

AMENDMENT No. 11

TO THE

**INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION

ANNEX 13

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The amendment to Annex 13 contained in this document was adopted by the Council of ICAO on **3 March 2006**. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before **17 July 2006** will become effective on that date and will become applicable on **23 November 2006** as specified in the Resolution of Adoption.

March 2006

INTERNATIONAL CIVIL AVIATION ORGANIZATION

Please insert State letter **AN 6/1.2-06/27** on blue paper and stamped **“FOR INFORMATION”**.

**AMENDMENT 11 TO THE INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION

RESOLUTION OF ADOPTION

The Council

Acting in accordance with the Convention on International Civil Aviation, and particularly with the provisions of Articles 37, 54 and 90 thereof,

1. *Hereby adopts* on 3 March 2006 Amendment 11 to the International Standards and Recommended Practices contained in the document entitled *Aircraft Accident and Incident Investigation* which for convenience is designated Annex 13 to the Convention;
2. *Prescribes* 17 July 2006 as the date upon which the said Amendment shall become effective, except for any part thereof in respect of which a majority of the Contracting States have registered their disapproval with the Council before that date;
3. *Resolves* that the said Amendment or such parts thereof as have become effective shall become applicable on 23 November 2006;
4. *Requests the Secretary General:*
 - a) to notify each Contracting State immediately of the above action and immediately after 17 July 2006 of those parts of the amendment which have become effective;
 - b) to request each Contracting State:
 - 1) to notify the Organization (in accordance with the obligation imposed by Article 38 of the Convention) of the differences that will exist on 23 November 2006 between its national regulations or practices and the provisions of the Standards in the Annex as hereby amended, such notification to be made before 23 October 2006, and thereafter to notify the Organization of any further differences that arise;
 - 2) to notify the Organization before 23 October 2006 of the date or dates by which it will have complied with the provisions of the Standards in the Annex as hereby amended.
 - c) to invite each Contracting State to notify additionally any differences between its own practices and those established by the Recommended Practices, when the notification of such differences is important for the safety of air navigation, following the procedure specified in subparagraph b) above with respect to differences from Standards.

NOTES ON THE PRESENTATION OF THE PROPOSED AMENDMENT

1. The text of the amendment is arranged to show deleted text with a line through it and new text highlighted with grey shading, as shown below:

- 1. ~~Text to be deleted is shown with a line through it.~~ text to be deleted
- 2. **New text to be inserted is highlighted with grey shading.** new text to be inserted
- 3. ~~Text to be deleted is shown with a line through it~~ followed by the replacement text which is highlighted with grey shading. new text to replace existing text

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**TEXT OF AMENDMENT 11 TO THE
INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

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**AIRCRAFT ACCIDENT AND
INCIDENT INVESTIGATION**

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**ANNEX 13
TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

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CHAPTER 5. INVESTIGATION

**RESPONSIBILITY OF THE STATE
CONDUCTING THE INVESTIGATION**

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Non-disclosure of records

5.12 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:

- a) all statements taken from persons by the investigation authorities in the course of their investigation;
- b) all communications between persons having been involved in the operation of the aircraft;
- c) medical or private information regarding persons involved in the accident or incident;
- d) cockpit voice recordings, and transcripts from such recordings;
- e) recordings and transcriptions of recordings from air traffic control units; and
- f) opinions expressed in the analysis of information, including flight recorder information.

5.12.1 These records shall be included in the final report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.

Note 1.— Information contained in the records listed above, which includes information given voluntarily by persons interviewed during the investigation of an accident or incident, could be utilized inappropriately for subsequent disciplinary, civil, administrative or criminal proceedings. If such information is distributed, it may, in the future, no longer be openly disclosed to investigators. Lack of access to such information would impede the investigation process and seriously affect flight safety.

Note 2.— Attachment E contains legal guidance for the protection of information from safety data collection and processing systems.

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PARTICIPATION OF OTHER STATES

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Rights

5.23 Any State which on request provides information, facilities or experts to the State conducting the investigation shall be entitled to appoint an accredited representative to participate in the investigation.

Note.— Any State that provides an operational base for field investigations, or is involved in search and rescue or wreckage recovery operations, or is involved as a State of a code-share or alliance partner of the operator, may also be invited to appoint an accredited representative to participate in the investigation.

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CHAPTER 8. ACCIDENT PREVENTION MEASURES

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8.3 A voluntary incident reporting system shall be non-punitive and afford protection to the sources of the information.

Note 1.— A non-punitive environment is fundamental to voluntary reporting.

Note 2.— States are encouraged to facilitate and promote the voluntary reporting of events that could affect aviation safety by adjusting their applicable laws, regulations and policies, as necessary.

Note 3.— Guidance related to both mandatory and voluntary incident reporting systems is contained in the Safety Management Manual (Doc 9859).

Deleted: Accident Prevention Manual (Doc 9422)

Note 4.— Attachment E contains legal guidance for the protection of information from safety data collection and processing systems.

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PROPOSED AMENDMENT TO
INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES
AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION
ANNEX 13
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Insert new Attachment E as follows:

ATTACHMENT E. LEGAL GUIDANCE FOR THE PROTECTION OF
INFORMATION FROM SAFETY DATA COLLECTION AND PROCESSING SYSTEMS

1. Introduction

1.1 The protection of safety information from inappropriate use is essential to ensure its continued availability, since the use of safety information for other than safety-related purposes may inhibit the future availability of such information, with an adverse effect on safety. This fact was recognised by the 35th Assembly of ICAO, which noted that existing national laws and regulations in many States may not adequately address the manner in which safety information is protected from inappropriate use.

