

# AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY REGULATIONS, 2021

## Arrangement of Regulations

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### Regulation

- |    |   |   |
|----|---|---|
| 1. | Citation.....   | 2 |
| 2. | Regulations governing civil aviation accidents and incidents..... | 2 |
| 3. | Revocation of S.I. No. 4 of 2017.....                             | 2 |

### SCHEDULE

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2

# **AIRCRAFT INVESTIGATION AUTHORITY ACT, 2019 (NO. 44 OF 2019)**

## **AIRCRAFT ACCIDENT INVESTIGATION AUTHORITY REGULATIONS, 2021**

The Minister, in exercise of the power conferred by section 28 of the Aircraft Accident Investigation Authority Act, 2019, makes the following Regulations

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### **1. Citation.**

These Regulations may be cited as the Accident Investigation Authority Regulations, 2021.

### **2. Regulations governing civil aviation accidents and incidents.**

The *Schedule* shall have effect with respect to regulations governing the investigations for any civil aviation accident or incident.

### **3. Revocation of S.I. No. 4 of 2017.**

The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations, 2017 is hereby revoked.

## **SCHEDULE**

### **(regulation 2)**

## **SUBPART A: GENERAL 1.001 APPLICABILITY**

- (a) This Regulation contains requirements pertaining to —
- (1) notification, investigation, analysis and reporting of aircraft accidents and incidents and certain other occurrences in the operation of an aircraft, when the aircraft accidents and incidents involve —
    - (i) Bahamas-registered aircraft, wherever they occur;
    - (ii) foreign-registered civil aircraft, where the events occur in The Bahamas;

- (iii) accidents and serious incidents which occur in or over a country or territory which is not a Contracting State to aircraft registered in The Bahamas where such an investigation is not carried out by another State; and
- (iv) serious incidents which occur in or over a country or territory which is not a Contracting State to aircraft which are registered elsewhere than in The Bahamas but which are operated by an undertaking established in The Bahamas when such an investigation is not carried out by another State.
- (2) preservation of aircraft wreckage, mail, cargo, and records involving all civil and state aircraft accidents in The Bahamas.
- (3) conformance to the international Standards for accident and incident reporting.
- (b) This Regulation is applicable to the —
  - (1) organizations and operators that operate aircraft or provide services associated with the safe operation of aircraft; and
  - (2) all Government agencies necessary to ensure the timely and correct investigation and reporting of accidents.
- (c) This Regulation is also applicable to —
  - (1) all persons associated with the safe operations of aircraft;
  - (2) the general public where they have information pertinent to an accident or incident investigation; and
  - (3) the technical persons who participate in the investigations.
- (d) Throughout this regulation, the use of the male gender should be understood to include male and female persons.

### **1.005 OBJECTIVE OF INVESTIGATIONS.**

The sole objective of the investigation of an accident or incident shall be to prevent accidents and incidents. It is not the purpose of the activities subject to this Regulation to apportion blame or liability.

### **1.010 INDEPENDENCE OF INVESTIGATIONS.**

The Bahamas has established an accident investigation authority that is independent from the State's aviation authorities and other entities that could interfere with the conduct or objectivity of an investigation.

### **1.015 DEFINITIONS.**

For the purpose of implementing the provisions of these Regulations, the following terms shall have the following meanings —

**“AAIA”, “Authority” or “accident investigation authority”:** refers to the Air Accident Investigation Authority of The Bahamas;

**Accident:** An occurrence associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down, in which —

- (a) a person is fatally or seriously injured as a result of —
  - being in the aircraft, or
  - direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or
  - direct exposure to jet blast, except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or
- (b) the aircraft sustains damage or structural failure which —
  - adversely affects the structural strength, performance or flight characteristics of the aircraft, and
  - would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreens, the aircraft skin (such as small dents or puncture holes), or for minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike (including holes in the radome); or
- (c) the aircraft is missing or is completely inaccessible.

**Accident Investigation Authority (the Authority):** The authority designated by The Bahamas as responsible for aircraft accident and incident investigations within the context of Annex 13 — Aircraft Accident and Incident Investigation;

**Act:** the Aircraft Accident Investigation Authority Act, 2019 (*No. 44 of 2019*);

- Accredited representative:** A person designated by a State, on the basis of his or her qualifications, for the purpose of participating in an investigation conducted by another State. Where the State has established an accident investigation authority, the designated accredited representative would normally be from that authority;
- Adviser:** A person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in an investigation;
- Airport operator:** A person, organization or enterprise engaged in the operation, of an airport;
- Air traffic control unit:** A generic term meaning variously, area control center, approach control unit, or aerodrome control tower;
- Aircraft:** 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's surface;
- Annex 13:** The Annex to the Convention on International Civil Aviation that contains the International Standards and Recommended Practices related to Aircraft Accident and Incident Investigation;
- Appointed Head:** A commissioner, chief investigator or other competent government official who is appointed by The Bahamas to be responsible for the accident and incident investigations within the meaning of the Act;
- Causes:** Actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident. The identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability;
- Chief Investigator:** means the Chief Investigator of Air Accidents / Appointed Head;
- Collision:** An impact between aircraft, or between an aircraft and another object;
- Contributing factors:** Actions, omissions, events, conditions, factors or a combination thereof, which, if eliminated, avoided or absent, would have prevented or reduced the probability of the accident or incident occurring, or would have mitigated the severity of the adverse consequences of the accident or incident;
- Crew member:** A person assigned by an air operator to duty on an aircraft during a flight duty period;
- Dangerous goods:** Articles or substances which are capable of posing a risk to health, safety, property or the environment;

- Department:** Any ministry, authority, organization or other concerned body of the government of The Bahamas that has a direct interest in aircraft accidents or incidents;
- Document:** Includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic, film, sound recording, video tape, electronic files and data, and any copy thereof;
- Draft Final Report:** Draft investigation report that is sent in confidence to departments in The Bahamas, States, and organizations involved in the investigation, inviting their significant and substantiated comments on the report;
- Final Report:** A State's conclusive report on its investigation into an aircraft accident or incident. The Final Report is issued by the Authority and includes the pertinent factual information, analysis, conclusions and, when appropriate, associated safety recommendations. This report is made with the intention of preventing accidents or incidents and in no case has the purpose of creating a presumption of blame or liability;
- Flight recorder:** Any type of recorder installed in the aircraft for the purpose of complementing aircraft accident, serious incident and incident investigation;
- Incident:** An occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;
- Investigation:** A process conducted for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and/or contributing factors and, when appropriate, the making of safety recommendations;
- Investigation Interim Statement:** The public communication used by the Authority on each anniversary of the accident or incident for informing those having a direct interest in the investigation regarding the progress of an ongoing investigation and any safety issues raised during the investigation;
- Investigator:** A person delegated by the Authority to conduct its investigations;
- Investigator-in-charge:** A person charged, on the basis of his or her qualifications, with the responsibility for the organization, conduct and control of an investigation;
- Material fact in question:** means a fact that is significant or essential to the matter at hand, that one party alleges and that the other controverts, and is to be determined by the competent authority administering the balancing test;

**Observer:** A representative of a concerned department of The Bahamas who is authorized by the Authority to attend an investigation as an observer, or an Authority investigator authorized to attend an investigation being conducted by another concerned department;

**Occurrence:** Any accident or incident associated with the operation of an aircraft;

**Operator:** A person, organization or enterprise engaged in or offering to engage in an aircraft operation;

**Other reportable incident:** An occurrence, other than an accident or serious incident, which affects or could affect the safety of operations;

**Participant:** A person authorized by the Authority to participate in an investigation being conducted by the Authority because in the opinion of the Authority that person has the expertise to contribute to achieving the Authority's mandate;

**Pilot-in-command:** The pilot designated by the operator, or in the case of general aviation, the owner, as being in command and charged with the safe conduct of a flight;

**Regulations:** the Accident Investigation Authority Regulations, 2020;

**Safety recommendation:** A proposal of an accident investigation authority based on information derived from an investigation, made with the intention of preventing accidents or incidents and which in no case has the purpose of creating a presumption of blame or liability for an accident or incident. In addition to safety recommendations arising from accident and incident investigations, safety recommendations may result from diverse sources, including safety studies;

**Safety recommendation of global concern:** A safety recommendation made to a State civil aviation authority, to a regional certification authority, or to ICAO regarding a systemic deficiency having a probability of recurrence with potential for significant consequences, and requiring timely action to improve safety;

**Serious incident:** An incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down; (Appendix 2 of the Regulations provides a list of examples of serious incidents.)

**Serious injury:** An injury which is sustained by a person in an accident and which—

- (a) requires hospitalization for more than 48 hours, commencing within seven days from the date the injury was received; or
- (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose); or
- (c) involves lacerations which cause severe hemorrhage, nerve, muscle or tendon damage; or (d) involves injury to any internal organ; or
- (e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface; or
- (f) involves verified exposure to infectious substances or injurious radiation;

**State:** A Member State of the International Civil Aviation Organization (ICAO);

**State of Design:** The State having jurisdiction over the organization responsible for the type design;

**State of Manufacture:** The State having jurisdiction over the organization responsible for the final assembly of the aircraft, engine or propeller;

**State of Occurrence:** The State in the territory of which an accident or incident occurs;

**State of the Operator:** The State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence;

**State of Registry:** The State on whose register the aircraft is entered;

**Statement:** The whole or any part of an oral, written or recorded statement relating to an aircraft accident or incident given by the author of the statement to the Authority.

## **1.020 ACRONYMS & ABBREVIATIONS.**

- (a) The following acronyms and abbreviations are used in this Regulation —

**AAIA** – Air Accident Investigation Authority

**ACAS** – Aircraft Collision Avoidance System

**APU** – Auxiliary Power Unit

**ACCID** – Accident

**AIP** – Aeronautical Information Publication

**ANS** – Air Navigation Services

**AOC** - Air Operator Certificate



**APU** – Auxiliary Power Unit  
**ATC** – Air Traffic Control  
**ACAS** – Aircraft Collision Avoidance System  
**AOC** - Air Operator Certificate  
**ATM** – Air Traffic Management  
**ATS** – Air Traffic Services  
**CFIT** – Controlled Flight into Terrain  
**CRM** – Crew Resource Management  
**ETOPS** – Extended Range Twin Engine Operations Performance Standards  
**FD** – Flight Dispatchers  
**FOD** – Foreign Object Damage  
**GPNS** – Global Positioning Navigational System  
**ICAO** – International Civil Aviation Organization  
**IIC** – Investigator-in-Charge  
**INCID** – Incident  
**LOTC** – Loss of Thrust or Power Control  
**MEL** – Minimum Equipment List  
**PSE** – Principal Structural Element  
**RA** – Resolution Advisory  
**SSR** – Secondary Surveillance Radar  
**TAWS** – Terrain Awareness Warning System  
**PSE** – Principal Structural Element  
**UTC** – Universal Coordinated Time

## **SUBPART B: PERSONAL RESPONSIBILITY: ACCIDENT REPORTING**

### **1.025 APPLICABILITY.**

This Subpart is applicable to operators and individuals who are involved in or have knowledge of an aircraft accident or serious incident —

- (1) occurring within The Bahamas airspace;
- (2) with a Bahamas-registered aircraft; or
- (3) with a Bahamas AOC holder.

### **1.030 MANDATORY NOTIFICATION OF ACCIDENTS AND INCIDENTS.**

- (a) Where an aircraft accident or incident takes place, the owner, operator, pilot-in-command and any crew member of the aircraft, the operator of the airport, and any air traffic controller having knowledge of an accident or incident shall notify the Authority and provide as much information as is possible as soon as possible and by the quickest means available.
- (b) The notification to the Authority shall be in plain language and contain as much of the information specified in 1.040 to these Regulations as is readily available; but, the dispatch of the notification shall not be delayed due to the lack of complete information.

### **1.035 IMMEDIATE NOTIFICATION.**

- (1) The operator of any Bahamas-registered civil aircraft, or any State aircraft not operated by the military, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the AAIA when an aircraft accident or any of the following listed incidents occur —
  - (a) flight control system malfunction or failure;
  - (b) inability of any required flight crew member to perform normal flight duties as a result of injury or illness;
  - (c) failure of structural components of a turbine engine excluding compressor and turbine blades and vanes;
  - (d) in-flight fire;
  - (e) aircraft collide in flight.
  - (f) damage to property, other than the aircraft, estimated to exceed \$25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less; or
  - (g) for large multi-engine aircraft (more than 12,500 pounds maximum take-off weight)—
    - (i) in-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a backup source such as a battery, auxiliary power unit, or air driven generator to retain flight control or essential instruments;
    - (ii) in-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;
    - (iii) sustained loss of the power or thrust produced by two or more engines; and
    - (iv) an evacuation of an aircraft in which an emergency egress system is utilized.

- (2) This initial notification requirement also applies when an aircraft is overdue and is believed to have been involved in an accident.

*Note: The initial report may be made to the nearest air traffic service unit or flight information unit, to the BCAA or directly to the AAIA as prescribed in the Aeronautical Information Publication.*

#### **1.040 INFORMATION TO BE GIVEN IN THE NOTIFICATION.**

The required notification shall contain the following information, if available —

- (a) type, nationality, and registration marks of the aircraft;
- (b) name of owner, and operator of the aircraft;
- (c) name of the pilot in command;
- (d) date and time of the accident;
- (e) last point of departure and point of intended landing of the aircraft;
- (f) position of the aircraft with reference to some easily defined geographical point;
- (g) number of persons aboard, number killed, and number seriously injured;
- (h) nature of the accident, the weather and the extent of damage to the aircraft, so far as is known; and
- (i) a description of any explosives, radioactive materials, or other dangerous articles carried.

#### **1.045 RESPONSES TO NOTIFICATIONS.**

Where the Authority is notified of an aircraft accident or serious incident specified in Appendix 2 of these Regulations, the Authority with minimum delay shall—

- (a) forward a notification to—
  - (i) any concerned department;
  - (ii) the States having a direct interest in the accident or incident, including the State of Registry, State of the Operator, State of Design, State of Manufacture, and when required to ICAO;
  - (iii) involved air operator, operators of airports and air traffic control units, and aircraft manufacturer; and
  - (iv) any other local authorities and organizations that could assist the Authority in its investigation.
- (b) advise the entities noted in paragraph (a)(i) and (ii) of any investigation that the Authority plans to conduct, including the type and scope of the investigation.

### **1.050 INFORMING AVIATION SECURITY AUTHORITIES.**

- (a) If, in the course of an investigation it becomes known, or it is suspected, that an act of unlawful interference was involved, the investigator-in-charge shall immediately initiate action to ensure that the aviation security authorities of The Bahamas are so informed.
- (b) For the purpose of these Regulations, an act of unlawful interference means any act or attempted act such as to jeopardize the safety of civil aviation and air transport including —
  - (1) unlawful seizure of an aircraft;
  - (2) destruction of an aircraft in service;
  - (3) hostage taking on board aircraft or on aerodromes;
  - (4) forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility;
  - (5) introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;
  - (6) use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
  - (7) communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility.

### **1.055 WHERE TO FILE THE REPORTS.**

The operator of an aircraft shall file any initial notification or operator accident or incident report with the AAIA as specified in the Aeronautical Information Publication.

### **1.060 FORWARDING OF AN OPERATOR ACCIDENT OR INCIDENT REPORT.**

- (1) The operator of a civil, state or foreign aircraft shall file a report in the form and manner prescribed by the AAIA —
  - (a) Within ten days after an accident; or
  - (b) After seven days if an overdue aircraft is still missing.
- (2) An Operator Incident Report on an incident for which immediate notification is required shall be filed only as requested by an authorized representative of the AAIA.

