



International
Civil Aviation
Organization

Organisation
de l'aviation civile
internationale

Organización
de Aviación Civil
Internacional

Международная
организация
гражданской
авиации

منظمة الطيران
المدني الدولي

国际民用
航空组织

Tel.: +1 514-954-8219 ext. 8160

Ref.: AN 6/1.1-18/37

28 March 2018

Subject: Adoption of Amendment 16 to Annex 13

Action required: a) Notify any disapproval before 16 July 2018; b) Notify any differences and compliance before 8 October 2018; c) Consider the use of the Electronic Filing of Differences (EFOD) System for notification of differences and compliance

Sir/Madam,

1. I have the honour to inform you that Amendment 16 to the *International Standards and Recommended Practices, Aircraft Accident and Incident Investigation* (Annex 13 to the Convention on International Civil Aviation) was adopted by the Council at the sixth meeting of its 213th Session on 9 March 2018. Copies of the Amendment and the Resolution of Adoption are available as attachments to the electronic version of this State letter on the ICAO-NET (<http://portal.icao.int>) where you can access all other relevant documentation.

2. When adopting the amendment, the Council prescribed 16 July 2018 as the date on which it will become effective, except for any part concerning which a majority of Contracting States have registered their disapproval before that date. In addition, the Council resolved that Amendment 16, to the extent it becomes effective, will become applicable on 8 November 2018.

3. Amendment 16 was developed by the Accident Investigation Panel (AIGP) stemming from a recommendation from the 38th Session of the ICAO Assembly. The amendment relates to access to evidential material during investigations by the accident investigation authorities and monitoring the progress of actions taken in response to safety recommendations.

4. With reference to access to evidential material during investigations, the relationship between judicial authorities and accident investigation authorities during investigations can result in difficulties related to unrestricted and timely access to the accident site, examination of the wreckage, or access to data captured in flight recorders. While Standard 5.6 of Annex 13 requires that the investigator-in-charge have access to the wreckage and all relevant material and have control over it, paragraph 5.4.3 only recommends that investigations have access to all evidential material without delay. Upgrading

Recommendation 5.4.3 would ensure that investigation authorities have unrestricted and timely access to evidential material during the conduct of investigations, further bringing it in line with Standard 5.6.

5. With reference to monitoring the progress of actions taken in response to safety recommendations, related information is not readily available, especially when the addressee of a recommendation is not under the jurisdiction of the State issuing the recommendation. Applying the status of Standard to Recommendations 6.11 and 6.12 would achieve higher compliance with these provisions, enhancing monitoring procedures to track actions in response to safety recommendations, with a positive impact on safety and on the collection, analysis and sharing of safety risks.

6. In conformity with the Resolution of Adoption, may I request:

- a) that before 16 July 2018 you inform me if there is any part of the adopted Standards and Recommended Practices (SARPs) amendments in Amendment 16 concerning which your Government wishes to register disapproval, using the form in Attachment B for this purpose. Please note that only statements of disapproval need be registered and if you do not reply it will be assumed that you do not disapprove of the amendment; and
- b) that before 8 October 2018 you inform me of the following, using the Electronic Filing of Differences (EFOD) System or the form in Attachment C for this purpose:
 - 1) any differences that will exist on 8 November 2018 between the national regulations or practices of your Government and the provisions of the whole of Annex 13, as amended by all amendments up to and including Amendment 16, and thereafter of any further differences that may arise; and
 - 2) the date or dates by which your Government will have complied with the provisions of the whole of Annex 13, as amended by all amendments up to and including Amendment 16.

7. With reference to the request in paragraph 6 a) above, it should be noted that a registration of disapproval of Amendment 16 or any part of it in accordance with Article 90 of the Convention does not constitute a notification of differences under Article 38 of the Convention. To comply with the latter provision, a separate statement is necessary if any differences do exist, as requested in paragraph 6 b) 1). It is recalled in this respect that international Standards in Annexes have a conditional binding force, to the extent that the State or States concerned have not notified any difference thereto under Article 38 of the Convention.

8. With reference to the request in paragraph 6 b) above, it should also be noted that the ICAO Assembly, at its 38th Session (24 September to 4 October 2013), resolved that Member States should be encouraged to use the EFOD System when notifying differences (Resolution A38-11 refers). EFOD is currently available on the Universal Safety Oversight Audit Programme (USOAP) restricted website (<http://www.icao.int/usoap>) which is accessible by all Member States. You are invited to consider using this for notification of compliance and differences.

