew member); or
 - ◆ Otherwise act in a manner that poses an imminent threat to the safety of the aircraft to others on board the aircraft.

Unruly passengers may present a serious risk to aviation safety. Consistent with the NCAA's mission to promote air safety in transportation, Part 1.3.3 (iv)(3) & (4) of Nig. CARs provides for offences which attract maximum civil penalty of N1,000,000.00.

b. Violation involving Air Transportation Outside Nigeria.

- i. Section 62 CAA 2006, provides that NCAA shall monitor and enforce compliance with the provisions of Annex 18 to the Chicago Convention and ICAO Technical Instructions for the safe transportation of dangerous goods by air and is authorized to submit variations to the Technical institutions on behalf of Nigeria when necessary.
- ii. Failure to comply with the ICAO Technical Instructions generally constitutes a violation of Section 62 of CAA and Part 8.5.1 and Part 8.10.1.11 of Nig. CARs 2009.

10. Special Consideration for Investigation of Dangerous Goods Violations.

- a. Written Dangerous Goods Incident Reports. Section 62 CAA 2006 and Part 9.5 Nig. CARs requires the Air Carrier to file written report of each of the incidents listed in Part 9.5.1.1 – 9.5.1.17.

11. Administrative Subpoenas.

- a. Use of Administrative Subpoenas – Under Part 1.3.1.2 Nig. CARs, the NCAA may issue subpoenas. An administrative subpoena requires the person on whom it is served to provide either records or testimony on matters that are under investigation. Generally, administrative subpoenas are not required in an investigation, but when there are no other practicable means to get records or testimony, and the custodian of the record or the individual whose testimony is sought refuses to produce it, NCAA investigative personnel may obtain an administrative subpoena to compel production of the information. The legal counsel may issue an administrative subpoena. It is important that NCAA investigative personnel closely coordinate with NCAA legal counsel on the use of administrative subpoenas and seek advice on whether they will be of help and how they are to be used. Subpoenas can be an effective tool in the investigatory process when other investigatory means have proven unsuccessful.
- b. General Guidelines for the Use of Administrative Subpoenas. This is general guidance for the use of administrative subpoenas. It is not intended to restrict their use under other valid circumstances:
 - i. Administrative subpoenas are used for valid investigative purposes to obtain information or evidence that reasonably relates to the matter under investigation.
 - ii. Administrative subpoenas may be served on the subject of an investigation or on other individuals who have information relevant to the investigation.
 - iii. Other investigative means generally are used before an administrative subpoena, unless there is reason to believe the other means would not be effective. Normally, NCAA investigative personnel request the information before asking legal counsel to issue an administrative subpoena. If NCAA investigative personnel believe that evidence will be destroyed if a simple

request for the evidence is made, then they may request that an administrative subpoena be issued and served as the first request for the information.

- iv Some individuals or corporations are reluctant to provide information without an administrative subpoena to protect themselves from action by the subject of the investigations. They may be willing to produce the information once an administrative subpoena has been issued.
- c. Requesting an Administrative Subpoena. NCAA investigative personnel make a request for an administrative subpoena to NCAA legal counsel. They generally provide legal counsel with written answers to the following questions so a determination can be made whether to issue an administrative subpoena:
- i Why is a subpoena needed? This includes an explanation of why normal investigative techniques have not produced, or may not produce, the evidence sought.
 - ii What is requested? NCAA investigative personnel provide an accurate description of the records or testimony to be subpoenaed. The items requested should be reasonable in both their scope and duration.
 - iii Where are the records or the person to give testimony located?
 - iv Who is the custodian of the records?
 - v Where do the documents or evidence need to be produced? NCAA investigative personnel consider whether the documents need to be produced at an NCAA office or at the place of business of their custodian, or whether they may be produced by mail.
 - vi On what date should the items be produced? A reasonable time should be provided to allow for the documents to be produced. If NCAA investigative personnel believe that records may be destroyed, then they consider whether the items should be produced immediately. Under appropriate circumstances, documents may be produced by mail.
- d. Service of an Administrative Subpoena. Once an administrative subpoena has been issued, generally NCAA investigative personnel serve it personally on the individual or entity to whom it is issued. NCAA investigative personnel will return the acknowledgment copy, indicating when, where, how, and to whom service of the subpoena was made.

12. Criminal Investigation.

a. Coordination of Possible Criminal Violations.

- i NCAA coordination and referral to HAGF. When NCAA investigative personnel believe there may be a violation of any federal criminal statute in a matter involving aviation, he or she coordinates with his or her supervisor

and NCAA legal counsel. After coordination, if it is agreed that criminal conduct has possibly occurred, NCAA will refer the matter to HAGF. Potential criminal violations of state or local laws are referred to the HAGF in accordance with Nig. CARs as amended. This does not prevent NCAA investigative personnel from seeking assistance from state or local law enforcement personnel for an aviation safety matter requiring immediate action, for example, situations involving suspected intoxicated pilots.

- ii. Remedial safety action. Regardless of whether a matter is referred for criminal investigation, NCAA enforcement personnel immediately take whatever remedial action is required for safety in air navigation, particularly when the underlying conduct evidences a lack of qualification by a certificate holder. Remedial action may include emergency revocation of a certificate.
- iii. Securing evidence and communication with violator in criminal case. As in all cases, NCAA investigative personnel identify possible witnesses and preserve other sources of evidence in a case involving possible criminal violations. To avoid compromising the criminal investigation, NCAA investigative personnel should not speak to the apparent violator about the criminal investigation or violation.

13. State Aircraft Operations.

- a. Analysis for Determining State Aircraft or Civil Aircraft Status. Generally, the NCAA has oversight authority over only civil aircraft operations. The status of an aircraft as state or civil depends on its use in government service and the type of operation the aircraft is conducting at the time, rather than the nature of the entity operating the aircraft. Operations are viewed on a flight-by-flight basis to determine if a particular operation is state or civil, and, if civil in nature, then it is subject to all civil aircraft requirements.
- b. Circumstances when a Government-Owned Aircraft is subject to Civil Aircraft Requirements. A government-owned aircraft is subject to all the regulations applicable to civil aircraft when it is operated for commercial purposes, or when it is used to transport either passengers other than crewmembers or persons who are not required to perform, or who are not associated with the performance, of a governmental function.
- c. Evidence of Civil Aircraft Status. NCAA investigative personnel must obtain sufficient evidence to establish that a government-owned aircraft is being operated in civil status if they believe that such an aircraft has violated a requirement applicable only to civil aircraft.

14. Investigations for Referral to the Military.

- a. General. When a member of the armed forces while in the performance of official duties appears to have committed a violation, the NCAA compiles all information in its possession and forwards it as a complaint to the Ministry of Defence. The military authorities are required to conduct an independent investigation and advise the DG NCAA of the action taken.

- b. Processing of EIR for Referral. The appropriate Directorate forwards a completed EIR form, any statements from NCAA and all other evidence to the legal counsel for processing as soon as practicable following the incident. The legal counsel refers the matter to the Ministry of Defence.
- c. Incidents Requiring Complete Investigation. NCAA investigative personnel fully investigate and report violations by members of the Nigerian armed forces for enforcement action when:
 - i The apparent violator was not acting in the performance of official military duties; or
 - ii The apparent violator, whether or not acting in the performance of official military duties, holds an NCAA certificate and there is reason to question the qualifications of the apparent violator or the apparent violator has demonstrated a lack of qualification.

15. Investigations of Violations of Foreign Aviation Regulations.

- a. General. Violations of foreign aviation regulations by NCAA certificate holders, Nigerian citizens, or Nigerian companies may come to the attention of the NCAA in the form of a complaint addressed to a Nigerian Embassy Post, or by other means, such as in letters or telegrams from foreign aviation authorities addressed to DG NCAA. The NCAA investigative personnel investigate, report, and process the violation.

b. Conducting an Investigation.

- i Regardless of the manner in which the NCAA learns of a violation of foreign regulations by NCAA certificate holders, Nigerian citizens or Nigerian companies, the investigative personnel is responsible for the investigation and finally reporting to the foreign aviation authority that originated the complaint through, if appropriate, the Nigerian Embassy. In instances of particular significance, NCAA headquarters may issue instructions for special handling to the Investigative personnel.
- ii NCAA investigative personnel may conduct an investigation in a foreign country with the concurrence of the appropriate foreign aviation authorities and coordinate with the Nigerian Embassy in that country.
- iii When additional information is needed from the foreign authorities submitting the complaint, such as copies of appropriate foreign regulations or arrangements necessary to pursue the investigation within the reporting country, the NCAA investigative personnel directs the request to the foreign aviation authorities that submitted the original complaint. The NCAA investigative personnel provides information copies of such communications to the appropriate Nigerian Embassy.

CHAPTER 5

COMPLIANCE AND ENFORCEMENT ACTIONS AND RESPONSIBILITIES OF THE NCAA OFFICES

1. Selection of Enforcement Action. NCAA investigative personnel review the evidence compiled during an investigation to determine whether a violation of the regulations has been committed. If NCAA investigative personnel determine there is insufficient evidence to support a violation, then neither informal action, administrative action, nor legal enforcement action is appropriate. In determining the appropriate response when evidence of statutory or regulatory noncompliance exists, NCAA investigative personnel apply the guidance in Appendix A-14, Enforcement Decision Tool (EDT) and the range of actions set forth in chapter 2, subparagraph 3.(g). NCAA investigative personnel use the applicable sanction guidance policy only in those cases where they determine that legal enforcement action is warranted.
2. Administrative Action. NCAA investigative personnel determine whether administrative action is appropriate by applying the guidance in Appendix A-14, EDT, which includes evaluating the facts of a violation against the criteria in this section
 - a. General. The purpose for administrative enforcement action is to provide NCAA investigative personnel with an administrative means for addressing violations when, in the judgment of NCAA investigative personnel, legal enforcement action is not necessary. While the NCAA takes administrative enforcement action only in cases where there is evidence to prove a violation, the action does not charge the person involved with a violation. Administrative action brings the incident to the attention of the person involved, documents corrective action if appropriate, encourages future compliance with the regulations, and provides a source of information for the Authority's use. Part 1.3.2 Nig. CARs authorizes two types of administrative actions--warning notices and letters of correction.
 - b. Warning Notice. A warning notice under Section 1.3.3.1 (a)(1) Nig. CARs is a warning notice addressed to the apparent violator that brings to that person's attention the facts and circumstances of the incident. The warning notice advises that, based on available information, the apparent violator's action or inaction appears to be contrary to the regulations, but does not warrant legal enforcement action. It also requests future compliance with statutory and regulatory requirements. See sample warning notice in Appendix A-7.
 - c. **Letter of Correction.**
 - i. A letter of correction under Part 1.3.3.1(a)(2) serves the same purpose as a warning notice, but is used by NCAA investigative personnel when there is agreement with the company, organization, or airman that corrective action acceptable to the NCAA has been taken, or will be taken within a reasonable time.

A letter of correction usually confirms a discussion with the apparent violator in which the apparent violator agrees to take appropriate corrective action to remedy the noncompliance. NCAA investigative personnel determine whether corrective action must be immediate or may be taken within a reasonable period of time.

- ii. A letter of correction may also cover discrepancies or areas of needed improvement. The primary purpose of a letter of correction is to bring apparent noncompliance to the attention of an apparent violator and document action that has or will be taken to correct conditions that are in apparent violation of statutory or regulatory requirements. In a letter of correction, NCAA investigative personnel may reference an attachment containing recommendations and suggestions that are appropriately set apart and identified to prevent a recommendation or suggestion from being misinterpreted as reflecting an apparent violation requiring corrective action.
- d. **Completion of Corrective Action.** When corrective action has not been completed at the time the letter of correction is issued, NCAA investigative personnel perform a timely follow up inspection. When the corrective action is completed, NCAA investigative personnel send a letter acknowledging that fact and closing the case. See sample letter acknowledging completion of corrective action in Appendix A-9. NCAA enforcement personnel take more severe enforcement action for any continued noncompliance following receipt of the letter of correction. If the apparent violator fails to complete the corrective action within the agreed-upon time frame, NCAA enforcement personnel open a new EIR and initiate legal enforcement action against the apparent violator for both the past and any current violations.

3. Criteria for Administrative Action.

When NCAA investigative personnel determine that legal enforcement action is not necessary, the NCAA may issue a warning notice or letter of correction as provided in 1.3.3.11.1(a)(1) and 1.3.3.1(a)(2) Nig. CARs. NCAA investigative personnel do not take administrative action solely as a matter of convenience or when evidence to support a finding of a violation is lacking, investigative personnel must exercise sound judgment and reasonable discretion in issuing administrative actions to ensure the policy objectives of the NCAA or other higher levels in the NCAA's organization are being met.

- a. **Legal Effect.** Administrative actions are not adjudications. Neither a letter of correction nor a warning notice constitutes a finding of violation and, therefore, the opportunity for notice and hearing is not required. Prior administrative actions may be considered in deciding on the type of enforcement action appropriate for the latest apparent violation.
- b. **General Requirements.** In accordance with the guidance in Appendix A-14, NCAA investigative personnel may take administrative action, instead of legal enforcement action, when the criteria in chapter 5, subparagraphs 3.b. (i)-(iv) are satisfied. Even though such criteria are satisfied, NCAA investigative personnel may still elect to take legal enforcement action to address an apparent violation. Where legal enforcement action is not required by law, and

administrative action would serve as an adequate deterrent to future violations, a warning notice or letter of correction may be issued as provided in 1.3.3.1(a)(1) and 1.3.3.1(a)(2).

- ii. The nature of the violation does not indicate that a certificate holder lacks qualification to hold a certificate;
 - iii. The violation was inadvertent, that is it was not the result of purposeful conduct;
 - iv. The violation was not a substantial disregard for safety or security and the circumstances of the violation are not aggravated. Substantial disregard means in the case of a certificate holder, that the act or failure to act was a substantial deviation from the degree of care, judgment, and responsibility normally expected of a person holding that certificate with that type, quality, and level of experience, knowledge, and proficiency. In case the violator is not a certificate holder, substantial disregard means the act or failure to act was a substantial deviation from the degree of care and diligence expected of a reasonable person in those circumstances.
 - v. The apparent violator has a constructive attitude toward complying with the regulations, that is, an apparent violator that commits a significant number of unrelated violations, particularly of the same part of the NCAA's regulations over a relatively short period of time would ordinarily be regarded as having a poor compliance disposition;
 - vi. The apparent violation does not indicate a trend of noncompliance with, or a disregard for, regulations in a particular part of the NCAA's regulations because of a previous instance(s) of noncompliance with that part of the NCAA's regulations.
- c. Additional Guidance for Evaluating Trends of Noncompliance. With regard to an operator that has one previous apparent violation or finding of violation of a particular part of the NCAA regulations, a subsequent apparent violation of that part might not indicate a disregard for the regulations or trend of noncompliance if they occurred for different reasons.

In this case, administrative action may be appropriate for the subsequent apparent violation, provided all other criteria are met. On the other hand, if the apparent violations resulted from the same conduct by an operator, then the subsequent apparent violation might suggest a disregard for the regulations and the beginning of a trend of noncompliance. In this case, administrative action would not be appropriate.

- d. Public Interest Exception. In unusual circumstances, NCAA investigative personnel may take administrative action even if the case does not meet all the criteria in chapter 5, subparagraphs 3.b(i)-(vi). Administrative action may be taken in those cases only when the Director or Regional manager with authority over the investigating office provides a written explanation for why legal enforcement action would serve no useful purpose and that use of an administrative action is otherwise in the public interest. The Director or the Regional manager's written explanation is included in the EIR.

4. Informal Action. Informal action is either oral counseling or written counseling. A Directorate or investigative personnel may address an apparent violation by an individual with informal action, provided the apparent violation is considered careless and a low safety risk and is not intentional. Investigative personnel may address an apparent violation by a corporate body with informal action, provided the apparent violation is a low safety risk and is not intentional. The NCAA takes informal action only in cases where there is evidence to prove a violation; however, an informal action does not charge the person involved with a violation.

5. Re-inspection and Re-examination.

a. General.

- i. Re-inspection. Under Section 30(3)(a) and 31(d) CAA 2006, NCAA investigative personnel may re-inspect at any time a civil aircraft, aircraft manufacturers, maintenance facilities, or organisations, industry simulators, navigational facilities and other appliances designed for use in air transportation. This authority includes, but is not limited to, such activities as conducting surveillance, ramp checks, and routine inspections.
 - ii. Re-examination. NCAA investigative personnel use the re-examination authority, when there is a reasonable question whether an airman is qualified to hold a certificate. The purpose of a re-examination is to determine whether an airman remains qualified to hold his or her certificate. If the facts of a particular situation demonstrate that the certificate holder is not qualified, then re-examination is not appropriate and certificate action is taken to revoke that certificate based on the demonstrated lack of qualification.
 - iii. Re-examination and re-inspection are not punitive measures, and they do not preclude initiating concurrent punitive enforcement action when appropriate. When a certificate holder fails to comply with a request for re-examination or re-inspection, NCAA enforcement personnel suspend the certificate. This action removes a person that may not be qualified from the system and encourages the person to comply with the re-examination or re-inspection.
- b. Procedures for Re-examination. Under Part 2.2.9.2 Nig. CARs, re-examination may be required when NCAA investigative personnel or an office with medical responsibility has a reason to believe that a certificate holder may not be qualified to exercise the privileges of a certificate or rating.
- i. NCAA investigative personnel or the Aeromedical department generally notifies the certificate holder by letter sent through regular mail, registered mail or courier, that a re-examination is necessary. See sample re-examination letter in Appendix A-17. In some instances, instead of a letter, investigative personnel may notify the certificate holder of the necessity for the re-examination through the issuance of an administrative subpoena. Generally, the certificate holder is permitted a reasonable period of time in which to accomplish the re-examination. The certificate holder is advised in

the letter that failure to submit to re-examination will result in referral of the matter to legal counsel for possible suspension of the certificate pending re-examination. In some circumstances, immediate action to suspend the certificate in advance of the re-examination in accordance with chapter 5, subparagraph 5(c) may be appropriate. For example, immediate action may be necessary in advance of the re-examination when an airman is believed to have a medical condition that is incompatible with aviation safety and safety considerations will not allow for the usual procedures to be followed.

- ii. Generally the letter requests that within 7 days of the date of the letter the certificate holder contact the NCAA to schedule the time and place of the re-examination. Reasonable consideration is given to the convenience of the airman. The letter also states the factual basis on which the re-examination is requested and the scope of the re-examination. For re-examination requests, NCAA investigative personnel point out precisely the certificate or rating that will be re-examined. For medical certificates, the office of medical responsibility identifies the specific information or history needed to determine whether the holder of an airman medical certificate meets the applicable medical standards.
- c. Failure to Submit to Re-examination or Re-inspection. If the certificate holder fails to submit to re-examination within a reasonable time or to cooperate with a re-inspection, NCAA investigative personnel follow the procedures in chapter 5, subparagraphs 5.c.(i)-(vii).
- i. NCAA investigative personnel or the Aeromedical department prepares an EIR recommending suspension of the certificate or rating until the holder submits to and passes the re-examination or is reinspected and found to be qualified. Emergency certificate action generally is appropriate.
 - ii. The EIR contains the facts and evidence that support the need for re-examination or the facts surrounding the attempted re-inspection. For example, if an aircraft accident gave rise to the need for reexamination, the details of the accident are described and any supporting evidence compiled. The EIR contains an analysis explaining why the facts indicate the certificate holder may not be qualified. For example, the EIR specifies what it was about the accident that caused the NCAA to question the competence of the certificate holder with respect to the certificate or rating. If an accident or incident did not give rise to the necessity for the re-examination, then the EIR should document the circumstances that form the basis for the re-examination. For example, if the re-examination is necessary because there is doubt that the certificate holder met the eligibility requirements to apply for the certificate or that the certificate holder was adequately examined by the examiner, then the EIR should document those circumstances. The EIR also generally contains documentation showing that the NCAA requested the certificate holder to submit to re-examination or reinspection and that the certificate or rating without first requesting re-examination or reinspection, such circumstances may be identified and explained instead of this documentation.