### **1.065 CREW MEMBER STATEMENT.**

- (a) As soon as possible after the accident or serious incident, each crew member shall forward to the Authority, a statement setting forth the facts,

conditions, and circumstances relating to the accident or serious incident as they appear to the member.

- (b) If the crew member is incapacitated, the crew member shall submit the statement as soon as the crew member is physically able to do so.

## **SUBPART C: ACCIDENT & INCIDENT INVESTIGATION**

### **1.070 APPLICABILITY.**

- (a) This Subpart is applicable to the conduct of accident and incident investigations, the persons who conduct the investigations and those persons that have information or records pertinent to the investigations.
- (b) The AAIA shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of these Regulations. The investigation shall normally include—
  - (1) the gathering, recording and analysis of all relevant information on that accident or incident;
  - (2) the protection of certain accident and incident investigation records;
  - (3) if appropriate, the issuance of safety recommendations;
  - (4) if possible, the determination of the causes and/or contributing factors; and
  - (5) the completion of the Final Report.
- (c) Where feasible, the scene of the accident shall be visited, the wreckage examined and statements taken from witnesses. The extent of the investigation and the procedure to be followed in carrying out such an investigation shall be determined by the AAIA, depending on the lessons it expects to draw from the investigation for the improvement of safety.

### **1.075 DECISION AS TO THE TYPES OF INVESTIGATION.**

The Appointed Head of the Authority shall establish policies respecting the types of aircraft accidents or incidents to be investigated. The following criteria shall apply when the Authority makes its decision as to the types of its investigations

- (a) all accidents shall be investigated;
- (b) all serious incidents involving aircraft of a maximum mass of over 2,250 kg shall be investigated;
- (c) all serious incidents should be investigated; and
- (d) other types of incidents may be investigated.

### **1.080 RESPONSIBILITY FOR INVESTIGATION.**

- (a) The AAIA is charged with fulfilling the obligations of the Government of The Bahamas under Annex 13 to the Convention and does so consistent with the requirements of the legislation and responsibilities of the Government.

*(Note: Annex 13 contains specific requirements for the notification, investigation, and reporting of certain accidents and incidents involving international civil aviation.)*

- (b) In the case of an accident or incident in a foreign state involving civil aircraft of Bahamian registry, where the foreign state is a signatory to Annex 13 to the Convention, the state of occurrence is responsible for the investigation.
- (c) If the accident or incident occurs in a foreign state not bound by the provisions of Annex 13 to the Convention, or if the accident or incident involves a State aircraft (Annex 13 applies only to civil aircraft), the conduct of the investigation shall be in consonance with any agreement entered into between the Government of The Bahamas and the foreign state.

### **1.085 NATURE OF THE INVESTIGATION.**

- (a) Accident and incident investigations are conducted by the AAIA to determine the facts, conditions, and circumstances relating to an accident or incident and the probable cause(s) thereof.
- (b) These results are then used to ascertain measures that would best tend to prevent similar accidents or incidents in the future.
- (c) The investigation includes the field investigation (on-scene at the accident, testing, teardown, etc.), report preparation, and, where ordered, a public hearing.
- (d) The investigation results in AAIA conclusions issued in the form of a report or "brief" of the incident or accident.
- (e) Accident or incident investigations are fact-finding proceedings with no formal issues and no adverse parties.
- (f) These investigations are not conducted for the purpose of determining the rights or liabilities of any person.

### **1.090 RIGHT TO REPRESENTATION.**

Any person interviewed by an authorized representative of the AAIA during the investigation, regardless of the form of the interview (sworn, unsworn, transcribed, not transcribed, etc.), has the right to be accompanied, represented, or advised by an attorney or non-attorney representative.

## **1.095 FORM AND CONDUCT OF INVESTIGATIONS.**

The extent of investigations and the procedure to be followed in carrying out investigations required or authorized under these Regulations are —

- (1) wholly independent and separate from any judicial or administrative proceedings to apportion blame or liability;
- (2) coordinated with any investigation conducted by the judicial authorities;
- (3) determined by the Chief Investigator taking account of the purpose and the lessons the Chief Investigator expects to draw from the accident or incident for the improvement of safety.

## **1.100 CONDUCT OF THE INVESTIGATION.**

- (a) The AAIA shall institute an investigation into an aircraft accident or serious incident, in accordance with section 9(2) of the Act, the Chief Investigator may delegate the whole or any part of an investigation to another State, to a regional accident and incident investigation organization or to a department by mutual arrangement and consent. In any event, the Authority shall use every means to facilitate the investigation.
  - (1) Where the Authority has delegated the investigation to another department within The Bahamas;
  - (2) The delegated department is required to investigate under the provisions of the Act, and to provide its Final Report and recommendations to the Authority; and
- (b) The Authority may appoint participants to such an investigation.
- (c) In any event, the State of Occurrence shall use every means to facilitate the investigation.

*Note 1.— When the whole investigation is delegated to another State or a regional accident and incident investigation organization, such a State is expected to be responsible for the conduct of the investigation, including the issuance of the Final Report and the ADREP reporting. When a part of the investigation is delegated, the State of Occurrence usually retains the responsibility for the conduct of the investigation.*

*Note 2.— In the case of serious incidents, the State of Occurrence may consider delegating the investigation to the State of Registry or the State of the Operator, in particular those involving occurrences in which it might be beneficial or more practical for one of these States to conduct the investigation.*

*Note 3.— In the case of investigation of an unmanned aircraft system, only aircraft with a design and/or operational approval are to be considered.*

### **1.105 OBSTRUCTION OF INVESTIGATION.**

- (a) In accordance with these regulations and the Air Accident Investigation Act during the course of any investigation conducted, the AAIA shall have unrestricted access to all evidential material without delay.
- (b) No person shall obstruct or impede an Investigator or any person acting under the authority of the Minister in the exercise of any powers or duties under these Regulations.
- (c) No person shall without reasonable excuse fail, after having had the expenses, if any, to which he is entitled under these Regulations tendered to him, to comply with any summons of an Investigator holding an investigation.
- (d) A person who contravenes or fails to comply with paragraphs (a) or (b) commits an offence.

### **1.110 INVESTIGATOR-IN-CHARGE: DESIGNATION.**

- (a) The Chief Investigator of Air Accidents shall designate the investigator-in-charge of the investigation and shall initiate the investigation immediately.

### **1.115 CONFLICT OF INTEREST.**

- (a) Members of the Authority shall not directly or indirectly have an interest in or be an owner, shareholder, director, officer, partner, or otherwise:
  - (1) be engaged in an aviation undertaking or business; or
  - (2) have an interest in the manufacture or distribution of aircraft or aircraft equipment or components.
- (b) On appointment to the Authority, members of the Authority shall set aside conflicts of interest detailed in section (a).
- (c) During their terms of office, members of the Authority shall not accept or hold any office or employment, or carry on any activity inconsistent with the performance of their duties under the Act, these Regulations and the policies of the Authority.
- (d) Civil aviation authority experts assigned to participate in an investigation being conducted by the Authority shall not be engaged in any duties associated with the civil aviation authority for the duration of their involvement in the investigation.

### **1.120 INVESTIGATOR-IN-CHARGE.**

- (a) The designated investigator-in-charge organizes, conducts, controls, and manages the field phase of the investigation, regardless of what other



representatives of the Government is also on-scene at the accident or incident site.

- (b) The investigator-in-charge has the responsibility and authority to supervise and coordinate all resources and activities of all personnel, both government and civilians, involved in the on-site investigation.
- (c) The investigator-in-charge continues to have considerable organizational and management responsibilities throughout later phases of the investigation, up to and including the AAIA's consideration and adoption of a report or brief of probable cause(s).

### **1.125 INVESTIGATOR-IN-CHARGE: ACCESS & CONTROL.**

The investigator-in-charge shall have unhampered access to the wreckage and all relevant material, including flight recorders and ATS records, and shall have unrestricted control over it to ensure that a detailed examination can be made without delay by authorized personnel participating in the investigation.

### **1.127 QUALIFICATION OF ACCIDENT INVESTIGATORS.**

An accident investigator is required to be qualified in accordance with the Training Guidelines for Aircraft Accident Investigators (Circular 298-AN/172) of ICAO and the Accident Investigation Training Manual of the Authority created, adopted or established under section 9 of the Act.

*Note: See Appendix II for Background Experience For Investigators as provided in Training Guidelines for Aircraft Accident Investigators (Circular 298-AN/172) of ICAO.*

### **1.130 AUTHORITY OF ACCIDENT INVESTIGATORS.**

- (a) Investigators appointed may exercise the following powers for the purpose of investigating aircraft accidents or incidents—
  - (1) to call before him and examine all persons as the investigator thinks fit, and to require such persons to answer any questions or furnish any information;
  - (2) to require the protection and preservation of—
    - (i) the aircraft accident or incident site(s);
    - (ii) the aircraft and any parts thereof, and;
    - (iii) all records and documents associated with the occurrence.
  - (3) without warrant, and with the assistance of Police Officers, if he deems necessary to enter and search any place where an investigator believes on reasonable grounds that there is anything relevant to the conduct of an investigation of an accident or incident, and to seize anything that is found in the course of that

- search. (An investigator shall not exercise the powers in relation to a particular place without the consent of the person in charge of that place unless those powers are so exercised under the authority of a warrant, or by reason of exigent circumstances, it would not be practical for the investigator to obtain a warrant.);
- (4) to prohibit or limit access to the area immediately surrounding the place at which anything involved or likely to have been involved in an accident or incident is located for such period as is necessary for the purposes of preserving and protecting evidence. (The investigator shall have regard to the desirability of minimizing any resulting disruption to transportation services.);
  - (5) the authorized representatives of the AAIA also have exclusive authority, on behalf of the AAIA, to decide the way in which any testing will be conducted, including —
    - (i) decisions on the person that will conduct the test;
    - (ii) the type of test that will be conducted; and
    - (iii) any individual who will witness the test.
  - (6) To cause such tests, including tests to destruction, of anything that was seized for the purposes of the investigation. (To the extent that it is practical and safe to do so, and does not unreasonably impede the progress of the investigation, the investigator shall take all reasonable measures to invite the owner and any person who appears on reasonable grounds to be entitled to the component being tested to be present at any such tests.);
  - (7) Have immediate access to and use of the contents of the flight recorders and any other recordings;
  - (8) Ensure an immediate listing of evidence and controlled removal of debris or components, for examination or analysis purposes;
  - (9) Upon request by an authorized representative of the AAIA and presentation of certificate of appointment, a Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls relevant to the investigation, or any pertinent records or memoranda, shall immediately permit inspection, photographing, or copying thereof by the authorized person for the purpose of investigating an accident or incident, or preparing a study, or related to any special investigation pertaining to safety or the prevention of accidents.
  - (10) the records and memoranda specified under paragraph (2)(iii) shall include all files, hospital records, and correspondence then or thereafter existing, and kept or required to be kept.

- (11) to retain any such documents until the completion of the investigation, or as the case may be, it is determined that an investigation shall not be carried out;
- (12) to take statements from all such persons as the investigator thinks fit and to require any such person to make and sign a declaration of the truth of the statements made by the person;
- (13) to require a person(s) who was (were) directly or indirectly involved in the operation of an aircraft to submit to a medical examination, inclusive of blood tests, where the investigator believes on reasonable grounds that the medical condition is, or may be, relevant to the investigation, and —
  - (i) the notice for medical examinations shall be made in writing and signed by the investigator;
  - (ii) this requirement shall not be construed as a requirement that the person submit to any procedure involving surgery, the entry into the body of any drug or foreign substance;
  - (iii) require a physician or other practitioner to provide medical information concerning a patient where the investigator believes on reasonable grounds that such information is relevant to the investigation. (The notice for medical information shall be made in writing and signed by the investigator);
- (14) to cause an autopsy or medical examination to be performed on a body of a deceased person where the investigator believes on reasonable grounds that the information derived from the autopsy and examination is, or may be, relevant to the conduct of the investigation. (The notice for medical information shall be made in writing and signed by the investigator);
- (15) have immediate access to the results of examinations of the people involved in the operation of the aircraft or of tests made on samples taken from such people;
- (16) to require the person having custody of the body of the deceased person or other human remains to permit the performance of that autopsy or that medical examination. (The notice for medical information shall be made in writing and signed by the investigator); and
- (17) to call on the services of local authorities or other authorized persons to ensure protection of the accident site, including the aircraft and its contents, until such time as the Authority is able to directly take over custody and security of the aircraft and its contents.

- (b) Before acting under section (a), the investigator shall produce the investigator's certificate of appointment as proof of his identity and powers, when requested to do so by an involved person.
- (c) No person shall refuse or fail to produce information to an investigator, or to attend before an investigator and give a statement, or to provide information, to submit to a medical examination, or to make the body of a deceased person or other human remains available for the performance of an autopsy or medical examination imposed in section (a).
- (d) Investigators appointed may apply to the Supreme Court ex parte for an Order to compel compliance with orders or directives issued under section (a).
- (e) A person summoned by an Investigator under paragraph (d) shall be allowed such expenses as the Authority may determine.

### **1.135 PARTIES TO THE INVESTIGATION.**

- (a) The investigator-in-charge designates parties to participate in the investigation.

*(Note: 1. Parties shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitably qualified technical personnel actively to assist in the investigation.*

*Note: 2. No other entity is afforded the right to participate in accident investigations by the AAIA.)*

- (b) Participants in the investigation (that is, party representatives, party coordinators, and/or the larger party organization) shall be responsive to the direction of the representatives of the AAIA and may lose party status if they —
  - (1) do not comply with their assigned duties, active proscription of instructions; or
  - (2) conduct themselves in a manner prejudicial to the investigation.
- (c) No party to the investigation shall be represented in any aspect of the AAIA's investigation by any person who also represents claimants or insurers.
- (d) No party representative may occupy a legal position or have any legal judicial training or experience.
- (e) In addition to compliance with the provisions under paragraph (a), and to assist in ensuring complete understanding of the requirements and limitations of party status —

- (1) all party representatives in aviation investigations shall sign a statement containing these requirements and limitations immediately upon attaining party representative status; and
- (2) failure to timely sign that statement may result in sanctions, including loss of status as a party.

#### **1.140 INVESTIGATION COORDINATION.**

- (a) The Authority shall take all reasonable measures to ensure that the investigation procedures and practices that it follows in relation to aircraft accidents and incidents are compatible to the degree possible with investigation requirements, procedures and practices followed by other departments, regulatory authorities, police forces and coroners.
- (b) The Authority shall make all reasonable efforts to enter into agreements to provide for the coordination of activities between the Authority and the entities noted in (a), with respect to—
  - (1) investigation procedures and practices;
  - (2) requirements for reporting aircraft accidents and incidents;
  - (3) procedures to be followed in the event that conflicting interests arise during their activities with respect to aircraft accidents or incidents.
- (c) The Authority may investigate aircraft accidents and incidents that involve both State and civil aircraft and facilities. For such situations, the Authority shall take all reasonable measures to ensure that its investigation activities are coordinated with those other on-going investigations, if any.
- (d) Where a department is notified of an aircraft accident or incident that the Authority has the power to investigate under the Act, the department shall —
  - (1) notify the Authority with particulars of the aircraft accident or incident; and
  - (2) advise the Authority of any investigation that the department plans to conduct and of any remedial measures that the department plans to take.

#### **1.145 COORDINATION: JUDICIAL AUTHORITIES.**

- (a) The judicial authorities of The Bahamas shall ensure support, coordination and access of the investigator-in-charge or a representative assigned to the investigator-in-charge during the conduct of an accident investigation.
- (b) This coordination and support shall include any evidence which requires prompt recording and analysis for the investigation to be successful, such

as the examination and identification of victims and read-outs of flight recorder recordings.