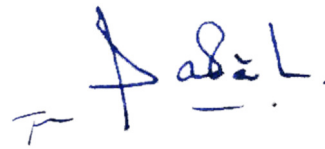
9. Guidance on the determination and reporting of differences is given in the Note on the Notification of Differences in Attachment D. Please note that a detailed repetition of previously notified differences, if they continue to apply, may be avoided by stating the current validity of such differences.

10. I would appreciate it if you would also send a copy of your notifications, referred to in paragraph 6 b) above, to the ICAO Regional Office accredited to your Government.

11. At the fifth meeting of its 204th Session, the Council requested that States, when being advised of the adoption of an Annex amendment, be provided with information on implementation and available guidance, as well as an impact assessment. This is presented for your information in Attachments E and F, respectively.

12. As soon as practicable after the amendment becomes effective, on 16 July 2018, replacement pages incorporating Amendment 16 will be forwarded to you.

Accept, Sir/Madam, the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read 'Fang Liu', with a horizontal line underneath.

Fang Liu
Secretary General

Enclosures:

- A — Amendment to the Foreword of Annex 13
- B — Form on notification of disapproval of all or part of Amendment 16 to Annex 13
- C — Form on notification of compliance with or differences from Annex 13
- D — Note on the Notification of Differences
- E — Implementation task list and outline of guidance material in relation to Amendment 16 to Annex 13
- F — Impact assessment in relation to Amendment 16 to Annex 13

ATTACHMENT A to State letter AN 6/1.1-18/37

AMENDMENT TO THE FOREWORD OF ANNEX 13

Add the following at the end of Table A:

<i>Amendment</i>	<i>Source(s)</i>	<i>Subject(s)</i>	<i>Adopted/Approved Effective Applicable</i>
16	Accident Investigation Panel (AIGP)	Upgrade Recommendations relating to access to evidential material during investigations, and monitoring the progress of safety recommendations.	9 March 2018 16 July 2018 8 November 2018

ATTACHMENT B to State letter AN 6/1.1-18/37

NOTIFICATION OF DISAPPROVAL OF ALL OR PART OF
AMENDMENT 16 TO ANNEX 13

To: The Secretary General
International Civil Aviation Organization
999 Robert-Bourassa Boulevard
Montreal, Quebec
Canada H3C 5H7

(State) _____ hereby wishes to disapprove the following parts of Amendment 16 to Annex 13:

Signature _____

Date _____

NOTES

- 1) If you wish to disapprove all or part of Amendment 16 to Annex 13, please dispatch this notification of disapproval to reach ICAO Headquarters by 16 July 2018. If it has not been received by that date it will be assumed that you do not disapprove of the amendment. **If you approve of all parts of Amendment 16, it is not necessary to return this notification of disapproval.**
- 2) This notification should not be considered a notification of compliance with or differences from Annex 13. Separate notifications on this are necessary. (See Attachment C.)
- 3) Please use extra sheets as required.

**NOTIFICATION OF COMPLIANCE WITH OR DIFFERENCES FROM
ANNEX 13
(including all amendments up to and including Amendment 16)**

To: The Secretary General
International Civil Aviation Organization
999 Robert-Bourassa Boulevard
Montréal, Québec
Canada H3C 5R7

1. No differences will exist on _____ between the national regulations and/or practices of **(State)** _____ and the provisions of Annex 13, including all amendments up to and including Amendment 16.
2. The following differences will exist on _____ between the regulations and/or practices of **(State)** _____ and the provisions of Annex 13, including Amendment 16 (Please see Note 2) below.)

- | a) Annex Provision
(Please give exact paragraph reference) | b) Details of Difference
(Please describe the difference clearly and concisely) | c) Remarks
(Please indicate reasons for the difference) |
|--|---|---|
|--|---|---|

(Please use extra sheets as required)

3. By the dates indicated below, **(State)** _____ will have complied with the provisions of Annex 13, including all amendments up to and including Amendment 16 for which differences have been notified in 2 above.

a) Annex Provision (Please give exact paragraph reference)	b) Date	c) Comments
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(Please use extra sheets as required)

Signature _____

Date _____

NOTES

- 1) If paragraph 1 above is applicable to your State, please complete paragraph 1 and return this form to ICAO Headquarters. If paragraph 2 is applicable to you, please complete paragraphs 2 and 3 and return the form to ICAO Headquarters
- 2) A detailed repetition of previously notified differences, if they continue to apply, may be avoided by stating the current validity of such differences.
- 3) Guidance on the notification of differences is provided in the Note on the Notification of Differences and in the *Manual on Notification and Publication of Differences* (Doc 10055).
- 4) Please send a copy of this notification to the ICAO Regional Office accredited to your Government.

