

Statutory Instrument No. 105 of 2020

CIVIL AVIATION ACT
(Cap. 71:01)

CIVIL AVIATION (SAFETY MANAGEMENT) REGULATIONS, 2020
(Published on 21st August, 2020)

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IN EXERCISE of the powers conferred on the Minister of Transport and Communications by section 89 of the Civil Aviation Act and on the recommendation of the Civil Aviation Authority, the following Regulations are hereby made —

Part I — *Preliminary*

- Citation **1.** These Regulations may be cited as the Civil Aviation (Safety Management) Regulations, 2020.
- Interpretation **2.** In these Regulations, unless the context otherwise requires —
- “accident” means 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 the person has 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 seriously injured as a result of —
- (i) being in the aircraft,
 - (ii) direct contact with any part of the aircraft, including a part which has become detached from the aircraft, or
 - (iii) direct exposure to jet blast,
- except when the injury is from a natural cause, is self-inflicted or inflicted by another person, or when the injury is to a stowaway hiding outside an area normally available to passengers and crew;
- (b) the aircraft sustains damage or structural failure which —
- (i) adversely affects the structural strength, performance or flight characteristics of the aircraft, and
 - (ii) would normally require major repair or replacement of the affected component, except for engine failure or damage, which is limited to a single engine and its cowlings and accessories, propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windscreen, small dents or puncture holes in the aircraft skin, 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;
- “aeroplane” means a power driven heavier than air aircraft, which derives its lift in flight mainly from an aerodynamic reaction on a surface which remains fixed under a given condition of flight;
- “Authority” means the Civil Aviation Authority of Botswana as established by section 4 of the Act;
- “helicopter” means a heavier than air aircraft supported in flight mainly by the reaction of the air on one or more power-driven rotors on substantially vertical axes;
- “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, related to aviation activities, or in direct support of the operation of an aircraft are reduced and controlled to an acceptable level;

“safety data” means a defined set of facts or a set of safety values collected from various aviation-related sources which is used to maintain or improve safety;

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

“Safety Management System” or “SMS” means a systematic approach to managing safety, including the necessary organisational structures, accountability, responsibilities, policies and procedures;

“safety oversight” means a function performed by the Authority to ensure that individuals and organisations performing any aviation activity comply with safety related regulations;

“safety performance” means a state’s 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 a state’s or service provider’s 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;

“SDCPS” means Safety Data Collection and Processing System;

“serious incident” means 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) a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time a person has disembarked; or

(b) 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;

“serious injury” means an injury which is sustained by a person in an accident which —

(a) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received;

(b) results in a fracture of any bone except simple fractures of fingers, toes or nose;

(c) involves a laceration which causes severe hemorrhage, nerve, muscle or tendon damage;

(d) involves injury to any internal organ;

(e) involves a second or third degree burn, or any burn which affects more than five percent of the body surface; or

(f) involves verified exposure to an infectious substance or injurious radiation;

“SSO” means State Safety Oversight;

“State Safety Programme (SSP)” means an integrated set of regulations and activities aimed at improving safety; and

“surveillance” means a state’s activities through which the Authority proactively verifies through an inspection and an audit that an aviation licence, certificate, authorisation or approval holder continues to meet the established requirement and function at the level of competency and safety required by the state.

Application 3. (1) These Regulations shall apply to safety management functions related to, or in direct support of the safe operation of an aircraft.

(2) Except where otherwise specified, these Regulations shall not apply to areas including —

- (a) occupational safety;
- (b) environmental protection;
- (c) customer service; or
- (d) product quality.

Part II — *State safety management responsibilities*

Establishment of State Safety Programme 4. (1) The Authority shall establish and maintain an SSP commensurate with the size and complexity of Botswana’s Civil Aviation System.

(2) The SSP shall be founded on the SSO system which shall be implemented in compliance with the following elements —

- (a) provisions of the Act;
- (b) Regulations made under the Act;
- (c) state systems and functions;
- (d) qualified technical personnel;
- (e) technical guidance, tools and safety critical information;
- (f) licensing, certification, authorisation and approval obligations;
- (g) surveillance obligations; and
- (h) resolution of safety issues.

(3) The framework for the implementation and maintenance of the SSO under subregulation (2) shall be as set out in Schedule 1.

State safety policy, objectives and resources 5. (1) The Authority shall establish a state safety policy, objectives and provide resources that satisfy the requirements of regulation 4 (2) (a), (b), (c) (d) and (e).

(2) The Authority shall identify, define and document the requirements, obligations, functions and activities regarding the establishment and maintenance of the SSP, including the directives to plan, organise, develop, maintain, control and continuously improve the SSP.

(3) The safety policy, objectives and resources shall —

- (a) reflect commitment regarding safety;
- (b) facilitate the promotion of a safety culture in the aviation industry; and
- (c) be periodically reviewed by the Authority to ensure that they remain relevant and appropriate.