- (c) Possible conflicts between investigating and judicial authorities regarding the custody of flight recorders and their recordings may be resolved by an official of the judicial authority carrying the recordings to the place of read-out, thus maintaining custody.
- (d) Possible conflicts between investigating and judicial authorities regarding the custody of the wreckage may be resolved by an official of the judicial authority accompanying the wreckage to the place of examination and being present at such examination when a modification of the condition of the wreckage is required, thus maintaining custody.

#### **1.150 FLOW & DISSEMINATION OF ACCIDENT OR INCIDENT INFORMATION.**

- (a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the designated representative of the AAIA.
- (b) All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the investigator-in-charge through appropriate channels before being provided to any individual outside the investigation.
- (c) Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action.
- (d) However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the AAIA without prior consultation and approval of the investigator-in-charge.

#### **1.155 INTERACTIONS BETWEEN THE MEDIA AND THE ACCIDENT INVESTIGATION AUTHORITY.**

- (a) To promote dissemination of factual information and to minimize speculation and rumors about the accident or incident, the media should be provided, on a regular basis, with all those facts which can be released without prejudice to the investigation.
- (b) It is essential to convey to the news media, local authorities, and the public that the investigation is under AAIA jurisdiction. Additional information that can be released to the media is that the Go Team is en route, name of the Investigator in Charge on scene, name of the media contact, and when the team is expected to arrive. Other information can include—

- (1) Name of the Operator;
  - (2) Aircraft type and registration number;
  - (3) Type of flight, origin and intended destination;
  - (4) Number of fatalities (or best information presently known);
  - (5) Condition and location of crew members;
  - (6) Extent of aircraft damage; and
  - (7) Other information considered relevant (e.g., hazardous material (HAZMAT) and site considerations)
- (c) The accident investigation authorities and the accredited representatives and their advisers participating in an investigation shall not give the media or the public, access to any documents obtained during the investigation without the express consent of the State conducting the investigation. The release of such information by a participating State, without the consent of the State conducting the investigation, would undermine the mutual confidence and cooperation amongst the States involved and must therefore be avoided.
- (d) The investigator-in-charge or his designee is to be the official spokesperson regarding any accident or incident investigation that the AAIA undertakes.
- (e) While other parties may be investigating an accident or incident at the same time the AAIA is investigating, each party may respond to requests for information from the media concerning its mandate and activities. Each party will provide notice and details to the AAIA in advance of the release of formal communiques or press releases, which may be of interest to, or impact on, the mandate or activities of the parties involved.

#### **1.160 PROTECTION OF RECORDS.**

- (a) The protections in section 20 (1) of the Act shall apply from the time an accident or incident occurs and continue after the publication of the Final Report.
- (b) The protections in section 20 (1)(b) of the Act shall apply from the time they come into the custody or control of the Authority and continue after the publication of the Final Report.
- (c) The requests for records in the custody or control of the Authority shall be directed to the original source of the information, where available.
- (d) The records specified in section 20 of the Act 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.

- (e) The records referred to in section 20 of the Act, specifically audio and visual contents of cockpit voice recorders, airborne image recordings, or any other recordings captured may be protected by—
  - (1) prevention of disclosure of recordings through authoritative safeguards such as protective orders, closed court proceedings or in camera review; or
  - (2) prevention of disclosure through technical means, such as encrypting, over writing or erasing the contents before returning the device to the owner.
- (f) The names of the persons involved in an accident or incident shall not be disclosed to the public by the Authority.

*Note: See Appendix 10 for types of records generated or obtained during an investigation that require protection.*

#### **1.165 COMPETENT AUTHORITY.**

- (a) In accordance with Annex 13, 5.12, each State shall designate a competent authority or competent authorities appropriate to the task of administering the balancing test. (See Appendix 5 for further information on the Competent Authority).
- (b) Different competent authorities may be designated for different circumstances for applying the balancing test ;
  - (1) In the case of criminal or civil proceedings the Competent Authority has been designated as the Attorney General of The Bahamas or his designee.
  - (2) In the case of administrative or disciplinary proceedings or public disclosure, the competent authority has been designated as the Accident Investigation Authority.

#### **1.170 ADMINISTRATION OF THE BALANCING TEST.**

- (a) Where the request is for a record to be disclosed or used in a criminal, civil, administrative or disciplinary proceeding, the competent authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test. (See Appendix 6 for determination of the Balancing Test).
- (b) A material fact in question is a legal term used to refer to a fact that is significant or essential to the matter at hand, that one party alleges and that the other controverts, and is to be determined by the competent authority administering the balancing test.
- (c) When administering the balancing test, the competent authority shall take into consideration factors such as—



- (1) the purpose for which the record was created or generated;
- (2) the requester's intended use of that record;
- (3) whether the rights or interests of a person or organization will be adversely affected by the disclosure or use of that record;
- (4) whether the person or organization to whom that record relates has consented to make that record available;
- (5) whether suitable safeguards are in place to limit the further disclosure or use of that record;
- (6) whether that record has been or can be de-identified, summarized or aggregated;
- (7) whether there is an urgent need to access that record to prevent a serious risk to health or life;
- (8) whether that record is of a sensitive or restrictive nature; and
- (9) whether that record reasonably indicates that the accident or incident may have been caused by an act or omission considered, in accordance with national laws and regulations, to be gross negligence, wilful misconduct, or done with criminal intent.

*Note 1. - The administration of the balancing test can be done once for a certain category of records and the result incorporated into national laws and regulations.*

*Note 2.— The competent authority may need to administer a balancing test for determining whether to permit the disclosure of a record, and a separate balancing test for determining whether to permit the use of a record.*

*Note 3.— Guidance material on the balancing test can be found in the Manual on Protection of Safety Information (Doc 10053), Part I— Protection of Accident and Incident Investigation Records.*

### **1.175 RECORDS OF THE DECISIONS.**

The competent authority should record the reasons for its determination when administering the balancing test. The reasons should be made available and referred to as necessary for subsequent decisions. (See Appendix 6, 6.10, Step 4 for more information)

*Note.— States may submit the decisions recorded to the International Civil Aviation Organization in one of the working languages of the Organization to be archived in a public database.*

## **SUBPART D: RESPONSIBILITY OF INVESTIGATING STATE**

### **1.180 APPLICABILITY.**

This Subpart is applicable to international obligations in the event of an accident or incident investigation where The Bahamas is the State of Occurrence or the Investigating State.

### **1.185 NOTIFICATION OF AFFECTED STATES.**

- (a) The investigator-in-charge shall ensure the immediate notification of other States, the ICAO and the Minister responsible for civil aviation of the accident or incident and the instituting of the investigation by the most suitable and quickest means.
- (b) The collection and recording of information shall not be delayed to await the arrival of an accredited representative.
- (c) In situations where The Bahamas is the State of Occurrence, the AAIA shall ensure the forwarding of the notification of an accident or incident with a minimum of delay and by the most suitable and quickest means available to —
  - (1) The State of Registry;
  - (2) The State of the Operator;
  - (3) The State of Design;
  - (4) The State of Manufacture; and
  - (5) The International Civil Aviation Organization, when the aircraft involved is of a maximum mass of over 2,250kg.
- (d) In situations where The Bahamas is the State of Registry and the AAIA institutes the investigation of an accident or incident, the investigator-in-charge shall forward a notification containing the format and content specified in Section 1.200, with a minimum of delay and by the most suitable and quickest means available, to the States listed under paragraph (c).
- (e) In situations where The Bahamas is either the State of Registry or the State of the Operator, if it is determined that the civil aviation authorities of the State of Occurrence is not aware of a incident, the AAIA shall forward a notification of such an incident to the —
  - (1) State of Design;
  - (2) State of Manufacture; and
  - (3) State of Occurrence.
- (f) For the purposes of this paragraph “suitable and quickest means” shall include but not be limited to telephone, facsimile, e-mail or the Aeronautical Fixed Telecommunication Network (AFTN) will in most cases constitute “the most suitable and quickest means available” and more than one means of communication may be appropriate.

### **1.190 ACCIDENTS OR INCIDENTS IN TERRITORY OF NON-CONTRACTING STATE.**

When the accident or the serious incident has occurred in the territory of a non-Contracting State which does not intend to conduct an investigation in accordance with Annex 13, the State of Registry or, failing that, the State of the Operator, the State of Design or the State of Manufacture should endeavor to institute and conduct an investigation in cooperation with the State of Occurrence but, failing such cooperation, should itself conduct an investigation with such information as is available.

### **1.195 ACCIDENTS OUTSIDE THE TERRITORY OF ANY STATE.**

- (a) When the location of the accident or the serious incident cannot definitely be established as being in the territory of any State, the State of Registry shall institute and conduct any necessary investigation of the accident or serious incident. However, it may delegate the whole or any part of the investigation to another State by mutual arrangement and consent.
- (b) States nearest the scene of an accident in international waters shall provide such assistance as they are able and shall, likewise, respond to requests by the State of Registry.

### **1.200 FORMAT & CONTENT OF NOTIFICATION.**

The notification shall be in plain language and contains as much of the following information as is readily available, but the notification process shall not be delayed due to the lack of complete information —

- (1) For accidents the identifying abbreviation ACCID, for serious incidents INCID;
- (2) Manufacturer, model, nationality and registration marks, and serial number of the aircraft;
- (3) Name of owner, operator and hirer, if any, of the aircraft;
- (4) Qualification of the pilot-in-command, and nationality of crew and passengers
- (5) Date and time (local time or UTC) of the accident or serious incident;
- (6) Last point of departure and point of intended landing of the aircraft;
- (7) Position of the aircraft with reference to some easily defined geographical point and latitude and longitude;
- (8) Number of crew and passengers; aboard, killed and seriously injured; others, killed and seriously injured;
- (9) Description of the accident or serious incident and the extent of damage to the aircraft so far as is known;

- (10) An indication to what extent the investigation will be conducted or is proposed to be delegated by the State of Occurrence;
- (11) Physical characteristics of the accident or serious incident area, as well as an indication of access difficulties or special requirements to reach the site;
- (12) Identification of the originating authority and means to contact the investigator-in-charge and the accident investigation authority of the State of Occurrence at any time; and
- (13) Presence and description of dangerous goods on board the aircraft.

### **1.205 LANGUAGE TO BE USED IN THE NOTIFICATION.**

The notification shall be prepared in English, taking into account the language of the recipient(s), whenever it is possible to do so without causing undue delay.

### **1.210 ADDITIONAL RELEVANT INFORMATION.**

As soon as it is possible to do so, the AAIA shall dispatch the details omitted from the notification as well as other known relevant information to all applicable States.

### **1.215 EXPECTATIONS OF PARTICIPATION OF STATES.**

- (a) The State of Registry, the State of the Operator, the State of Design and the State of Manufacture should acknowledge receipt of the notification of an accident or serious incident.
- (b) If these acknowledgements do not occur in a timely fashion, the AAIA will contact the civil aviation authorities of the States on an informal and individual basis.
- (c) The State of Registry, the State of the Operator, the State of Design and the State of Manufacture are expected to appoint an accredited representative when specifically requested to do so by the State conducting the investigation of an accident to an aircraft over 2,250 kg. The participation of their representatives is encouraged for the usefulness of their presence and participation in the investigation.

### **1.220 EXPECTATIONS FOR INFORMATION FROM OTHER STATES.**

- (a) Upon receipt of the notification, the State of Registry, the State of the Operator, the State of Design and the State of Manufacture should, as soon as possible, provide the AAIA with any relevant information available to them regarding the aircraft and flight crew involved in the accident or serious incident.

- (b) Upon receipt of the notification, the State of the Operator should, with a minimum of delay and by the most suitable and quickest means available, provide the AAIA with details of dangerous goods on board the aircraft.
- (c) Each State should also inform the AAIA —
  - (1) whether the State intends to appoint an accredited representative; and
  - (2) if such an accredited representative is appointed, the name, contact details, and the expected date of arrival if the accredited representative will travel to The Bahamas.

## **SUBPART E: RIGHT OF PARTICIPATION IN INVESTIGATION**

### **1.225 APPLICABILITY.**

- (a) This Subpart provides the requirements for allowing the participation of accredited representatives, their advisors and other experts to assist in the accident investigation, reports and safety recommendations.
- (b) Subject to any conditions that the Authority may impose, a person may attend as a participant in an investigation by the Authority, if in the opinion of the Authority that person has the expertise to contribute to achieving the Authority's mandate.
- (c) Subject to any conditions that the Authority may impose, a person may attend as an observer at an investigation by the Authority if the person is designated as an observer by a concerned department of the State having a direct interest in the subject matter of the investigation.
- (d) The investigator-in-charge will ensure that these persons are included in the accident and incident investigation to the extent of their entitlement.

### **1.230 STATES ENTITLED TO APPOINT A REPRESENTATIVE.**

- (a) Subject to the Standards and Recommended Practices contained in ICAO Annex 13, accredited representatives and advisers appointed by States are entitled to participate in an investigation conducted by the Authority.
- (b) The following States are entitled to appoint an accredited representative to participate in an accident or incident investigation conducted by the AAIA —
  - (1) The State of Registry;
  - (2) The State of the Operator;
  - (3) The State of Design; and
  - (4) The State of Manufacture.

- (c) The State that designed or manufactured the powerplant or major components of the aircraft shall also be invited to participate in the investigation of an accident.
- (d) Any State which on request provides information, facilities or experts to the AAIA shall be entitled to appoint an accredited representative to participate in the investigation.
- (e) 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, shall also be invited to appoint an accredited representative to participate in the investigation.
- (f) Where The Bahamas is —
  - (1) the State of the Registry; or
  - (2) the State of the Operator,the Bahamas Civil Aviation Authority shall be appointed to serve as the accredited representative.

#### **1.235 LIMITS TO ENTITLEMENT.**

- (a) Nothing in this Regulation precludes the AAIA from extending participation beyond the entitlement enumerated herein.
- (b) The pertinent documents referred to also include documents such as the reports on examinations of components or studies performed within the framework of the investigation.
- (c) The collection and recording of information need not be delayed to await the arrival of an accredited representative

#### **1.240 COORDINATION OF PARTICIPATION OF OTHER STATES.**

The AAIA shall ensure the proper coordination and participation of the representative, advisors and technical experts in accordance with the provisions of Subparts E and F.

### **SUBPART F: ENTITLEMENT OF ACCREDITED REPRESENTATIVES**

#### **1.245 APPLICABILITY.**

- (a) This Subpart provides the requirements that will be applied to the accredited representatives that participate in the investigation of aircraft accidents and incidents in The Bahamas.

- (b) The investigator-in-charge shall ensure that these accredited representatives are accorded the appropriate entitlements.

### **1.250 OBLIGATIONS.**

- (a) Accredited representatives and their advisors —
  - (1) shall provide the State conducting the investigation with all relevant information available; and
  - (2) shall not divulge information on the progress and the findings of the investigation without the express consent of the AAIA conducting the investigation.
- (b) Nothing under paragraph (a) precludes prompt release of facts when authorized by the investigator-in-charge of the investigation, nor does this Section preclude accredited representatives from reporting to their respective States in order to facilitate appropriate safety actions.