NOTE ON THE NOTIFICATION OF DIFFERENCES
(Prepared and issued in accordance with instructions of the Council)

1. *Introduction*

1.1 Article 38 of the *Convention on International Civil Aviation* (“Convention”) requires that a Contracting State notify ICAO any time it does not comply with a Standard in all respects, it does not bring its regulations or practices into full accord with any Standard, or it adopts regulations or practices differing in any particular respect from the Standard.

1.2 The Assembly and the Council, when reviewing the notification of differences by Contracting States in compliance with Article 38 of the Convention, have repeatedly noted that the timeliness and currency of such notifications is not entirely satisfactory. Therefore, this note is issued to reiterate the primary purpose of Article 38 of the Convention and to facilitate the determination and notification of differences.

1.3 The primary purpose of the notification of differences is to promote safety, regularity and efficiency in air navigation by ensuring that governmental and other agencies, including operators and service providers, concerned with international civil aviation are made aware of all national regulations and practices in so far as they differ from those prescribed in the Standards contained in Annexes to the Convention.

1.4 Contracting States are, therefore, requested to give particular attention to the notification of differences with respect to Standards in all Annexes, as described in paragraph 4 b) 1) of the Resolution of Adoption.

1.5 Although differences from Recommended Practices are not notifiable under Article 38 of the Convention, the Assembly has urged Contracting States to extend the above considerations to Recommended Practices contained in Annexes to the Convention, as well.

2. *Notification of differences from Standards and Recommended Practices (SARPs)*

2.1 Guidance to Contracting States in the notification of differences to Standards and Recommended Practices (SARPs) can only be given in very general terms. Contracting States are further reminded that compliance with SARPs generally extends beyond the issuance of national regulations and requires establishment of practical arrangements for implementation, such as the provision of facilities, personnel and equipment and effective enforcement mechanisms. Contracting States should take those elements into account when determining their compliance and differences. The following categories of differences are provided as a guide in determining whether a notifiable difference exists:

- a) ***A Contracting State’s requirement is more exacting or exceeds a SARP (Category A).*** This category applies when the national regulation and practices are more demanding than the corresponding SARP, or impose an obligation within the scope of the Annex which is not covered by the SARP. This is of particular importance where a Contracting State requires a higher standard which affects the operation of aircraft of other Contracting States in and above its territory;

- b) *A Contracting State's requirement is different in character or the Contracting State has established other means of compliance (Category B)**. This category applies, in particular, when the national regulation and practices are different in character from the corresponding SARP, or when the national regulation and practices differ in principle, type or system from the corresponding SARP, without necessarily imposing an additional obligation; and
- c) *A Contracting State's requirement is less protective, partially implemented or not implemented (Category C)*. This category applies when the national regulation and practices are less protective than the corresponding SARP; when no national regulation has been promulgated to address the corresponding SARP, in whole or in part; or when the Contracting State has not brought its practices into full accord with the corresponding SARP.

These categories do not apply to Not Applicable SARP. Please see the paragraph below.

2.2 **Not Applicable SARP.** When a Contracting State deems a SARP concerning aircraft, operations, equipment, personnel, or air navigation facilities or services to be not applicable to the existing aviation activities of the State, notification of a difference is not required. For example, a Contracting State that is not a State of Design or Manufacture and that does not have any national regulations on the subject, would not be required to notify differences from Annex 8 provisions related to the design and construction of an aircraft.

2.3 **Differences from appendices, tables and figures.** The material comprising a SARP includes not only the SARP itself, but also the appendices, tables and figures associated with the SARP. Therefore, differences from appendices, tables and figures are notifiable under Article 38. In order to file a difference against an appendix, table or figure, States should file a difference against the SARP that makes reference to the appendix, table or figure.

