

LEGAL NOTICE No. 2

REPUBLIC OF TRINIDAD AND TOBAGO

THE CIVIL AVIATION ACT, CHAP. 49:03

REGULATIONS

MADE BY THE TRINIDAD AND TOBAGO CIVIL AVIATION AUTHORITY  
WITH THE APPROVAL OF THE MINISTER UNDER SECTION 33 OF THE  
CIVIL AVIATION ACT AND SUBJECT TO NEGATIVE RESOLUTION OF  
PARLIAMENT

THE CIVIL AVIATION [(NO. 14) AIRCRAFT ACCIDENT AND  
INCIDENT INVESTIGATION] (AMENDMENT) REGULATIONS,  
2020

1. These Regulations may be cited as the Civil Aviation [(No. 14) Citation  
Aircraft Accident and Incident Investigation] (Amendment)  
Regulations, 2020.

2. In these Regulations, “the Regulations” mean the Civil Aviation Interpretation  
[(No. 14) Aircraft Accident and Incident Investigation] (Amendment) Chap. 49:03  
Regulations, 2004.

3. The Regulations are amended—

Regulation 2  
amended

(a) by renumbering regulation 2 as regulation 2(1);

(b) in subregulation (1), as renumbered, by inserting in the  
appropriate alphabetical sequence, the following definitions:

“accident investigation authority” means the authority  
designated by a State as responsible for aircraft  
accident and incident investigation within the context  
of Annex 13 of the Chicago Convention;

“hazard” means a condition or an object with the potential  
to cause or contribute to an aircraft accident or  
incident;

“industry codes of practice” means guidance material  
developed by an industry body, for a particular sector  
of the aviation industry to comply with the  
requirements of the International Civil Aviation  
Organization’s Standards and Recommended  
Practices, other aviation safety requirements and the  
best practices deemed appropriate;

“operating base” means the location from which  
operational control is exercised and is normally the  
location where personnel involved in the operation of  
the aircraft work and the records associated with the  
operation are located. An operating base has a degree  
of permanency beyond that of a regular point of call;

“operation” means an activity or group of activities which are subject to the same or similar hazards and require a set of equipment to be specified, or the achievement and maintenance of a set of pilot competencies, to eliminate or mitigate the risk of such hazards;

“operational personnel” means personnel involved in aviation activities who are in a position to report safety information;

“safety” means the state in which risks associated with aviation activities, related to, or in direct support of the operation of aircraft, are reduced and controlled to an acceptable level;

“safety data” means a defined set of facts or set of safety values collected from—

(a) various aviation related sources, which is used to maintain or improve safety; and

(b) proactive or reactive safety related activities, including, but not limited to, the following:

(i) accident or incident investigation;

(ii) safety reporting;

(iii) continuing airworthiness reporting;

(iv) operational performance monitoring;

(v) inspections, audits, surveys; or

(vi) safety studies and reviews;

“safety information” means safety data processed, organised or analysed in a given context so as to make it useful for safety management purposes;

“safety management system” means a systematic approach to managing safety, including the necessary organisational structures, accountability, responsibilities, policies and procedures;

“safety oversight” means a function performed by a State to ensure that individuals and organisations performing an aviation activity comply with safety-related national laws and regulations;

“safety performance” means a State or a service provider's safety achievement as defined by its safety performance targets and safety performance indicators;

“safety performance indicator” means a data-based parameter used for monitoring and assessing safety performance;

“safety performance target” means the State or service providers’ planned or intended target for a safety performance indicator over a given period that aligns with the safety objectives;

“safety risk” means the predicted probability and severity of the consequences or outcomes of a hazard;

“state safety programme” means an integrated set of regulations and activities aimed at improving safety;

“surveillance” means the State activities through which the State proactively verifies through inspections and audits that aviation licence, certificate, authorization or approval holders continue to meet the established requirements and function at the level of competency and safety required by the State;

“SDCPS” means the safety data collection and processing systems used to capture, store, aggregate and enable the analysis of safety data and safety information;”;  
and

(c) by inserting after subregulation (1 ), the following subregulation:

“(2) For the purposes of these regulations—

“SMS” means Safety Management System; and

“SSP” means state safety programme.