- iii. Legal counsel initiates certificate action in accordance with the provisions of chapter 5 when the evidence is sufficient to establish that the certificate holder refused to be re-examined and that the certificate holder may lack the qualifications to hold the certificate or rating, requiring the suspension of the certificate pending satisfactory completion of re-examination. Likewise, legal counsel issues a suspension order when a reinspection cannot be accomplished because of a certificate holder's or product owner's lack of cooperation.
 - iv. The certificate action orders or proposes the suspension of the certificate or rating until the certificate holder submits to re-examination or the reinspection if accomplished and qualification to hold a certificate is established.
 - v. If the certificate holder is found qualified while any appeal of the order of suspension pending re-examination or reinspection is pending, the NCAA investigative personnel or Aeromedical department that conducts the re-examination or reinspection notifies legal counsel so the order can be terminated.
 - vi. If the certificate holder satisfactorily established qualifications to continue to hold the certificate, NCAA investigative personnel or Aeromedical department issues a letter advising the certificate holder of that finding, with a copy to the legal counsel who issued the order. Legal counsel takes appropriate steps to terminate the order, release the certificate stop order.
 - vii. If a certificate holder whose certificate is suspended fails to submit to a re-examination or reinspection, the certificate or rating remains suspended indefinitely pending the certificate holder's successful re-examination. Legal counsel changes the status of such cases from open status to pending status after the time to appeal the suspension order has passed. The certificate stop order remains in effect until the re-examination is successfully completed.
- d. Unsuccessful Re-examination or Re-inspection. If the certificate holder submits to re-examination or re-inspection and does not establish qualifications, and does not voluntarily surrender that certificate or rating for cancellation, NCAA enforcement personnel follow the procedures in chapter 5, subparagraph 6.d.(i)-(iii).
- i. The NCAA investigative personnel or the Aeromedical department prepares an EIR, recommending revocation of the certificate or rating. This generally is on an emergency basis, unless an order suspending the certificate or rating is already in effect and the NCAA holds the certificate.
 - ii. The EIR is assigned a new report number. Any companion report number that was assigned to an earlier EIR in connection with certificate suspension is stated in the related number block. If revocation action is taken against only part of the certificate, such as a single rating, for example, the appropriate NCAA investigative personnel or Aeromedical department issues the necessary temporary certificate or new certificate with the remaining privileges. NCAA investigative personnel include evidence of the failure to demonstrate qualifications as an item of proof in the EIR.

- iii. The NCAA does not allow an airman who has not demonstrated qualifications to try repeatedly to prove qualification. Generally, if the airman has twice submitted to re-examination and has twice failed, the certificate or rating is revoked. The opportunity for a second reexamination is allowed when the airman voluntarily places his or her certificate on deposit with the NCAA following the first failure while the certificate holder prepares for the second attempt.

6. Mandatory Occurrence Reporting Programme Under the Nig. CARs Part 8.5.1.19

- a. **General.** The mandatory occurrence reporting is intended to improve safety compliance and require a regulated person to promptly disclose to the NCAA an apparent violation and take prompt action satisfactory to the NCAA to correct the violation and prevent its recurrence. The NCAA regulates person's performance through setting regulatory standards, issuing guidance, and monitoring compliance through periodic inspections. Regulated entities, which have the ultimate responsibility for compliance, have a superior vantage point for monitoring their own performance. Therefore, mandatory disclosure programmes can serve an important role in achieving compliance and improving aviation safety.
- b. **Internal Evaluation Procedures.** Because a regulated entity is in the best position to identify deficiencies and promptly correct them, it should have in place a procedure whereby internal compliance audits are performed and top management is informed of its company's operations, compliance, and safety record. Such internal audits improve a regulated person's ability to identify and correct any safety problems before, rather than after, NCAA inspections. Public safety is enhanced significantly if deficiencies are identified and corrected when they are discovered by a regulated person, instead of when the NCAA discovers the deficiencies, sometimes much later, during an inspection or in the wake of an accident or incident. The mandatory reporting programme is intended to serve as an incentive to set up and maintain a system of internal evaluation.
- c. **Applicability of Mandatory Occurrence Reporting.** The mandatory occurrence reporting applies to certificate-holding persons, and other persons subject to regulation under Part 8 of Nig. CARs.
- d. **Criteria for Acceptance of Mandatory Occurrence Reporting.** The NCAA may accept a mandatory disclosure of an apparent violation under the mandatory disclosure reporting only if the criteria in chapter 5, subparagraphs 6.d (i)-(vi) are met.
 - i. The regulated entity has notified the NCAA of the apparent violation immediately after detecting it and before the Authority has learned of it by other means;
 - ii. The regulated entity does not disclose the apparent violation to the NCAA during, or in anticipation of, an NCAA investigation or inspection or in association with an accident or incident;

- iii. The apparent violation was inadvertent;
 - iv. The apparent violation does not indicate a lack, or reasonable question of a lack of qualification of the regulated entity;
 - v. Immediate action, satisfactory to the NCAA, was taken upon discovery to terminate the conduct that resulted in the apparent violation; and
 - vi. The regulated entity has developed or is developing a comprehensive fix and schedule of implementation satisfactory to the NCAA. The comprehensive fix includes a follow up self-audit to ensure the action taken corrects the noncompliance.
- e. Investigation of Mandatory Reporting. NCAA investigative personnel thoroughly investigate, analyze, review, and report the facts and circumstances surrounding all self-disclosed apparent violations. They determine whether the apparent violation disclosed meets the criteria in chapter 5, subparagraphs 6.d(i)-(vi) for acceptance under the programme. NCAA investigative personnel contact the Investigative personnel or other oversight office, as appropriate, to determine, and gather written information that indicates if and when the regulated person disclosed the apparent violation and when it became known to the regulated entity. In addition, NCAA investigative personnel consult with the investigative personnel, or other oversight office as appropriate about the effectiveness of the regulated entity's proposed action to preclude recurrence of the apparent violation.
- f. EIR for a Mandatory Occurrence Reporting. The EIR for a mandatory reporting includes any evidence of how, when, and where the apparent violation was detected and by whom. It also includes evidence of whether and when the regulated person disclosed the apparent violation to the investigative personnel or other oversight office, as appropriate, when it became known to the regulated entity and when the regulated entity took action to correct the apparent violation; that is, to stop any conduct that did or might constitute a violation. The EIR also includes evidence of whether a regulated entity has taken, or has agreed to take, corrective action acceptable to the NCAA to preclude recurrence of the apparent violation, including an analysis of the nature and likely effectiveness of the action and the time within which the regulated entity must implement the corrective action. NCAA investigative personnel also include in the EIR a summary listing similar violations by that regulated person to evaluate what corrective action, if any, may be necessary to preclude recurrence of the apparent violation.
- g. Letter of Correction under Mandatory Occurrence Reporting. When the NCAA determines under this programme that it will not seek a civil penalty, it advises the regulated person by a letter of correction issued under Part 1. 3. 3. 1 (a)(2). The letter of correction does not constitute a formal adjudication of the matter. The letter of correction contains all relevant facts, including how, where, and by whom the apparent violation was detected; when the regulated entity disclosed it to the NCAA; the nature and extent of any actions taken to correct it and to

preclude its recurrence; and any mitigating circumstances the NCAA considered relevant. Following issuance of the letter of correction, NCAA investigative personnel closes the case subject to reopening if the regulated entity does not complete the agreed-upon comprehensive fix on time.

7. Remedial Training.

- a. **General.** Using the EDT process in Appendix A-14, an investigative personnel determines whether remedial training is the appropriate action to take for a violation by an airman if so, the inspector offers the airman an opportunity for training. The investigative personnel document the corrective action.
- b. **Applicability.** This programme applies to individual airman certificate holders not using their certificate in air transportation at the time of the apparent violation.
- c. **Procedures.** When an apparent statutory or regulatory violation becomes known to the NCAA, appropriate Directorate assigns investigative personnel who initiates a full investigation in accordance with current NCAA policy. If, during the investigation, the investigating personnel believes that based on the outcome of the EDT process in Appendix A-14, a remedial training is appropriate, the investigative personnel recommends a suitable remedial course for the airman. He requests the airman to sign a training agreement (see sample training agreement in Appendix A-10).
- d. **Letter of Agreement.** When an agreement on training has been reached, the investigative personnel and the airman sign and date the letter of agreement specifying the terms and conditions of the remedial programme. The remedial training agreement clearly states the objective of the prescribed remedial training course, includes a completion date and the method by which the airman documents satisfactory completion of the training.
- e. **Verification of Completion of Training.** The investigative personnel verifies that the training objectives have been met. Within the time specified in the training agreement, the airman provides the required evidence that training has been completed, including an original record of training, signed by each instructor or authorized official of the training establishment, certifying the completion certificate and other documentary evidence, such as logbook entries and aircraft rental invoices, are placed in the EIR as required by the remedial training agreement.
- f. **Issuance of Letter of Correction.** When the investigative personnel is satisfied that the terms and conditions of the remedial training course and objective(s) have been met, he or she closes the enforcement action with a letter of correction {see sample letter of correction for remedial training A-8(3)}. Issuance of the letter of correction, which contains a statement that the required remedial training has been satisfactorily accomplished, closes the case.
- g. **Failure to Complete Training.** If the airman fails to meet any term or condition of the programme or the agreement, the inspector notifies the airman by letter, sent by regular mail, registered mail or courier, that participation in the training

programme has been terminated, and that appropriate legal enforcement action will be taken (see sample letter of termination in Appendix A-11).

8. Legal Enforcement Actions.

a. **General.** This section describes enforcement actions that NCAA investigative personnel may determine are necessary or appropriate for violations once they determine that legal enforcement action is appropriate based on the guidance in Appendix A-14 EDT, and the guidance in this chapter.

b. Certificate Actions.

i. Section 30 CAA 2006, and Part 1.3.3.3 Nig. CARs 2009 authorizes the DG NCAA to amend, modify, suspend or revoke any part of a certificate issued under the Act and Regulations, if the DG NCAA decides that safety in air navigation or air transportation and the public interest require that action. Holders of certificates issued under Section 30(3) (b-f) may appeal actions taken against their certificates to the DG NCAA. Part 18 (2\4) Nig. CARs 2006 provides that the sanctions imposed by the Authority shall subsist until varied by the D.G upon the recommendations of the review panel.

ii. A suspension of a certificate means the certificate temporarily ceases to be effective. The time the certificate is not effective is specified in the order of suspension, and once the required time period has passed, the certificate is automatically reinstated. The time period is defined by either a specific amount of time, usually a number of days, or until certain conditions are met, for example until a re-examination under Part 2.2.9.1, Nig. CARs 2009 is successfully completed.

iii. A revocation of a certificate means the certificate is no longer valid, and the holder may not exercise any of its privileges. Unlike a suspension, a certificate that has been revoked cannot be reinstated. A certificate holder whose certificate has been revoked may reapply for a new certificate, but an individual applying for an airman certificate must meet all the qualifications for the new certificate, including retaking all tests, whether written, oral, or practical. Any experience requirements for the new certificate may be met with experience obtained before the revocation of the original certificate. If an airman certificate has been revoked for less than one year, the NCAA generally denies any application by that airman for a new certificate, and the airman has no appeal from that denial.

c. **Suspension or Revocation of Airman Medical Certificates.** An appropriate NCAA medical officer, for example, the Aeromedical Department, may recommend that an airman medical certificate be suspended or revoked. Such action is recommended when an airman does not meet the medical certification standards or there is a reasonable basis to question his or her qualifications or when an airman fails to provide requested medical information or provides intentionally false or incorrect information in support of medical certification (see Section 36(4) CAA 2006 and Part 1.2.1.5 Nig. CARs).

d. Emergency Certificate Action.

Section 35 (2) of the CAA and part 1.3.3 (b) (3)(c) of the Nig. CARs authorises the DG NCAA to take certificate actions immediately effective if the DG finds that an emergency exists and safety in air navigation or air transportation require the action to be effective immediately. An emergency certificate action immediately deprives the certificate holder of the right to exercise the privileges of that certificate.

- e. **Civil Penalties.** Part 1.3.3.1 Nig. CARs makes a person liable for a civil penalty for violations of certain provisions of the CAA 2006 and regulations prescribed or orders issued under those provisions. A civil penalty is a payment of money. The maximum civil penalty that may be imposed for each violation depends on which statutory or regulatory provisions are violated and who is charged with the violation. See appropriate sanction guidance table in Appendix A-13 for assistance in determining the maximum civil penalty per violation. Each day that a violation continues may be considered a separate violation. Civil penalties may be appealed to DG NCAA.
- f. **Informal Conferences.** NCAA investigative personnel may participate in the informal conference when possible. The purpose of the informal conference is to hear any information the alleged violator wishes to present, and to consider whether this information should affect the proposed action. The proposed sanction is not raised above the amount originally proposed. Any violations charged that are disproved by the information presented at this conference are withdrawn. If the proposed sanction is determined to be excessive, it is reduced. Normally the proposed penalty is not changed unless information is presented that was not taken into consideration when the notice was issued.
- g. **Detention of Aircraft.** Section 53 CAA 2006 and Part 1.3.3.4 (a) Nig. CARs provides for the detention of aircraft involved in violation for which a civil penalty has been imposed or may be imposed on its owner or operator may be subject to detention by the Authority in accordance with the procedures set down in this Handbook.
- h. **Injunctions.** Injunctions are court orders that may require a person to do something (mandatory) or not to do something (prohibitory). Failure to comply with an injunction may be punishable as contempt of court, which may result in fines or jail term. Section 2 (2) (b) authorizes DG NCAA to bring a civil action in its corporate name which may include an action in relation to the Act and regulations against any person at the Federal High Court. For example, when an airman knowingly continues to operate an aircraft without the appropriate certificate, NCAA may bring such an action to request the court to issue an injunction.
- i. **Airman Medical Certificate Denials.** Aviation medical examiners have the authority to examine applicants for airman medical certificates and to issue or initially deny those certificates. When an aviation medical examiner denies issuance of a medical certificate, the airman may apply in writing within 30 days after the

date of denial to the Aeromedical Department for reconsideration of the denial. Final denial by the Aeromedical Department, gives the applicant the right to appeal to the DG NCAA.

- j. Other Airman Certificate Denials. When an application for an airman certificate is denied by the NCAA under Part 2.2.9.1 Nig. CARs the applicant has a right to appeal to DG NCAA. The person applying for the certificate must prove that he or she has the qualifications to hold the certificate. If the DG NCAA finds that the applicant does have these qualifications, he/she will issue the certificate to the applicant.

CHAPTER 6

LEGAL ENFORCEMENT ACTIONS AND LEGAL COUNSEL RESPONSIBILITIES

1. Prosecutorial Discretion. NCAA legal counsel exercises broad prosecutorial discretion in the handling of legal enforcement actions. This discretion extends from the initial determination of whether legal enforcement action is supportable through closure of a case. Legal counsel, in coordination with the Directorates, exercises discretion in selecting an appropriate sanction for a particular violation, within the parameters of the NCAA's compliance and enforcement activities. This discretion is guided by the sanction guidance policies in this Handbook based on the relevant facts and circumstances surrounding a violation. Legal counsel uses sound prosecutorial judgment to make decisions that further the NCAA's safety mission and the public interest. After initiating a case, legal counsel in consultation with the concerned Directorate when practicable, may settle cases, when in their judgment, the settlement is warranted.
2. **Coordination with Headquarters through Enforcement Alerts.**
 - a. General. The determination of the type of legal enforcement action and sanction amount is the joint responsibility of the appropriate Directorate and legal counsel. An important objective in conducting the compliance and enforcement activities is to achieve consistency of action throughout the NCAA. Further, it is important for headquarters to be aware of significant legal enforcement actions, especially when they are taken on an expedited basis. For these reasons, the regions coordinate certain cases with headquarters before the initiation of a legal enforcement action, and in other cases provide information to headquarters at the same time the action is taken.
 - b. Coordination of Initial Legal Enforcement Actions with Headquarters. All significant enforcement actions are coordinated with headquarters to promote consistency in sanctions. The coordination of significant legal enforcement actions is an internal NCAA policy and is not intended to limit NCAA legal counsel from taking timely and appropriate action. Although coordination and clearance ordinarily are accomplished before the initiation of a significant legal enforcement action, special circumstances may warrant that coordination be contemporaneous with issuance of the action. When coordination and clearance are accomplished before issuance of the enforcement action, NCAA legal counsel prepares an enforcement alert in accordance with the guidance set forth below, and sends it to CSLA and the appropriate Directorate in headquarters. The actions listed hereunder are considered significant.
 - i. Special circumstances. Legal enforcement actions involving major aviation safety issues or other special circumstances that are likely to draw broad public attention or national interest, such as those involving public figures, unusual or broadly publicized events, or air carrier pilots flying under the influence of drugs or alcohol.

- ii. Certificate actions. All emergency and initial certificate actions against the holders of certificates issued under the Nig. CARs, except actions against certificate holders that have effectively stopped doing business.
 - iii. Civil penalty actions. All proposed civil penalty actions in which the proposed civil penalty is contained in the implementing standards of Part 1 Nig. CARs 2009.
 - iv. Extraordinary actions. All extraordinary actions, such as orders of compliance, aircraft detention, grounding of aircraft, injunctive relief, and criminal referrals.
- c. How to Coordinate a Significant Initial Legal Enforcement Action. Coordination of significant initial enforcement actions with headquarters is accomplished through the enforcement alert process. Each enforcement alert includes general information on the alleged violator, an explanation of the alleged violations, a summary of the alleged violator's explanation for the violations or defence, a discussion of the alleged violator's compliance disposition, including a summary of the enforcement history, and an analysis of the recommended sanction. A copy of the proposed legal action document, for example, emergency order of suspension or revocation, notice of proposed civil penalty, or civil penalty letter, is provided with the alert.

3. Informal Conferences.

a. Purpose and Policy.

- i. The informal conference provides an alleged violator with an opportunity to be heard as required by section 36 of the Constitution of the Federal Republic of Nigeria 1999 and Part 1.3.3.3(c) of Nig. CARs 2009. Except in emergency cases, the NCAA must provide an opportunity for an informal conference before issuing an order of suspension or revocation, or an order of assessment or a final notice of proposed civil penalty.
- ii. The alleged violator has an opportunity at the informal conference to speak to the CSLA to present evidence or information in response to the proposed enforcement action. The NCAA Legal Counsel evaluates any new information obtained at the informal conference in accordance with the Handbook.
- iii. The NCAA does not use the informal conference to gather additional evidence or admissions to prove the charges in the enforcement action. However, the NCAA may use any information revealed by the alleged violator for impeachment purposes if the alleged violator makes a contrary statement about a material fact later in the proceeding.

b. Procedure.

- i. The NCAA tries to hold informal conferences within 30 days of receiving the request for informal conference. Informal conferences in cases that have direct impact on aviation safety generally are held within 14 days of receiving

the request for the informal conference. NCAA legal counsel schedules and holds the informal conference. Legal counsel asks the Directorate that processed the EIR to assign a representative to attend the conference, if practicable. Legal counsel conducts the conference even if a Directorate representative is not present.

- ii. At the conclusion of the informal conference, legal counsel prepares a detailed summary, which is included in the case file.
- iii. Ordinarily, the NCAA holds the informal conference either by telephone or in person at the Headquarters or in any of the NCAA regional offices where the alleged violations occurred.
- iv. When, at the alleged violator's request, legal counsel schedules an informal conference at a location other than at the Headquarters or regional offices, legal counsel advises the alleged violator that if the alleged violator fails to attend the informal conference, a rescheduled conference, if any, will be available only at Headquarters or any of the regional offices or by telephone.

4. Consolidating Civil Penalty Actions. Legal counsel may initiate separate EIRs in one legal enforcement action provided consolidating these EIRs does not change the jurisdictional forum of any one of the EIRs. Once complaints have been filed, legal counsel may move to consolidate the cases for litigation purposes.