2.4 **Differences from definitions.** Contracting States should notify differences from definitions. The definition of a term used in a SARP does not have independent status but is an essential part of each SARP in which the term is used. Therefore, a difference from the definition of the term may result in there being a difference from any SARP in which the term is used. To this end, Contracting States should take into consideration differences from definitions when determining compliance or differences to SARPs in which the terms are used.

2.5 The notification of differences should be not only to the latest amendment but to the whole Annex, including the amendment. In other words, Contracting States that have already notified differences are requested to provide regular updates of the differences previously notified until the difference no longer exists.

2.6 Further guidance on the identification and notification of differences, examples of well-defined differences and examples of model processes and procedures for management of the notification of differences can be found in the *Manual on Notification and Publication of Differences* (Doc 10055).

* The expression "different in character or other means of compliance" in b) would be applied to a national regulation and practice which achieve, by other means, the same objective as that of the corresponding SARPs or for other substantive reasons so cannot be classified under a) or c).

3. *Form of notification of differences*

3.1 Differences can be notified:

- a) by sending to ICAO Headquarters a form on notification of compliance or differences; or
- b) through the Electronic Filing of Differences (EFOD) System at www.icao.int/usoap.

3.2 When notifying differences, the following information should be provided:

- a) the number of the paragraph or subparagraph which contains the SARP to which the difference relates*;
- b) the reasons why the State does not comply with the SARP, or considers it necessary to adopt different regulations or practices;
- c) a clear and concise description of the difference; and
- d) intentions for future compliance and any date by which your Government plans to confirm compliance with and remove its difference from the SARP for which the difference has been notified.

3.3 The differences notified will be made available to other Contracting States, normally in the terms used by the Contracting State when making the notification. In the interest of making the information as useful as possible, Contracting States are requested to ensure that:

- a) statements be as clear and concise as possible and be confined to essential points;
- b) the provision of extracts from national regulations not be considered as sufficient to satisfy the obligation to notify differences; and
- c) general comments, unclear acronyms and references be avoided.

* This applies only when the notification is made under 3.1 a).

ATTACHMENT E to State letter AN 6/1.1-18/37

**IMPLEMENTATION TASK LIST AND OUTLINE OF GUIDANCE
MATERIAL IN RELATION TO AMENDMENT 16 TO ANNEX 13**

1. IMPLEMENTATION TASK LIST

1.1 Essential steps to be followed by a State in order to implement the proposed amendment to Annex 13:

a) **access to evidential material during investigations**

- 1) modification of legislation or regulations, as necessary; and
- 2) official adoption of modified legislation or regulations, as applicable.

b) **monitoring the progress of actions taken in response to safety recommendations**

- 1) modification of regulations, as necessary; and
- 2) official adoption of modified regulations, as applicable.

2. STANDARDIZATION PROCESS

2.1 Effective date: 16 July 2018

2.2 Applicability date: 8 November 2018

2.3 Embedded applicability date(s): N/A

3. SUPPORTING DOCUMENTATION

3.1 ICAO documentation

Title	Type (PANS/TI/Manual/Circ)	Planned publication date
<i>Manual of Aircraft Accident and Incident Investigation (Doc 9756)</i>	Manual	Available; third edition of Doc 9756, Part IV in July 2019
<i>Manual on Accident and Incident Investigation Policies and Procedures (Doc 9962)</i>	Manual	Available; second edition in July 2018

3.2 **External documentation**

Title	External Organization	Publication date
N/A		

4. **IMPLEMENTATION ASSISTANCE TASKS**

4.1 The subject will be addressed during meetings of the regional aviation safety groups in 2018.

5. **UNIVERSAL SAFETY OVERSIGHT AUDIT PROGRAMME (USOAP)**

5.1 The content of this paper may require an amendment of the USOAP CMA protocol questions in the area of AIG to assess effective implementation by States. Existing protocol questions may need amendment or new protocol questions may be required. This will be assessed during the next amendment cycle of the protocol questions.

IMPACT ASSESSMENT IN RELATION TO AMENDMENT 16 TO ANNEX 13

1. INTRODUCTION

1.1 Amendment 16 to Annex 13 is intended to:

- a) ensure that investigation authorities have unrestricted and timely access to evidential material during the conduct of investigations; and
- b) ensure the implementation of monitoring procedures to track actions in response to safety recommendations, resulting in a positive impact on safety and on the collection, analysis and sharing of safety risks.