4. Regulation 3 of the Regulations is amended—

Regulation 3  
amended

(a) in paragraph (a)(iii), by deleting the word “and”;

(b) in paragraph (b), by deleting the full stop and substituting the words “; and”; and

(c) by inserting after paragraph (b), the following paragraph:

“(c) an accident and investigation authority established independently from the Trinidad and Tobago Civil Aviation Authority and other State aviation authorities or other entities that could interfere with the conduct or objectivity of an investigation.”.

5. Regulation 4 of the Regulations is amended—

Regulation 4  
amended

(a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”;

(b) in subregulation (2), by deleting the word “he” and substituting the word “it”;

(c) in subregulation (3), by deleting the word “him” and substituting the word “it”;

(d) in subregulation (5), by—

(i) renumbering paragraphs (b), (c) and (d) as (c), (d) and (e) respectively; and

(ii) inserting after paragraph (a), the following paragraph:

“(b) the protection of certain accident and incident investigation records in accordance with Regulation 22(1);”.

Regulation 6  
amended

6. Regulation 6 of the Regulations is amended, by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”.

Regulation 7  
amended

7. Regulation 7 of the Regulations is amended, by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”.

Regulation 8  
amended

8. Regulation 8 of the Regulations is amended—

(a) in subregulations (1), (2), (4), (5), (7) and (8), by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”;

(b) by deleting the word “he” wherever it occurs and substituting, in each case, the word “it”;

(c) in subregulation (3)—

(i) in paragraph (a), by deleting the word “and”;

(ii) in paragraph (b), by deleting the comma and substituting the words “; and”;

(iii) by renumbering paragraph (b) as paragraph (c);

(iv) by inserting after paragraph (a), the following paragraph:

“(b) Accident Investigation Authority; and”; and

(d) in subregulation (8)(a), by deleting the words “to him”.

Regulation 10  
amended

9. Regulation 10 of the Regulations is amended, by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”.

10. Regulation 11 of the Regulations is amended— Regulation 11  
amended
- (a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”; and
  - (b) by deleting the word “he” wherever it occurs and substituting, in each case, the word “it”.
11. Regulation 12 of the Regulations is amended— Regulation 12  
amended
- (a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”; and
  - (b) in subregulation (2), by deleting the word “he” and substituting the word “it”.
12. Regulation 13 of the Regulations is amended— Regulation 13  
amended
- (a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”; and
  - (b) in subregulation (3), by deleting the word “he” and substituting the word “it”.
13. Regulation 14 of the Regulations is amended by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”. Regulation 14  
amended
14. Regulation 15 of the Regulations is amended by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”. Regulation 15  
amended
15. Regulation 16 of the Regulations is amended by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”. Regulation 16  
amended
16. Regulation 17 of the Regulations is amended by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”. Regulation 17  
amended
17. Regulation 18 of the Regulations is amended, by inserting after subregulation (2), the following subregulations: Regulation 18  
amended
- “(3) Recordings or transcripts of CVR, CARS, Class AIR and Class AIRS shall not be used for purposes other than the investigation of an accident or incident, except where the recordings or transcripts are—
- (a) related to a safety-related event identified in the context of a safety management system;

- (b) restricted to the relevant portions of a de-identified transcript of the recordings;
- (c) used for inspections of flight recorder systems;
- (d) sought for use in criminal proceedings not related to an event involving an accident or incident investigation; and
- (e) subject to the protections accorded by Annex 19 of the Chicago Convention.

(4) Recordings or transcripts of FDR, ADRS as well as Class B and Class C AIR and AIRS, shall not be used for purposes other than the investigation of an accident or incident, except where the recordings or transcripts are—

- (a) used by the operator for airworthiness or maintenance purposes;
- (b) used by the operator in the operation of a flight data analysis programme;
- (c) sought for use in proceedings not related to an event involving an accident or incident investigation;
- (d) de-identified;
- (e) disclosed under secure procedures; and
- (f) subject to the protections accorded by Annex 19 of the Chicago Convention.”.