### **1.255 ACCREDITED REPRESENTATIVES & THEIR ADVISORS.**

- (a) A State entitled to appoint an accredited representative shall also be entitled to appoint one or more advisors to assist the accredited representative in the investigation
- (b) A State participating in an investigation may call upon the best technical experts from any source and appoint such experts as advisors to its accredited representative.
- (c) The State of Design and the State of Manufacture shall be entitled to appoint one or more advisors, proposed by the organizations responsible for the type design and the final assembly of the aircraft, to assist their accredited representatives.
- (d) Advisors assisting accredited representatives shall be permitted, under the accredited representatives' supervision, to participate in the investigation to the extent necessary to enable the accredited representatives to make their participation effective.
- (e) Where a person referred to in Sections (a) of these Regulations attends an investigation of an accident or incident conducted by the Authority, that person, unless otherwise prohibited by law, shall be granted the rights and entitlements expressed in Subpart E and F.
- (f) The Authority may engage, on a temporary basis, the services of persons having technical or specialized knowledge to assist the Authority in its investigations.
- (g) The Authority may remove or ask to have removed an observer or a participant from an investigation—

- (1) if that person contravenes a condition imposed by the Authority on the person's presence, or
  - (2) if, in the Authority 's opinion, the person has a conflict of interest that impedes the conduct of the investigation.
- (h) Where a person referred to in Sections (e) and (f) attends as an observer or a participant at the investigation of an occurrence conducted by the Authority, the person may, subject to the conditions and limitations imposed by the Authority and under the supervision of an Authority investigator—
- (1) attend at the occurrence site(s);
  - (2) examine the aircraft and its component parts and contents involved in the occurrence;
  - (3) attend laboratory tests or analyses.
  - (4) unless otherwise prohibited by law, examine any document as defined in Section 1.130(2)(c) of the Regulations, and any other relevant evidence, relating to—
    - (i) the aviation activity during which the occurrence took place,
    - (ii) the crew members involved in the occurrence, and
    - (iii) the aircraft, its component parts and contents;

#### **1.260 PARTICIPATION.**

- (a) The accredited representatives, their advisors and other invited participants may participate in all aspects of the investigation, under the control of the investigator-in-charge, in particular to—
- (1) Visit the scene of the accident;
  - (2) Examine the wreckage;
  - (3) Obtain witness information and suggest areas of questioning;
  - (4) Have full access to all relevant evidence as soon as possible;
  - (5) Receive copies of all pertinent documents;
  - (6) Participate in read-outs of recorded media;
  - (7) Participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations;
  - (8) Participate in investigation progress meetings including deliberations related to analysis, findings, causes and safety recommendations; and
  - (9) Make submissions in respect of the various elements of the investigation.



- (b) The rights and entitlements granted to an observer or participant shall not, unless otherwise authorized by the Investigator in Charge, include attendance at an interview of a witness during an investigation.
- (c) However, participation of States other than the State of Registry, the State of the Operator, the State of Design and the State of Manufacture may be limited to those matters which entitled such States to participation under this section
- (d) Pursuant to Regulation 1.130 (a)(6), where the owner of the component being tested, and any person who appears on reasonable grounds to be entitled to it are invited to observe such tests, these persons may:
  - (i) record or cause to be recorded the condition of the component being tested prior to, during and after the test; and
  - (ii) be represented by a person having technical knowledge and expertise in the subject-matter of the test.

### **1.265 STATES WITH FATALITIES OR SERIOUS INJURIES TO ITS CITIZENS**

A State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens shall, upon making a request to do so, be permitted by the AAIA to appoint an expert who shall be entitled to —

- (1) visit the scene of the accident;
- (2) have access to the relevant factual information which is approved for public release by the AAIA and information on the progress of the investigation; and
- (3) assist in the identification of the victims;
- (4) meet with survivors; and
- (5) receive a copy of the Final Report.

### **1.270 ADDITIONAL INVITED PARTICIPANTS.**

- (a) If neither the State of Registry, nor the State of the Operator appoint an accredited representative, the AAIA shall invite the operator to participate, subject to the procedures of the State conducting the investigation.
- (b) When neither the State of Design nor the State of Manufacture appoint an accredited representative, the AAIA shall invite the organizations responsible for the type design and the final assembly of the aircraft to participate, subject to the procedures of the AAIA.

### **1.275 PROCEDURES.**

All participants in the accident or incident investigation, or part thereof, shall be subject to the restrictions and procedures of The Bahamas, as administered by the investigator-in-charge.

## **SUBPART G: FOREIGN INVESTIGATIONS**

### **1.280 APPLICABILITY.**

This Subpart is applicable to international obligations in the event of an accident or incident investigation where The Bahamas is not the State of Occurrence, but is the —

- (1) State of Registry; or
- (2) State of the Operator;

### **1.285 ACTIONS FOLLOWING RECEIPT OF NOTIFICATION.**

Where the Authority has been notified of an aircraft accident or serious incident that occurred outside the territory of The Bahamas involving a Bahamas registered aircraft, or an aircraft operated by a Bahamas operator, the Authority shall—

- (a) acknowledge receipt of the notification from the State of Occurrence.
- (b) provide the notifying State with the following information with the least possible delay:
  - (1) any relevant information regarding the aircraft and flight crew involved in the accident or serious incident; and
  - (2) if The Bahamas is the State of the Operator, details of any dangerous goods on board the aircraft;
- (c) inform the notifying State as to—
  - (1) whether The Bahamas intends to appoint or has appointed an accredited representative; and
  - (2) if such accredited representative will be or has been appointed and will be travelling to the State in which the investigation is being carried out, the contact details and the expected date of arrival of the accredited representative in such State.
- (d) appoint an accredited representative, if requested to do so by the State conducting an investigation into an accident, or a serious incident involving an aircraft of a maximum mass of over 2,250 kg.

### **1.290 PROVISION OF ADDITIONAL INFORMATION.**

- (a) The AAIA shall, on request from the State conducting the investigation of an accident or incident, provide that State with all the relevant information available to the AAIA including information on any organization whose activities may have directly or indirectly influenced the operation of the aircraft..

- (b) The AAIA shall, when the facilities or services of The Bahamas have been, or would normally have been, used by an aircraft prior to an accident or incident, and if the AAIA has information pertinent to the investigation, to provide such information to the State conducting the investigation.

### **1.295 REQUIRED APPOINTMENT OF AN ACCREDITED REPRESENTATIVE**

When the State conducting an investigation of an accident of an aircraft of a maximum mass of over 2,250 kg specifically requests participation of The Bahamas, the AAIA shall appoint an accredited representative.

## **SUBPART H: PRESERVATION OF WRECKAGE & RECORDS**

### **1.300 APPLICABILITY.**

This Subpart is applicable to all persons and organizations that have access to the wreckage and records that are critical to the investigation of the accident or serious incident.

### **1.305 ACCESS TO & RELEASE OF WRECKAGE, RECORDS, MAIL & CARGO.**

- (a) Only the accident investigation personnel of the AAIA, and persons authorized by the investigator-in-charge who is participating in any particular investigation, examination or testing shall be permitted access to wreckage, records, mail, or cargo in the AAIA's custody.
- (b) Wreckage, records, mail, and cargo in the AAIA's custody shall be released when the AAIA has determined that there is no further need for the wreckage, mail, cargo, or records.

### **1.310 PRESERVATION & PROTECTION OF WRECKAGE & ACCIDENT SITE.**

- (a) The operator and pilot-in-command shall ensure as much as is practical that the wreckage and accident site is protected and preserved in accordance with the requirements of this subpart.
- (b) An operator shall ensure, to the extent possible, in the event the aircraft becomes involved in an accident or incident, the preservation of all related flight recorder records and, if necessary, the associated flight recorders, and their retention in safe custody pending their disposition as determined in accordance with this Regulation.

- (c) All persons involved in the rescue, search and investigation of an accident shall take all reasonable measures to protect the evidence and to maintain safe custody of the aircraft and its contents for such a period as may be necessary for the purposes of an investigation —
  - (1) protection of evidence shall include the preservation, by photographic or other means of any evidence which might be removed, effaced, lost or destroyed.
  - (2) safe custody shall include protection against further damage, access by unauthorized persons, pilfering and deterioration.
- (d) The operator of an aircraft involved in an accident or incident for which notification must be given is responsible for preserving to the extent possible any wreckage, cargo, and mail aboard the aircraft, and all records, including all recording mediums of flight, maintenance, and voice recorders, pertaining to the operation and maintenance of the aircraft and to the airman until the AAIA takes custody thereof or a release is granted.
- (e) The operator of an aircraft involved in an accident or incident shall retain all records, reports, internal documents, and memoranda dealing with the accident or incident, until authorized by the AAIA to the contrary.

### **1.315 MOVING THE WRECKAGE.**

- (a) Prior to the time the AAIA or its authorized representative takes custody of the aircraft wreckage, mail, or cargo, such wreckage, mail, or cargo may not be disturbed or moved except to the extent necessary to —
  - (1) Remove persons injured or trapped;
  - (2) Protect the wreckage from further damage; or
  - (3) Protect the public from injury.
- (b) Where it is necessary to move the aircraft wreckage, mail, or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the original positions and condition of the wreckage and any significant impact marks.
- (c) If a request is received from the State of Registry, the State of the Operator, the State of Design or the State of Manufacture that the aircraft, its contents, and any other evidence remain undisturbed pending inspection by an accredited representative of the requesting State, the investigator-in-charge shall take all necessary steps to comply with such request, so far as this is reasonably practicable and compatible with the proper conduct of the investigation; provided that the aircraft may be moved —
  - (1) To the extent necessary to extricate persons, animals, mail and valuables;
  - (2) To prevent destruction by fire or other causes; or

- (3) To eliminate any danger or obstruction to air navigation, to other transport or to the public; and
- (4) Provided that it does not result in undue delay in returning the aircraft to service where this is practicable.

### **1.320 FLIGHT RECORDER: ACCIDENTS & INCIDENTS.**

- (a) Effective use shall be made of the flight recorders in the investigation of an accident or incident. The AAIA shall arrange for the readout of the flight recorders without delay.
- (b) During the conduct of an accident or incident investigation, if the investigator-in-charge determines that adequate facilities to read out the flight recorders are not available in The Bahamas, the investigator-in-charge may use the facilities made available to the investigator-in-charge by other States, giving consideration to the following —
  - (1) The capabilities of the read-out facility;
  - (2) The timeliness of the read-out; and
  - (3) The location of the read-out facility.

*Note: See Appendix 8, Guidelines for Flight Recorder Read-Out and Analysis for more information.*

### **1.325 FLIGHT RECORDERS RECORDS.**

- (a) When an aircraft involved in an accident or a serious incident lands in a State other than the State of Occurrence, the State of Registry or the State of the Operator shall, on request from the State conducting the investigation, furnish the latter State with the flight recorder records and, if necessary, the associated flight recorders.
- (b) The State of Registry or the State of the Operator may request the cooperation of any other State in the retrieval of the flight recorder records.

### **1.330 RELEASE FROM CUSTODY.**

- (a) Subject to the provisions of Sections 1.305 and 1.310, the investigator-in-charge shall release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required in the investigation, to any person or persons duly designated by the State of Registry or the State of the Operator, as applicable.
- (b) For this purpose the investigator-in-charge shall facilitate access to the aircraft, its contents or any parts thereof, provided that, if the aircraft, its contents, or any parts thereof lie in an area within which the investigator-in-charge finds it impracticable to grant such access, it shall itself effect removal to a point where access can be given.

### **1.335 SAFETY OF FLIGHT.**

When matters directly affecting safety are determined to be involved in an accident or serious incident, the AAIA shall forward that information to the appropriate States and the ICAO —

- (1) As soon as the information is available; and
- (2) By the most suitable and quickest means available.

### **1.340 AUTOPSY & MEDICAL EXAMINATIONS.**

- (a) The investigator-in-charge, on behalf of the AAIA, conducting the investigation into a fatal accident shall arrange for complete autopsy examination of fatally injured flight crew and, subject to the particular circumstances, of fatally injured passengers and cabin crew members, by a pathologist, preferably experienced in accident investigation.
- (b) The investigator-in-charge is authorized to obtain, with or without reimbursement, a copy of the report of autopsy performed on any person who dies as a result of having been involved in an aircraft accident within the jurisdiction of the AAIA.
- (c) The investigator-in-charge, on behalf of the AAIA, may order an autopsy or seek other tests of such persons as may be necessary to the investigation, provided that to the extent consistent with the needs of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.
- (d) When appropriate, the investigator-in-charge shall arrange for medical examination of the crew, passengers and involved aviation personnel, by a physician, preferably experienced in accident investigation.
- (e) Such examinations may also determine whether the level of physical and psychological fitness of flight crew and other personnel directly involved in the occurrence is sufficient for them to contribute to the investigation.
- (f) The investigator-in-charge shall ensure that the autopsy and medical examinations are completed in a timely manner and that a copy of the report is made available to the AAIA.

## **SUBPART I: ACCIDENT REPORTS**

### **1.345 APPLICABILITY.**

- (a) This Subpart is applicable to the reports that are completed, edited and the distribution of the reports that are required in the accident and serious incident investigation process.

### **1.350 LANGUAGE.**

All notifications and reports by the AAIA during the course of accident and incident investigation shall be submitted to appropriate States and to the ICAO in English.

### **1.355 TIMELY COMPLETION OF PERTINENT REPORTS.**

The AAIA shall ensure the timely and completeness of all required reports specified.

## **Subdivision I: Preliminary Report**

### **1.360 REQUIRED REPORT.**

During the investigation of an aircraft accident or serious incident, the AAIA shall complete a Preliminary Report outlining the facts, observations and findings of the investigators at the time of the report.

### **1.365 TIMELY SUBMISSION OF THE PRELIMINARY REPORT.**

The AAIA shall send the Preliminary Report by facsimile, e-mail, or airmail within 30 days of the date of the accident, unless the Accident/Incident Data Report has already been sent by that time.

### **1.370 ACCIDENTS TO AIRCRAFT OVER 2,250 KG.**

When an aircraft involved in an accident is of a maximum mass of over 2,250 kg, the AAIA shall send the Preliminary Report to —

- (1) The State of Registry or the State of Occurrence, as appropriate;
- (2) The State of the Operator;
- (3) The State of Design;
- (4) The State of Manufacture;
- (5) Any State that provided relevant information, significant facilities or experts; and
- (6) The International Civil Aviation Organization.

### **1.375 ACCIDENTS TO AIRCRAFT OF 2,250 KG OR LESS.**

When an aircraft, a maximum mass of 2,250 kg or less, is involved in an accident and when airworthiness or matters considered to be of interest to other States are involved, the AAIA shall forward the Preliminary Report to —

- (1) The State of Registry or the State of Occurrence, as appropriate;
- (2) The State of the Operator;
- (3) The State of Design;

- (4) The State of Manufacture; and
- (5) Any State that provided relevant information, significant facilities or experts.

## **Subdivision II: Accident or Incident Data Report**

### **1.380 REQUIRED REPORT.**

During the investigation of an aircraft accident or serious incident, the AAIA shall complete an Accident or Incident Data Report in the form and manner prescribed by the ICAO.

### **1.385 ACCIDENTS TO AIRCRAFT OVER 2,250 KG.**

When the aircraft involved in an accident is of a maximum mass of over 2,250 kg, the AAIA shall send, as soon as practicable after the investigation, the Accident Data Report to ICAO.

### **1.390 ADDITIONAL INFORMATION.**

The AAIA shall, upon request, provide other States with pertinent information additional to that made available in the Accident/Incident Data Report.

### **1.395 INCIDENTS TO AIRCRAFT OVER 5,700 KG.**

When the AAIA conducts an investigation into an incident to an aircraft of a maximum mass of over 5,700 kg, the Incident Data Report shall be sent to the ICAO as soon as practicable after the investigation.