2. IMPACT ASSESSMENT

2.1 *Safety impact:* Timely and unrestricted access to evidential material during investigations, including the accident site, analysis of the wreckage and data captured by flight recorders, will allow investigations authorities to undertake proper and comprehensive investigations called for in Annex 13, and will be a catalyst for safety. Likewise, due processing of safety recommendations will boost safe operations, improving the analysis and sharing of safety risks.

2.2 *Financial impact:* There would be minimal or negligible costs to States to modify their legislation and regulations, as applicable.

2.3 *Security impact:* No security impact with the implementation of this proposal.

2.4 *Environmental impact:* No environmental impact with the implementation of this proposal.

2.5 *Efficiency impact:* No efficiency impact with the implementation of this proposal.

2.6 *Expected implementation time:* Six months.

AMENDMENT No. 16

TO THE

**INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

**AIRCRAFT ACCIDENT AND
INCIDENT INVESTIGATION**

ANNEX 13

TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The amendment to Annex 13 contained in this document was adopted by the Council of ICAO on **9 March 2018**. Such parts of this amendment as have not been disapproved by more than half of the total number of Contracting States on or before **16 July 2018** will become effective on that date and will become applicable on **8 November 2018** as specified in the Resolution of Adoption. (State letter AN 6/1.1-18/37 refers.)

MARCH 2018

INTERNATIONAL CIVIL AVIATION ORGANIZATION

**AMENDMENT 16 TO THE INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

**ANNEX 13 — AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION
RESOLUTION OF ADOPTION**

The Council

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

1. *Hereby adopts* on 9 March 2018 Amendment 16 to the International Standards and Recommended Practices contained in the document entitled *International Standards and Recommended Practices, Aircraft Accident and Incident Investigation* which for convenience is designated Annex 13 to the Convention;
2. *Prescribes* 16 July 2018 as the date upon which the said amendment shall become effective, except for any part thereof in respect of which a majority of the Contracting States have registered their disapproval with the Council before that date;
3. *Resolves* that the said amendment or such parts thereof as have become effective shall become applicable on 8 November 2018;
4. *Requests the Secretary General:*
 - a) to notify each Contracting State immediately of the above action and immediately after 16 July 2018 of those parts of the amendment which have become effective;
 - b) to request each Contracting State:
 - 1) to notify the Organization (in accordance with the obligation imposed by Article 38 of the Convention) of the differences that will exist on 8 November 2018 between its national regulations or practices and the provisions of the Standards in the Annex as hereby amended, such notification to be made before 8 October 2018, and thereafter to notify the Organization of any further differences that arise;
 - 2) to notify the Organization before 8 October 2018 of the date or dates by which it will have complied with the provisions of the Standards in the Annex as hereby amended;
 - c) to invite each Contracting State to notify additionally any differences between its own practices and those established by the Recommended Practices, when the notification of such differences is important for the safety of air navigation, following the procedure specified in subparagraph b) above with respect to differences from Standards.

**NOTES ON THE PRESENTATION OF
THE AMENDMENT TO ANNEX 13**

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

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

**TEXT OF AMENDMENT 16 TO THE
INTERNATIONAL STANDARDS
AND RECOMMENDED PRACTICES**

**AIRCRAFT ACCIDENT AND INCIDENT INVESTIGATION
ANNEX 13
TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION**

CHAPTER 5. INVESTIGATION

...

RESPONSIBILITY OF THE STATE
CONDUCTING THE INVESTIGATION

...

General

...

5.4.3 **Recommendation.**—A State ~~should~~ shall ensure that any investigations conducted under the provisions of this Annex have unrestricted access to all evidential material without delay.

...

CHAPTER 6. FINAL REPORT

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RESPONSIBILITY OF A STATE RECEIVING OR ISSUING
SAFETY RECOMMENDATIONS

Action on safety recommendations

...

6.11 **Recommendation.**—A State conducting the investigation or any other State issuing a safety recommendation ~~should~~ shall implement procedures to record the responses received under 6.10 to the safety recommendation issued.

6.12 **Recommendation.**—A State that receives a safety recommendation ~~should~~ shall implement procedures to monitor the progress of the action taken in response to that safety recommendation.

Note.— *Guidance on the identification, drafting and follow-up of safety recommendations is contained in the Manual of Aircraft Accident and Incident Investigation (Doc 9756), Part IV — Reporting.*

— END —