5. Closing Cases.

- a. Closing Cases before Initiation of Legal Action. If legal counsel reviews an EIR and determines there is insufficient evidence to support a violation, then legal counsel returns the EIR to the Directorate for further investigation or closure, as appropriate. Legal counsel prepares a memorandum for the file that provides the reasons the case is being returned to the Directorate.
- b. Closing Cases after Initiation of Legal Action. If after the initiation of legal action, legal counsel determines a case should be closed no action because of legal insufficiency, legal counsel withdraws the enforcement action, issues a letter to the alleged violator, and notifies the Directorate about the closing of the case. Legal counsel keeps the EIR.
- c. Downgrading from Legal Enforcement Action to Administrative Action. If, at any time after receipt of a case, legal counsel in consultation with the Directorate determines that administrative action rather than legal enforcement action is appropriate in that case, legal counsel returns the case to the Directorate with a memorandum recommending that administrative action be taken. Legal counsel transfers the case to the Directorate and makes appropriate entries in the remarks section of the EIR reflecting the joint determination.

6. Emergency Suspension or Revocation of Certificates.

- a. Authority. Whenever the DG NCAA, through delegated authority to the CSLA, other lawyers in the legal department or Directors or regional manager determines

that the public interest and safety in air transportation or air navigation require the immediate effectiveness of a suspension or revocation, an emergency action is taken. The authority to take such action is contained in Section 35(2) CAA 2006.

- b. **Form and Content of Emergency Action.** An emergency action contains all the allegations and findings necessary to any other order and, in addition, contains a statement that "the DG NCAA finds that an emergency exists and safety in air transportation or air navigation require the immediate effectiveness of this action." An emergency action is immediately effective, and informs the certificate holder of his right of appeal under Part 18 (2) Nig. CARs 2006. An appeal against an emergency action of the Authority does not stay the effectiveness of the action.

c. Criteria for Emergency Action.

- i. Emergency action is taken only:

- * When the certificate holder lacks qualification, or there is a reasonable basis to question whether the holder is qualified to hold the certificate; and

- ii. If it is known that a certificate holder is unable to exercise the privileges of the certificate, a notice proposing certificate action is issued. For example, a notice proposing certificate action is used if the certificate holder is confined to prison or is known to be physically unable to exercise the privileges of the certificate. Similarly, a notice proposing certificate action is issued when a certificate holder, who is required to hold an airman medical certificate, does not hold a currently valid airman medical certificate. In those circumstances, NCAA legal counsel notifies Aeromedical Department to flag the certificate holder's medical certification file and advise it, if a new medical certificate is issued to the airman. If a medical certificate has been issued to the airman, an emergency order is generally issued. Sometimes when the certificate holder does not hold a currently valid airman medical certificate, it nevertheless is appropriate to take emergency certificate action if it is known the certificate holder has operated an aircraft despite the lack of a currently valid airman medical certificate.

- iii. NCAA legal counsel initiates case under Nigeria CARs Part 1.3.3.3 upon identification of a violation related to airman qualification issuing a notice proposing certificate action. Following an informal conference, which generally is held within 30 days of the receipt of the request for an informal conference, NCAA legal counsel issues an order that may be made immediately effective if the circumstances of the case warrant that action. Usually, based on the nature of the underlying circumstances and the nexus of those circumstances to safety in air transportation or air navigation, NCAA legal counsel issues the order as an immediately effective order. The order need not be made immediately effective when the certificate holder is confined to prison or is known to be physically unable to exercise the privileges of the certificate. When there is an issue of whether the order should be made immediately effective, the case is coordinated with relevant Directorate.

- iv. NCAA legal counsel initiates a case under Nig. CARs Part 1..3.3.3 by issuing a notice proposing certificate action. Following an informal conference, which generally is held within 30 days of the receipt of the request for an informal conference, NCAA legal counsel issues an order ordinarily on a nonemergency basis. However, NCAA legal counsel may issue an emergency order if the circumstances of the case warrant that action. An emergency order likely is issued if the underlying conduct is egregious (for example, drug kingpin activity) or if there is evidence of present or recent involvement in the same type of conduct. When there is an issue of whether the order should be issued as an emergency, the case is coordinated with CSLA.
- d. **Timeliness of Emergency Action.** Emergency action is taken as soon as possible when the need for such action is recognized. Failure to take prompt action does not preclude the issuance of an emergency order when it is appropriate; public safety should not be jeopardized because of NCAA delay. If a significant delay has occurred, however, circumstances justifying the emergency action may have changed, and consideration is given to reevaluating the case, including, as appropriate, reinspection or reexamination of the certificate holder. For example, when NCAA is ready to initiate action, the unqualified or culpable management personnel may have changed and the NCAA may determine that revocation is no longer required. In such a case, the NCAA may use another enforcement action to address the previously discovered violations. Issues regarding the timeliness of declaring an emergency are resolved in coordination with the NCAA Legal Counsel.
- e. **Emergency Suspension Pending Reexamination.** If there is a reasonable basis to question whether the certificate holder is qualified and the holder might reasonably be able to exercise the privileges of the certificate, emergency suspension action pending successful reexamination is considered.
- f. **Appeal for Review of Emergency Action.** All appeals for review of emergency actions of the Authority shall be in writing to the DG. Appeals shall be entertained by the Authority if submitted within 30 days from the date of receipt of the emergency action by the appellant.
- g. **Hearing of Appeal.** Pursuant to Part 18 (2) Nig.CARs 2006, the DG shall constitute a panel to hear and determine the appeal.

7. Appeal Procedures

Directives on corrective action on safety issues must be complied with and rectified immediately irrespective of the violator's intention to appeal.

Any party who disagrees with the administrative sanctions imposed by the Authority may appeal for a review, within seven (7) days from the date of the imposition of the sanction.

The appeal shall be in writing and addressed to the Director-General of the Authority. The appeal must contain the following information:

- i The person or entity authorized to represent the party appealing the Initial decision ;

- ii Whether the appellant agrees with any or all of those allegations or findings set forth in the Initial decision, and specifically which allegations or findings are disputed ;
- iii A request for the reevaluation of the facts or of the circumstances forming the basis of the decision ;
- iv A written statement of any other facts or pertinent circumstances or law ;
- v Any request for a hearing with the IP and the NCAA Legal Officer. Upon receipt of the Appeal, the Director-General shall, within 30 days from the date of receipt of the Notice of Appeal, constitute an Appeal Panel made up of not more than five (5) members drawn from the NCAA and industry stakeholders.

The Appeal Panel shall be chaired by an industry stakeholder.

The sanction(s) imposed by the Authority shall subsist until set aside or varied by the Director- General upon the recommendation of the Appeal Panel.

a. Handling of Appeal

This Appeals Panel will provide an alleged violator the opportunity to be heard and to present evidence or information in response to the administrative/civil sanctions. The panel shall ensure that the appeal process is concluded within 45 days of its constitution.

Ordinarily, the hearing should take place in the NCAA headquarters or any of its regional offices.

In the exercise of discretion, hearing may be scheduled at any other location based on mutual agreement or as appointed by the Director General.

The Appeal Panel shall be guided by the following criteria amongst others:

- i Will the administrative sanctions result in adverse consequences to the general public?
 - ii Is it consistent with precedent?
 - iii Is it arbitrary or capricious?
 - iv Was there any erroneous credibility findings established?
 - v Is it novel or controversial?
 - vi Was the sanction based on appropriate interpretation of the Civil Aviation Law?
- b Final Decision: The appeal panel shall forward their recommendation to the Director General for consideration and further necessary action. The Director General shall make known his ruling on the Appeal Panel's Report, within 14 days of submission of the Report.

8. Nonemergency Certificate Actions. When it is determined that nonemergency certificate suspension or revocation is the appropriate enforcement action, NCAA legal counsel follow the guidance in this paragraph.
- a. Notice of Proposed Certificate Action. Under Nigeria CARs Part 1 .3.3.3 (c), the DG NCAA, before ordering the suspension or revocation of a certificate, must give the certificate holder notice proposing such action and provide such person with an opportunity to answer and be heard, except when an emergency action is issued. When it is determined that certificate action on a nonemergency basis is appropriate, NCAA legal counsel prepares a notice of proposed certificate action. The notice sets forth the facts alleged, the regulation(s) violated, and the action proposed. Legal counsel pleads the facts in sufficient detail that the certificate holder has notice of the charges. A specific proposed sanction is stated in the notice. When legal counsel proposes that only a rating be suspended, the notice informs the airman that during the suspension period a temporary certificate will be issued to permit the exercise of those privileges not under suspension.
 - b. Attachments to the Notice. An information sheet and a certificate holder reply form are sent with the notice. In the information sheet, which may be a printed form, the alleged violator is advised of the alternatives available in response to the notice. The alleged violator is given the opportunity to elect from the alternatives listed on the certificate holder reply form.
 - c. Alternatives for Responding to Notice. An alleged violator may respond to the notice of violation in the following ways:
 - i. Admit the charges and surrender the certificate as proposed;
 - ii. Answer the charges in writing;
 - iii. Request an informal conference with NCAA legal counsel; or
 - iv. Request that an order be issued so the alleged violator may appeal to the DG.
 - d. Reevaluating the Case. When the certificate holder submits evidence or other considerations in writing, or in person at an informal conference, new matters submitted are considered and evidence on which the notice was based is reevaluated. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures. Unless matters not considered in issuing the notice are brought to legal counsel's attention, the order normally imposes the sanction proposed in the notice.
 - e. Orders of Suspension or Revocation. The order is issued by authorized legal counsel.
 - i. When the certificate holder surrenders the certificate pursuant to the notice of proposed certificate action, legal counsel issues the order immediately. The effective date of the surrender is the date on which the certificate is

surrendered to the NCAA, such as the date of personal delivery. Surrendering the certificate in response to the notice constitutes a waiver of the airman's appeal rights, when the certificate holder has been informed of his rights in the information sheet.

- ii. Orders allege the violations that constitute the basis for the action, state accurately the action taken, state the reasons that “safety in air navigation or air transportation and the public interest” require certificate action, state the effective date, and inform the certificate holder of appeal rights and procedures.
- f. Service of the Notice or Order. Legal counsel sends the alleged violator the notice or order by regular mail, registered mail or courier. For certificate holders, legal counsel sends the notice or order to the current address of record. If legal counsel delivers the notice or order in person, then he or she documents the delivery in the file.
- g. Voluntary Surrender of Certificate Pending the Appeal of an Order of Suspension.
 - i. Legal counsel may accept the voluntary surrender of a certificate in response to an order of suspension despite an appeal of the order only if the respondent agrees to stipulate at the hearing to the period of suspension stated in the order and appeals only the findings of violations set forth in the order.
 - ii. Such a voluntary surrender must be documented through a formal written agreement, which must make clear the respondent waives the postponement of the effective date of the order pending appeal, limits his or her appeal only to the findings of violation, and agrees to the period of suspension stated in the order. Under such an agreement, legal counsel credits the period of voluntary surrender as service of the suspension if the NCAA prevails in the pending litigation.
 - iii. If legal counsel allows the voluntary surrender of an NCAA certificate pending the appeal of the findings in the order of suspension, legal counsel ensures the entire suspension period is continuously served; legal counsel does not allow for the division of a suspension period.
 - iv. Legal counsel may elect to refuse the voluntary surrender of an NCAA certificate during pending litigation. In such a circumstance, if the NCAA prevails in the pending litigation, the certificate holder will be required to surrender the subject certificate at the conclusion of the litigation.
 - v. This policy does not apply to revocation actions.

9. Airman Medical Certificate Denials Process.

- a. General. As provided in Part 2.11.1.3 of Nig.CARs 2009, aviation medical examiners have been delegated the authority to examine applicants for airman medical certificates and to issue or initially deny such certificates after determining whether the applicants meet the standards prescribed in Part 2.11.1.4 Nig.CARs

2009. When an aviation medical examiner denies issuance of a medical certificate, the airman may, within 30 days after the date of denial, apply in writing to the DG for reconsideration of the denial.

- b. Aviation Certificate Denials (other than medicals) besides the denial of an airman medical certificate, the NCAA may also deny other airman certificates when the Authority is satisfied that it is in the interest of safety to do so.
- c. Appeal against Denial of Medical Certificate. In accordance with the appeal procedures set forth in Part 18 (2) of Nig. CARs 2006, any person can appeal in writing to the DG whenever he determines that his medical certificate has been unjustly denied.
- d. Reevaluating the Case. When the alleged violator submits evidence, information, or views in writing or in person at an informal conference, legal counsel considers the new evidence or information and reevaluates the notice. Legal counsel makes a new determination regarding the alleged violations in consultation with the appropriate Directorate. Allegations that are disproved are withdrawn. If the sanction proposed is determined to be excessive, it is reduced appropriately. Legal counsel does not increase the sanction proposed in the notice as a result of the informal procedures. Unless matters not considered in issuing the notice are brought to legal counsel's attention, the order normally imposes the sanction proposed in the notice.

10. Aircraft Registration Violations.

- a. General. Generally, an aircraft is eligible for Nigerian registration only if a "citizen of Nigeria" owns it and it is not on a foreign registry. Until it is registered under Nig. CARs 4.2.1.2(1), an eligible civil aircraft may not be operated in Nigeria.
 - b. Effectivity of Registration Certificate. Once the aircraft is registered, the effective registration certificate must be carried aboard the aircraft. Certificate of aircraft registration is no longer effective when one or more of the events specified in Part 4.2.1.2 Nig. CARs occur or the certificate is determined to be invalid under Nig. CARs. Further operation of that aircraft with an invalid or ineffective certificate is a violation of Nig. CARs, 2009.
11. Suspension or Revocation of Airman Medical Certificate. Whenever the NCAA has doubt concerning the medical fitness of the holder of a medical certificate, the Authority may determine that the person involved shall repeat a complete or partial medical examination and may suspend the validity of the medical certificate until the examination is completed with favourable results. The NCAA exercises this power pursuant to Part 2.2.9.2 Nig. CARs 2009.

The validity of a medical certificate may also be suspended in a case of a temporary rejection on medical grounds, refusal to submit to re-examination, failure to provide medical information or falsification of certificate or application, illegal alteration on the certificate or when an airman makes a false entry in any document required to be kept in connection with a medical certificate.

12. Notification of Suspension of Medical Certificate. Under Part 2.2.9.2(c) Nig. CARs 2009, the NCAA shall notify a certificate holder in writing of the suspension of his licence stating the reasons for that suspension.
13. Surrender of Suspended Certificate. Under Part 2.2.9.2(d) Nig. CARs , any person who receives a notice of suspension of his certificate shall within 7 days after the date of receipt of the notice surrender the medical certificate to the NCAA.
14. Appeal against Suspension Medical Certificate. Any person who feels aggrieved with the decision of NCAA to suspend his medical certificate may appeal to the DG for reconsideration of the suspension.
15. Procedures for Recovering Certificates and Related Enforcement Action.
 - a. Issuance of a Demand Letter. If a person does not surrender a suspended or revoked certificate, authorization, or other approval within 14 days of the date an emergency order is issued or within 30 days of the date a nonemergency order is issued, legal counsel issues a letter to the certificate holder demanding the immediate surrender of the suspended or revoked certificate, authorization, or other approval. In the demand letter, legal counsel advises the holder that failure to do so will result in civil penalty action for failure to surrender.
 - b. Civil Penalty Action for Failure to Surrender. If the holder of a certificate, authorization, or other approval fails to surrender a suspended or revoked certificate, authorization, or other approval within 14 days of the date of a demand letter is issued, legal counsel ordinarily initiates a civil penalty action against the holder for failing to surrender. Legal counsel opens a separate EIR for the civil penalty action. The holder is subject to a civil penalty for each day the holder failed to surrender the certificate, authorization, or other approval.
 - c. Continued Failure to Surrender. If the holder fails to surrender a certificate, authorization, or other approval after the NCAA has taken civil penalty action against him, then NCAA legal counsel refers the failure to surrender to the DG who may consider suspension or revocation, if appropriate.
- 16. Procedures for the Collection of Administratively Assessed Civil Penalties.**
 - a. Applicability. This Handbook applies only to the collection of civil penalties the NCAA administratively assesses.
 - b. Procedures for Cases where Hearing is Not Requested.
 - i. An order assessing civil penalty and a final order of assessment (that is, after the time periods for appealing have expired) are legally collectible debts. NCAA personnel immediately take steps to collect the assessed amounts once an order assessing civil penalty has been issued or the period for appealing an order of assessment has expired. To expedite the collection of civil penalties, these orders contain language that satisfies the requirements of an initial demand letter. Under Nig. CARs Part 1.3.3.3 (c), an initial demand letter must inform the debtor of: the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review

within the NCAA; the applicable standards for assessing interest, penalties, and administrative costs; the date by which payment is to be made, which normally should be not more than 30 days from the date the initial demand letter was mailed or hand-delivered. Legal counsel exercises care to ensure that orders imposing civil penalties, which are initial demand letters, are mailed or hand-delivered on the same day that they are dated.

- ii. In the order assessing civil penalty or order of assessment, legal counsel advises the violator to send payment of the civil penalty to the Directorate of Finance at the Headquarters of the NCAA.

CHAPTER 7.

SANCTION GUIDANCE POLICIES

1. Purpose. This chapter provides the NCAA's policies for determining an appropriate sanction once NCAA enforcement personnel decide that legal enforcement action is appropriate. This chapter contains the general policy that NCAA intends to apply in selecting the types of sanctions, ranges of sanctions within those types, and specific sanction amounts to impose in legal enforcement actions for typical violations of the NCAA statute and regulations. This guidance covers the parameters both for selecting sanctions and for modifying sanctions during the informal procedures.

2. General Guidelines.

a. Certificate Suspension Action and Civil Penalty Action:

- i. General. If a certificate holder improperly exercises the privileges of a certificate, a natural consequence of that act is to lose the privileges for a period of time commensurate with the violation. Balanced against this principle, however, the NCAA considers the adverse impact that a certificate suspension could have on the public. Thus, the Authority generally suspends the certificates of individual certificate holders for violations. However, the NCAA usually takes civil penalty action against air carriers and airports because such actions do not disrupt service, which may adversely affect the public. Nevertheless, when the NCAA determines that safety considerations warrant it, the Authority will suspend the certificate of any type of certificate holder.
- ii. Use of both certificate action and civil penalty action for the same violations. The NCAA may if the situation warrants take civil penalty action and certificate action (that is, certificate suspension for a fixed period of time and imposition of civil penalty) against a certificate holder for the same conduct.
- iii. Change in type of proposed sanction. The initial enforcement action reflects the NCAA's best assessment of the appropriate sanction for the violations alleged. After initiating the action, legal counsel ordinarily does not change the type of sanction unless additional facts or circumstances are presented to the NCAA that warrant a change.

b. Legal Sanctions for Remedial Purposes.

- i. Indefinite certificate suspension pending compliance or demonstration of qualification. Suspension action is appropriate where there is a need temporarily to suspend the privileges of the certificate or rating pending demonstration of qualification or compliance with statutory or regulatory requirements.
- ii. Certificate revocation - general. The NCAA revokes a certificate when a certificate holder lacks the qualifications to hold the certificate. The certificate

holder's continued exercise of the privileges of the certificate in such circumstances would be contrary to safety in air navigation or air transportation and the public interest. Revocation is appropriate whenever a certificate holder's conduct demonstrates a lack of the technical proficiency or a lack of the degree of care, judgment, or responsibility, required of the holder of such a certificate. Orders of revocation are issued on an emergency basis when the certificate holder lacks qualification and is reasonably not able as a practical matter to exercise the privileges of the certificate.

- iii. Certificate revocation - individuals. The NCAA generally revokes an individual's certificate or rating whenever he or she demonstrates a lack of willingness or ability to comply consistently with statutory or regulatory requirements. A lack of willingness or ability to comply may be demonstrated by such things as repeated or deliberate violations or by violations that involve grossly careless or reckless conduct. Even a single violation may be sufficient to warrant a conclusion that an individual lacks qualifications. The NCAA ordinarily revokes all certificates of a person who commits a violation involving intentional falsification.
- iv. Certificate revocation - entities. Revocation is normally appropriate when a certificate-holding entity deliberately or flagrantly violates the statute or regulations or falsifies records. Revocation also is generally appropriate when the certificate holder has committed the same or similar violations in the recent past demonstrating a lack of qualification, or when the certificate holder no longer has, and does not obtain in a reasonable time, the personnel or equipment to conduct its operation in full compliance with statutory and regulatory requirements.
- v. Mandating Certificate Revocation. Under Part 1.2.1.8 (e)(i) Nig. CARs, NCAA is authorised to revoke the certificate, licence, rating, authorisation of any person who is convicted for the violation of any laws controlled substances.