## **Subdivision III: Safety Recommendations**

### **1.400 SAFETY RECOMMENDATIONS.**

- (a) At any stage of the investigation of an accident or incident, the AAIA shall, in a dated transmittal correspondence recommend to the appropriate authorities, including those in other States, those persons or organizations of the aviation community that have a direct interest in the safety issue that was the basis for the safety recommendation as well as to other members of the aviation community who would benefit from the information, any preventive action that the AAIA considers necessary to be taken promptly to enhance aviation safety.
- (b) Such individuals that would benefit from the information includes but not limited to the following—
  - (1) action addressee for the safety recommendation;
  - (2) involved government departments;



- (3) involved States and accident investigation authorities;
  - (4) involved stakeholders, such as but not limited to the airline, maintenance organization, manufacturer, air traffic services provider, and airport operator; and
  - (5) others who may benefit from lessons learned.
- (c) The AAIA shall address, when appropriate, the accident investigation authorities of other State(s) concerned of any safety recommendations arising out of the AAIA's investigations.
- (d) A State that receives safety recommendations shall inform the proposing State, within ninety (90) days of the date of the transmittal correspondence, of the preventive action taken or under consideration, or the reasons why no action will be taken.

#### **1.405 ACTION ON SAFETY RECOMMENDATIONS.**

- (a) When the Authority receives proposed safety recommendations from another State based on an accident or incident investigation, an evaluation of the recommendation(s) shall be conducted.
- (b) Following that evaluation, the Authority shall inform the proposing State of the —
- (1) Preventive action taken or under consideration;
  - (2) Reasons why no action will be taken; or
  - (3) Alternative recommendation(s) for preventive action other than the original safety recommendations.
  - (4) The Authority shall record and review responses to its safety recommendations and assess the degree to which the risks underlying the safety recommendation have been mitigated.
  - (5) The Authority shall implement procedures to monitor the progress of the action taken in response to a safety recommendation that the Authority receives.
  - (6) The Authority should inform ICAO of safety recommendations of global concern issued by the Authority, as well as the responses received to these recommendations.

#### **1.410 WHEN ICAO DOCUMENTS ARE INVOLVED.**

- (a) The AAIA shall address, when appropriate, any safety recommendations arising out of its investigations to ICAO, when ICAO documents are involved.
- (b) When Final Reports contain safety recommendations addressed to ICAO, because ICAO documents are involved, the AAIA shall ensure that these

reports must be accompanied by a letter outlining the specific action proposed.

## **Subdivision IV: Final Report**

### **1.415 REQUIRED REPORT.**

During the investigation of an aircraft accident or serious incident, the investigator-in-charge shall ensure the drafting, coordination and completion of a Final Report of that investigation in sufficient detail for analysis by the AAIA, other States and ICAO.

### **1.420 DRAFT FINAL REPORTS.**

- (a) In accordance with the provisions of section 23 of the Act, the Authority shall send a copy of the Draft Final Report to the States referred to in subparagraph (b), inviting their significant and substantiated comments on the report.
- (b) The draft Final Report of the investigation shall be sent to the following States: —
  - (1) Any concerned department of The Bahamas
  - (2) The State that instituted the investigation
  - (3) The State of Registry;
  - (4) The State of the Operator;
  - (5) The State of Design;
  - (6) The State of Manufacture;
  - (7) Any Organization involved in the investigation; and
  - (8) Any State that participated in the investigation.
- (c) When sending the draft Final Report to recipient States, and others concerned, the AAIA shall use the most suitable and quickest means available, such as facsimile, email, courier service or express mail.
- (d) The AAIA shall not disclose any Draft Final Report, either issued or received, to the public.
- (e) No person shall communicate or use the Draft Final Report, or permit its communication or use, for any purpose not strictly necessary to the study of the report and the preparation of comments concerning the report.

### **1.425 RELEASE OF INFORMATION: CONSENT.**

No person may circulate, publish or give access to a draft report or any part thereof, or any documents obtained during an investigation of an accident or incident, without the express consent of the AAIA, unless such reports or

documents have already been published or released by the Government of The Bahamas.

#### **1.430 INVITING COMMENTS FROM OTHER INTERESTED PARTIES.**

- (a) The AAIA shall also send, through the State of the Operator, a copy of the draft Final Report to the operator to enable the operator to submit comments on the draft Final Report.
- (b) The AAIA shall send, through the State of Design and the State of Manufacture, a copy of the draft Final Report to the organizations responsible for the type design and the final assembly of the aircraft to enable them to submit comments on the draft Final Report.
- (c) The time limit for providing comments on the Draft Final Report shall be sixty (60) days from the date of the transmittal letter sending the draft report, unless an extension of that period has been agreed to by those concerned.

#### **1.435 PROPOSED FINDINGS.**

- (a) Any person, government agency, company, or association whose employees, functions, activities, or products were involved in an accident or incident under investigation may submit to the AAIA written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendations designed to prevent future accidents.
- (b) To be considered, these submissions must be received before the matter is calendared for consideration by the AAIA.
- (c) All written submissions must be presented to the AAIA in advance of the formal scheduling of the meeting.
- (d) The procedure referred to under paragraph (c) will ensure orderly and thorough consideration of all views.

#### **1.440 PROCESSING OF TIMELY COMMENTS.**

- (a) If the AAIA receives comments within 60 days of the date of the transmittal letter, it shall either —
  - (1) Amend the draft Final Report to include the substance of the comments received; or
  - (2) If desired by the State that provided comments, append the comments to the Final Report.
- (b) If the AAIA receives no comments within 60 days of the date of the first transmittal letter, the AAIA shall issue the Final Report, unless an extension of that period has been agreed by the States concerned.

- (c) During the course of the investigation, the AAIA may consult with other States, such as those States which provided relevant information, significant facilities, or experts who participated in the investigation.
- (d) Comments to be appended to the Final Report are restricted to non-editorial-specific technical aspects of the Final Report upon which no agreement could be reached.

#### **1.445 RELEASE OF THE FINAL REPORT.**

- (a) In the interest of accident prevention, the AAIA shall release the Final Report of an accident or serious incident as soon as possible.
- (b) The AAIA shall release the Final Report in the shortest possible time and, if possible, within 12 months of the date of the occurrence.
- (c) If the report cannot be released within 12 months, the AAIA shall release an investigation interim statement publicly available on each anniversary of the occurrence, detailing the progress of the investigation and any safety issues raised.
- (d) The Authority shall provide the Investigation Interim Statement referred to in Section (c) to the following:
  - (1) any concerned department of The Bahamas;
  - (2) the States having a direct interest in the occurrence, and if appropriate to ICAO; and
  - (3) States having suffered fatalities or serious injuries to its citizens.
- (e) The Authority shall make the Investigation Interim Statement publicly available.
- (f) When the AAIA has released a Final Report of an investigation into an accident or an incident involving an aircraft of a maximum mass of over 5,700 kg, the AAIA shall send a copy of that report to the ICAO.

#### **1.450 RECIPIENT STATES.**

- (a) The AAIA shall send the Final Report of the investigation of an accident with a minimum of delay to—
  - (1) The State that instituted the investigation;
  - (2) The State of Registry;
  - (3) The State of the Operator;
  - (4) The State of Design;
  - (5) The State of Manufacture;
  - (6) Any State that participated in the investigation;
  - (7) Any concerned department in The Bahamas;

- (8) Any State having suffered fatalities or serious injuries to its citizens; and
- (9) Any State that provided relevant information, significant facilities or experts.

#### **1.455 RE-OPENING OF THE INVESTIGATION.**

- (a) If new and significant evidence becomes available after the closure of an investigation of an accident that occurred within the jurisdiction of The Bahamas, the AAIA shall re-open the investigation.
- (b) If new and significant evidence becomes available to the AAIA regarding an accident that occurred in another State, that evidence shall be transmitted to the appropriate authorities of the State which instituted the original investigation.
- (c) If the AAIA would like to re-open an investigation that was not instituted by the Government of The Bahamas, the consent of appropriate authorities of the State which instituted the investigation shall be obtained.

### **SUBPART J: VOLUNTARY OCCURRENCE REPORTING**

#### **1.460 GENERAL APPLICABILITY.**

- (a) This Subpart prescribes the general requirements and administrative rules for implementation and on-going administration of processes for voluntary reporting of occurrences where such reports are required by these Regulations. Section 13 to 16 of the Aircraft Accident Investigation Authority Act, 2019 (*No. 44 of 2019*) prescribes additional information relative to Voluntary Confidential Reporting.
- (b) Any person having knowledge of any safety-related event, other than an accident or incident, may make a voluntary report to the Authority under section 13(3) of the Aircraft Accident Authority Act, 2019 (*No. 44 of 2019*) and provide any information that the person believes is relevant.

#### **1.465 OBJECTIVE OF THE REPORTING REQUIREMENTS.**

- (a) The sole objective of occurrence reporting is the prevention of accidents and incidents through the collection and dissemination of relevant safety information and not to attribute blame or liability.
- (b) The voluntary reporting of persons contributes to the improvement of air safety in the interest of flight safety through the same processes and policies applicable to the mandatory reporting requirements.

- (c) Where a voluntary report is made to the Authority, no person shall release the identity of the person making the report or any information that could reasonably be expected to reveal that person's identity, unless the person making the report authorizes, in writing, its release.
- (d) A report made to the Authority under a voluntary reporting system shall not be used against the person who made the report in any disciplinary, civil, administrative and criminal proceedings.
- (e) The protection provided in sections (c) and (d) regarding the identity of the person making the voluntary report shall not apply to situations involving unlawful acts, gross negligence or wilful infractions by that person, or unless an appropriate authority determines in accordance with national legislation, the value of its disclosure or use in any particular instance, outweighs the adverse impact such action may have on aviation safety.

#### **1.470 POSSIBLE ACTION BY EMPLOYERS.**

- (a) Where a reported occurrence indicated an unpremeditated or inadvertent lapse by an employee, the employer shall act responsibly to share the employer's view that free and full reporting is the primary aim, and that every effort should be made to avoid action that may inhibit reporting.
- (b) Employers shall refrain from disciplinary or punitive action which might inhibit their staff from duly reporting incidents of which the staff may have knowledge, that, except to the extent that action is needed in order to ensure safety, and except in such flagrant circumstances.

#### **1.475 ACCIDENT AND INCIDENT DATABASE.**

The Authority shall establish and maintain an accident and incident database to facilitate the effective analysis of information obtained on actual or potential safety deficiencies and to determine any preventive actions required.

## **APPENDIX 1 - GUIDANCE FOR THE DETERMINATION OF AIRCRAFT DAMAGE**

1. If an engine separates from an aircraft, the event is categorised as an accident even if damage is confined to the engine.
2. A loss of engine cowls (fan or core) or reverser components which does not result in further damage to the aircraft is not considered an accident.
3. Occurrences where compressor or turbine blades or other engine internal components are ejected through the engine tail pipe are not considered accidents.
4. A collapsed or missing radome is not considered an accident unless there is related substantial damage in other structures or systems.
5. Occurrences of missing flaps, slats and other lift augmenting devices, winglets, etc., that are permitted for dispatch under the configuration deviation list (CDL) are not considered accidents.
6. Retraction of a landing gear leg or wheels-up landing, resulting in skin abrasion only, when the aircraft can be safely dispatched after minor repairs or patching, and subsequently undergoes more extensive work to effect a permanent repair, would not be classified as an accident.
7. If the structural damage is such that the aircraft depressurizes, or cannot be pressurized, the occurrence is categorized as an accident.
8. The removal of components for inspection following an occurrence, such as the precautionary removal of an undercarriage leg following a low-speed runway excursion, while involving considerable work, is not considered an accident unless significant damage is found.
9. Occurrences that involve an emergency evacuation are not counted as accidents unless someone receives serious injuries or the aircraft has sustained significant damage.

*Note 1.— Regarding aircraft damage which adversely affects the structural strength, performance or flight characteristics, the aircraft may have landed safely, but cannot be safely dispatched on a further sector without repair.*

*Note 2.— If the aircraft can be safely dispatched after minor repairs and subsequently undergoes more extensive work to effect a permanent repair, then the occurrence would not be classified as an accident. Likewise, if the aircraft can be dispatched under the CDL with the affected component removed, missing or inoperative, the repair would not be considered as a major repair and consequently the occurrence would not be considered an accident.*

*Note 3.— The cost of repairs, or estimated loss, such as provided by insurance companies may provide an indication of the damage sustained but should not be used as the sole guide as to whether the damage is sufficient to count the occurrence as an accident. Likewise, an aircraft may be considered a “hull loss” because it is uneconomic to repair, without it having incurred sufficient damage to be classified as an accident.*



## APPENDIX 2 - LIST OF EXAMPLES OF SERIOUS INCIDENTS

2.1 The term “serious incident” is defined in as follows:

**Serious incident.** An incident involving circumstances indicating that there was a high probability of an accident and associated with the operation of an aircraft which, in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time as it comes to rest at the end of the flight and the primary propulsion system is shut down.

2.2 The incidents listed are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance to the definition of serious incident.

- Near collisions requiring an avoidance maneuver to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate.
- Collisions not classified as accidents.
- Controlled flight into terrain only marginally avoided.
- Aborted take-offs on a closed or engaged runway, on a taxiway<sup>1</sup> or unassigned runway.
- Take-offs from a closed or engaged runway, from a taxiway or unassigned runway.
- Landings or attempted landings on a closed or engaged runway, on a taxiway<sup>1</sup> or unassigned runway
- Gross failures to achieve predicted performance during take-off or initial climb.
- Fires and/or smoke in the cockpit, in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents.
- Events requiring the emergency use of oxygen by the flight crew.
- Aircraft structural failures or engine disintegrations, including uncontained turbine engine failures, not classified as an accident.
- Multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft.
- Flight crew incapacitation in flight.

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<sup>1</sup>Excluding authorized operations by helicopters

- Fuel quantity level or distribution situations requiring the declaration of an emergency by the pilot, such as insufficient fuel, fuel exhaustion, fuel starvation, or inability to use all usable fuel on board.
- Runway incursions classified with severity A. The Manual on the Prevention of Runway Incursions (Doc 9870) contains information on the severity classifications.
- Take-off or landing incidents. Incidents such as under-shooting, overrunning or running off the side of runways.
- System failures, weather phenomena, operations outside the approved flight envelope or other occurrences which caused or could have caused difficulties controlling the aircraft.
- Failures of more than one system in a redundancy system mandatory for flight guidance and navigation.
- The unintentional or, as an emergency measure, the intentional release of a slung load or any other load carried external to the aircraft.

### **APPENDIX 3 - OBJECTIVE OF PROTECTING CERTAIN ACCIDENT AND INCIDENT INVESTIGATION RECORDS**

3.1 The objective of protecting certain accident and incident investigation records is to improve aviation safety by safeguarding accident investigation authorities' continued access to essential information during the course of an investigation; it is not aimed at restricting interested parties or the general public's access to information, nor to prevent the administration of justice.

3.2 It is recognized that disclosing or using certain records, which have been collected for the purpose of an investigation, for other purposes can have adverse consequences for the persons or organizations that have provided those records. The disclosure or use of records listed in Standard 5.12 of Annex 13 in criminal, civil, administrative or disciplinary proceedings, or their public disclosure, may therefore cause persons or organizations to refuse to provide information or be reluctant to cooperate with accident investigation authorities.

3.3 The protection of investigation records attempts to ensure that, when their disclosure or use is sought for purposes other than aviation safety, the resulting impact on the prevention of accidents is balanced against other public interests at stake.

3.4 In addition, and in agreement with Standard 5.12.5 of Annex 13, the public disclosure of highly sensitive accident and incident investigation records, such as audio content of cockpit voice recordings and image and audio content of airborne image recordings, must be prevented. The objective of preventing the public disclosure of those records is not only for safety enhancement but also to prevent privacy violation of persons involved and ensuring moral dignity.