Regulation 19 amended 18. Regulation 19 of the Regulations is amended by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”.

Regulation 20 amended 19. Regulation 20 of the Regulations is amended by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”.

Regulation 22 amended 20. Regulation 22 of the Regulations is amended—  
(a) by revoking subregulation (1), and substituting the following subregulation:

“(1) When conducting an investigation, the Accident Investigation Authority shall not make the following records available for purposes other than accident or incident investigation, unless the Accident and Investigation Authority determines, in accordance with written laws and these regulations, 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;

- (b) records in the custody or control of the Accident Investigation Authority being —
  - (i) all statements taken from persons by the Accident and Investigation Authority in the course of their investigation;
  - (ii) all communications between persons having been involved in the operation of the aircraft;
  - (iii) 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) draft Final Reports of an accident or incident investigation.”
- (b) in subregulation (2), by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”;
- (c) by revoking subregulation (3) and substituting the following subregulations:
  - “(3) The Accident Investigation Authority shall ensure that the following information is not disclosed to the public:
    - (a) the names of persons involved in an accident or incident;
    - (b) parts of the records listed in subregulation (1) that are not relevant to the analysis of the accident or incident;
    - (c) audio content of cockpit voice recordings as well as image and audio content of airborne image recordings; and
    - (d) draft Final Reports where States have issued or received such reports.
  - (4) The Accident Investigation Authority shall ensure that—
    - (a) requests for records under its custody and control are directed to the original source of the information, where available;

- (b) the records listed in subregulation (1) shall be included in the Final Report only when pertinent to the analysis of the accident or incident; and
- (c) the use, protection and disclosure of records is in accordance with Schedule 6.”.

Regulation 23 amended 21. Regulation 23 of the Regulations is amended in subregulations (1) and (2), by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”.

Regulation 24 amended 22. Regulation 24 of the Regulations is amended, by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”.

Regulation 25 amended 23. Regulation 25 of the Regulations is amended by deleting the words “Director-General” and substituting the words “Accident Investigation Authority”.

Regulation 26 amended 24. Regulation 26 of the Regulations is amended, by—

- (a) deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”; and
- (b) deleting the word “he” wherever it occurs and substituting, in each case, the word “it”.

Regulation 27 amended 25. Regulation 27 of the Regulations is amended—

- (a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”;
- (b) in subregulation (1)(a)—
  - (i) in subparagraph (iii), by deleting the word “and”;
  - (ii) in subparagraph (iv), by inserting after the words “Manufacture;”, the word “and”; and
  - (iii) by inserting after subparagraph (iv), the following paragraph:
 

“(v) the Authority.” ;
- (c) in subregulations (1)(b), (4) and (8), by deleting the word “he” and substituting the word “it”; and
- (d) by inserting after subregulation (4)(c), the following paragraph: “(d) the Authority,”.

- 
26. Regulation 28 of the Regulations is amended— Regulation 28  
amended
- (a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”;
  - (b) in subregulation (1), by deleting the word “he” and substituting the word “it”;
  - (c) in subregulation (2)—
    - (i) in paragraph (a), by inserting after subparagraph (v), the following subparagraph:  
“vi) the Authority”;
    - (ii) in paragraph (b)(i), by deleting the word “and”;
    - (iii) in paragraph (b)(ii), by deleting the full stop and substituting the words “; and”; and
    - (iv) by inserting after paragraph (b)(ii), the following subparagraph:  
“(iii) the Authority”.
27. Regulation 29 of the Regulations is amended— Regulation 29  
amended
- (a) in subregulations (1) and (2), by deleting the words “Director General” and substituting the words “Accident Investigation Authority”; and
  - (b) in subregulation (1), by deleting the word “he” and substituting the word “it”.
28. Regulation 30 of the Regulations is amended— Regulation 30  
amended
- (a) by deleting the words “Director-General” wherever they occur and substituting, in each case, the words “Accident Investigation Authority”;
  - (b) in subregulations (1), (8) and (14), by deleting the word “he” and substituting the word “it”; and
  - (c) in subregulation (13), by deleting the word “his” and substituting the word “its”.
29. Regulation 30A of the Regulations is amended, by deleting the Regulation 30A  
amended  
words “Director-General” and substituting the words “Accident Investigation Authority”.
30. Regulation 31 of the Regulations is amended, by deleting the Regulation 31  
amended  
words “Director-General” and substituting the words “Accident Investigation Authority”.

