



International Civil Aviation Organization

**EIGHTH MEETING OF THE ASIA PACIFIC REGIONAL AVIATION SAFETY TEAM
(APRAST/8)**

(Bangkok, Thailand, 28 March to 1 April 2016)

Agenda Item 4: Update, discussion and review of APRAST activities

AMENDMENT 15 TO ANNEX 13

(Presented by Chairman, APAC-AIG)

SUMMARY

This information paper draws the States/Administrations' attention to ICAO Council's adoption of Amendment 15 to Annex 13.

1. INTRODUCTION

1.1 The ICAO Council has on 22 February 2016 adopted Amendment 15 to Annex 13, which 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 States/Administrations will receive in due course an ICAO State letter regarding Amendment 15 to Annex 13. This paper summarises the key elements in the amendment for APAC States/Administrations' advance information.

2. DISCUSSION

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. This 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 to Annex 13 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 to both 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 to Annex 13

2.12 Attachment E of Annex 13 (*Legal Guidance for the Protection of Information from Safety Data Collection and Processing Systems*) will be replaced with an Appendix 2 to Annex 13 (*Protection of Accident and Incident Investigation Records*). This is to better assist States in their implementation of Standard 5.12.

3. ACTION BY THE MEETING

3.1 The meeting is invited to:

- a) Request States/Administrations to note the pending amendment to Annex 13;
- b) Encourage States/Administrations to take early actions to implement the new ICAO requirements;
- c) Remind States/Administrations that have not yet established an accident investigation authority authority to do so as soon as possible;
- d) Highlight to States/Administrations that ICAO will not regard an accident investigation unit that is within the State civil aviation authority as an independent accident investigation authority; and
- e) Inform States/Administrations planning to set up an independent accident investigation authority that they may consult the APAC-AIG.

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