3.5 Decisions regarding the disclosure or use of the records and the application of a balancing test may be particularly complex and require special consideration when the circumstances of the event or the record(s) in question is/are in some way unique. Investigators routinely review a similar set of records during investigations, such as data, voice, and/or image recordings; training and medical records; maintenance records; engineering documents; and witness statements. Investigation authorities may therefore anticipate the need to protect certain sensitive records from public disclosure, while also recognizing the limits of their ability to protect them due to national practices such as the existence of generic freedom of information laws.

## **APPENDIX 4 - RECORDS SUBJECT TO PROTECTION**

4.1 Standard 5.12 of Annex 13 states that the following records shall not be made available for purposes other than accident or incident investigation, unless the competent authority designated by the State conducting the investigation determines, in accordance with national laws and subject to Appendix 2 and Standard 5.12.5 of Annex 13, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:

- (a) cockpit voice recordings and airborne image recordings and any transcripts from such recordings; and
- (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;
  - (6) information exchanged among States or institutions during investigations;
  - (7) information provided by stakeholders in the investigation, including industry proprietary information;
  - (8) information obtained using statutory powers of compulsion by the accident investigator; and
  - (9) the draft Final Report of an accident or incident investigation.

4.2 The requirement contained in Standard 5.12 of Annex 13 prioritizes the level of protection to those records that are more sensitive in nature. Cockpit voice recorder (CVR) recordings and airborne image recorder (AIR) recordings and any transcripts from such recordings are subject to protection from the time an accident or incident occurs regardless of who has custody of the recordings or transcripts. For other records listed in 5.12, protections are afforded only when they are in the custody or control of the accident investigation authority. This

differentiation recognizes that other legitimate forms of investigation may need to access information concerning the records, notably from the original source. It is noted that the disclosure or use of a draft Final Report can be misleading because they are not finalized documents and are subject to change following the consultation process with States involved in the investigation.

4.3 States are encouraged to determine whether any other records obtained or generated by the accident investigation authority, as a part of an accident or incident investigation, need to be protected in the same way as the records listed in 4.1(b) above.

4.4 As mentioned above, the level of protection given to records listed in Standard 5.12 diverges depending on the nature of the record. When an investigation has been instituted in accordance with Annex 13, the disclosure or use of cockpit voice recordings and airborne image recordings and any transcripts from such recordings is subject to the administration of the balancing test. This requirement applies from the time an accident or incident occurs and continues after the publication of the Final Report. It applies to the entire recording of the CVR and AIR. Furthermore, it is applicable in any situation, whether the records are in the custody or control of the accident investigation authority or of any other entity.

4.5 In addition, and in accordance with Standard 5.12.5 of Annex 13, audio content of cockpit voice recordings and image and audio content of airborne image recordings are prevented from disclosure to the public. This is not applicable to transcripts of cockpit voice recordings and written descriptions of the content of airborne image recordings which may be included in the Final Report when pertinent to the analysis of the accident or incident.

## **APPENDIX 5 - DESIGNATION OF A COMPETENT AUTHORITY**

5.1 Section 3 of Appendix 2 to Annex 13 states that “In accordance with Standard 5.12, each State shall designate a competent authority or competent authorities appropriate to the task of administering the balancing test.”

5.2 There are two matters to be considered under this provision. The first involves whether more than one competent authority can be designated. It is acknowledged that the balancing test may need to be administered for a range of different purposes with respect to the disclosure and use of investigation records in Standard 5.12 and that the “competent authority” may not be the same for every purpose. The second matter involves how the State designates a competent authority to the task of administering the balancing test.

5.3 Addressing the first issue, it is likely that a State will need to appoint more than one competent authority to facilitate the use of the balancing test in the range of different contexts which Standard 5.12 contemplates. For example, in cases where disclosure or use of a record is sought by the media pursuant to a freedom of information or “sunshine” law, an administrative body may be considered an appropriate authority. Alternatively, if the proposed disclosure or use of the record is sought for the administration of justice or if the question of the disclosure or use of the record in itself becomes the subject of litigation brought under the same freedom of information or “sunshine” law, then a court could be the competent authority to administer the balancing test. Similarly, if the purpose of the disclosure or use is for safety action to be taken by the regulator, then the balancing test may be administered by the accident investigation authority having custody or control of the record.<sup>1</sup> The determination of the competent authority for each specific purpose remains at the discretion of each State, depending on their specifications and national context.

5.4 Competent authorities other than the courts should be considered for appropriate contexts; otherwise, the courts could be overburdened. Most States already have laws which designate administrative bodies other than the courts for the purpose of making decisions about the disclosure and use of government information. Often the government agency which has custody or control of certain information will have a role to play in the decision-making process if it is not the decision-maker itself. This was taken into consideration in the new protective framework for investigation records which calls for accident investigation authorities to retain, where possible, only copies of records, so that

the original could remain available from the source. This is intended to facilitate direct requests for information to the original source.

5.5 It is acknowledged that in most States, judicial authorities will often be seen as appropriate to the task of administering the balancing test where matters concerning the administration of justice are concerned. There may be risks with interfering in the role of the judicial authorities by handing the decision-making power to an administrative body. However, that does not mean the power should always be vested in the courts. Some States enact legislation that determines access to evidence in courts, and administrative bodies may have a role to play in withholding national security information. While dependent on national laws, an administrative body could have a role to play in deciding whether or not records could be disclosed to or used by a judicial authority. It is important that the entity entrusted be the one best able to consider the factors to be weighed in the balancing test which are associated with the administration of justice.

5.6 In all contexts, the entity designated as the competent authority will need to be capable of balancing the competing interests in the balancing test. One of these interests will always be the preservation of the protection of the record for investigation purposes and the continued access of vital information to investigators. The other interests will depend on the context of the proposed disclosure or use of the record. The competent authority will need to be experienced enough in the competing interests (freedom of information, regulation of aviation safety, etc.) or have available to it the relevant expertise in order for the public to have confidence in its decision-making capabilities.

5.7 States should designate competent authorities appropriate to the task of administering the balancing test for the different purposes that may come under consideration. Permanent designation will allow expediency in the decision-making process. There will also be certainty in the competent authority's standing and ability to deal with the matter with the competent authority gaining more experience. It is critical that the competent authority have in place rules and processes governing the decision-making process. These rules and processes should flow from national laws. This can only be achieved if the designation of the competent authority in a particular area remains constant.

5.8 There are States where the competent authority for one or several purposes will be the legislator. In such cases, the balancing test will be administered by the competent authority, i.e. the legislator, during the legislation or rulemaking process and as part of the travaux préparatoires (preparatory works). As such, the

administration of the balancing test can be done once for a certain category of records and the result incorporated into national laws and regulations.

5.9 The material set out below provides guidance to States that are developing national laws, rules (regulations and policies) and processes for a competent authority to administer the balancing test. A number of States already are familiar with the balancing test and have in place frameworks for its conduct. Nonetheless, the guidance on the steps to give effect to the different elements of the balancing test (as set out in Standard 5.12 of Annex 13 and Appendix 2) may assist with reviewing the existing approach. The guidance is also intended to facilitate the progress of States towards a uniform understanding and approach about the way in which the balancing test is applied.



## **APPENDIX 6 - ADMINISTRATION OF THE BALANCING TEST**

### **6.1 Step 1 — Identify the competing public interest.**

In order to administer the balancing test, it is first necessary to identify the proposed purpose of the disclosure or use of the investigation record, which may constitute the competing public interest. It could be to meet a public interest associated with the administration of justice, such as a court proceeding between two parties involved in the accident or incident. It could be associated with a recognized right to access information such as under a Freedom of Information law. It could be for another aviation safety purpose, as in an administrative safety action being taken by the regulator.

6.1.1 The purpose for which the investigation record is proposed to be disclosed or used needs to be contextualized as representing a particular interest in order to be able to identify the appropriate competent authority to conduct the balancing test. Depending on the matter to be decided, national laws should determine the competent authority to make the determination.

### **6.2 Step 2 — Confirm the status of the record.**

Standard 5.12 of Annex 13 does not protect every record associated with an accident or incident investigation. So, there is a need to confirm the status of the record to determine its level of protection. For instance, CVRs and AIRs recordings as well as their transcripts, contemplated in Standard 5.12, a), are protected no matter who has possession of the recording or transcript. The protection afforded to CVRs and AIRs is based on the fact that these records are extremely sensitive and critical for the investigation. In fact, these types of recordings were installed onboard originally for accident and incident investigation purposes. The recordings usually contain some of the most critical information which help investigators understand how an accident or incident occurred. Any action that jeopardizes the future availability of this information jeopardizes aviation safety.

6.2.1 The records in Standard 5.12, b) are treated differently and the protections only apply when these records are in the custody or control of the accident investigation authority.

### **6.3 Step 3 — Directing to the original source.**

Standard 5.12.4 of Annex 13 provides that “States shall ensure that requests for records in the custody or control of the accident investigation authority are directed to the original source of the information, where available.”

6.3.1 The purpose of this Standard is to preserve the independence of the investigation as well as prevent or limit the potential for the investigation to become associated with blame or liability proceedings (which are not the purpose of Annex 13-type investigations). Acknowledging that Standard 5.12, b) limits protections for records so that they only apply when the records are in the custody or control of the accident investigation authority, other forms of investigation should be able to obtain the same records from the original source without concerns about the Standard 5.12 protections. These other forms of investigation should be directed to the original source of the record in the first instance. If they can obtain the record from the original source, there would be no need to involve the accident investigation authority.

#### **6.3.2 Custody or control of the records by the accident investigation authority.**

Standard 5.12, b) affords protection for certain records when they are in the custody or control of the accident investigation authority. In this context, “custody” means that the record is actually in the physical possession of the accident investigation authority. “Control” means that the accident investigation authority has power over the record in order to be able to take physical possession of it (e.g. the accident investigation authority obtained or created the record but has an expert contractor inspecting it for the purpose of the investigation).

6.3.3 The custody or control of records by the accident investigation authority during the course of investigations may be detailed in procedures and policies. Further, these procedures and policies should contemplate that requests can be directed to the original source of the information. When the investigator only retains copies of records (in accordance with recommendation 5.12.4.1), it means that the original record will still be available from the original source for purposes other than the accident and incident investigation. For example, medical records of persons involved in an accident or incident should still be available from the person’s doctor, and air traffic control recordings should still be available from the air traffic control provider.

#### **6.3.4 Information available from another source.**

If the information required from the investigation record can be obtained from sources other than the record, the competent authority might decide against allowing access to the record until all alternative avenues to acquire the information have been exhausted. Other avenues for information might exist for witness statements if another organization has conducted an investigation. Similarly, analysis and opinions might be available from other investigations or through experts conducting their own tests. The accident investigation authority is unlikely to be the sole organization through which information about the accident can be acquired.

6.3.5 Likewise, Standard 5.12.4 of Annex 13, mentioned above, recognizes that the original source of the information in the investigation record may still exist.

#### **6.4 Step 4 — Determining that there is a material fact in question.**

If the public interest identified in Step 1 relates to the administration of justice, then 4.1 of Appendix 2 would likely apply: “Where the request is for a record to be disclosed or used in a criminal, civil, administrative or disciplinary proceedings, the competent authority shall be satisfied that a material fact in question in the proceedings cannot be determined without that record, before administering the balancing test.”

6.4.1 As regards the term “material fact in question”, “A material fact in question is a legal term used to refer to a fact that is significant or essential to the matter at hand; that one party alleges and that the other controverts; and is to be determined by the competent authority administering the balancing test.”

6.4.2 A material fact in question is a fact that is crucial to the determination of the issue at hand. To consider whether or not a record should be disclosed for a criminal, civil or administrative or disciplinary proceeding, the competent authority must be satisfied that the content of the record is required to decide a material fact in question in the proceeding. If an adjudicative fact can be established without referring to the investigation record (for example, if the fact is stipulated to by the parties to the proceeding or settled by judicial notice), then the competent authority must give the greatest weight to preserving the protection of the record for investigation purposes only. There is little impetus to allow for

a process that may prejudice the investigation when the significant fact or facts in the proceedings can be established without the investigation record.

6.4.3 This material fact requirement recognizes the adverse consequences that might flow from the disclosure or use of the content of records for purposes other than accident or incident investigation, such as the refusal of aviation operational personnel to willingly cooperate with investigators. If the fact in question is peripheral, such that there is no connection between the contents of the record and a material fact at issue in the proceedings, and thus determining the existence of the fact will not affect the outcome, then current and future investigations should not be jeopardized by making the investigation record available.

6.4.4 The extent to which an investigation record will assist the fact-finder in deciding a material fact in question in a criminal, civil, administrative or disciplinary proceeding is to be addressed as a factor in conducting the balancing test.

## **6.5 Step 5 — Application of the balancing test.**

If the competent authority has determined that there is a competing public interest for the use or release of the investigation record, which needs to be weighed against the public interest in protecting the record, then the competent authority will proceed to apply the balancing test in Standard 5.12. In order to determine whether to allow the disclosure or use of the subject investigation record for purposes other than accident or incident investigation, the competent authority must identify and weigh the competing considerations raised by the particular circumstances of the case.

6.5.1 Without limiting the competent authority's considerations, Appendix 2 to Annex 13, 4.2, sets out a number of factors to be taken into account, as follows:

- (a) the purpose for which the record was created or generated;
- (b) the requester's intended use of that record;
- (c) whether the rights or interests of a person or organization will be adversely affected by the disclosure or use of that record;
- (d) whether the person or organization to whom that record relates has consented to make that record available;
- (e) whether suitable safeguards are in place to limit the further disclosure or use of that record;

- (f) whether that record has been or can be de-identified, summarized or aggregated;
- (g) whether there is an urgent need to access that record to prevent a serious risk to health or life;
- (h) whether that record is of a sensitive or restrictive nature; and
- (i) whether that record reasonably indicates that the accident or incident may have been caused by an act or omission considered, in accordance with national laws and regulations, to be gross negligence, wilful misconduct, or done with criminal intent.

6.5.2 Depending on the circumstances, the above factors can assist the competent authority in applying the balancing test. However, not all the factors are relevant in every situation and there may be other factors that need to be taken into account. The competent authority will need to identify all the relevant factors associated with the matter at hand and weigh them. The guidance set out below is intended to assist the competent authority, even in cases where such authority is judicial or administrative which may be familiar with the process of balancing competing public interests.

6.5.3 The guidance addresses some particulars relevant to the application of the balancing test in Standard 5.12 and the supporting material in Part 4 of Appendix 2 to Annex 13.

6.6 To apply the balancing test referred in Standard 5.12, it is recommended that the competent authority follow this process:

**6.6.1 Step 1 — Identify the factors advocated for the disclosure or use of the investigation record for purposes other than the investigation.**

There can be many factors which may be advocated for the disclosure or use of an investigation record for purposes other than investigations. If the proposed disclosure or use relates to the “administration of justice”, then the factors raised might involve the “right to a fair trial” and the “public’s confidence in the judicial system”. The extent to which these factors would be affected one way or another by the disclosure or use of the record in the judicial proceeding will depend on how critical the record is as evidence in the proceedings. Paragraph 4.1 of Appendix 2 already requires a judgment to be made about this by asking the competent authority to consider the extent to which the records would assist with determining a material fact in question.

6.6.2 Where the public disclosure or use relates to a public interest connected with Freedom of Information laws, the factors involved might relate to transparency and openness in government. In an aviation safety context, another factor to consider might be the public's concern to understand any safety issues that might affect them as participants in the industry or as travelers.

6.6.3 It is likely that requests will be made for investigation records to be disclosed or used by the regulator to facilitate a safety action. The public interest involved in these circumstances will relate to maintaining or improving safety.