3. Applicability and Exclusions.

The sanction guidance table in Appendix A-13 provides types of sanctions and general ranges of sanction amounts for violations of the CAA 2006 and the Nig. CARs. Once the NCAA has determined that legal enforcement action is warranted for a violation, NCAA enforcement personnel use the table of sanctions and paragraph 4 of this chapter, as well as any other sanction guidance, to determine a proposed sanction.

- a. Decisions to Take Administrative Action (Warning Notices or Letters of Correction). An administrative action does not constitute either a formal adjudication of the incident or a finding of violation. For that reason, NCAA investigative personnel do not propose a sanction using the table.
- b. The NCAA's Exercise of Prosecutorial Discretion. The decision whether to prosecute a particular case is based on a review of the evidence and relevant policy and litigation considerations. The NCAA exercises broad discretion in both the initial decision to bring a legal enforcement action, and in any later determination to compromise or settle a case based on various considerations.

- c. Violations by Members of the Nigerian Armed Forces. The NCAA is required to forward reports of these violations to the Ministry of Defence, whenever the violator is acting in the performance of official duties. The NCA, however, takes remedial action in addition to referring a report when the violator, whether or not acting in the performance of official military duties, holds an NCAA certificate, and the violator's qualifications are at issue. The NCAA may take punitive action against a member of the Nigerian Armed Forces for a violation committed when the member is not performing official duties.

4. Mitigating or Aggravating Factors and Elements. These factors and elements provide a framework for determining sanctions for violations specifically listed in the table. All the factors and elements however may not apply to each violation. Only those factors and elements that are relevant to a violation are considered in determining a sanction for the violation. This list of factors and elements is not intended to be exhaustive; other factors may be relevant as well.

- a. Nature of the Violation. Three elements define the nature of a violation: first, whether the violation was operational or non-operational; second, whether the violation involved careless or reckless conduct; and third, whether the violation involved any special aggravating or mitigating factors.
 - i. Individuals. When an individual who holds a certificate improperly exercises the privileges of that certificate, the natural consequence of that act should be loss of privileges for a period of time commensurate with the violation. The NCAA, therefore, primarily uses certificate actions to enforce operational regulations against individuals who hold certificates. The potential adverse impact that certificate action may have on an individual's livelihood does not alter this principle. Non-operational violations may warrant a different type of sanction.
 - ii. Entities. The NCAA ordinarily takes civil penalty action against a certificate-holding entity (for example, an air carrier) when it determines there would be a substantial adverse impact on the public interest from disrupted service by that certificate holder and the impact is not outweighed by safety considerations. Even when a substantial adverse impact would occur, when there is a need to prevent continuing violations or other egregious conduct by any certificate holder, when any certificate holder lacks qualification, or there is a reasonable basis to question the qualifications of any certificate holder, the NCAA takes remedial action, for example, revocation or indefinite suspension, as necessary.
 - iii. Careless or reckless conduct. Violations that involve careless or reckless conduct may warrant more severe sanctions. Carelessness connotes conduct that falls below the standard of care or prudence expected of a reasonable person, or holder of the relevant certificate, acting under the same or similar circumstances. Recklessness connotes conduct that demonstrates a gross, or even callous or flagrant, disregard for safety. Aircraft operations that do not otherwise result in a violation of a specific regulation should be evaluated in light of these standards to determine whether they constitute careless or reckless operations in violation of the Civil Aviation Act or Regulations.

- b. Whether the Violation was inadvertent and not deliberate. If a violation is deliberate or not inadvertent, a sanction at the upper end of the range or exceeding the range for that type of violation generally is appropriate. A deliberate violation generally warrants a sanction that is more severe than one that is just not inadvertent.
- i. Not deliberate. This element means a lack of the degree of deliberation found in intentional misconduct. Deliberate or intentional misconduct is an aggravating circumstance and includes deliberate conduct that leads to a violation as well as circumstances indicating intent to commit a violation.
 - ii. Inadvertence. An act is inadvertent when it is the result of both inattention and lack of purposeful choice. For example, an inadvertent act occurs when a pilot flies at an incorrect altitude because he or she misread the aircraft's instruments; however, it is not an inadvertent act when a pilot flies at an incorrect altitude as a result of choosing not to consult the aircraft's instruments or choosing not to use other available means to verify altitude. The test to be applied is whether the conduct, not the factual or legal consequences, is inadvertent and unintended.

c. Certificate Holder's Level of Experience.

- i. Level of experience refers primarily to the type of certificate and ratings held (for example, student, private, commercial, airline transport pilot, or certified flight instructor), and the number of hours flown, by the certificate holder. Certificate holders with greater levels of experience may be held to a higher standard. Thus, for example, commercial pilots may be held to a higher standard than private pilots and airline transport pilots may be held to an even higher standard than commercial pilots.
- ii. In determining an appropriate sanction, the NCAA may consider the extent to which the certificate holder's action deviated from the degree of care and diligence normally expected of a person with the certificate holder's level of experience. A significant deviation from the degree of care and diligence expected of the holder of that certificate may warrant a more aggravated sanction.

d. Attitude of the Violator.

A good compliance attitude is the norm and does not warrant a reduction in sanction. A prior violation history may suggest that a person has a poor compliance disposition, which is an aggravating factor. Furthermore, a person who commits an act or omission contrary to statutory or regulatory requirements after receiving notice through a prior administrative action or counseling that such conduct is in violation of those requirements might well be regarded as having a poor compliance disposition. In evaluating compliance disposition, the NCAA does not view an alleged violator as having a poor attitude because the alleged violator fails to respond to a letter of investigation, chooses to be represented by counsel, or contests the violation.

e. Degree of Hazard.

- i. The degree of hazard may be increased as a result of the interplay of the operational environment (for example, weather conditions, congested vs. sparsely populated areas) and the nature of the threat to safety (to the life or property of another, including those in the aircraft being operated, to other aircraft, or to persons or property on the surface) that the misconduct presents. The safety threat is based on the reasonably foreseeable consequences of the misconduct. For example, operating 500 feet below the minimum altitude poses a greater hazard than operating 100 feet below. Similarly, if an aircraft operator fails to comply with an airworthiness directive by operating 10 hours past a required inspection, the degree of hazard is probably not as great as when the aircraft is operated 100 hours beyond the required. And it is not mitigating when a violation does not result in actual harm; that is simply fortuitous.
 - ii. The sanction ranges reflect the degree of danger normally inherent in an average violation of a regulation, without aggravating circumstances. As outlined in chapter 7, subparagraph 5.b., an increase in the degree of hazard may form the basis for exceeding the sanction ranges.
- f. **Action Taken by Employer or Other Authority.** This factor ordinarily involves the following elements: whether the alleged violator's employer has taken disciplinary action and whether criminal prosecution is involved.
- i. **Employment discipline.** Where the violation would normally call for a certain type of enforcement action, the NCAA takes that action regardless of any action taken by the violator's employer.
 - ii. **Criminal prosecution.** When arising out of the same conduct, local, state, or federal prosecution does not preclude the NCAA from taking appropriate remedial enforcement action. For cases where federal, state, or local authorities prosecute criminally, the NCAA generally does take remedial enforcement action if that is warranted despite the criminal prosecution.
- g. **Use of a Certificate.** This factor relates to the nature or kind of activity or operation involved at the time the violation was committed. Whether the certificate holder was engaged in student, private, commercial, or airline activity bears on the severity of the sanction. Air carriers are held to the highest standard of care. Likewise, personnel engaged in air transportation are held to the highest safety standard.

h. Violation History.

- i. A violation-free history is the expected norm, not the exception and, therefore, is not a mitigating factor. Sanction ranges in the table generally represent the normal range of sanction for a single, first-time, inadvertent violation. Given the expected norm, a prior violation record can be evidence of a poor compliance disposition or of a pattern of disregard for the NCAA's regulations,

which are aggravating factors. As a result, a violation history can justify imposing a sanction at the higher end of the normal range or a sanction beyond the normal range. It might also justify revocation rather than suspension if the pattern of violation reflects a lack of qualification. In addition, a violation history might justify a certificate suspension if previously issued civil penalties have not produced the desired deterrent effect. In deciding whether a violation history justifies aggravating the sanction or changing the usual type of sanction, the NCAA considers the length of time that has elapsed between violations, whether the violations involved the same or similar regulations, and whether the violations are factually similar.

- ii. The following actions constitute violation history when they involve regulatory violations and become final: orders of amendment, modification, suspension, or revocation of an NCAA certificate; orders assessing a civil penalty; findings of violation contained in consent order, order of compliance or denial; and findings of violation made by a federal court. In addition, a party may agree as part of a settlement that the NCAA may consider alleged violations as findings of violation for future sanction determinations.
- i. Ability to Absorb Sanction. Sanctions should be deterrent not be unduly harsh, they should be substantial enough to prevent violators from profiting from their violations ,that is, the sanction should be high enough to remove any profit incentive for violations. Penalties should never be permitted to be a cost of doing business. Air carriers, inparticular, are required by law to have the financial wherewithal to operate according to established safety standards. While the NCAA does not allow financial circumstances to excuse any violation, it does consider a carrier's size and financial strength in choosing the appropriate sanction amount. The difference in the penalties fixed in the law recognizes this fact. A civil penalty that may be a mere cost of doing business to a major air carrier might compel a small air carrier to go out of business. Therefore, the NCAA uses air carrier size as one means of ensuring a relatively equivalent deterrent effect on each air carrier that violates the same NCAA regulation. The ranges of civil penalties are set for it in Appendix A - 13. For all entities and individuals, the NCAA considers ability to pay a civil penalty and the effect a civil penalty will have on a person's ability to continue in business to the extent it knows such information.
- j. Consistency of Sanction. One of the NCAA's goals is to achieve relative consistency in imposing similar sanctions for similar violations. The NCAA pursues this objective to assure fairness and so the sanction's impact has an equivalent degree of effect to others similar situations.
- k. Whether the Violation was Reported Voluntarily.
 - i. The NCAA may grant special enforcement consideration under certain circumstances to a person who, incident to his or her report of another's violations, voluntarily discloses his or her own participation in the same or related violations. This special enforcement consideration may range from mitigating the sanction to determining that no enforcement action is required.

- ii. If a person voluntarily reports an apparent violation to the NCAA before the NCAA discovers it, takes immediate action to correct the noncompliance, and works with the NCAA on steps to preclude recurrence of the apparent violation, the NCAA may consider such actions in mitigating the sanction for the violation.
- I. **Corrective Action.** The NCAA considers corrective action a mitigating factor in determining sanction provided the corrective action exceeds the minimum regulatory or statutory requirements. The amount of credit given in setting a sanction depends on the extent and timing of the corrective action, that is, how extensive was the corrective action and how quickly was it taken. Implementing new procedures that are above those required under the NCAA's regulations to prevent future violations ordinarily is considered a mitigating factor in determining an appropriate sanction. Corrective action taken after the alleged violator first becomes aware of a deficiency but before NCAA discovery of the violation ordinarily warrants greater mitigation than corrective action that is taken only after the alleged violator receives notice of the NCAA's enforcement action. Corrective action taken by an alleged violator that simply brings that person into compliance with the statutory or regulatory requirements is not considered in mitigation of sanction. To mitigate a sanction based on such corrective action would put at an economic disadvantage on competitors who have expended the resources necessary to maintain compliance.

5. Use of the Table of Sanctions.

- a. **General.** Sanction determinations are not accomplished through a strict mathematical formula; rather, sanction determinations result from a judgment of where a case lies along a spectrum of gravity. Ultimately, the circumstances of each case are evaluated in terms of the needs of safety and the public interest. However NCAA must impose any sanction mandated by law or regulations.

6. General Guidance on Multiple Acts or Multiple Violations.

- a. **Description of Multiple Violations.** Enforcement actions often involve multiple violations: multiple violations of a single regulation; a single violation of multiple regulations; or multiple violations of multiple regulations. Under Nig. CARs Part 18(3) 2006, every repetition of a violation shall constitute a separate offence with penalties to run consecutively in each case.
- b. **General Sanction Guidance.** Multiple violations ordinarily result in high sanction amounts. Such sanction amounts ordinarily are not determined by simply adding up the individual penalties for multiple violations set forth in the table. Simply adding up the individual penalties for each violation could result in compounding a sanction in a disproportionately harsh manner for the conduct involved. However, multiple violations may be so serious in their consequences for safety and the public interest as to require a penalty greater than the sum of the recommended amount of penalty provided for in the table for each violation.
- c. **Single Act of Noncompliance Resulting in Multiple Violations.** When a single instance of noncompliance results in multiple violations of general and specific

regulations involving the same or similar conduct, the NCAA ordinarily does not compound the sanction to reflect the amount of sanction recommended in the table for each regulatory violation. In calculating the amount of sanction for multiple violations, NCAA enforcement personnel consider the totality of circumstances relating to the multiple violations, including the alleged violator's degree of culpability, and whether the alleged violator had taken steps, although unsuccessful, to prevent the violations.

- d. Type of Legal Enforcement Action. Where this guidance designates the type of legal enforcement action for a single violation, the NCAA ordinarily selects the same type of sanction for multiple violations of a similar nature. The seriousness of multiple violations, however, may require changing what is normally a civil penalty action to a certificate action or, sometimes, a punitive certificate suspension to a remedial revocation action.

7. Remedial Sanction Guidance Policy.

a. General.

- i. The CAA 2006 requires the DG NCAA to foster the safety of civil aviation in Nigeria. As one means of achieving this goal, the CAA 2006 specifically authorizes the DG NCAA to issue various certificates. These certificates include airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, and air navigation facility certificates. For most of these certificates, the CAA 2006 requires the DG NCAA to investigate and make appropriate findings regarding qualifications to hold the certificate applied for before the certificate is issued.
- ii. Because the DG NCAA's responsibility to foster safety of civil aviation is constant, the DG NCAA must also take appropriate action when the DG NCAA finds, or has reason to believe, the certificate holder no longer possesses the qualifications required to hold a certificate.
- iii. Revocation is the appropriate remedy for conduct that demonstrates that a certificate holder lacks either the technical proficiency or the degree of care, judgment, and responsibility, required for the certificate and ratings held. The proper standard for revocation is not whether specific violations demonstrate a failure to exercise the necessary qualifications of a certificate holder, but rather whether the violations demonstrate that the holder has never possessed or no longer possesses such qualifications. Similarly, suspension until demonstration of qualification is appropriate when the Authority has reason to believe the certificate holder may lack the required competence to hold a certificate and generally when the certificate holder fails or refuses to be reexamined. In either case, using the factors normally applied to select a sanction in suspension cases is neither required nor appropriate.

b. Misconduct Generally Warranting Revocation.

- i. Some acts of misconduct by their nature are so egregious as to demonstrate the certificate holder never possessed or no longer possesses the qualifications required to hold any airman certificate and other certificates. Therefore, such acts of misconduct warrant revocation of all airman certificates and other certificates held by the certificate holder. Such acts include: making a fraudulent or intentionally false statement; operating an aircraft while under the influence of alcohol or drugs, or with an alcohol concentration of .04 percent or above, or within 8 hours of consuming alcohol, in violation of the Nig. CARs; operating a civil aircraft within Nigeria with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs or substances as defined in federal or state statutes are carried in the aircraft, in violation of extant laws; refusing to submit to a drug or alcohol test; and conviction for the violation of any federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, depressant or stimulant drugs or substances involving the use of an aircraft, the exercise of the privileges of the alleged violator's airman certificate to further the prohibited conduct

c. Intentionally False or Fraudulent Statements.

In general, the NCAA considers the making of intentionally false or fraudulent statements so serious an offense that it results in revocation of all certificates held by the certificate holder. Falsification has a serious effect on the integrity of the records on which the NCAA's safety oversight depends. If the reliability of these records is undermined, the NCAA's ability to promote aviation safety is compromised.

8. General Guidance for Applying Sanction for Unruly Passenger, Airline Personnel Conduct

a. General Purpose and Policy.

- i. Part 18 sections 12 and 13 provide sanction range for a single act of unruly conduct by a passenger or airline personnel from not less than N50,000 and imprisonment for a term of not less than 2 months.
 - ii. Whether a particular passenger's unruly act warrants a sanction within or outside the sanction range, decision not to proceed with enforcement action depends on the totality of the circumstances in a particular case. Where the mitigating and aggravating factors described in chapter 7, paragraph 4 are also present in a case, NCAA enforcement personnel applying the sanction ranges consider those factors in selecting an appropriate sanction within or outside the range. The variety of conduct and the varied facts and circumstances within which unruly conduct may occur, may also warrant consideration of other mitigating and aggravating factors unique to unruly passenger conduct. Some of these additional factors are set forth in chapter 7, subparagraphs 8 b. and c.
- b. Additional Aggravating Factors to Consider. In addition to the factors described in chapter 7, paragraph 4, NCAA enforcement personnel consider other

potentially aggravating factors in chapter 7, subparagraphs 8.b.(1)-(7) in the determining of an appropriate sanction within or outside the sanction range prescribed in the Regulations.

- i. The severity of the unruly conduct. The severity of the conduct may be indicated by several factors, including:
 - The physical characteristics of the individual committing the unruly
 - conduct contrasted with those of the victim.
 - The nature of the conduct itself.

 - The extent of any injury inflicted.
 - ii. Whether the unruly conduct occurred when the aircraft was in flight or while passengers were boarding or deboarding. Certain unruly conduct that occurs during flight or on a crowded boarded flight may be more aggravating than the same conduct that occurs while passengers are deplaning.
 - iii. Whether the unruly conduct was directed at a crew member or a passenger. Because a crew member has safety duties to perform on a flight, unruly conduct against a crew member may be more aggravating than the same unruly conduct directed at an individual who does not have any safety duties to perform on the flight.
 - iv. Whether the unruly passenger provoked the situation that resulted in the unruly conduct. For instance, a passenger who instigates a confrontation, or a passenger who mixes alcohol with prescribed or over-the-counter drugs that the passenger claims precipitated the unruly conduct.
 - v. Whether the unruly conduct necessitated that the flight be diverted from its intended destination.
 - vi. Whether the unruly conduct necessitated that the flight crew call ahead for law enforcement to meet the flight on arrival.
 - vii. Whether the unruly conduct was inflicted with malice or in anger.
- c. Additional Mitigating Factors to Consider. The factors listed in chapter 7, subparagraphs 8.c.(i)-(iii) may justify a sanction below the sanction range, or in the Authority's prosecutorial discretion, may justify a decision not to prosecute a passenger's unruly conduct.
- i. Whether the unruly passenger has already served a criminal sentence for the same conduct or has already made monetary restitution in the context of a criminal prosecution for the same conduct.
 - ii. Whether the passenger's unruly conduct was caused by a diagnosed medical or mental condition for which the passenger was receiving medical treatment.
 - iii. Whether the unruly conduct was a reasonable response to a provocation by

another. However, a passenger's use of unreasonable force in response to a provocation by another individual on the aircraft would not constitute a mitigating factor.

- d. When to Apply the Sanction Range for Acts Posing an “Imminent Threat” to Safety of the Aircraft or Others on Board the Aircraft.
 - i. The sanction range provided in Part 1.3.3(b) (iv) Nig. CARs applies for an act that poses an imminent threat to safety of aircraft or other individuals or collective safety of others on the aircraft applies on board the aircraft. For example, a passenger attempting to open an emergency exit door would be an imminent threat to the safety of the aircraft.
 - ii. In selecting an appropriate sanction within or outside the sanction range for an act posing an imminent safety threat, NCAA enforcement personnel consider whether the resultant imminent threat was the unintended consequence of the passenger's careless or reckless act or whether the passenger intended the consequences. The former would justify a sanction toward minimum range, while the latter would justify a sanction toward the maximum range.

