



Republic of the Philippines
CIVIL AVIATION AUTHORITY OF THE PHILIPPINES

MEMORANDUM CIRCULAR NO.: 016-17

TO : ALL CONCERNED
FROM : DIRECTOR GENERAL
SUBJECT : ADOPTION OF ICAO ANNEX 13 AMENDMENT 15 TO PCAR PART 13.

REFERENCES:

1. Philippine Civil Aviation Regulations
2. ICAO Annex 13
3. ICAO state letter ref. # AN 6/1.1-16/20
4. Regulations Amendment/Revision Procedure
5. Board Resolution No.: 2012-054 dated 28 September 2013

Pursuant to the powers vested on the Director General of the Civil Aviation Authority of the Philippines under Republic Act 9497, otherwise known as the Civil Aviation Authority Act of 2008 and in accordance with the Regulations Amendment/Revision Procedure with Board Resolution No.: 2012-054 dated 28 September 2013, I hereby approve the incorporation of the following amendments to the Philippine Civil Aviation Regulations.

AMENDED REGULATIONS:

PCAR PART 13

SUBPART A: GENERAL

13.005 DEFINITIONS AND APPLICATION

(a) As used in this part the following words or phrases are defined as follows—

xxx

(3) *Accident investigation authority*. The authority designated by a State as responsible for aircraft accident and incident investigations within the context of this Part.

(10) *Chairman*. means the Head of the Aircraft Accident Investigation and Inquiry Board

13.015 PURPOSE OF INVESTIGATION

- (c) The accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of this Part. The investigation shall include –
- (1) the gathering, recording and analysis of all relevant information on the accident or incident;
 - (2) the protection of certain accident and incident investigation records in accordance with Part 13.220;
 - (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.

SUBPART C: ACTIONS UPON RECEIPT OF NOTIFICATION

13.055 OCCURRENCE IN THE REPUBLIC OF THE PHILIPPINES

- (a) Where an accident or a incident occurs in Republic of the Philippines involving a civil aircraft, the Chairman or Investigator-in-Charge shall do the following:
- (1) with the least possible delay and by the quickest means of communication available, forward a notification of the accident or serious incident containing as much of the information referred to in paragraph 13.030(a) as may be available to
 - (i) a Contracting State that is the State of Registry, the State of the Operator, the State of Design or the State of Manufacture; and
 - (ii) if the aircraft is of a maximum certificated take-off mass of over 2,250 kg, or is a turbojet-powered aeroplane, the International Civil Aviation Organization;

Note 1.— A list of addresses of aircraft accident investigation authorities can be found in the Aircraft Accident Investigation Handbook.

SUBPART E: ACCIDENT & INCIDENT INVESTIGATION

13.095 OBLIGATION TO INVESTIGATE

- (c) The Chairman shall institute an investigation into the circumstances of the accident and serious incident be responsible for the conduct of the investigation, but it may delegate the whole or any part of the conducting of such investigation to another State or a regional accident and incident investigation organization by mutual arrangement and consent. In any event, the State of Occurrence shall use every means to facilitate the investigation.
- (d) The Chairman shall institute an investigation into the circumstances of a serious incident when the aircraft is of a maximum mass of over 2 250 kg. Such the Authority may delegate the whole or any part of the conducting of such investigation to another State or a

regional accident and incident investigation organization by mutual arrangement and consent. In any event the State of Occurrence shall use every means to facilitate the investigation.

Note 1.— The investigation of a serious incident does not exclude other already existing types of investigation of incidents (serious or not) by other organizations.

Note 2.— 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 3.— In the case of investigation of an unmanned aircraft system, only aircraft with a design and/or operational approval are to be considered.

Note 4.— 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 5.— Guidance related to the establishment and management of a regional accident and incident investigation organization (RAIO) is contained in the Manual on Regional Accident and Incident Investigation Organization (Doc 9946).

13.110 POWERS OF INVESTIGATOR-IN-CHARGE

(b) The investigator-in-charge shall —

(1) xxx

(6) have unrestricted access to all evidential material without delay.

SUBPART I: MISCELLANEOUS

13.220 PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

(a) Subject to paragraph (b), no person shall make the following records available for purposes other than accident or incident investigation, unless the competent authority designated by that State determines, in accordance with national laws and subject to IS 13.220, that their disclosure or use outweighs the likely adverse domestic and international impact such action may have on that or any future investigations:

1) cockpit voice recordings and airborne image recordings and any transcripts from such recordings;

2) records in the custody or control of the accident investigation authority being:

- (i) all statements taken from persons by the accident investigation authority in the course of their investigation;
 - (ii) all communications between persons having been involved in the operation of the aircraft;
 - (iii) any medical or private information regarding persons involved in the accident or incident;
 - (iv) recordings and transcripts of recordings from air traffic control units;
 - (v) analysis of and opinions about information, including flight recorder information, made by the accident investigation authority and accredited representatives in relation to the accident or incident; and
 - (vi) the draft Final Report of an accident or incident investigation.
- (b) A record referred to in paragraph (a) shall be included in the Final Report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.

Note —The records listed in Part 13.220 (a) include information relating to an accident or incident. 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.