6.6.4 The competent authority will need to understand how safety will be impacted with and without the investigation record being made available to make its determination.

6.6.5 There may be requests for investigation records where there are no substantive factors to justify the release of the information. Public curiosity is an example. Public curiosity about information contained in an investigation record generally does not justify its release. A fascination with seeing what is in a witness statement does not establish a right to the information. It is difficult to state that the disclosure or use of the investigation record in this context is for the "good order and functioning of the community and government affairs for the well-being of its citizens".

**6.6.6 Step 2 — Set out the factors favoring protection of the investigation record.**

The factors favoring retaining the protection applicable to the investigation record can be derived from examining Standard 5.12. This Standard denotes that the purpose of the protection is to prevent the likely adverse domestic and international impact that disclosure or use for purposes other than accident or incident investigation may have on the investigation to which the record relates or any future investigations.

6.6.7 Based on the circumstances, the competent authority will need to set out the factors that could result in an adverse impact on the current investigation or future investigations. An important factor to be taken into account is the potential for the disclosure or use of the investigation record to result in a failure of persons to cooperate with the current or future

investigations. The question to be asked is, “Is there a reasonable possibility of safety information becoming unavailable?”

6.6.8 The ICAO Assembly has stated that “the protection of certain accident and incident records from inappropriate use is essential to ensure the continued availability of all relevant information to accident investigators in future investigations;” and “that the use of information, derived from accident investigations, for disciplinary, civil, administrative and criminal proceedings is generally not a means to maintain or improve aviation safety”<sup>2</sup>. Furthermore, the Note to Standard 5.12.2 of Annex 13 clarifies that “The disclosure or use of such information for purposes where the disclosure or use is not necessary in the interest of safety may mean that, in the future, the information will no longer be openly disclosed to investigators. Lack of access to such information would impede the investigation process and seriously affect aviation safety.”

6.6.9 The competent authority may be able to refer to precedents that demonstrate the adverse impact the disclosure or use of an investigation record has had on investigations in the past. The competent authority may also be able to refer to statements from persons involved in the industry about their concerns if an investigation record is used for purposes other than the investigation.

6.6.10 Principally, the competent authority needs to be able to form a view about how the disclosure or use of the investigation record might impact cooperation with investigations. If the proposed purpose of the disclosure is for civil, criminal, administrative or disciplinary proceedings, then the person who is the original source or person to whom the investigation record relates may fear the record being used against them. The competent authority needs to consider the extent to which these people and others may not readily provide assistance in accident and incident investigations consequent upon such disclosure.

6.6.11 Similarly, if the proposed purpose of the disclosure or use of the investigation record is to publish the information, the competent authority should consider the potential detriment to anyone. Detriment may be contextualized in a number of forms, including embarrassment and loss of livelihood resulting from the information being made publicly available. If aviation operational personnel or other persons involved are fearful that their interests might be prejudiced in this manner, then it is conceivable that they, and people in a similar class, will be concerned about the record being made available to the accident investigation authority.

6.6.12 If the proposed disclosure or use of an investigation record is for the purposes of the regulator, in respect of aviation safety, there may still be factors to consider related to potential adverse impacts on current and future investigations. The purpose of the disclosure may be for safety purposes. However, such disclosure may still have an adverse impact on investigations if the safety outcomes involve action that may be perceived as detrimental to the persons who are the subject of the action. People and organizations may be concerned about suspension or revocation of authorizations and licenses.

6.6.13 The fact that organizations or people involved in an accident or incident might be concerned about action taken against them by the regulator does not mean the action is not in the interests of safety. In that case, there are two aspects of the same public interest which are competing. A safety action may be required in order to address an unacceptable risk; that an organization or person may have concerns about the action must still be taken into account in the administration of the balancing test, if it is proposed to disclose the record for the purpose of the regulator taking the action.

6.6.14 The balancing test becomes a process of weighing two safety interests against each other. Where the issue is balancing safety outcomes from investigations against safety outcomes from regulatory processes, consideration should be given to the long-term needs of both processes and the necessity of enacting an immediate safety outcome. Given that the outcome – safety – is the same, the conduct of the balancing test might be a difficult exercise. There may be no simple answer and each case must stand on its own merits.

**6.6.15 Step 3 — Assess the weight of the competing factors and decide whether the proposed purpose of the disclosure or use outweighs the interest in retaining Standard 5.12 protections for the investigation records.**

Having identified the factors for or against the public interest advocated for the proposed disclosure or use of the record, and for or against the public interest in non-disclosure of the record, the competent authority must weigh the factors on both sides to determine which interest is to prevail. If the factors associated with the public interest in non-disclosure of the record are considered to carry more weight, then the protections in Standard 5.12 must be preserved.



6.6.16 The record should only be disclosed or used for purposes other than accident and incident investigation when the factors associated with the public interest for disclosure carry more weight.

6.6.17 There is no easy formula for deciding which interest will be stronger in any particular case. Each case needs to be carefully considered on its merits. Different circumstances will require different weightings to be given to similar factors. The issue of how critical an investigation record is when deciding a material fact in question in a criminal, civil administrative or disciplinary proceeding is an example. If the investigation record does not assist with deciding a material fact in question, it lends little weight to a case for the disclosure or use of the record in the proceedings.

6.6.18 Alternatively, if the record is relevant to the determination of a material fact in question, and the proceeding also concerns a serious matter, the expectation might be that a strong case would need to be made to withhold the record.

6.6.19 The competent authority might require a substantive argument to be made that there will be adverse impacts on current and future investigations, likely to result in risks to safety.

6.6.20 Similarly, if a competent authority is asked to decide whether a record should be disclosed to the public, perhaps via a request from the media, the competent authority would most likely want to know how important it is that the public knows the contents of the record. For instance, the competent authority might ask a question like, “without knowing the contents of the record, would the public have a proper understanding of the occurrence, or would the event have safety consequences for the travelling public?” Being able to substantiate a view that the public’s knowledge would be compromised without access to the record might give weight to an argument for the record’s disclosure. However, the record would not have to be disclosed just because these grounds were established. If the disclosure of the record would seriously compromise an investigation currently being undertaken, or would likely discourage witnesses to future occurrences from being forthcoming with information, the decision may not necessarily be in favor of disclosure.

6.6.21 When the competent authority has to decide whether to allow a regulator access to a record, the competent authority should consider if a

case can be made that a serious risk to aviation safety will arise without the regulator accessing the record. However, before deciding in favor of allowing the regulator to access the record, the competent authority will need to inform itself of how sensitive the record is in the context of the investigation. The competent authority will further need to understand the repercussions for persons or organizations who are the subject of the record and how such persons and organizations might cooperate with accident investigation authorities in the future if they knew similar records could be disclosed to the regulator.

## **6.7 Effect of certain factors in the administration of the balancing test.**

### *Awareness and consent*

Paragraph 4.2 of Appendix 2 lists potential factors that could affect the weightings to be applied during the administration of the balancing test. There is likely to be little risk of adverse effects on current and future investigations if all persons to whom the record relates have consented to its disclosure or use for purposes other than investigations.

6.7.1 The opportunity to seek consent can be present at a number of different stages during the investigation process.

6.7.2 Consent can be sought at the time the record is made or when the need arises to make a decision about the disclosure or use of the record for purposes other than investigations.

6.7.3 Ensuring a person is aware, before the record is created, of the purposes for which it may be disclosed might be a similar factor that the competent authority should take into account in its decision-making. A person being “aware” will not be given the same weight as the person giving their “consent”, but it is a factor that might help the competent authority assess the extent to which persons would object to the disclosure or use of the record for purposes other than investigations.

6.7.4 Conversely, if a person has been given assurances of confidentiality and then the record is disclosed in a manner that conflicts with those assurances, it is foreseeable that there will be adverse impacts on current and future investigations. Persons and organizations involved in accidents and incidents are likely to be less trusting of the investigators and less forthcoming with information. It is important that investigators accurately inform persons and organizations involved in the investigation process as

to how records can be disclosed and used in order to avoid acting in conflict with expectations.

### **6.8 Threats to health or life.**

The competent authority may give greater weight to factors in favor of disclosure or use of the record for purposes other than accident and incident investigations where the purpose of the disclosure is to lessen or prevent threats to the life or health of a person. However, in apportioning such weight in favor of the disclosure or use, the competent authority should be reasonably assured that the record is going to be necessary to achieve this outcome.

6.8.1 There is a risk involved in the decisions in which the competent authority is called on to make a determination based on an anticipated outcome that may not eventuate.

### **6.9 Safeguards for protection, confidentiality and de-identification.**

Paragraph 4.2 of Appendix 2 does include some factors that may mitigate the negative consequences associated with the disclosure or use of records for purposes other than investigations. It might be possible to limit any potential damage from the proposed disclosure or use by putting in place safeguards to further limit the disclosure or use of the record. A State may include in its national legislation, under which the balancing test is administered, the power for the competent authority to impose Requirements for the record to be kept confidential following a decision to allow access.

6.9.1 States, and accident investigation authorities in particular, may also establish legislation, regulations, policies and procedures for the handling of typical investigation records. For example, investigations of accidents and incidents involving transport category aircraft routinely include cockpit voice recordings that are widely recognized as being particularly sensitive. States may, therefore, establish national laws that restrict the release and/or use of those recordings for purposes other than investigations. Similarly, many States have national laws and regulations pertaining to the handling of privacy, medical or proprietary information in recognition of the potential damages caused by the release of those records. In these States, the equivalent of a balancing test has effectively been conducted and the results have been incorporated into national laws

and regulations to establish the State's approach to future situations involving the protection or release of such information.

6.9.2 De-identification of the record is another safeguard that may be used before the record is disclosed or used for purposes other than investigations. However, de-identification may be difficult given that people involved in an accident or incident may be well known, particularly in a State with a limited aviation community, and depending on the profile of the occurrence. In such cases, the forum in which the record is proposed to be disclosed or used, and the nature of the information, would be of utmost importance.

6.9.3 If the record is proposed to be disclosed or used in a forum where knowledge of the persons connected to the record is limited, then the competent authority might be confident that de-identification of the record would safeguard the identities of the sources of the record. Similarly, if the nature of the information is primarily technical, then there may not be much identifying information in the record that needs to be removed, making the task more easily achievable.

6.9.4 The competent authority should also consider whether the forum of the proposed disclosure or use of the record and the nature of the information contained in the record, will affect the degree to which the source of the information in the record can be identified, and whether removing identifying information would be enough. If the proposed disclosure or use may adversely affect a company or organization, such as an aircraft operator, then the competent authority should decide whether de-identification of the record would provide reasonable protection which the company or operator would have obtained if the disclosure or use had not been allowed.

6.9.5 If the competent authority considers that the de-identification of the records may prevent the intended use of a record, the de-identification would not be possible. Therefore, States may opt to implement different safeguards to allow limited disclosure for a specific purpose and prevent wider use or public disclosure of the records. Protective orders, closed proceedings, in-camera review and summaries are examples of such safeguards.

6.9.6 Accident investigation authorities may also adopt best practices such as ensuring that the environment in which information is collected, stored,

processed, and transmitted is sufficiently secure, and that controls over access and authorization are sufficient to protect the records. Investigators may limit collection of sensitive records to only those required to the investigation, and retain records only as long as necessary to fulfill the purposes for which they were collected. In accordance with 5.12.4.1 of Annex 13, investigators should retain only copies of investigation records so that the original record(s) remain(s) available from the original source for purposes other than investigations if subsequently required, or if the results of a balancing test warrant subsequent release of those records by a different competent authority. In that way, the accident investigation authority is neither a convenient source for the disclosure of investigation records nor an obstruction to other potential public interests.

### **6.10 Step 6 — Record the decision.**

Section 5 of Appendix 2 to Annex 13 includes the following recommendation: “The competent authority should record the reasons for its determination when administering the balancing test. The reasons should be made available and referred to as necessary for subsequent decisions.”

6.10.1 This recommendation advocates the recording of decisions made in accordance with Standard 5.12 of Annex 13 so that the decision may form part of a series of precedents, which can be used to guide the competent authority in future decision-making processes with an analogous set of facts. Reliance upon precedent provides predictability.

6.10.2 A reasonable level of predictability is important where the disclosure or use of information is subject to the administration of a balancing test. When a record is created, the people and organizations associated with the record will need to understand how the record could be disclosed and used after its creation. If they are uncertain, they may be hesitant about fully cooperating in its creation.

6.10.3 A greater level of certainty about how records will be disclosed and used will assist the accident investigation authority to work with people and organizations affected by accidents and incidents and to provide them with assurances. These assurances are necessary if the accident investigation authority is to promote an atmosphere of trust and cooperation in the investigation process.

6.10.4 In a number of States, where the competent authority administering the balancing test in accordance with Standard 5.12 of Annex 13 is a judicial authority, it is likely that the authority will be familiar with the concept of a precedent and have a series of legal rules that form the basis for establishing one and using it as a reference.

6.10.5 Competent authorities who are not familiar with the process of recording decisions in order to establish precedents, may benefit from developing processes and guidelines for doing so. The processes and guidelines should include the circumstances in which precedents would be referenced.

## **6.11 Benefits of recording decisions.**

Apart from the value of providing documentation referenced for a precedent, the benefits for competent authorities to record the reasons of their decisions are as follows:

6.11.1 — Recording reasons of a decision helps with making and enhancing the operation of the decision. An obligation to give reasons imposes a discipline on the decision-maker to address the task with intellectual rigor. It is likely that decision-makers who understand that they may be called upon to explain their decision, will make a better decision than decision-makers who do not have this understanding.

6.11.2 — Reasons benefit the people affected by the decision. The decision needs to be based on reason and that can only be seen if the decision-maker states its reasons. A person affected by a decision, even if the decision is unfavorable, is likely to have much greater confidence that the decision was made fairly and properly if the reasons are recorded.

6.11.3 — Reasons enable the question to be asked as to whether there was any error in the decision, including whether certain factors should have been accounted for or not. Reasons can facilitate a review if one is necessary. Often, decisions as to whether or not investigation records should be disclosed have significant consequences; it is imperative that assurances are given that the correct decision has been made.

6.11.4 — Recording the decisions also promotes consistency, transparency and standardization at national and global levels. The access to these documents will facilitate authorities to analyze cases decided by other

authorities in different States. This will likely foster a homogeneous implementation of the protective framework for the investigation records.

### **6.12 Draft the reasons in clear and unambiguous language before the decision is finalized.**

As a matter of practice, the reasons given in a record of a decision should be stated in clear and unambiguous language. The competent authority should explain the reasons in terms that can be readily understood.

6.12.1 Where possible, reasons should also be drafted prior to the decision being made. If reasons are drafted after a decision is made, it becomes too easy to draft them in a manner to suit the final decision rather than to accurately reflect the factors that were taken into consideration in the decision-making process.

### **6.13 Submission to ICAO.**

The note to the recommendation in section 5 of Appendix 2 to Annex 13 encourages States to submit records of decisions to ICAO in one of the working languages of the Organization to be archived in a public database.

6.13.1 The value in having a central repository for the decisions taken internationally is to enable a more comprehensive understanding of how difficult decisions were handled and the factors taken into consideration. It affords the opportunity to develop some international consistency in the administration of the balancing test, which is important given the global nature of the aviation industry.

6.13.2 Participants in the industry work within a number of different jurisdictions. They will make the transition between jurisdictions more easily where there is standardization.

6.13.3 Understandably, the full record of a decision may not always be available to be shared. It is acknowledged that there may be sensitivities and that providing the full record of every decision might expose the content of a record which is meant to be protected from disclosure. However, there will be certain decisions where a public record of the decisions is available, including judicial decisions in many States. The international community would benefit from these decisions being consolidated.