CHAPTER 8.

ENFORCEMENT INVESTIGATIVE REPORT (EIR)

1. Purpose for EIR.

The Enforcement Investigative Report (EIR) is the means for documenting, assembling, organizing, and presenting all evidence and other relevant information obtained during an investigation. Because it is the record from which determinations of violations and sanctions are made, the report must be well prepared, factual, and provide the proof required to substantiate the enforcement actions contemplated.

2. EIR Recommendations.

If during an investigation, NCAA investigative personnel determine that no violation occurred, they terminate the investigation and complete the appropriate sections of the EIR. If a letter of investigation was issued, NCAA investigative personnel notify the recipient that the matter has been closed. If NCAA investigative personnel determine after evaluation of all the evidence obtained in the investigation that a violation appears to have occurred, then they recommend either administrative action or legal enforcement action in accordance with the guidance in chapter 5. NCAA investigative personnel must exercise caution to ensure that neither the alleged violator nor any other unauthorized person is informed of their recommendations.

3. Organization of an EIR.

An EIR contains three sections labeled A, B, and C. The information contained in each section is described in chapter 8, subparagraphs 3.a., b., and c. NCAA investigative personnel prepare an EIR in accordance with the guidance in this chapter.

- a. Section A. NCAA EIR Form. Section A of the EIR contains a completed EIR Form. NCAA investigative personnel complete the information blocks on EIR Form in accordance with the guidelines in chapter 8, paragraph 4. They enter the information required in computer data base system. After completion of all required fields in EIR form, NCAA investigative personnel print it for inclusion in the EIR.
- b. Section B. Statement of Case and Factors Affecting Sanction. The statement of case and factors affecting sanction is section B, the second part of the EIR, and is assembled as a separate item behind section A. In section B, NCAA investigative personnel also provide any opinions and feelings they have about the case, evaluate the reliability of the evidence, and discuss any conflicting evidence in the case. They also state in this section their recommendations on sanction.
 - i. Statement of case. The statement of case is a concise statement of the facts and alleged statutory or regulatory violations found during the

investigation and a discussion of how those facts establish the alleged violations. The statement of case identifies who did what, when, where, why, and how. NCAA investigative personnel provide an orderly and logical statement of the facts necessary to establish each element of each regulation believed violated and the related investigative action that established that fact. If the alleged violations involved one or a few flights, then each flight should be specifically identified with the aircraft, the origin, destination, place of landing, the name of the pilot in command, and the reasons why the NCAA believes that individual was the pilot in command. If the flight involved an unairworthy aircraft, then each discrepancy needs to be stated. If the violation involved the failure to do something required or the doing of something prohibited, then the specific omission or commission is specifically stated. It is usually helpful to the reader if the summary of case is organized in chronological fashion. NCAA investigative personnel support each factual statement by referring to an item of proof. The reference to the item of proof appears directly after the statement it supports, unless the item of proof supports an entire paragraph. If an item of proof supports an entire paragraph, NCAA investigative personnel reference the item of proof at the end of the paragraph. NCAA investigative personnel may briefly describe the origin or the basis of the investigation. They have latitude to go into as much detail as necessary given the complexity and nature of the particular case to assure an understanding of the investigation and apparent violations. When the investigation fails to establish a violation, NCAA investigative personnel state this conclusion with an explanation of how the investigation led to this conclusion.

- ii. Factors affecting sanction. NCAA investigative personnel analyze whether each of the factors in chapter 7 is relevant and applies to the case. The factors are the nature of the violation, including how safety was affected; whether the violation was inadvertent and not deliberate; the certificate holder's level of experience; attitude of the violator; degree of hazard; action taken by employer or other authority; the use of the certificate; violation history; decisional law; ability to absorb sanction; consistency of sanction; whether the violation was reported voluntarily; and corrective action. NCAA investigative personnel address each factor in section B of the EIR. If a factor is relevant to the case, NCAA investigative personnel explain in section B of the EIR how the facts and circumstances support the applicability of that factor to the alleged violations. Using the guidance in chapter 7, NCAA investigative personnel explain whether the factor has a mitigating or aggravating effect on the amount of sanction for the apparent violations. NCAA investigative personnel may support their analysis of the factors affecting sanction with reference to items of proof as appropriate. If a factor does not apply to the case, then NCAA investigative personnel state in section B that the factor is not applicable. In each case, NCAA investigative personnel summarize violation history information contained if computer data base system exists.
- iii. Other information. In section B, NCAA investigative personnel also evaluate the reliability of the evidence and discuss any conflicting evidence in the case. If appropriate, they reference specific supporting items of proof. NCAA

investigative personnel fully analyze in section B any explanation provided by the apparent violator about the incident. Such explanation may appear in a record of interview of the apparent violator or a response to the letter of investigation. NCAA investigative personnel set forth in section B any other mitigating, extenuating, or aggravating factors about the apparent violations. If NCAA investigative personnel have any opinions or feelings about the case, they state them in section B and label them as opinions. NCAA investigative personnel state a conclusion, a recommendation about sanction, as appropriate, and set out the reasons justifying their enforcement action recommendations and sanction recommendations. If NCAA investigative personnel receive any information after they forward the EIR to the next reviewing official, they prepare an analysis and an amendment to the EIR and forward them with the information to that reviewing official. Their analysis indicates whether, based on the information, they have changed their conclusions or recommendations about the facts, the alleged statutory or regulatory violations, or sanction.

- iv. Enforcement Decision Tool (EDT) Work Sheet. NCAA investigative personnel include in section B of the EIR EDT worksheet prepared in accordance with guidance A-16.
 - v. Regional Office Sanction Recommendations. Regional office personnel making sanction recommendations about the amount of sanction, prepare a separate written statement for such recommendations. In this written statement, regional office personnel state their specific sanction recommendation and the reasons supporting it. The written statement is included in section B of the EIR.
- c. Section C. Items of Proof. Section C consists of the items of proof and a numerical index of those items. The items of proof consist of originals photocopies of each piece of evidence gathered to prove the apparent violations. When the size or nature of physical evidence precludes including it in the EIR, NCAA investigative personnel include appropriate photographs of such evidence in the EIR and an explanation of where the physical evidence is located. The numerical index of the items of proof provides a brief statement of each item's content. Each item of proof is numbered consecutively. The items of proof are listed in a logical order to facilitate review. Each piece of documentary evidence referenced in section B of the EIR is included as an item of proof. The items of proof might include records of interview, witness statements, relevant portions of maintenance manuals or operations manuals pertinent to the violation, aeronautical charts current on the date of the violation, copies of log books, and photographs.

4. Preparation of Form EIR.

- a. EIR Number. NCAA investigative personnel enter the report or case reference number which identifies a specific EIR in the appropriate block on the EIR. The report or case reference number consist of the directorate, year, month and day. The block identified as related number refers to the report number for another EIR associated with the underlying incident. NCAA investigative personnel enter the report number for the related EIR in the same code form. If there is more

than one related case, NCAA investigative personnel select a case to be the lead case and enter that case as the related EIR case number for all related cases.

b. Instructions for Completing Blocks 1-33 on EIR Form.

- i. Block 1. Name. Enter the name of the apparent violator. The entry shows an individual by last, first, and middle name (for example, Odukoya Ranu David Ltd). The name of a legal entity should be entered in full with no punctuation. A legal entity's name should be the standard in use for the organization, such as the air carrier designator, the name in the airport table, or other standard source. Enter the aircraft's civil registration number for actions against that aircraft's airworthiness certificate.
- ii. Block 2. Address and telephone number. Enter the current complete address of record for a certificate holder. If the mailing address is a post office box, include a street address in the remarks section if one is available. Enter a complete telephone number with area code, if available.
- iii. Block 3. Date of birth. Enter, in numerals, the date of birth of an individual apparent violator, in an eight-digit year-month-day.
- iv. Block 4. Sex. Enter male (M) or female (F).
- v. Block 5. NCAA certificate number. Enter the number of the NCAA certificate held by the apparent violator, if related to the incident under investigation or the regulation believed violated. Leave blank if no certificate is held.
- vi. Block 6. NCAA certificate type. Enter the type of certificate referenced in block 5 (for example, commercial pilot; air carrier; airport operator). If no certificate is held, use "none."Note: If multiple certificates and certificate numbers are involved, enter each additional certificate number and type in the remarks section.
- vii. Block 7. Aviation employer. Enter the apparent violator's employer if the apparent violation is related to that employment.
- viii. Block 8. Make. Enter the name or trade name of the manufacturer when an aircraft, aircraft engine, propeller, aircraft component, or appliance is involved in or related to the apparent violation. Blocks (8) through (12) may be left blank if not applicable or marked N/A
- ix. Block 9. Model. Enter the model of the aircraft, aircraft engine, propeller, appliance, or aircraft component, as appropriate.
- x. Block 10. Identification number. For an aircraft, enter the civil registration number. For an aircraft, aircraft engine, propeller, appliance, or aircraft component, enter the serial number when available.
- xi. Block 11. Owner. Enter the name of the owner of the aircraft involved in the apparent violation.

- xii. Block 12. Owner's address. Enter the address of record of the owner listed in block 11.
- xiii. Block 13. Date occurred. Enter, in numerals, the date(s) on which the apparent violation occurred, in an eight-digit year-month-day format. Enter the earliest violation date if there are multiple violation dates or the violation continued over a period of time.
- xiv. Block 14. Time. Enter the local time at which the apparent violation occurred using a 24-hour clock (e.g., 1105 for 11:05 a.m.; 1435 for 02:35 p.m.). Leave blank if a specific time of occurrence is not appropriate or mark N/A.
- XV Block 15. Date known to NCAA. Enter, in numerals, the date on which anyone in the NCAA first learned of the incident that later was determined to be a violation in an eight-digit year-month-day format (for example, 2004/04/22). For example, if a pilot deviates from an air traffic control clearance issued by an NCAA facility, the date known to the NCAA is the date of the violation, and not the date the air traffic employee referred the apparent violation to the NCAA investigative personnel for investigation. Another example is: the date a written complaint is received by the NCAA is the date known to the NCAA, and not the date NCAA investigative personnel determine a violation occurred.
- xvi. Block 16. Region of discovery. Enter the two or three-character identifier of the region in which the apparent violation was first discovered. (Note: This may not be the region of occurrence.) e.g Los for Lagos and PH for Port Harcourt.
- xvii. Block 17. Location. Enter the name of the geographic location where the violation is alleged to have occurred. Use the airport identifier and name (if appropriate), the city and state, and any information needed to describe the location relative to a specific airport or city. The airport identifier standardizes the airport information.
- xviii. Block 18. Regulations or statutes believed violated. Enter all violations believed substantiated by the facts and technical analysis. Be specific in identifying the violation by section and subsection as appropriate. For example, if the rule believed violated in Part 1.2.1.8(a) Nig. CARs, is entered as such, do not enter it more generally as 1.2.1.8. In those cases where the regulation cited fails to identify adequately the act or aggravated circumstance involved, and NCAA investigative personnel believes that clarification is necessary, a clear text statement may be inserted in this block following citation of the rule believed violated. In medical cases, enter the appropriate section or subsection of the rule believed violated, in cases involving medical disqualification, the specific section or subsection that pertains to the medical qualification at issue.
- xix. Block 19. Enter the type of activity the apparent violator was engaged in at the time of the apparent violation.

- xx. Block 20. Category. Enter the category of the apparent violation.
- xxi. Block 21. Source. Enter the source of the initial information about the apparent violation.
- xxii. Block 22. Accident associated. Enter the type of accident or incident associated with the apparent violation
- xxiii. Block 23. Security programme. This section is only applicable for violation.
- xxiv. Block 24. Type action recommended or taken. Enter the type of enforcement action, which include administrative action, civil penalty, suspension, and no action.
- xxv. Block 25. Recommended sanction. Enter the sanction type, which include warning notice, letter of correction, amount involved and number of days.
- xxvi. Block 26. Date. Enter the date signed by the investigative personnel.
- xxvii. Block 27. Investigating office. Enter the appropriate directorate or regional office identifier.
- xxviii. Block 28. Regulations or statutes believed violated. Same as instructions for block 18 EIR; only this reflects the opinion of personnel or Director or legal counsel reviewing the EIR. If the investigative personnel entered an incorrect regulation or statutory provision in block 18, the correct regulation or statutory provision is cited. This is left blank for cases closed with no action.
- xxix. Block 29. Recommended type action. Same as instructions for block 25.
- xxx. Block 30. Recommended sanction. Same as instructions for block 25, except, for all EIRs, the regional office enters a specific amount of sanction (that is, specific number of Naira or days).
- xxxi. Block 31. Date. Enter the date signed by the Director.
- xxxii. Block 32. Region. Enter two or three-letter identifier for the reporting region (for example, PH, ABV, LOS).

5. Sections of EIR Required for Types of Action.

- a. Legal Enforcement Action. For legal enforcement action, NCAA investigative personnel complete all sections of the EIR, that is, sections A, B, and C.
- b. Administrative Action.

General. When administrative enforcement action is taken, NCAA investigative personnel complete section A of the EIR Form. The investigative personnel also include the completed Enforcement Decision Tool worksheet and a copy of

the warning notice or letter of correction in the EIR. The Directorates or regional office may decide to prepare or have prepared a complete EIR in cases involving complex or sensitive investigations even if administrative action is recommended.

c. No Action Cases.

General. When NCAA investigative personnel close an EIR with no action, they complete only section A and the statement of case portion of section B.

- d. Cases Referred for Criminal Investigation. For cases referred for possible criminal investigation, NCAA investigative personnel complete all sections of the EIR A, B, and C and transmit the EIR through the appropriate Director or legal counsel to the Director General NCAA for referral to the appropriate Authority for further action.

6. Processing an EIR.

a. Administrative Action EIRs.

- i. The investigative personnel at the headquarters or regional office issue warning notice and letters of correction. The investigative personnel prepare the letters as prescribed in Chapter 5.
- ii. Downgraded legal enforcement EIR. Sometimes legal counsel may return EIR if the investigative personnel recommends legal and enforcement action for downgrading to administrative action or no action. In this, the investigative personnel prepare and process an EIR for administrative action or no action.

- b. Legal Counsel. On receiving the EIR, legal counsel review the file for the sufficiency of the evidence to support the type of action recommended by the investigative personnel. If the evidence is insufficient, legal counsel coordinates the additional information needed through the appropriate Directorate. Legal counsel makes an independent determination of the appropriate sanction type and amount, giving due consideration to the sanction recommended by the investigative personnel, If the legal counsel's assessment of the appropriate sanction differs with that of the investigative office, legal counsel and the investigative personnel confer in an effort to reach an agreement. If they cannot agree, they refer the issue to the Director General. When legal counsel determines that sufficient evidence exists to support the recommended legal enforcement action and a sanction has been determined, legal counsel initiates legal enforcement action as provided in Chapter 6. Once legal enforcement action has been initiated, legal counsel has the final authority to change the type of action or sanction, or enter into a settlement agreement. When feasible, legal counsel coordinates sufficient changes with appropriate NCAA investigative personnel. Legal counsel informs the appropriate office and NCAA investigative personnel of the final disposition in all cases. The legal enforcement file held by legal counsel is the official NCAA record copy and is retained in the legal department.

7. Requests for Emergency Action Based on Partial EIR. The appropriate handling of a violation requiring emergency certificate suspension or revocation may involve initiation of such action by legal counsel before completion of the EIR. In these situations, NCAA investigative personnel prepare and forward an advance or partial EIR to legal counsel and provide legal counsel copies of all evidence that supports the alleged violation. NCAA investigative personnel complete the full EIR and forward it to legal counsel as quickly as possible.

CHAPTER 9.

ENFORCEMENT INFORMATION DATABASE SYSTEM (EIS) AND DISTRIBUTION REQUIREMENTS.

1. Enforcement Information Database System Overview.

- a. General. The Enforcement Information Database System is the NCAA's primary database for tracking information about enforcement actions for statutory or regulatory violations. All NCAA offices that have regulatory responsibilities must track their enforcement actions in the database system.
- b. EIS Capabilities. The database system is designed to provide data input and retrieval capabilities at the field, regional, and headquarters levels. It maintains electronic records of enforcement actions that authorized NCAA personnel can access.
- c. Data Entry. Data entry to the EIS is decentralized and occurs at the level of the office conducting the investigation or undertaking the next action.
- d. Access to Data. All NCAA Directorates have access to information database for querying, printing, or reporting purposes. Authorized NCAA personnel can access database records at the field, regional, and headquarters levels as needed.
- e. Security. All database users are required to have assigned user names and passwords. User names are associated with the entire database so only those names and personnel that are authorized can have access to it.
- f. Annual EIS Database Review and Reconciliation. Each NCAA Directorate and the legal department annually review the database records and reconcile those records with the corresponding EIRs. NCAA enforcement personnel make corrections and updates to the database records, including closing database records or changing the record owner for cases, to ensure the database record accurately reflects the status of a case.

2. Enforcement Information Database System.

- a. General. The enforcement information database shall be resident on a mainframe computer in Abuja and Lagos.

3. Distribution of Enforcement Documents.

- a. General. The distribution of Enforcement Investigative Reports, letters, notices, orders, and associated documents varies with the type of enforcement action recommended and the NCAA function involved. NCAA enforcement personnel do routinely distribute paper copies of records but can be accessed electronically in EIS.

b. Administrative Enforcement Actions.

- i. The investigative personnel sends the original of the warning notice or letter of correction to the alleged violator. In cases involving companies with complex organizational structures, the investigative personnel exercises care to assure it addresses the letter to the responsible official. NCAA investigative personnel may obtain advice on such matters from the supporting office.
- ii. When the investigative personnel complete its portion of a case, it forwards all applicable information to the appropriate Director, in accordance with this Hand Book.
- iii. The investigative personnel send a copy of the warning notice or letter of correction to the supporting office(s).

c. Legal Enforcement Actions or Referrals.

- i. The investigative personnel send the original EIR, with the original of all exhibits, to the appropriate Director.
- ii. The investigative personnel send a copy of section B of the EIR to the supporting office(s) through the investigating personnel Director. The supporting office can electronically access section through database system.
- iii. The regional office, after review and evaluation, transmits the EIR, to the Director General or to the legal for counsel handling.
- iv. The legal counsel processes legal enforcement cases and complaint referrals in accordance with chapter 2.

d. Legal Enforcement Documents.

Legal counsel distributes either electronic or hard copies of letters, notices, orders, and associated documents related to the legal handling of enforcement cases as follows:

- i. Copies of NCAA civil penalty letters, notices, and orders are sent to appropriate Directorate. Copies of final orders imposing a civil penalty are also sent to the accounting office.
- ii. Copies of NCAA notices, orders, and civil penalty letters and appeal decisions involving airman certificate holders are sent to appropriate Directorate.

APPENDICES

Appendix A-1

Sample Letter of Investigation

[Date]

EIR NO.....

ABC Airlines PLC
Address

Attention: Mr. B. Abubakar
Director, Engineering and Maintenance

Dear Mr. Abubakar,

During a recent spot check of ABC Airlines, Plc.'s maintenance facilities, the NCAA discovered irregularities concerning ABC Airlines, Plc's maintenance procedures and records. Specifically, the NCAA found that ABC Airlines' B-727 aircraft; 5N-XYZ was operated beyond A check (150-hour periodic inspection) by 1 hour and 30 minutes. The NCAA also discovered that ABC Airlines' L-1049H aircraft, 5N-LMN exceeded a Number 2 check by 10 hours and 30 minutes.

This is to inform you that the NCAA is investigating this matter. We wish to offer you an opportunity to discuss the incident in person or submit a written statement within 7 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.