- (c) Such parts of the record which are not relevant to the analysis of the accident or incident shall not be included in the Final Report.
- (d) The names of the persons involved in the accident or incident shall not be disclosed to the public by the accident investigation authority.
- (e) The Authority 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.

Note: The accident investigation authority should retain, where possible, only copies of records obtained in the course of an investigation.

- (f) The Authority shall take measures to ensure that audio content of cockpit voice recordings as well as image and audio content of airborne image recordings are not disclosed to the public.
- (g) The Authority issuing or receiving a draft Final Report shall take measures to ensure that it is not disclosed to the public.

13.221 INFORMATION — ACCIDENTS AND INCIDENTS

Note.—The Authority may determine the limitations on disclosure or use that will apply to information before it is exchanged between them for the purposes of an accident or incident investigation.

IMPLEMENTING STANDARDS

IS 13.220 PROTECTION OF ACCIDENT AND INCIDENT INVESTIGATION RECORDS

INTRODUCTION

Note 1.— The disclosure or use of records listed in Part 13.220, in criminal, civil, administrative or disciplinary proceedings, or their public disclosure, can have adverse consequences for persons or organizations involved in accidents and incidents, likely causing them or others to be reluctant to cooperate with accident investigation authorities in the future. The determination on disclosure or use required by Part 13.220 is designed to take account of these matters.

Note 2.— In accordance with Part 13.220, the provisions specified in this IS are intended to:

1) assist the Authority in developing national laws, regulations and policies to protect accident and incident investigation records appropriately; and

2) assist the competent authority in making the determination as required by Part 13.220.

a) Throughout this Implementing Standards:

1) *balancing test* refers to the determination by the competent authority, in accordance with Part 13.220, of the impact the disclosure or use of accident and incident investigation records may have on current or future investigations; and

2) *record(s)* refers to those listed in Part 13.220.

GENERAL

a) The Authority shall accord the protections in Part 13.220 and this IS to the entire recording of the cockpit voice recorder and airborne image recorder, and any transcripts from such recordings. These protections shall apply from the time an accident or incident occurs and continue after the publication of the Final Report.

b) The Authority shall accord the protections in Part 13.220 and this IS to the other records listed in Part 13.220 (b). These protections shall apply from the time they come into the custody or control of the accident investigation authority and continue after the publication of the Final Report.

NON-DISCLOSURE OF AUDIO OR IMAGE RECORDINGS TO THE PUBLIC

- a) The Authority shall take action to achieve the non-disclosure of audio content of cockpit voice recordings as well as image and audio content of airborne image recordings to the public, as per Part 13.220 (f), such as:
- 1) prevention of disclosure through the adoption of national laws, regulations and policies; or
 - 2) adoption of authoritative safeguards such as protective orders, closed proceedings or in-camera review; or
 - 3) prevention of disclosure of recordings, through technical means such as encrypting or overwriting, before returning the cockpit voice recorders or airborne image recorders to the owners.

Note.— Ambient workplace recordings required by SARPs contained in the Annexes to the Chicago Convention, such as cockpit voice recordings and airborne image recordings, may be perceived as constituting an invasion of privacy for operational personnel if they are disclosed or used for purposes other than those for which the recordings were made.

COMPETENT AUTHORITY

In accordance with Part 13.220, the designated competent authority or competent authorities shall be tasked of administering the balancing test.

Note.— Different competent authorities may be designated for different circumstances. For example, the competent authority designated for applying the balancing test in criminal or civil proceedings may be a judicial authority. Another competent authority may be designated for applying the balancing test in cases where the purpose of the request for disclosure is for public accessibility.

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.

Note.— 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.

- b) 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, Part I — Protection of Accident and Incident Investigation Records (ICAO Doc 10053).

RECORDS OF THE DECISIONS

Note 1.— 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.

Note 2.— 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.

FINAL REPORT

Note 1.— In order to limit the use of the Final Report for purposes other than the prevention of accidents and incidents, the competent authority should consider:

- 1) instituting a separate investigation for those other purposes; or

- 2) differentiating between the parts of the Final Report in order to allow the use of factual information contained therein while preventing use of analysis, conclusions and safety recommendations for apportioning blame or liability; or
- 3) preventing the use of the Final Report as evidence in proceedings to apportion blame or liability.

Note 2.— In accordance with Part 13.145, Final Reports are publicly available in the interest of accident prevention and are not subject to protection under Part 13.220. However, the use of portions of the Final Report, in particular the analysis, conclusions and safety recommendations, as evidence before national courts in view of assigning blame or determining liability is against the purposes for which the investigation was undertaken.

ACCIDENT AND INCIDENT INVESTIGATION PERSONNEL

Note.— In the interest of safety and in accordance with Part 13.170, the competent authority should consider that accident investigation personnel not be compellable to give an opinion on matters of blame or liability in civil, criminal, administrative or disciplinary proceedings.

EFFECTIVITY:

Fifteen (15) days after compliance with the requisite publication in a single newspaper of general circulation and a copy filed with the U.P. Law Center – Office of the National Administrative Register, these amendments shall be incorporated to the Philippine CAR, series of 2017 and shall supersede any memoranda, regulations and directives in conflict herewith.

So Ordered. Signed this 23rd day of May 2017, CAAP, Pasay City


CAPTAIN JIM C. SYDIONGCO
Director General