1.2 The guidance contained in this Attachment is therefore aimed at assisting States enact national laws and regulations to protect information gathered from safety data collection and processing systems (SDCPS), while allowing for the proper administration of justice. The objective is to prevent the inappropriate use of information collected solely for the purpose of improving aviation safety.

1.3 Because of the different legal systems in States, the legal guidance must allow States the flexibility to draft their laws and regulations in accordance with their national policies and practices.

1.4 The guidance contained in this Attachment, therefore, takes the form of a series of principles that have been distilled from examples of national laws and regulations provided by States. The concepts described in these principles could be adapted or modified to meet the particular needs of the State enacting laws and regulations to protect safety information.

1.5 Throughout this Attachment:

- a) *safety information* refers to information contained in SDCPS established for the sole purpose of improving aviation safety, and qualified for protection under specified conditions in accordance with 3.1, below;
- b) *operational personnel* refers to personnel involved in aviation operations who are in a position to report safety information to SDCPS. Such personnel include, but are not limited to, flight crews, air traffic controllers, aeronautical station operators, maintenance technicians, cabin crews, flight dispatchers and apron personnel;

- c) *inappropriate use* refers to the use of safety information for purposes different from the purposes for which it was collected, namely, use of the information for disciplinary, civil, administrative and criminal proceedings against operational personnel, and/or disclosure of the information to the public;
- d) SDCPS refers to processing and reporting systems, databases, schemes for exchange of information, and recorded information and include:
 - 1) records pertaining to accident and incident investigations, as described in Annex 13, Chapter 5;
 - 2) mandatory incident reporting systems, as described in Annex 13, Chapter 8;
 - 3) voluntary incident reporting systems, as described in Annex 13, Chapter 8; and
 - 4) self-disclosure reporting systems, including automatic data capture systems, as described in Annex 6, Part I, Chapter 3, as well as manual data capture systems.

Note.— Information on safety data collection and processing systems can be found in the ICAO Safety Management Manual (Doc 9859).

2. General principles

2.1 The sole purpose of protecting safety information from inappropriate use is to ensure its continued availability so that proper and timely preventive actions can be taken and aviation safety improved.

2.2 It is not the purpose of protecting safety information to interfere with the proper administration of justice in States.

2.3 National laws and regulations protecting safety information should ensure that a balance is struck between the need for the protection of safety information in order to improve aviation safety, and the need for the proper administration of justice.

2.4 National laws and regulations protecting safety information should prevent its inappropriate use.

2.5 Providing protection to qualified safety information under specified conditions is part of a State's safety responsibilities.

3. Principles of protection

3.1 Safety information should qualify for protection from inappropriate use according to specified conditions that should include, but not necessarily be limited to: the collection of information was for explicit safety purposes and the disclosure of the information would inhibit its continued availability.

3.2 The protection should be specific for each SDCPS, based upon the nature of the safety information it contains.

3.3 A formal procedure should be established to provide protection to qualified safety information, in accordance with specified conditions.

3.4 Safety information should not be used in a way different from the purposes for which it was collected.

3.5 The use of safety information in disciplinary, civil, administrative and criminal proceedings should be carried out only under suitable safeguards provided by national law.

4. **Principles of exception**

4.1 Exceptions to the protection of safety information should only be granted by national laws and regulations when:

- a) there is evidence that the occurrence was caused by an act considered, in accordance with the law, to be conduct with intent to cause damage, or conduct with knowledge that damage would probably result, equivalent to reckless conduct, gross negligence or wilful misconduct;
- b) an appropriate authority considers that circumstances reasonably indicate that the occurrence may have been caused by conduct with intent to cause damage, or conduct with knowledge that damage would probably result, equivalent to reckless conduct, gross negligence or wilful misconduct; or
- c) a review by an appropriate authority determines that the release of the safety information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release may have on the future availability of safety information.

5. **Public disclosure**

5.1 Subject to the principles of protection and exception outlined above, any person seeking disclosure of safety information should justify its release.

5.2 Formal criteria for disclosure of safety information should be established and should include, but not necessarily be limited to, the following:

- a) disclosure of the safety information is necessary to correct conditions that compromise safety and/or to change policies and regulations;
- b) disclosure of the safety information does not inhibit its future availability in order to improve safety;
- c) disclosure of relevant personal information included in the safety information complies with applicable privacy laws; and
- d) disclosure of the safety information is made in a de-identified, summarized or aggregate form.

6. **Responsibility of the custodian of safety information**

6.1 Each SDCPS should have a designated custodian. It is the responsibility of the custodian of safety information to apply all possible protection regarding the disclosure of the information, unless:

- a) the custodian of the safety information has the consent of the originator of the information for disclosure; or
- b) the custodian of the safety information is satisfied that the release of the safety information is in accordance with the principles of exception.

7. **Protection of recorded information**

7.1 Considering that ambient workplace recordings required by legislation, such as cockpit voice recorders (CVRs), may be perceived as constituting an invasion of privacy for operational personnel that other professions are not exposed to:

- a) subject to the principles of protection and exception above, national laws and regulations should consider ambient workplace recordings required by legislation as privileged protected information, i.e. information deserving enhanced protection; and
- b) national laws and regulations should provide specific measures of protection to such recordings as to their confidentiality and access by the public. Such specific measures of protection of workplace recordings required by legislation may include the issuance of orders of non-public disclosure.

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