Sincerely,

[Name]
Aviation Safety Inspector

Appendix A-2

Sample Record of Interview

RECORD OF INTERVIEW			
Date and time of Interview		Place of Interview	
Name/address of person interviewed		Name/address of person conducting interview	
Reason for Interview			
Other person(s) present (Witnesses)			
Name:	Address:	Phone:	
Name:	Address:	Phone:	
Did witness identify any additional witnesses that should be interviewed? If so, specify names and phone numbers.			
Did witness identify any documents or other evidence that may be pertinent to this case? If so, where is it located?			
Does person interviewed have any specialized knowledge pertinent to the subject of the interview?			
Remarks:			
Interviewer Signature	NCAA Office	EIR Number	Date

Sample WITNESS STATEMENT

Name	Address		
PHONE:	<i>Home:</i>	<i>Work:</i>	<i>Mobile:</i>

Narrative Statement:

Use reverse side and blank sheets to continue:

Printed Name:	Signature:
Date:	Time:

Appendix A-4

Examples of Certification Language

SAMPLE DOCUMENT AUTHENTICATION STATEMENTS

1. Documents copied from originals held by individuals or companies

I certify that this is a true and accurate copy of the original {insert description of document} held by {insert name of source}.

{Name of NCAA Investigative Personnel}

2. Documents secured by NCAA Investigative Personnel from sources outside the NCAA upon request:

I certify that this copy of {insert description of document} was provided to me upon request by {insert name of source}.

{Name of NCAA Investigative Personnel}

3. Photographs either taken or secured by NCAA Investigative Personnel:

I certify that this photograph fairly and accurately depicts {describe the image of the photograph} on {insert date and time it was taken}.

{Name of NCAA Investigative Personnel}

Appendix A-5

Sample Authorization for the Release of Test Results to the NCAA.

TO WHOM IT MAY CONCERN:

I, _____, born on _____
(Name) (Date)

at _____, presently residing at
(City) (State or Country)

(Street address)

Authorize any clinic, hospital, doctor, or other person to release to the NCAA or his duly authorized representative, the results of each test made or a sample taken on _____ between _____ am/pm and _____ am/pm
(Date) (Time) (Time)

that indicates the alcohol concentration in my blood or breath or the presence of any drugs in my body. This authorization is given pursuant to NCARs Part 2 Sec 2.11.1.9 to investigate a possible violation of Part 8 Sec 8.5.1.5 of NCARs 2009.

Reproduction of this authorization shall be deemed as effective as the original.

(Date)

(Signature)

Appendix A-6

Sample Letter Requesting Release of Alcohol Test Results.

Mr. Ojo Okoro.
Address

Dear Mr. Okoro,

The Nigerian Civil Aviation Authority is investigating an incident that occurred on May22, 2009 from about 12:00 p.m. to about 12:30 p.m., where you may have operated an aircraft in violation of Sec 8.5.1.5NCARs. This section provides that:

No person may act or attempt to act as a crewmember of a civil aircraft -

- (1) Within 8 hours after the consumption of any alcoholic beverage;
- (2) While under the influence of alcohol;
- (3) While using any drug that affects the person's faculties in any way contrary to safety; or
- (4) While having an alcohol concentration of .04 percent or greater in a blood or breath specimen.

Pursuant to Sec2.11.1.9 NCARs 2009, you are requested to furnish to the undersigned the results of each test taken within 4 hours of the above time that indicates the concentration of alcohol in your blood or breath or the presence of drugs in your body, or to authorize any clinic, hospital, doctor, or other person to release to the undersigned such test results.

Enclosed is a release form which you may complete and sign to authorize the release of such test results. Our investigation indicates that such a test was conducted on May 22, 2004, at about 2:00 p.m., at

Your failure to furnish the test results or signed release form within 7 days of service of this letter may result in the suspension or revocation of your certificate for violation of Sec 8.5.1.5NCARs.

Sincerely,

Aviation Safety Inspector

Appendix A-7

Sample Warning Notice

[Date]

Mr. Ayo Dele
Address

Dear Mr. Dele,

On May 26, 2004, you were the pilot in command of a Beech Baron N13697 that landed at the Abuja Domestic Airport. At the time of your flight, it appears that you did not ~~carry~~^{carry} a pilot certificate or photo identification in your possession or readily accessible to you in the aircraft. This conduct is allegedly in violation of Sec 8.4.1.4 NCARs 2009.

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 the undersigned. We expect your future compliance with the regulations.

Sincerely,

Aviation Safety Inspector

Appendix A-8(1)

SAMPLE LETTER OF CORRECTION

EIR No: _____ OPERATOR: _____

ACCOUNTABLE MANAGER: _____

Dear Sir/Madam:

Your _____ was examined for compliance with the applicable Civil Aviation Regulations and/or Operations Specifications during the period: _____ . At the end of that inspection, you were advised of our findings as follows: _____

You may be in non-compliance with the following regulation(s)/directive(s):

We also provided the following suggested action:

This letter is to inform you that this/these discrepancy(âs) must be corrected. Please respond to this office within 10 days of your proposed corrective action, which will include the action necessary to prevent recurrence which will be made a matter of record.

Sincerely,

Aviation Safety Inspector.

Appendix A-8(2)

SAMPLE LETTER OF CORRECTION AIRPORTS

[Date]

(Name)
Manager (Airport)
Address

Dear (Name),

On (Name), I conducted a certification inspection of the (Airport) to determine compliance with Part 6 of NCARs. Based on this inspection, it appears that (Airport) is not in compliance with all of the requirements.

During investigation, I discovered that the certification specifications is approximately 2months out of date and does not reflect current conditions at the airport. The NCAA acknowledges that you are now revising the entire manual. You should give priority to the emergency plan section.

You agreed at the exit interview to revise the manual according to the following schedule:

Correction date for Emergency Plan: Date
Correction Date for Manual Draft: Date
Correction Date for Completed manual: Date

In lieu of the above, we are issuing this letter which will be made a matter of re cord. We expect future compliance with the regulations. Please advise in writing when the manual is revised.

Sincerely,

Aviation Safety Inspector.

Appendix A-8 (3)

**SAMPLE LETTER OF CORRECTION
(REMEDIAL TRAINING)**

[Date]

EIR/File NO

Capt. Amaka Azubuike

Address

Dear Ms. Azubuike

This letter is in regard to your operation as pilot in command of a circus aircraft XYZ, on FG@August 2008.

The aircraft was observed and identified as operating contrary to an air traffic clearance while under IFR in Class D airspace in the vicinity of Port Harcourt International airport such operation being contrary to the provisions of NCARs.

As a result of our discussions on 23rd A~ * ~ •c2008, you agreed to complete a program of remedial training as a substitute for certificate action. The evidence you submitted shows that you have successfully completed the trainings recommended to you.

In closing this case, we have considered all facts and based on your compliance with the recommended remedial training program, certificate action will not be pursued. In place of such action, we are issuing this letter which will be made a matter of record.

We appreciate your cooperation in this matter and expect your full compliance with the regulations in the future.

Sincerely,

Aviation Safety Inspector.

Appendix A-9.

SAMPLE LETTER ACKNOWLEDGING COMPLETION OF CORRECTIVE ACTION

[Date]

EIR/File NO

Capt. Amaka Azubuiké

Address

Dear Ms. Azubuiké

This is to response to your letter of 28th August 2008 concerning Aircraft Systems Evaluation Program conducted at NCAT Zaria on 25th August 2008.

The corrective action discussed in your letters has been evaluated on site by Director of Operations and Training NCAA and has been found to be satisfactory.

In closing this case, we have given consideration to all available facts and concluded that the matter does not require a certificate action but this letter will be made a matter of record.

Sincerely

CSLA

Appendix A-10

SAMPLE REMEDIAL TRAINING AGREEMENT

[Date]

Mr. John D. Onuoha
(Address)

Dear Mr. Onuoha,

On September 12, 2005, you were advised that the Nigerian Civil Aviation Authority was investigating an incident that occurred on September 5, 2005 in the vicinity of Owerri Airport, and involved your operation of a A310, 5N-XYZ.

You have been advised that such an operation is contrary to Sec 8..... NCARs. 2009 Therefore, you have agreed to enter into this training agreement.

In consideration of all available facts and circumstances, we have determined that remedial training as a substitute for legal enforcement action is appropriate. Accordingly, your signature on this letter signifies your agreement to complete the prescribed course of remedial training within the assigned period of time. To complete this remedial training program successfully you must do the following:

- a. You must obtain the required training from an approved source.
- b. You are required to complete all elements of the remedial training syllabus and meet acceptable completion standards within 21 days of accepting this training agreement.
- c. You are required to provide this office with written documentation indicating satisfactory completion of the prescribed remedial training. You must provide the original of a written certification signed by the certified flight instructor who conducts the remedial training.

The written certification must describe each element of the syllabus for which instruction was given and the level of proficiency you have achieved.

- d. All expenses incurred for the prescribed training must be borne by you.

REMEDIAL TRAINING SYLLABUS

Syllabus Objective: To improve the student's knowledge and pilot proficiency concerning proper use of the A310 flight director, navigation and autopilot avionics systems specific to 5N-XYZ.

Syllabus Content:

- a. A minimum of two hours of ground instruction on the following subjects:
 - 1. Compliance with ATC clearances
 - 2. Programming and use of the GNS 430 navigation system for IFR operations
 - 3. Use of the autopilot for IFR operations
- b. A minimum of one hour of flight instruction in IFR procedures to include:
 - 1. Compliance with IFR clearances
 - 2. Use of the GNS 430 navigation system and the autopilot for IFR departures and arrivals
 - 3. Timely response to undesired autopilot commands

Completion standards: The training will have been successfully completed when the assigned instructor, by oral testing and practical demonstration, certifies that the student has completed instruction in the above-mentioned subjects in accordance with the remedial training syllabus.

Aviation Safety Inspector

Date

I agree to comply with the terms and conditions specified in this letter. I understand that failure to complete any element of this agreement within the prescribed period of time may result in my removal from the corrective action through remedial training program and may result in appropriate legal enforcement action. If such legal enforcement action is taken, I waive my right, to move to dismiss the NCAA's complaint as stale.

Aviation Safety Inspector

Date

Appendix A-11

SAMPLE LETTER OF TERMINATION OF REMEDIAL TRAINING AGREEMENT

[Date]

Mr. John D. Onuoha

(Address)

Dear Mr. Onuoha,

This is to inform you that you have not complied with the remedial training agreement executed on September 13th 2008, requiring that you complete specified remedial training.

Your designated flight instructor Mr. Benson John advises that you did not complete the flight training segment for the use of the GNS 430 navigation system and autopilot for IFR departures and arrivals by October 25th 2008. You have not contacted NCAA to request for modification of any of the terms of the remedial training agreement.

In view of your failure to comply with the terms and conditions of the training programme agreement, NCAA has terminated your participation in the remedial training programme agreement. The case involving your operation of A310 on 5th September 2008 has been referred to the Company Secretary /Legal Adviser for appropriate legal enforcement action.

Sincerely,

Investigative Personnel.

Appendix A-12.

SAMPLE VOLUNTARY SURRENDER OF CERTIFICATE FORM.

To: John L. Doe
NCAA
AVIATION HOUSE

FROM: _____
Instructor's Name (print)

Address

This is to certify that Mr. John D. Smith has satisfactorily completed the entire training program shown below, as required by the prescribed remedial training syllabus and achieved the level of proficiency described below:

Syllabus Objective: To improve the student's knowledge and pilot proficiency concerning proper use of the A310 navigation and autopilot avionics systems specific to 5N-XYZ

Syllabus Content:

- a. A minimum of two hours of ground instruction on the following subjects:
 - 1. Compliance with ATC clearances
 - 2. Programming and use of the GNS 430 navigation system for IFR operations
 - 3. Use of the autopilot for IFR operations

- b. A minimum of one hour flight instruction in:
 - 1. Compliance with IFR clearances
 - 2. Use of the GNS 430 navigation system and the autopilot for IFR departures and arrivals.
 - 3. Timely response to undesired autopilot commands

Level of Proficiency Achieved: _____

Signature: _____

CFI Certificate no. _____

Expires: _____

Date signed: _____

Appendix A-13.

TABLE 1. RANGE C: CIVIL PENALTIES

Parly committing violation Air Carriers	Amount of Civil Penalty Maximum : [N5,000,000.00] Moderate : [N2,000,000.00] Minimum : [N500,000.00]	
Aerodrome Operators	Maximum : [N10,000,000.00] Moderate : [N5,000,000.00] Minimum : [N2,500,000.00]	Legal Enforcement Actions.
Air Navigation Services Providers	Maximum: [N10,000,000.00] Moderate: [N5,000,000.00] Minimum: [N1,000,000.00]	
Air Carrier Personnel	Maximum: [N200,000.00] Moderate: [N100,000.00] Minimum: [N50,000.00]	
Party committing violation General Aviation Owners, Operators, Aircraft Maintenance Engineers, other licenced and nonlicenced persons	Amount of Civil Penalty Maximum : [N1,000,000.00] Moderate : [N500,000.00] Minimum : [N50,000,00]	
Approved Maintenance Organisations	Maximum : [N2,500,000.00] Moderate : [N1,500,000.00] Minimum : [N500,000.00]	
Approved Training Organisations	Maximum : [N2,500,000.00] Moderate: [N1,500,000.00] Minimum : [N500,000.00]	

TABLE 2. RECOMA ENDED SANCTIONS

Violation	Recommended Sanction per Violation
I ATR OPERATORS AND AIRPORT OPERATORS	
1. Maintenance Manual	Suspend until manuals are current to 7 day suspension and thereafter until manuals are made current
(a) Failure to maintain current manual	Moderate to maximum civil penalty
(b) Failure to provide adequate instructions & procedures in manual	Moderate civil penalty
(c) Failure to distribute manual to appropriate personnel	Maximum civil penalty to 7-day suspension
(d) Release of aircraft without required equipment	Moderate to maximum civil penalty
2 Failure to comply with Airworthiness Directives	Maximum civil penalty to 7-day suspension
3. Operations Specifications	Maximum civil penalty
(a) Failure to comply with inspection and overhaul time limitations	Maximum civil penalty to suspension until proper servicing maintenance, repair, and inspection of facilities and equipment is provided.
(b) Operations contrary to operations specifications	repair, and inspection of facilities and equipment.
4. Failure to provide adequately for proper servicing, maintenance,	

5. Failure to provide or maintain a maintenance & inspection organisation	Maximum civil penalty to suspension until appropriate maintenance and inspection organisation is provided.
6. Training Program	Maximum civil penalty to suspension until compliance is demonstrated Moderate to maximum civil penalty adequately
(a) Failure to have or maintain an effective training program	
(b) Failure to train specific personnel	Moderate to maximum civil penalty
7. Failure to insure that maintenance release is completed and signed	Maximum civil penalty
8. Performance of maintenance by unauthorised persons	Maximum civil penalty Moderate to maximum civil penalty
9. Failure to perform or improper performance of maintenance	Moderate to maximum civil penalty
10. Failure to revise aircraft data after repair	Moderate to maximum civil penalty
11. Records and Reports	Moderate to maximum civil penalty
(a) Failure to make accurate engineer's interruption summary report	Maximum civil penalty to 7-day suspension and thereafter until aircraft is in airworthy conditions
(b) Failure to make available reports of major alterations or repairs	Moderate to maximum civil penalty
(t ¹) Failure to make accurate engineer's reliability reports	Moderate to maximum civil penalty
(d) Failure to keep maintenance records	Moderate civil penalty
(t) Failure to make required entry in aircraft log	Maximum civil penalty
(f) Failure to make available pilot records	Maximum civil penalty
(g) Failure to make available load manifests	Maximum civil penalty
12. Operation of an unairworthy aircraft	13. Serving alcoholic beverages to or hoarding a person who appears to be intoxicated
(a) Technical non-conformity to type certificate, but no likely effect (potential or actual) on safe operation	14. Failure to make available a seat on the flight deck for Authority inspectors conducting an en route inspection
Non-conformity which may have an (a) adverse effect on safety of operation (c) Non-conformity which has an adverse effect (actual or potential) on safe operation	15. Using an unqualified crewmember

16. Improperly returning an aircraft to service	Maximum civil penalty
	Maximum civil penalty Revocation
17. Illegal carriage of controlled substance with knowledge of carrier, i.e., knowledge of management personnel	Maximum civil penalty
	Maximum civil penalty
18. Security Violations	Maximum civil penalty Revocation
(a) Failure to properly screen baggage or each passenger	Maximum civil penalty
(b) Unauthorised access to airport operations area	Moderate civil penalty
	Moderate civil penalty
(c) Failure to comply with air carrier security program, including failure to detect weapons, incendiary and other dangerous devices	Moderate civil penalty
	Minimum to moderate civil penalty
(d) Management personnel coerce, condone, or encourage falsification of records/reports	Minimum civil penalty
	Minimum to moderate civil penalty
(e) Deliberate failure to maintain employee records	Maximum civil penalty
	Minimum to moderate civil penalty
(f) Failure to challenge	Maximum civil penalty
(g) Failure to test screeners or test equipment	Maximum civil penalty
(h) Failure to properly train	
(i) Unintentional failure to maintain screening records	Maximum civil penalty officer to respond in a timely manner
(j) Improper use of dosimeters	
(k) Failure to display identification	
(l) Failure to manage/control identification system	
(m) Failure to conduct background check	
(n) Failure to detect test objects	
(o) Failure to comply with approved or current security program	
(g) Failure of the law enforcement	

II. PERSONNEL OF AIR CARRIERS

- | | | |
|------|---|--------------------------|
| 1. | Maintenance performed by unauthorised personnel | |
| (a) | Without a licence | Maximum civil penalty |
| (b) | Exceeding limitations | 30 to 45 day suspension |
| 2. | Failure to properly perform maintenance | 30 to 120 day suspension |
| 3. | Inspection personnel | |
| (a) | Failure to make required inspection | 30 to 60 day suspension |
| (b) | Making improper inspection | 30 to 120 day suspension |
| (r) | Improperly releasing an aircraft to service | 30 to 60 day suspension |
| 4. | Records and reports | |
| (a) | Failure to make entries in aircraft log | 15 to 60 day suspension |
| (b) | Failure to make entries in worksheets | 15 to 30 day suspension |
| (d) | Failure to sign off work or inspection performed | 15 to 30 day suspension |
| (e) | Failure to complete and sign maintenance release | 15 to 30 day suspension |
| (-) | Falsification of records or reports | Revocation |
| 5. | Releasing aircraft for service without required equipment | 30 to 60 day suspension |
| 6. | Prc-flight | |
| (a) | Failure to use pre-flight cockpit checklist | 15 to 30 day suspension |
| (à) | Failure to check aircraft logs, flight manifests, weather, etc. | 30 to 90 day suspension |
| 11 . | Taxiing | |
| (a) | Failure to adhere to taxi clearance or instruction it | 30 to 60 day suspension |
| (b) | Collision while taxiing | 30 to 120 day suspension |
| (c) | Jet blast | 30 to 180 day suspension |
| (d) | Taxiing with passenger standing | 30 to 60 day suspension |
| 8. | Takeoff | |

(a) Takeoff against instruction or clearance	
(b) Takeoff below weather minima	60 to 120 day suspension
(c) Takeoff in overloaded aircraft	60 to 120 day suspension
J. Onroute	60 to 120 day suspension
(a) Deviation from clearance or instruction	30 to 90 day suspension
(b) Operating VFR within clouds	90 day suspension to revocation
(c) Operation of unairworthy aircraft	30 to 180 day suspension
(d) Unauthorised departure from flight desk	15 to 30 day suspension
(e) Operating within restricted or prohibited area, or within positive control area with clearance	30 to 90 day suspension
(f) Operating without required equipment	15 to 120 day suspension
(g) Fuel mismanagement/exhaustion	30 to 150 day suspension
A E1A Approach to landing	30 to 90 day suspension
(a) Deviation from clearance or instruction in terminal area	45 to 90 day suspension
(b) Approach below weather minimums	30 to 60 day suspension
(c) Exceeding speed limitation in airport traffic areas	90 to 180 day suspension
F1. Landing	30 to 90 day suspension
(a) Landing at wrong airport	15 to 60 day suspension
(b) Deviation from instrument approach procedure	
(c) Overweight landing	
(d) Hard landing	
(e) Short or long landing	30 to 180 day suspension
(f) Wheels up landing	30 to 180 day suspension
(h) Failure to comply with preferential runway system	Maximum civil penalty to 15 day suspension
12 Unauthorised admission to flight deck	30 to 90 day suspension
13. Failure to close and lock	Maximum civil penalty to 30 day

cockpit door

- | | |
|--|---|
| 14. Acting as flight crewmember while under the influence of liquor or other psychoactive substances, or alcoholic beverage consumption within 8 hours | suspension
Emergency revocation
30 to 60 day suspension |
| 15. Denial of authorised entry to flight deck | 15 to 90 day suspension |
| 16. Flight and duty time limitations | |
| 17. Operation without required licence, certificate or rating | 15 to 60 day suspension |
| (a) Medical certificate | 180 day suspension to revocation |
| (b-) Lack of type rating | 30 to 90 day suspension |
| (c) Missed proficiency check | 30 to 90 day suspension |
| (d} Lack of current experience | Moderate civil penalty to 7 day suspension |
| (c) Failure to have current certificate or licence in possession | Revocation |
| 18. Operation with known physical disability | |

