



International Civil Aviation Organization

**FOURTH MEETING OF THE ASIA PACIFIC ACCIDENT INVESTIGATION GROUP
(APAC-AIG/4)**

Tokyo, Japan, 1-2 September 2016

Agenda Item 2: Update on ICAO initiatives

AMENDMENT 15 TO ANNEX 13

(Presented by Secretariat)

SUMMARY

This paper draws the States/Administrations' attention to Amendment 15 to Annex 13.

1. INTRODUCTION

1.1 ICAO has issued Amendment 15 to Annex 13. The amendment will become applicable on 10 November 2016. The amendment introduces a definition for “accident investigation authority” as well as provisions for the independence of investigations, and for the protection of accident and incident investigation records.

1.2 ICAO has set the following implementation timeline:

- a) Establishment of an accident investigation authority – Six months to two years; and
- b) Implementation of enhanced protection of investigation records – One to two years

2. DISCUSSION

Defining “accident investigation authority”

2.1 The term “accident investigation authority” was incorporated into Annex 13 in 1981 and has been adopted by many States into their legislation/regulations. The term is now defined as follows:

Accident investigation authority. The authority designated by a State as responsible for aircraft accident and incident investigations within the context of this Annex.

2.2 The definition would add clarity to the meaning of the term in ICAO Annexes and AIG-related documentation and avoid potential misunderstanding.

Independence of accident and incident investigation

2.3 ICAO emphasises the importance of an independent accident investigation authority with the introduction of a new Standard 3.2 in Amendment 15 as follows:

“A State shall establish an accident investigation authority that is independent from State aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.”

2.4 Annex 13 and associated guidance materials indicate that the independence of investigations needs to be afforded both to the process followed in investigations and to the accident investigation authority itself. Such “independence” avoids real or perceived conflicts of interest and enhances the credibility of the accident investigation authority.

2.5 In the context of Annex 13, “independence” does not imply that the accident investigation authority would not be administratively supervised and accountable to a government ministry/parliament/congress for its finances, administration, policies and working methods. Rather, “independence” means a situation in which the accident investigation authority is functionally separate from State aviation authorities and other entities that could interfere with the conduct or objectivity of investigations.

2.6 At the APRAST/6 held on 6-10 April 2015, States/Administrations’ attention were drawn to the ICAO State Letter 2013/55 of 19 July 2013 [Ref. AN 6/12-13/55] which proposed the Standard 3.2. With the standard now becoming applicable in November 2016, States that have not yet established an independent accident investigation authority will have to do so as soon as possible.

2.7 In this regard, it has to be noted that ICAO will not regard an accident investigation unit that is within the State civil aviation authority as an independent accident investigation authority.

Protection of accident and incident investigation records

2.8 Currently, Standard 5.12 states:

“The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the appropriate authority for the administration of justice in that State determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations: ...”

Amendment 15 introduces this amended version:

“The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to Appendix 2 and 5.12.5, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations: ...”

2.9 The significant features of this amended version are:

- a) ICAO is now using the term *balancing test* to refer to the determination of the impact the disclosure or use of accident and incident investigation records may have on current or future investigations.
- b) The scope of the balancing test will include the *use* of accident and incident investigation records, not just the disclosure of such records.
- c) The revised Standard 5.12 will require that the balancing test be performed by a competent authority designated by the State, instead of the appropriate authority for the administration of justice. This is in recognition that different competent authorities may be designated for different circumstances. For example, the competent authority designated for applying the balancing test in criminal or civil proceedings may be a judicial authority. Another competent authority may be designated for applying the balancing test in cases where the purpose of the request for disclosure is for public accessibility. This provides States with more flexibility to designate the authority that will perform a balancing test for purposes other than accident or incident investigation.

2.10 Standard 5.12 includes a list of accident and incident investigation records that are to be subjected to the balancing test. This list is amended and re-organised to the following version:

- a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings;
- b) records in the custody or control of the accident investigation authority being:
 - 1) all statements taken from persons by the accident investigation authority in the course of their investigation;
 - 2) all communications between persons having been involved in the operation of the aircraft;
 - 3) medical or private information regarding persons involved in the accident or incident;
 - 4) recordings and transcripts of recordings from air traffic control units;
 - 5) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and
 - 6) the draft Final Report of an accident or incident investigation.

2.11 The significant features of this amended list are:

- a) Airborne image recordings, not just cockpit voice recordings, and the related transcripts will be subjected to the balancing test.
- b) Cockpit voice recordings and airborne image recordings and the related transcripts are treated somewhat differently from the other records listed in Standard 5.12. The former is always subjected to the balancing test, whereas protections for the other records are afforded only when the records are in the custody or control of the accident investigation authority. This differentiation accords a higher level of protection to those records that are more sensitive in nature.

- c) Draft Final Reports are to be subjected to the balancing test. This is because the disclosure or use of such drafts can be misleading as they are not finalised documents and are subject to change following the consultation process with States/Administrations involved in investigation.

New Appendix 2

2.12 Attachment E of Annex 13 (*Legal Guidance for the Protection of Information from Safety Data Collection and Processing Systems*) is to be replaced by an Appendix 2 (*Protection of Accident and Incident Investigation Records*). This is to assist States in incorporating the protections accorded to investigation records into national laws and assist the designated competent authority/authorities in administering the balancing test. The proposed amendments also provided factors that the competent authority shall take into consideration when administering the balancing test.

Implementation Assistance Tasks

2.10 ICAO has planned a series of workshop to assist States/Administrations in each region in the implementation of Amendment 15. The implementation workshop for the Asia Pacific region has been tentatively scheduled for April 2017. The following topics will be addressed during the workshop:

- Independence of accident investigation authorities
- New SARPs on the protection of investigation records, and new Appendix 2 to Annex 13
- Interaction of Annex 13 with Annexes 6 and 19
- Manual on Protection of Safety Information

Universal Safety Oversight Audit Programme (USOAP)

2.12 ICAO will be reviewing the USOAP audit protocol questions to see if there is a need to amend existing protocol questions or formulate new protocol questions for the assessment of effective implementation of Amendment 15 by States/Administrations.

3. ACTION BY THE MEETING

3.1 The meeting is invited to note:

- a) That Amendment 15 to Annex 13 will become applicable on 10 November 2016;
- b) That ICAO will not regard an accident investigation unit that is within the State civil aviation authority as an independent accident investigation authority; and
- c) That States/Administrations planning to set up an independent accident investigation authority may consult the APAC-AIG.

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