6.13.4 A collection of decisions dealing with the protection, use and disclosure of information can be accessed at [www.icao.int/safety/airnavigation/AIG/Pages/Database.aspx](http://www.icao.int/safety/airnavigation/AIG/Pages/Database.aspx)



## **APPENDIX 7 - RIGHTS AND OBLIGATIONS OF THE STATE OF THE OPERATOR IN RESPECT OF ACCIDENTS AND INCIDENTS INVOLVING LEASED, CHARTERED OR INTERCHANGED AIRCRAFT**

7.1 The Standards and Recommended Practices of Annex 13 — Aircraft Accident and Incident Investigation were developed when the State of Registry and the State of the Operator normally were the same. In recent years, however, international aircraft leasing and interchanging arrangements have developed so that in many instances the State of the Operator is different from the State of Registry.

7.2 Leasing or interchange arrangements sometimes include the provision of flight crews from the State of Registry. However, more often, flight crews are provided by the State of the Operator and the aircraft operated under national legislation of the State of the Operator. Similarly, a variety of arrangements for airworthiness can emerge from these arrangements. Airworthiness responsibility may rest, wholly or partly, with the State of the Operator or State of Registry.

7.3 Sometimes the operator, in conformity with an airworthiness control system specified by the State of Registry, carries out maintenance and keeps records.

7.4 In the event of an accident or incident, it is important that any State which has assumed responsibility for the safety of an aircraft has the right to participate in an investigation, at least in respect of that responsibility. It is also important that the State conducting the investigation should have speedy access to all documents and other information relevant to that investigation.

7.5 When the location of an accident or an incident cannot definitely be established as being in the territory of another State, the State of the Operator, after consultation with the State of Registry, should accept full or partial responsibility for the conduct of the investigation.

## **APPENDIX 8 - GUIDELINES FOR FLIGHT RECORDER READ-OUT AND ANALYSIS**

### **8.1 Initial response.**

The aftermath of a major accident is a demanding time for any State's accident investigation authority. One of the immediate items requiring a decision is where to have the flight recorders read out and analyzed. It is essential that the flight recorders be read out as early as possible after an accident. Early identification of problem areas can affect the investigation at the accident site where evidence is sometimes transient. Early identification of problem areas may also result in urgent safety recommendations which may be necessary to prevent a similar occurrence.

8.1.1 Many States do not have their own facilities for the playback and analysis of flight recorder information (both voice and data) and consequently request assistance from other States. It is essential, therefore, that the accident investigation authority of the State conducting the investigation make timely arrangements to read out the flight recorders at a suitable read-out facility.

### **8.2 Choice of facility.**

The State conducting the investigation may request assistance from any State that, in its opinion, can best serve the investigation. The manufacturer's standard replay equipment and playback software, which are typically used by airlines and maintenance facilities, are not considered adequate for investigation purposes. Special recovery and analysis techniques are usually required if the recorders have been damaged.

8.2.1 Facilities for the read-out of flight recorders should have the ability to:

- (a) disassemble and read out recorders that have sustained substantial damage;
- (b) play back the original recording/memory module without the need for the use of a manufacturer's copy device or the recorder housing that was involved in the accident or incident;
- (c) manually analyze the raw binary waveform from digital tape flight data recorders;
- (d) enhance and filter voice recordings digitally by means of suitable software; and

(e) graphically analyze data, derive additional parameters not explicitly recorded, validate the data by cross-checking and use other analytical methods to determine data accuracy and limitations.

### **8.3 Participation by the State of Manufacture (or Design) and the State of the Operator.**

The State of Manufacture (or Design) has airworthiness responsibilities and the expertise normally required to read out and analyze flight recorder information. Since flight recorder information can often reveal airworthiness problems, the State of Manufacture (or Design) should have a representative present when the flight recorder read-out and analysis are being conducted in a State other than the State of Manufacture (or Design).

8.3.1 The State of the Operator has regulatory responsibilities regarding the flight operation and can provide insights into operational issues which may be specific to the operator. Since flight recorder information can reveal operational problems, the State of the Operator should also have a representative present when the flight recorder read-out and analysis are being conducted.

### **8.4 Recommended procedures.**

The flight data recorder and the cockpit voice recorder should be read out by the same facility, because they contain complementary data which can help validate each recording and aid in determining timing and synchronization.

8.4.1 Flight recorders should not be opened or powered up and original recordings should not be copied (particularly not by high-speed copy devices) prior to the read-out because of the risk of damage to the recordings.

8.4.2 The facility at which the flight recorders are read out for another State should be given an opportunity to comment on the Final Report in order to ensure that the characteristics of the flight recorder analysis have been taken into account.

8.4.3 The facility at which the flight recorders are read out may require the expertise of the aircraft manufacturer and the operator in order to verify the calibration data and validate the recorded information.

8.4.4 The State conducting the investigation may leave the original recordings, or a copy of them, with the read-out facility until the investigation is completed, in order to facilitate the timely resolution of additional requests or clarifications, providing that the facility has adequate security procedures to safeguard the recordings.

## **APPENDIX 9 - INTERACTIONS BETWEEN THE MEDIA AND THE ACCIDENT INVESTIGATION AUTHORITY**

9.1 The discussion of the role of the media is necessarily limited by consideration of the newsworthiness of the accident or incident under investigation. The factors that determine newsworthiness are generally beyond the control of the accident investigation authority, or of the government in general. Typically, these investigations generate some interest in the media at the departure, arrival and accident/incident site locations for twenty-four to forty-eight hours following the event. When there is a significant number of casualties from the aircraft or on the ground, or where a casualty is well known to the public, the level of media interest often grows disproportionately.

9.2 The local level of media interest associated with a “routine” investigation presents few challenges for the investigators. However, when the occurrence triggers a higher level of interest, the challenge to the investigators will be significant. Experience has shown that two factors will determine the outcome of the media coverage. First, there must be a “media plan” put in place by the accident investigation authority prior to any investigation efforts. The plan must have sufficient flexibility to allow response to any level of media interest. Second, there must be regulations and policies in place which govern the timing and content of the release of any information. These regulations must be sufficiently robust to withstand significant media pressure.

9.3 Media reports will be primarily concerned with a rapid analysis of what happened. This analysis is normally conducted with whatever information is available at the time, and by persons not involved in the investigation and frequently without qualification for such analysis. The right of the public to be informed is colored by the need of the public to be informed of something quickly.

9.4 The best way to ensure accurate reporting may be the disclosure of as much information as possible and as quickly as possible, with due consideration of the provisions of Annex 13 concerning confidentiality. Such a policy seeks to ensure that the media coverage of the event is at least factually correct. The assumption is that a more complete factual record will control the analysis performed by “media experts”.

9.5 Proper care must be taken to avoid release of facts which are incomplete or which may be taken out of context. Such release may well defeat the objective of improved media analysis. Where a fact or facts are incomplete or in question, release should be delayed. Where a partial release of facts could bias the media coverage towards a conclusion which may not be warranted by the investigation, it may be prudent to withhold release until a more complete factual setting is possible. Accordingly, the disclosure policy should provide for an internal contextual review prior to release to the public.

9.6 The role of a spokesperson is critically important in contextualizing the facts which are released. Ideally, the spokesperson should be a member of the accident investigation authority, technically competent and trained in media interaction. There should only be one spokesperson for any given event. The spokesperson should be fully briefed by the investigation team including the content of the media briefing prior to briefing the media. Where a media briefing will be provided by someone not directly connected to the investigation, every effort should be made to restrict the briefing to facts considered appropriate for release and to provide the briefer with context. Policy for this eventuality would be very helpful and should be considered as a part of the overall policy on media relations and disclosure of facts.

9.7 It is of utmost importance that the content of CVRs and AIRs are protected from public disclosure through the media. As previously indicated, the content of such recordings is critical for the investigation of aircraft accidents and incidents and needs to be accorded the highest level of protection.

## **APPENDIX 10 - TYPES OF RECORDS GENERATED OR OBTAINED DURING AN INVESTIGATION**

10.1 During the course of an investigation, the accident investigation authority collects, records and analyses data to determine the causes and/or contributory factors and to develop its Final Report. The records that an investigation collects and produces includes, but are not limited to: accident particulars such as date, time, location, departure point, cruising altitude, destination and intermediate stops; weather reports; technical particulars such as aircraft operator’s documentation associated with the aircraft, flight crew and the flight operation, weather reports, fuel samples, manufacturing and maintenance records, on-board data collection devices and flight recorders, radar records, laboratory analysis of aircraft components, air traffic services communication recordings, interviews with operational personnel, crew training records, duty and rest time records, medical records, aerodrome operator records, NOTAMs, etc. The protection of records only applies to those records that are sensitive in nature and that their use for purposes other than maintaining or improving safety may inhibit its future availability.

10.2 The table below includes a list of records that are sensitive in nature and considerations on why some of them may warrant protection.

CVRs/AIRs and transcripts	<p>Considered highly sensitive as they are ambient workplace recordings, perceived as constituting an invasion of privacy for operational personnel and their next of kin if disclosed or used for purposes other than the investigation of an accident or incident in the context of Annex 13. Further, these records are considered highly sensitive because they are critical to the investigation. The lack of operational personnel’s trust on the protections in place for these records may result in unwillingness to freely communicate while conducting operations.</p>
Statements	<p>Considered a highly sensitive form</p>

	<p>of information because persons may have divulged the information to the accident/incident investigators with the Expectation and/or commitment from the investigation authority that it would not be disclosed and used against them.</p>
<p>All communications between persons involved in the operation of an aircraft (e.g. dispatch)</p>	<p>Considered a highly sensitive form of information because communications may be inhibited, thereby affecting safety, if persons are concerned that what they say can/will be used against them.</p>
<p>Medical and private information</p>	<p>Considered sensitive because of the right to privacy and the need to protect personal and medical information so that individuals can access essential health and other services without fearing the information will be used against them. These records may be further protected by other national laws.</p>
<p>ATC communications — where publicly broadcasted</p>	<p>These records are not protected as they are broadcasted, thus, are publicly available. Generally there should be limits on getting such records from the accident investigation authority. If those records are available from another source, then they should be obtained from that source.</p>
<p>ATC — intrafacility</p>	<p>Considered highly sensitive as they are ambient workplace recordings perceived as constituting an invasion of privacy for operational personnel and their next of kin if disclosed or used for purposes other than those for which the recordings were made. The lack of operational</p>



	<p>personnel’s trust on the protections in place for these records may result in unwillingness to freely communicate while conducting operations. States may consider applying similar levels of protection afforded to CVRs and AIRs.</p>
<p>Opinions and Analysis generated by the accident investigation Authority and accredited representatives in investigations</p>	<p>Investigations conducted in accordance with Annex 13 shall be separate from proceedings to apportion blame or liability. The use of the analysis, conclusions and safety recommendations generated through an investigation as evidence in these proceedings are against the purposes for which the investigation was undertaken. The protective framework set up does not prevent the use of factual information. Investigation personnel should not be compelled to give an opinion in proceedings aiming to apportion blame or liability to preserve the objective of the investigation. If the opinions and analysis of investigators are used in such proceedings, people involved in an accident may be less willing to cooperate with the investigation.</p>
<p>All information recorded in FDRs and ADRS</p>	<p>These types of records are not protected in the case of an investigation instituted within the context of Annex 13. However, these records may be considered sensitive in day-today operations, and therefore Annex 6 and Annex 19 provide provisions for the protection and use of such records.</p>
<p>Information exchanged among</p>	<p>The information subject to</p>

<p>States or institutions during investigations</p>	<p>exchange might include sensitive information protected in the State providing the information. Considered sensitive as States' relations may be damaged if the information is disclosed for purposes other than those agreed upon, or may not even be exchanged if the receiving State does not afford the same levels of protection granted by the State providing the information. It may also damage individuals and organizations referred to in the information.</p>
<p>Information provided by stakeholders involved in the investigation, Including industry proprietary information</p>	<p>Considered sensitive as it may damage reputations and commercial confidence as well as result in undue financial damage. These records may be protected by other national laws (e.g. IP rights).</p>
<p>Information obtained using statutory powers of compulsion by the accident investigator (only when applicable, i.e. when enabled by existing legislation)</p>	<p>Considered highly sensitive as the information is obtained coercively and may be in contravention of other rights, e.g. the right not to self-incriminate.</p>
<p>Draft Final Report</p>	<p>Considered highly sensitive as the disclosure or use of these drafts can be misleading. Drafts are subject to change following the consultation process with States involved in the investigation. Furthermore, primary evidence used to develop the report can usually be obtained from the original source.</p>
<p>Final Report</p>	<p>The Final Report is publicly available in the interest of accident prevention and is not subject to protection under 5.12 of Annex 13. However, the use of portions of the</p>

	<p>Final Report, in particular the analysis, conclusions and safety recommendations, as evidence before courts with a view to apportioning blame or determining liability is against the purposes for which the investigation was undertaken. Further, accident/incident investigators may rely on hypotheses to render their conclusions and recommendations</p>
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## **APPENDIX 11 - BACKGROUND EXPERIENCE FOR INVESTIGATORS**

2.1 Aircraft accident investigation is a specialized task which should only be undertaken by qualified investigators. Many States establish an accident investigation authority manned by qualified and experienced investigators. Some States have both an independent accident investigation authority and an accident investigation unit within the regulatory authority; others rely on investigation by the regulatory authority alone. Some States do not have any personnel employed solely for aircraft accident investigation. Such States should train appropriately qualified personnel in the accident investigation techniques required to participate in or to conduct an aircraft accident investigation. When assigned to an accident investigation, such personnel should be relieved of their regular duties for the duration of the investigation.

2.2 Potential accident investigators must have considerable practical experience in aviation as a foundation on which to build their investigation skills. This experience can be acquired from civil or military qualification as a pilot, aeronautical engineer or aircraft maintenance engineer. Personnel qualified in flight operations, airworthiness, air traffic management, or aviation related management might also be suitable for accident investigator training. Since accident investigations will often involve specialized areas, it is important that those selected for training as investigators understand the aviation infrastructure and are able to relate to the many different areas of aviation.

2.3 Normally, a small team or even a single investigator conducts the investigation of an accident involving a general aviation or small commuter aircraft. In these investigations, it is desirable for an operations investigator to have some technical experience and for an engineering investigator to have some experience as a pilot. In addition, the investigators should have a comprehensive understanding of the interrelationship of each of the supporting services that are necessary to operate an aircraft in the aviation environment.

2.4 Since the outcome of an accident investigation is largely dependent upon the aviation knowledge, skills and experience of the assigned aircraft accident investigators, they should have:

- an understanding of the depth of investigation that is necessary in order for the investigation to conform with the legislation, regulations and other requirements of the State for which they are conducting the investigation;
- a knowledge of aircraft accident investigation techniques;
- an understanding of aircraft operations and the relevant technical areas of aviation;
- the ability to obtain and manage the relevant technical assistance and resources required to support the investigation;

- the ability to collect, document and preserve evidence;
- the ability to identify and analyse pertinent evidence in order to determine the causes and, if appropriate, make safety recommendations; and
- the ability to write a final report that meets the requirements of the accident investigation authority of the State conducting the investigation.

2.5 In addition to technical skills and experience, an accident investigator requires certain personal attributes. These attributes include integrity and impartiality in the recording of facts; ability to analyse facts in a logical manner; perseverance in pursuing inquiries, often under difficult or trying conditions; and tact in dealing with a wide range of people who have been involved in the traumatic experience of an aircraft accident.

**Dated this                      day of                      , 2021**

**MINISTER RESPONSIBLE FOR TRANSPORT**