III. INDIVIDUALS AND GENERAL AVIATION-OWNERS, PILOTS, MAINTENANCE PERSONNEL, APPROVED MAINTENANCE ORGANISATIONS, APPROVED TRAINING ORGANISATIONS

1. Owners and operators other than required crewmembers

Moderate to maximum civil penalty

- | | |
|---|--|
| (a) Failure to comply with airworthiness directives | Moderate to maximum civil penalty |
| (b) Failure to perform or improper performance of maintenance, including required maintenance | |
| (c) Failure to make proper entries in aircraft logs | Minimum to moderate civil penalties |
| (d) Operation of aircraft beyond annual, 100-hour, or progressive inspection | Minimum to moderate civil penalty |
| (e) Operation of unairworthy aircraft | Moderate to maximum civil penalty |
| (f) Falsification of any record | Revocation |
| 2. Approved Maintenance Organisations | |
| (a) Failure to provide adequately for proper servicing, maintenance repairs, and inspection | Moderate to maximum civil penalty |
| (b) Failure to provide adequate personnel who can perform, supervise, and inspect work for which the station is rated | Maximum civil penalty to 7-day suspension and thereafter until adequate personnel are provided |
| (c) Failure to have enough qualified | Maximum civil penalty to 7-day suspension |

personnel to keep up with the volume of work	and thereafter until certificate penalty to 7-day suspension holder has enough qualified personnel
(d) Failure to maintain records of supervisory and inspection personnel	Moderate to maximum civil penalty
(e) Failure to maintain performance records and reports	Moderate to maximum civil penalty
(f) Failure to ensure correct calibration of all inspection and test equipment is accomplished at prescribed intervals	Minimum to maximum civil penalty
(g) Failure to set forth adequate description of work performed	Minimum to maximum civil penalty
(h) Failure of engineer to make log entries, records, or reports	Moderate to maximum civil penalty
(I) Failure to sign or complete maintenance release	Minimum to moderate civil penalty
(j) Inspection of work performed and approval for return to service by other than a qualified inspector	Maximum civil penalty to 30 day suspension
(k) Failure to have an adequate inspection system that produces satisfactory quality control	Moderate civil penalty to 30 day suspension and thereafter until an adequate inspection system is attained.
(l) Maintaining or altering an article for which it is rated, without using required technical data, equipment, or facilities	Maximum civil penalty to 30 day suspension
(m) Failure to perform or properly perform maintenance, repairs, alterations, and required inspections	Moderate civil penalty to 30 day suspension
(n) Maintaining or altering an airframe, powerplant, propeller, instrument, radio, or accessory for which it is not rated.	Maximum civil penalty to revocation
(o) Failure to report defects or unairworthy conditions to the Authority in a timely manner.	Moderate to maximum civil penalty
(p) Failure to satisfy housing and facility requirements	Moderate civil penalty to suspension until housing and facility requirements are satisfied
(q) Change of location, housing, or facilities without advance written approval	Moderate civil penalty to suspension until approval is given
(r) Operating as a certificated repair station without a repair station certificate	Maximum civil penalty
(s) Failure to permit Authority to inspect	Maximum civil penalty to suspension until Authority is permitted to inspect.

3 General Aviation Maintenance

(a) Failure to revise aircraft data after major repairs or alterations	30 to 60 day suspension
(b) Failure to perform or improper performance of maintenance	30 to 120 day suspension
(r) Failure of engineer to properly accomplish inspection	30 to 60 day suspension
(d) Failure of engineer to record inspection	Minimum civil penalty to 30 day suspension
(e) Failure of Inspection Authorisation holder to properly accomplish inspection	60 to 120 day suspension of Inspection Authorisation
(f) Failure of Inspection Authorisation holder to record inspection	Moderate civil penalty to 30 day suspension of Inspection Authorisation
(g) Maintenance performed by person without a certificate	Moderate to maximum civil penalty 15 to 60 day suspension
(h) Maintenance performed by person who exceeded certificate limitations	Moderate civil penalty to 60 day suspension
(i) Improper approval for return to service	
(j) Failure to make maintenance record entries	Moderate civil penalty to 60 day suspension
(k) Failure to set forth adequate description of work performed	Minimum civil penalty to 30 day suspension
(l) Falsification of maintenance records	Revocation
4. Student Operations	Revocation
(a) Carrying passengers	45 to 90 day suspension
(b) Solo flight without endorsement	60 to 90 day suspension
(c) Operation on international flight	90 to 120 day suspension
(d) Use of aircraft in business	Revocation
(e) Operation for compensation or hire.	
5. Flight instructors	
(a) Operation without valid medical certificate	Revocation
(b) False endorsement of student pilot certificate	30 to 90 day suspension
(c) Exceeding flight time limitations he/she is not rated 6-	30 to 90 day suspension
6. Operational violations	
(a) Operation without valid airworthiness or registration certificate	30 to 90 day suspension
(b) Failure to close flight plan or file arrival notice	Administrative action to minimum civil penalty
(c) Operation without valid pilot certificate (no certificate)	
(d) Operation while pilot certificate is suspended	Minimum civil penalty
(e) Operation without pilot or medical certificate in personal possession	Administrative action to 15 day suspension

(g) Operation for compensation or hire without commercial pilot certificate	180 day suspension to revocation
(h) Operation without type or class rating	60 to 120 day suspension
(i) Failure to comply with special conditions of medical certificate	90 day suspension to revocation
(j) Operation with known physical deficiency	90 day suspension to revocation
(k) Failure to obtain preflight information	30 to 90 day suspension
(i) Deviation from ATC instruction or clearance	30 to 90 day suspension
(m) Taxiing, takeoff, or landing without a clearance where ATC tower is in operation	30 to 90 day suspension
(n) Failure to maintain radio communications in airport traffic area	30 to 60 day suspension
(o) Failure to comply with airport traffic pattern	30 to 60 day suspension
(p) Operation in terminal control area without or contrary to a clearance	60 to 90 day suspension
(q) Failure to maintain altitude in airport traffic area	30 to 60 day suspension
(r) Exceeding speed limitations in traffic area	30 to 60 day suspension
(s) Operation of unairworthy aircraft	30 to 60 day suspension
(t) Failure to comply with Airworthiness directives	30 to 180 day suspension
(u) Operation without required instruments and/or equipment	30 to 180 day suspension
(v) Exceeding operating limitations	30 to 90 day suspension
(w) Operation within prohibited or restricted area, or within positive control area	30 to 90 day suspension 30 to 90 day suspension
(x) Failure to adhere to right of way rules	30 to 90 day suspension 30 to 90 day suspension
(y) Failure to comply with VFR cruising altitudes	30 to 90 day suspension 30 to 90 day suspension

TABLI-. 2. RECCOMENDED SANCTIONS contd.

Violation	Recommended Sanction per Violation
(z) Failure to maintain required minimum altitudes over structures, persons, or vehicles over :	60 to 180 day suspension
(i) Congested area	30 to 120 day suspension
(ii) Sparsely populated area	
(aa) Failure to maintain radio watch while under IFR	30 to 60 day suspension
(bb) Failure to report at compulsory reporting points	30 to 60 day suspension
(cc) Failure to display position lights	30 to 60 day suspension
(dd) Failure to maintain proper altimeter settings	30 to 60 day suspension
(ee) Weather operations .	
(i) Failure to comply with visibility minimums in controlled airspace	60 to 180 day suspension
(ii) Failure to comply with visibility minimums outside controlled airspace	30 to 120 day suspension
(iii) Failure to comply with distance from clouds requirements in controlled airspace	60 to 180 day suspension
(iv) Failure to comply with distance from clouds requirements outside of controlled airspace	30 to 120 day suspension
(ff) Failure to comply with IFR landing minimums	45 to 180 day suspension
(gg) Failure to comply with instrument approach procedures	45 to 180 day suspension
(hh) Careless or reckless operations ;	
(I) Fuel mismanagement/exhaustion	30 to 150 day suspension
(ii) Wheels up landing	30 to 60 day suspension
(iii) Short or long landing	30 to 90 day suspension
(iv) Landing on or taking off from closed runway	30 to 60 day suspension
(v) Landing or taking off from ramps or other improper areas	30 to 120 day suspension
(vi) Taxiing collision	30 to 90 day suspension
(vii) Leaving aircraft unattended with motor running	30 to 90 day suspension
(viii) Propping aircraft without a qualified person at controls	30 to 90 day suspension
	30 to 90 day suspension

substances	60 to 120 day suspension
(Hi) Performing acrobatics when all passengers are not equipped with approved parachutes	
IV. SECURITY VIOLATIONS BY INDIVIDUALS	60 to 90 day suspension
1. Checked baggage	
(a) Failure to declare unloaded firearm	Minimum civil penalty
(b) Loaded firearm	Moderate to maximum civil penalty
(c) Incendiary/explosive	Up to maximum civil penalty and/or criminal referral
2. Non-passengers : No intent to board	
(a) Possession of firearm (unloaded, unloaded with ammunition accessible, or loaded) or other dangerous or deadly weapon (including stun guns):	
(I) At screening point with no aggravating circumstances	Minimum civil penalty
(ii) At screening point with aggravating circumstances	Moderate to maximum civil penalty
(iii) In sterile area with no aggravating circumstances	Minimum to moderate civil penalty
(iv) In sterile area with aggravating circumstance	Moderate to maximum civil penalty and/or criminal referral
(b) Possession of incendiary/explosive at screening point or in sterile area with no intent to board a flight	Maximum civil penalty and/or criminal referral
(c) Artful concealment of firearm (loaded or unloaded), other dangerous or deadly weapon (including stun guns), or incendiary/explosive at screening point or in sterile area.	Moderate to maximum civil penalty and/or criminal referral
3. Passengers : Intent to board	
(a) Possession of dangerous or deadly weapon (including stun guns, mace, etc., but excluding firearms and incendiary/explosives) that would be accessible in flight in air transportation :	
(I) At screening point with no	

aggravating circumstances	Minimum civil penalty
(ii) At screening point with aggravating circumstances	Moderate to maximum civil penalty
(in) In sterile area or aboard aircraft with no aggravating circumstances	Minimum to moderate civil penalty
(iv) In sterile area or aboard aircraft with aggravating circumstances	Moderate to maximum civil penalty
(b) Possession of firearm that would be accessible in flight in air transportation with firearm unloaded, without accessible ammunition:	
(i) At screening point with no aggravating circumstances	Minimum to moderate civil penalty
(ii) At screening pint with aggravating circumstances	Maximum civil penalty Moderate civil penalty
(iii) In sterile area or aboard aircraft with no aggravating circumstances	
(iv) In sterile area or aboard aircraft with aggravating circumstances	Maximum civil penalty
(c) Possession of firearm that would be accessible in flight in air transportation with firearm loaded, or with accessible ammunition :	
(i) At screening point with no aggravating circumstances	Maximum civil penalty
(ii) At screening point with aggravating circumstances	
(in) In sterile area or aboard aircraft with no aggravating circumstances	Moderate to maximum civil penalty
(iv) In sterile area or aboard aircraft with aggravating circumstances	
(d) Artful concealment of dangerous or deadly weapon (including stun guns, but excluding firearms and incendiary/explosives) at screen point, in sterile area	Maximum civil penally and/or criminal referral
or aboard aircraft.	
(e) Possession of incendiary/explosive at screening point, in sterile area, or aboard aircraft that would be accessible in flight in air transportation.	Maximum civil penalty and/or criminal referral
(f) Artful concealment of firearm or incendiary/ explosive at screening point, in sterile area, or aboard aircraft.	Maximum civil penalty and/or criminal referral
4. OTHER ACTS	
(a.) Entering sterile area after failing to submit to screening — non- aggravated	Minimum civil penalty
(b) Entering sterile area after failing to submit to screening fiaggravated	
Maximum civil penalty	Moderate to maximum civil penalty

- | | |
|--|--|
| (c) Imparting or conveying false information concerning an attempt to do an act that would be a crime prohibited by the Civil Aviation Act | Maximum civil penalty |
| (d) Threatening overt act or other intent to use or dangerously display firearm, incendiary/explosive, or other deadly or dangerous weapon (including stun guns) | Maximum civil penalty and/or criminal referral |
| (e) Violation of Sections 54, 55, 56, 57, 59, 60 and 74 of the Civil Aviation Act 2006. | Criminal referral |

Appendix A-14.

ENFORCEMENT DECISION TOOL (EDT).

1. Introduction.

- a. Purpose. The Enforcement Decision Tool (EDT) is an aid for NCAA enforcement personnel to assist them in carrying out the NCAA's exercise of prosecutorial discretion. The EDT process uses systems safety risk management principles to allocate limited NCAA investigative and legal resources to the most important cases, for a more timely and effective compliance and enforcement system. The EDT maps the safety risk posed by an act with the type of conduct involved. There are separate EDTs for individuals and Corporate bodies, so that systemic problems can be considered in evaluating Corporate body conduct.
 - b. Benefits. Additional benefits of the EDT process include:
 - (1) Improving consistency and standardization in determining the most appropriate type of enforcement action to take considering the case facts and circumstances;
 - (2) Improving airman skills through the offer of the remedial training process for general aviation pilot and mechanic cases involving careless conduct with a high safety risk;
 - (3) Improving operator systems for systems safety benefits through the use of letters of correction for certain Corporate body cases involving unintentional conduct with a high safety risk; and
 - (4) Endorsement of oral and written counseling as appropriate enforcement tools, documented in a database to support systems safety analysis and to identify repeat acts.
2. Applicability. NCAA uses the Enforcement Decision Tool (EDT) along with associated guidance to determine the type of enforcement action to take (informal, administrative, or legal) in all enforcement cases, except those categorically excluded in subparagraph 6.a of this appendix.
 3. Definitions. The following definitions apply to the EDT process.

Act includes failure to act.

Intentional conduct means a deliberate act where the individual or Corporate body knowingly acted contrary to a regulation.

Reckless conduct means a gross disregard for safety standards or norms for reasonably prudent conduct, considering the certification level of the individual and the type of operation involved.

Careless conduct means a slip, lapse, or mistake that was not intentional or reckless. Systemic conduct means pervasive, repeated, or repeatable acts indicating a system deficiency.

Non systemic conduct means acts that are not systemic.

Hazard means a condition that could lead to injury or property damage.

Safety risk means the level (high, moderate, or low) of potential injury or property damage from a hazard created by an act, considering the hazard severity and the likelihood that the severity will be realized.

Severity means the worst credible outcome (catastrophic, critical, marginal, or negligible) in terms of the extent of injury or property damage potentially caused by a hazard.

Likelihood means the probability (frequent, occasional, or remote) that the worst credible outcome (severity) will result from a hazard.

Legal action means enforcement action other than administrative action or informal action.

Administrative action means letter of correction or warning notice.

Informal action means oral or written counseling of individuals or Corporate bodies, documented in a line of Corporate body database.

4. Categorizing Conduct. NCAA uses the following attributes and examples in conjunction with the definitions in paragraph 3 as an aid in categorizing conduct. Not all of the attributes need be met for the category to apply, as long as the definition is met.

a. Intentional Conduct.

(1) Attributes: Taking or failing to take an action with knowledge that the behavior was prohibited. May be, but does not have to be, associated with risk taking.

(2) Examples of intentional conduct include:

- ◆ Flying an aircraft in such a manner as to cause danger to any person on or property in the aircraft, land or water.
- ◆ Conducting aerobatics in a traffic pattern.
- ◆ Knowingly eliminating required steps from the execution of a maintenance procedure.
- ◆ Failing to declare a shipment with knowledge that the contents are dangerous materials.

- ◆ Hiring an individual for a safety-sensitive position after the individual received a positive pre-employment drug test result without completing the return to duty process.

b. Reckless Conduct.

(1) Attributes. Wanton abandonment of concern for the potential consequences of an act. Conscious disregard of a known, visible, significant, or unjustifiable risk. Substantial disregard of accepted safety standards so as to potentially or actually endanger the life or property of another.

(2) Examples of reckless conduct include:

- ◆ Fuel exhaustion while operating without current winds aloft forecasts (strong headwinds) and without visually checking tanks to ensure they were topped off before departure.
- ◆ Failing to consult the maintenance manual and then conducting an improper/insufficient inspection of a critical required inspection item.
- ◆ A commercial pilot taking off at a busy controlled airport without having received takeoff clearance.
- ◆ "A passenger failing to declare a container of pesticide in his or her checked luggage.

c. Careless Conduct.

(1) Attributes: Failure to exercise ordinary, proper, or reasonable care. Failure to recognize a risk. No awareness that a risk was being taken. Should have been, but was not, aware they were taking a risk. Actions were based upon an expectation of correct conduct. No awareness that an error was going to be made. No intent to engage in the misconduct.

(2) Examples of careless conduct include:

- ◆ Private pilot missing an item on a checklist (for example, lower the landing gear) due to a distraction.
- ◆ Missing an item on a maintenance job task card.
- ◆ Selecting the wrong fix while programming a GPS receiver
- ◆ Mistakenly using an incorrect label to identify a dangerous material.

d. Systemic Conduct.

(1) Attributes: Similar, interconnected problems seen throughout a system or organization. Similar problems that occur frequently. Problem(s) that has occurred and could continue to occur due to an identified lack of policies, procedures, or controls.

(2) Examples of systemic conduct include:

- ◆ Repeatedly dispatching aircraft contrary to the Minimum Equipment List (MEL).
- ◆ Chronic record-keeping problems in various departments (pilot, aircraft, and dispatch records) throughout an air carrier.
- ◆ Repeatedly completing dangerous materials declaration forms improperly.

e. Non Systemic Conduct

(1) Attributes: Isolated acts or occurrences not indicative of a system deficiency. Unrelated problems in a system or organization that occur infrequently. Failure of an employee to follow established and adequate policies, procedures, and controls.

(2) Examples of conduct that is not systemic include:

- ◆ Misinterpretation and resulting misapplication of the Minimum Equipment List (MEL) on a single occasion.
- ◆ A pilot record missing an item of required information.
- ◆ Shipment of a single undeclared dangerous material by an untrained employee of a company that regularly ships dangerous materials.

5. Addressing High Safety Risk.

a. Careless acts. Careless acts by individuals with a high safety risk must be handled through the offer of the remedial training process for flight standards cases meeting the criteria for use of remedial training (see chapter 5, subparagraph 7. c of this Handbook). Other cases that do not meet the criteria for remedial training, must be handled through other administrative or legal action.

b. Limitation on use of remedial training. Remedial training is only used for high safety risk cases to ensure limited inspector resources are used on the most important cases.

c. Unintentional Non Systemic acts.

(1) Unintentional non systemic acts with a high safety risk require a letter of correction or legal action, whichever is deemed most appropriate to achieve future compliance. Administrative action through the use of a warning notice is not appropriate for any high safety risk act, since the potential safety benefits of a structured corrective action process are necessary in these cases if administrative action is to be used.

(2) Unintentional acts that are non systemic, with moderate or low level of safety risk are eligible for warning notices because they are not purposeful conduct and often do not represent a substantial disregard for safety.