Schedule 6  
inserted

31. The Regulations are amended by inserting after Schedule 5, the following Schedule:

“SCHEDULE 6

*[Regulation 22]*

PROTECTION OF ACCIDENT AND INCIDENT  
INVESTIGATION RECORDS

PART I

INTRODUCTION

*The disclosure or use of records 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 harm or others to be reluctant to cooperate with accident investigation authorities in the future. The determination on disclosure or use required by Regulation 22 is designed to take account of these matters.*

*Note 1.* Throughout this Schedule—

- (a) Balancing test* refers to the determination by the competent authority, in accordance with Regulation 22, of the impact the disclosure or use of accident and incident investigation records may have on current or future investigations; and
- (b) Record(s)* refers to those listed in Regulation 22.

*Note 2.* In accordance with Regulation 22, the provisions specified in this Schedule are intended to—

- (c)* assist States in developing national laws, regulations and policies to protect accident and incident investigation records appropriately; and
- (d)* assist the competent authority in making the determination as required by Regulation 22.

*Note:—Provisions on the use and protection of safety information and related sources other than accident and incident investigation are included in ICAO Annex 19—Safety Management.*

PART II

GENERAL

1. States shall accord the protections in Regulation 22 and this Schedule 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.

2. States shall accord the protection of Regulation 22 and this Schedule to the other records listed in Regulation 22. These protections shall apply from the time they come into 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***

3. States shall take action to achieve the non-disclosure of the audio content of cockpit voice recordings as well as image and audio content of airborne image recordings to the public as per Regulation 22 and ICAO Annex 13, such as—

- (a) the prevention of disclosure through the adoption of national laws, regulations and policies;
- (b) the adoption of authoritative safeguards such as protective orders, closed proceedings or in-camera review; or
- (c) the 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.

PART III

COMPETENT AUTHORITY

In accordance with Regulation 22, each State shall designate a competent authority or competent authorities appropriate to the task 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.*

PART IV

ADMINISTRATION OF THE BALANCING TEST

Where the request is for the record to be disclosed or used in 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.

*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 party controverts; and is to be determined by the competent authority administering the balancing test.*

1. When administering the balancing test, the competent authority shall take into consideration factors such as—

- (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 organisation will be adversely affected by the disclosure or use of that record;

- (d) whether the person or organisation 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, summarised 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.

*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 (Doc 10053).*

#### PART V

##### 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.*

*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.*

#### PART VI

##### FINAL REPORT

*In order to limit the use of the Final Report for purposes other than the prevention of accidents, States should consider—*

- (a) instituting a separate investigation for those other purposes;
- (b) 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
- (c) preventing the use of the Final Report as evidence in proceedings to apportion blame or liability.

*Note:—In accordance with Part V Regulation 30 of the Regulations, Final Reports are publicly available in the interest of accident prevention and are not subject to protection under Regulation 22 of the Regulations or ICAO Annex 13 Chapter 5.12. 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.*

PART VII

ACCIDENT AND INVESTIGATION PERSONNEL

*In the interest of safety and in accordance with ICAO Annex Chapter 3, States 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.”*

Made by the Trinidad and Tobago Civil Aviation Authority this 16th day of December, 2020.

F. REGIS  
*Trinidad and Tobago  
Civil Aviation Authority*

Approved by the Minister of Works and Transport this 29th day of December, 2020.

R. SINANAN  
*Minister of Works and Transport*