6. APPLYING THE EDT. NCAA investigative personnel apply the EDT when sufficient investigative information becomes available to categorize the safety risk and the conduct. They take the following steps based upon the facts and circumstances indicated by the enforcement investigation results.

a. Determine Applicability. Ensure the type of case is not categorically excluded from the EDT process. Excluded cases are those involving:

(1) Lack of qualification, for example:

- ◆ Failure to meet technical qualifications for a certificate held
- ◆ Conducting air transportation without holding an air carrier certificate
- ◆ Refusal to permit and/or submit to an inspection, reexamination, or drug/alcohol test
- ◆ Intentional falsification of records or applications
- ◆ Cheating on a written examination

(2) Criminal activities, such as narcotics convictions

(3) Special emphasis enforcement programmes

b. Categorize Conduct. Determine the category of conduct. The categories for individuals and corporate bodies, respectively, are:

(1) Individuals: Intentional, Reckless, or Careless

(2) Corporate bodies: Intentional Systemic, Intentional Non Systemic, Unintentional Systemic, or Unintentional NonSystemic.

If the conduct is determined to be intentional, legal action is indicated. The remainder of the EDT process (and worksheet) is not completed unless a deviation from the EDT process outcome will be sought (see subparagraph 6.j. below). Deviations require the appropriate Director's approval and will generally only be considered in cases where there was negligible or no safety risk involved.

If an individual's conduct is both intentional and reckless, the conduct is categorized as intentional for the purpose of applying the EDT.

c. Prepare Risk Statement. Prepare a statement that describes the hazard created by the act, and the potential consequences of that hazard. This risk statement is generally a single phrase that expresses the condition created and how that could endanger persons or property. For example:

(1) An aircraft that operates in the airspace without a clearance providing separation from other aircraft could cause a mid-air collision.

- (2) A packing group 1 pesticide is a highly toxic material, and if not properly packaged, declared, and marked for air cargo it poses an undue health hazard to persons that unexpectedly come into contact with it.
 - (3) Failing to conduct pre-employment drug testing could lead to the hiring of a pilot with a substance abuse problem, which could result in aircraft operations conducted in an impaired state endangering the aircraft and its occupants.
- d. Determine Severity. Review the risk statement to determine the severity of the hazard. Severity is the worst credible outcome potentially caused by the hazard. In other words, what's the worst type of injury/damage that could realistically occur? Severity must be determined without considering the likelihood of that severity being realized. For example, if a plausible argument can be made that a hazard could under some circumstances result in death or severe damage, the severity is catastrophic, notwithstanding the fact that such an outcome from the hazard might be extremely rare. The most common error in determining severity is prematurely considering likelihood. Likelihood must be considered and determined after the severity is determined. Severity can be one of the following:

- (1) Catastrophic (death or severe damage).
- (2) Critical (severe injury or substantial damage).
- (3) Marginal (minor injury or damage).
- (4) Negligible (incident/occurrence with no injury or damage).

In assessing the severity of an act as one part of determining safety risk, the NCAA considers only the potential outcome, not the actual outcome that resulted from the act. The potential severity can be catastrophic, critical, marginal, or negligible regardless of whether actual injury or property damage occurred or nearly occurred. For example, a 1,000-foot altitude deviation from an ATC clearance may have the same potential outcome regardless of whether there was actually another aircraft that came into conflict or not. Similarly, a fuel exhaustion occurrence may have the same potential outcome irrespective of whether an actual accident resulted. In these examples, the lack of another aircraft that came into conflict or the existence of suitable forced landing sites are fortuitous (by chance) circumstances not considered in the risk determination, since other aircraft could have been in conflict (by chance) or there could have been a lack of suitable forced landing sites (by chance). In determining the level of safety risk, the existence of fortuitous circumstances is not considered, and therefore plays no role in aggravating or mitigating the type of enforcement action selected.

e. Determine Likelihood. Determine the likelihood of the worst credible outcome occurring. In other words, how likely is it that the severity level would actually be realized given the facts and circumstances involved? Likelihood can be one of the following:

- (1) Frequent (likely to occur often).
- (2) Occasional (likely to occur sometimes).
- (3) Remote (unlikely to occur, or would seldom occur).

f. Determine Safety Risk. Determine the safety risk (high, moderate, or low) from the following risk assessment matrix:

RISK ASSESSMENT MATRIX

	SEVERITY			
LIKELIHOOD	Catastrophic	Critical	Marginal	Negligible
Frequent	High	High	Moderate	Moderate
Occasional	High	Moderate	Moderate	Low
Remote	Moderate	Moderate	Low	Low

g. Determine the Type Action. Determine the type of action to take from the applicable EDT (individual or corporate body):

EDT-INDIVIDUAL

	SAFETY RISK		
CONDUCT	High	Moderate	Low
Intentional	Legal	Legal	Legal
Reckless	Legal	Legal	Administrative
Careless	Remedial Training Or Legal	Administrative	Administrative or Informal

EDT-CORPORATE BODY

	SAFETY RISK		
CONDUCT	High	Moderate	Low
Intentional Systematic	Legal	Legal	Legal
Intentional Non Systematic	Legal	Legal	Legal
Unintentional Systemic	Legal	Administrative	Administrative or Informal
Unintentional Non	Letter of	Administrative	Administrative or Informal

Systemic	correction or Legal		
-----------------	------------------------	--	--

- h. Ensure Administrative Action or Remedial Training Criteria Met (if applicable). If administrative action or remedial training is proposed, the eligibility criteria for taking that action must be met. The eligibility criteria for administrative action are found in chapter 5, subparagraph 3.b. of this Handbook; the criteria for remedial training are found in chapter 5, subparagraph 7.c. of this Handbook. If the criteria for taking administrative action or remedial training are not met, then legal enforcement action is taken unless approval by the appropriate Director is given in accordance with subparagraph 6.j. of this appendix. If informal action is proposed, the eligibility criteria for administrative action must be met.
- i. Specific action indicated. Select the specific type of action indicated by the EDT process:
- (1) Informal action (oral counseling or written counseling).
 - (2) Warning notice.
 - (3) Letter of correction (other than remedial training).
 - (4) Remedial training resulting in a letter of correction.
 - (5) Legal action after remedial training offer was refused or not completed.
 - (6) Legal action after letter of correction actions not completed.
 - (7) Legal action (other than after a remedial training offer refused or not completed or letter of correction actions not completed).
- j. Deviation from EDT Process Outcome (if applicable). If NCAA investigative personnel select a type of action other than that indicated by applying subparagraphs 6.g. and 6.h. of this appendix, the appropriate Director's approval is required, see chapter 5, subparagraph 3.d. regarding the use of administrative action when associated criteria are not met.
- k. Legal Counsel Concurrence (for legal enforcement cases only). Before initiating legal enforcement action, legal counsel determines that the proposed type of enforcement action conforms to the EDT process. Legal counsel discusses and attempts to resolve with the appropriate Directorate disagreements with a proposed type of enforcement action or how the EDT process was applied in a case. Legal counsel signs the worksheet, and explains if a nonconformance to the EDT process is noted.

7. Documentation.
 - a. EDT Worksheet. NCAA investigative personnel must complete the Enforcement Decision Tool (EDT) Worksheet in Figure 1 of this appendix, to support the type of enforcement action selected. If remedial training is offered but declined or not completed, it is not necessary to complete a new worksheet. NCAA investigative personnel change the specific action taken in subparagraph 6.i. of this appendix to reflect legal action after a remedial training offer is refused or not completed.
 - b. EIR Worksheet in EIR. NCAA investigative personnel include the completed worksheet in section B of the EIR for administrative and legal actions. For administrative and informal actions, they retain the worksheet in the investigating office in accordance with established file retention directives, but not less than 24 months after completion to ensure the availability of the worksheets to facilitate evaluation of the EDT process.
 - c. Entry in Enforcement Information Database System (EIR). Legal and administrative actions are recorded in EIS. Informal actions do not require the preparation of an EIR, and must be documented in an Enforcement Information Database to support national, regional, and local systems safety analysis, and to identify recent similar acts for consideration in applying the EDT to future cases involving the same individual or Corporate body. NCAA investigative personnel record the following data on informal actions in the appropriate Enforcement information database system:
 - (a) Name of the individual or corporate body
 - (b) Certificate type and number of the individual or corporate body (as applicable)
 - (c) Regulations involved (include section, paragraph and subparagraph)
 - (d) Date of counseling
 - (e) Type of counseling (oral or written)
 - (f) For corporate bodies, name and title of person counseled
 - (g) Brief description of the apparent noncompliance
8. Review of EDT Application.
 - a. Supervisory Review. Policies and procedures for office EIR review, including the appropriateness of the action taken, are also applicable to cases that use the EDT process. The appropriate Director and Legal Counsel ensure that the EDT was appropriately applied in all legal cases.

- b. Feedback. Appropriate Director and Legal Counsel will establish mechanisms to provide periodic feedback and guidance to investigating offices on any problems observed in the application of the EDT. This process will involve collaboration between appropriate Director and Legal Counsel who review the cases and EDT worksheets so that common errors and process application problems are identified and communicated to investigating offices at least quarterly. Appropriate Director will establish similar processes for legal cases they receive, and they will communicate errors and problems noted to CS/LA for further communication to investigating offices. The CS/LA will collect the information generated by these feedback processes at least quarterly in order to monitor the implementation of the EDT process. The CS/LA may be contacted to recommend any process improvements needed based upon the information collected.

ENFORCEMENT DECISION TOOL (EDT) WORKSHEET

NOTE: Insert this completed worksheet in section B of the EIR for legal actions and those administrative actions where the EIR includes such a section. For administrative actions where the EIR does not contain a section B, insert the worksheet in the EIR, and retain the EIR in the investigating office in accordance with established file retention directives, but not less than 24 months. For informal actions, retain the worksheet in the investigating office in accordance with established file retention directives, but not less than 24 months.

EIR Number (if applicable): _____ Case Name: _____

- a) Determine Applicability. Is this case categorically excluded? Yes ____ No _____. If yes, discontinue the EDT process and follow applicable program guidelines.

Excluded cases are those involving:

- ◆ Mandatory Occurrence Reporting Programme.
- ◆ Lack of qualification, for example:
 - ◆ Failure to meet technical qualifications for a certificate held
 - ◆ Conducting air transportation without holding an Air Carrier Certificate
 - ◆ Refusal to permit and/or submit to an inspection, reexamination, or drug/alcohol test
 - ◆ Intentional falsification of records or applications
 - ◆ Cheating on a written examination
- ◆ Criminal activities, such as narcotics convictions
- ◆ Special emphasis enforcement programs

- b) Categorize Conduct. Select the category of conduct involved:

Individual: Intentional ____ Reckless ____ Careless ____.

Corporate body: Intentional Systemic ____ Intentional Non Systemic ____ Unintentional Systemic ____ or Unintentional Non Systemic ____.

Describe the facts and circumstances considered:

NOTE: If "Intentional" is checked above for an individual or corporate body, legal action is indicated. You need not complete the rest of this worksheet unless a deviation from the EDT process outcome will be sought (see item j. below). Deviations require appropriate Director's approval and will generally only be considered in cases where there was negligible or no safety risk involved.

c) Prepare Risk Statement. Write a single phrase that expresses the hazard condition created and how that could endanger persons or property:

d) Determine Severity. Select the worst credible outcome potentially resulting from the hazard created by the act:

- Catastrophic (death or severe damage)
- Critical (severe injury or substantial damage)
- Marginal (minor injury or damage)
- Negligible (no injury or damage)

Describe the factors considered:

e) Determine Likelihood. Select the probability of the worst credible outcome occurring:

- Frequent (likely to occur often)
- Occasional (likely to occur sometimes)
- Remote (unlikely to occur, or would seldom occur)

Describe the facts and circumstances considered:

f) Determine Safety Risk. Select the applicable safety risk from the following risk assessment matrix:

- High
- Moderate
- Low

RISK ASSESSMENT MATRIX

	SEVERITY			
LIKELIHOOD	Catastrophic	Critical	Marginal	Negligible
Frequent	High	High	Moderate	Moderate
Occasional	High	Moderate	Moderate	Low
Remote	Moderate	Moderate	Low	Low

g) Determine the Type Action. Determine the type of action to take from the applicable EDT (individual or corporate body):

EDT – INDIVIDUAL

	SAFETY RISK		
CONDUCT	High	Moderate	Low
Intentional	Legal	Legal	Legal
Reckless	Legal	Legal	Administrative
Careless	Remedial Training or Legal	Administrative	Administrative or Informal

EDT – CORPORATE BODY

	SAFETY RISK		
CONDUCT	High	Moderate	Low
Intentional Systemic	Legal	Legal	Legal
Intentional Non Systemic	Legal	Legal	Legal
Unintentional Systemic	Legal	Administrative	Administrative or Informal
Unintentional Non Systemic	Letter of correction or Legal	Administrative	Administrative or Informal

h) Administrative Action or Remedial Training Criteria. If administrative action or remedial training is proposed, the eligibility criteria of this order must be met. The eligibility criteria for administrative action are found in chapter 5, subparagraph 3.b. of this Handbook; the criteria for remedial training are found in chapter 5, subparagraph 7.c. of this Handbook. See these paragraphs for guidance on these criteria.

i. Administrative Action Criteria Met: Yes ____ No ____ N/A ____

- A. Legal enforcement action not required by law
- B. Administrative action would be an adequate deterrent to future violations
- C. Lack of qualification is not indicated
- D. The alleged violation was inadvertent
- E. A substantial disregard for safety or security was not involved
- F. The circumstances of the alleged violation were not aggravated
- G. The alleged violator has a constructive attitude toward compliance
- H. A trend of noncompliance is not indicated.

2. Remedial Training Criteria Met: Yes ____ No ____ N/A ____

- A. Future compliance can be reasonably ensured through remedial training alone
- B. Airman should exhibit a constructive attitude
- C. Lack of qualifications is not indicated
- D. The airman's record of enforcement actions does not indicate that remedial training would be inappropriate
- E. The conduct is not deliberate, grossly negligent, or criminal in nature.

If no, explain which criteria are not met and why:

i) Specific Action Indicated. Select the specific type of action indicated by the EDT process:

- ____ Oral counseling
- ____ Written counseling
- ____ Warning notice
- ____ Letter of correction (other than remedial training)
- ____ Remedial training resulting in a letter of correction
- ____ Legal action after remedial training offer was refused or not completed
- ____ Legal action after letter of correction actions not completed
- ____ Legal action (other than after a remedial training offer refused or not completed or letter of correction actions not completed)

j) Deviation From EDT Process Outcome Requested: Yes ____ No ____ . If a type of action is proposed other than that indicated in paragraph (i) above, the appropriate Director's approval is required. See chapter 5, subparagraph 3.d. of this Handbook regarding the use of administrative action when associated criteria are not met.

If yes, explain and justify proposed action:

Appropriate Director's Action: Approved ____ Disapproved ____
Signature:

- k) Legal Counsel Concurrence (for legal enforcement cases only).
The proposed type of enforcement action conforms to the EDT process:
Yes ____ No ____

If no, explain:

Legal Counsel's Signature: _____

ELEMENTS OF REGULATIONS

1. Elements of Regulations. Sec 8.5.1.4 provides that no person may operate an aircraft in a negligent and reckless manner so as to
2. endanger life or property of others.
Violations under this sub section must contain an item of proof that provides evidence to identify all the elements. The elements that must be included as IOP are:
 - i. A person
 - ii. Operate
 - iii. An Aircraft
 - iv. Negligent and reckless
 - v. Endangerment
 - vi. Life or property of another

First Element is identifying the person as defined in the Act or Nig. CARs.

Second Element is to prove that the person operated the aircraft. Operation here would include even aircraft parked on the ramp, a taxiway, airborne or taxiing in from a flight.

Third Element is to prove that aircraft is as defined in Sec 1.5.49 of Nig. CARs any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth surface.

Four Elements seeks to establish that the act or omission is negligent and careless. Negligent indicates lack of care, an act a reasonable prudent person would not commit if mindful of the potential consequences. Reckless can be alleged when there is evidence that the person intended to do what he did. It is not necessary to alleged that the person knew that their action was a violation of any regulation.

Fifth Element is to endanger. The IOP in a gear landing might consist of evidence documenting the aircraft damage that endangered the property or person of another.

Sixth Element requires evidence that the endangerment was to the life or property of another. Evidence of a passenger is good for this purpose.

2. All enforceable regulations include some elements and evidence to support each of the elements must be included in an EIR to support a violation.

Appendix A-16.

ENFORCEMENT INVESTIGATIVE REPORTS

EIR

SECTION A			
ENFORCEMENT INVESTIGATIVE REPORT (Read C & E Guidance Material for Instruction)		Report Number	Related Number
ALLEGED VIOLATOR IDENTIFICATION			
1. Name		2. Address (Include P. O. Box)	
TELEPHONE NUMBER	3. DATE OF BIRTH	4. SEX	
5. NCAA Certificate	6. NCAA Certificate Type	OTHER	
7. Aviation Employer			
AIRCRAFT, ENGINE, PROPELLER, COMPONENT OR APPLIANCE INVOLVED			
8. MAKE	9. MODEL	10. IDENTIFICATION NO.	
11. Owner Name		12. Address (Include P. O. Box)	
ALLEGED VIOLATION			
13. Date Occurred	14. Time	15. Date Known to NCAA	16. Region of Discovery
17. Location			
18. Regulations Believed Violated			

ENFORCEMENT INVESTIGATIVE REPORT (Read C & E Guidance Material for instruction)		Report Number	Related Number	
18. Regulations Believed Violated (continued)				
Remarks:				
RELATED DATA				
19. Type		20. Category	21. Source	22. Accident Assoc.
23. Security Programme				
INVESTIGATING PERSONNEL RECOMMENDATION				
24. Type Action			25. Sanction	
Reporting Inspector (Type name)			CASE ID	
26. Date		27. Investigating Office		

<p align="center">ENFORCEMENT INVESTIGATIVE REPORT (Read C & E Guidance Material for Instruction)</p>	<p>Report Number</p>	<p>Related Number</p>
<p align="center">DIRECTOR'S REVIEW</p>		
<p>28. Regulations Believed Violated</p>	<p>29. Recommended Type Action</p>	
	<p>30. Recommended Sanction</p>	
<p>31. Date</p>	<p>32. Region</p>	
<p>Typed Name/Title/ of Approving Official</p> <p align="right">Director,</p>		

NCAA FORM

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SECTION B

SUMMARY OF FACTS

[Empty box for Summary of Facts]

SECTION B

FACTS AND ANALYSIS

FACTS

Introduction

SECTION B

FACTS AND ANALYSIS

ANALYSIS

Reliability of the Evidence

Conflicting Evidence

Attitude

Safety Involvement and Impact

Mitigating Circumstances

Aggravating Circumstances

SECTION C
ITEM OF PROOF (IOP)

Appendix A-17

Sample Letter Requesting Reexamination under Part 2.2.9.2 Nig. CARs.

Dear

The NCAA has conducted an investigation of an accident/incident that occurred at on Based on that investigation, The NCAA has reason to believe that your competence as a certificated airman is in question, and that reexamination of your qualification to be the holder of an airman certificate is necessary in the interest of safety. Therefore, under the authority in Part 2.2.9.2 Nig. CARs, the NCAA requests that you call or appear at this office or a Flight Standard Inspectors Office more conveniently located to you not later than,, to make an appointment for a reexamination. The reexamination will consist ofand include the knowledge and skill necessary to be the holder of

..... with emphasis on

.....
If you make an appointment with an NCAA approved Medical Examiners.

If you do not accept the opportunity for reexamination by the date set forth above, we will begin proceedings to suspend your airman certificate until such time as you demonstrate your competence to exercise its privileges. If, for reasons beyond your control, you are unable to be reexamined at this time, please contact me prior to so that the NCAA can determine whether to grant an extension of time to you.

Please note that the incident that occurred on is still under investigation to determine whether other enforcement action is appropriate. If additional enforcement action is to be taken, you will be advised in a separate letter.

We will be pleased to discuss this matter with you and provide any further information that may assist you. Our office is open from to, and our telephone number is

Your cooperation in this matter will be appreciated.

Sincerely,