(4) The Authority shall develop and issue an enforcement policy that specifies the conditions and circumstances under which service providers with an SMS are allowed to deal with and resolve an event involving certain safety issues internally or within the context of their SMS and to the satisfaction of the Authority.

6. (1) The Authority shall — State safety risk management
- (a) establish a documented process and procedure to ensure that its licensing, certification, authorisation and approval obligations are met;
 - (b) maintain a process to identify hazards from collected state safety data and maintain a process that ensures the assessment of safety risks associated with identified hazards; and
 - (c) establish a mechanism for resolution of safety issues identified in the service provider's operations.
- (2) The Authority shall —
- (a) require service providers listed under regulation 10 (1) to implement an SMS;
 - (b) ensure that safety performance indicators and targets established by a service provider or operator are acceptable to the Authority;
 - (c) establish a criteria for implementation of an SMS by any international general aviation operator of a large or turbojet aeroplane conducting an operation in accordance with the Civil Aviation (Operation of Aircraft) Regulations; and Cap. 71:01 Sub. Leg.
 - (d) ensure that the criteria in paragraph (c) addresses the framework and elements set out in Schedule 2.
7. The Authority shall — State safety assurance
- (a) develop and implement a procedure and process to ensure that its surveillance obligations are met;
 - (b) establish and implement a procedure to prioritise an inspection, audit and a survey towards an area of greater safety concern or need; and
 - (c) periodically review the safety performance of an individual service provider.
8. The Authority shall — State safety performance
- (a) establish an acceptable level of state safety performance to be achieved through its SSP;
 - (b) develop and maintain a process to evaluate the effectiveness of an action taken to manage state safety risks and resolve safety issues; and
 - (c) periodically evaluate the effectiveness of the SSP to maintain or continuously improve the overall level of state safety performance.
9. (1) The Authority shall develop a state safety promotion by means of internal and external communication and dissemination of safety information. State safety promotion
- (2) The Authority shall promote safety awareness and the sharing and exchange of safety information to support the development of a positive safety culture that fosters the maintenance and improvement of safety.

PART III — *Safety Management System*

10. (1) An SMS shall be implemented by the following service providers — Safety management system obligations
- (a) an approved training organisation, certified in accordance with the Civil Aviation (Approved Training Organisations) Regulations, which is exposed to safety risks related to aircraft operations during the provision of its service; Cap. 71:01 Sub. Leg.
 - (b) an operator of an aeroplane or helicopter authorised to conduct commercial air transport in accordance with the Civil Aviation (Air Operator Certification and Administration) Regulations; Cap. 71:01 Sub. Leg.

Cap. 71:01
Sub. Leg.

(c) approved maintenance organisations providing service to operators of aeroplanes or helicopters engaged in commercial air transport in accordance with the Civil Aviation (Approved Maintenance Organisations) Regulations;

Cap. 71:01
Sub. Leg.

(d) organisations responsible for the type design or manufacture of aircraft, engines or propellers in accordance with the Civil Aviation (Airworthiness) Regulations;

Cap. 71:01
Sub. Leg.

(e) air traffic service providers in accordance with the Civil Aviation (Certification of Air Navigation Service Providers) Regulations; and

Cap. 71:01
Sub. Leg.

(f) Operators of certified aerodromes in accordance with the Civil Aviation (Certification and Licensing of Aerodromes) Regulations.

(2) An SMS implemented by a service provider referred to in subregulation (1) shall be —

(a) commensurate with the size of the service provider and the complexity of the service provider's aviation products or services;

(b) established in accordance with the framework elements set out in Schedule 2; and

(c) periodically reviewed to ensure that the SMS remains relevant and appropriate to the service provider.

(3) A general aviation operator conducting an operation in accordance with Civil Aviation (Operation of Aircraft) Regulations, Civil Aviation (Personnel Licensing) (Flight Crew) Regulations, Civil Aviation (Personnel Licensing) (General) Regulations and Civil Aviation (Remotely Piloted Aircraft Licensing) Regulations shall implement an SMS that shall be commensurate with the size and complexity of the operation and shall meet the criterion established by the Authority.

(4) A service provider shall develop a plan to facilitate the implementation of the service provider's SMS.

(5) The SMS established by a service provider under subregulation (1) shall have safety performance indicators and targets required by the Authority.

Safety
performance
monitoring and
measurement

11. A service provider shall, as part of the SMS safety assurance activities —

(a) develop and maintain the necessary means to verify the safety performance of the organisation in reference to the safety performance indicators and safety performance targets of the SMS; and

(b) validate the effectiveness of safety risk controls.

Part IV — *Safety data and safety information collection, processing, analysis, protection, sharing and exchange*

Safety Data
Collection and
Processing
System

12. (1) The Authority shall establish a Safety Data Collection and Processing System to capture, store, aggregate and enable the analysis of safety data and safety information.

(2) The Authority shall establish a —

(a) mandatory safety reporting system that includes the reporting of incidents; and

(b) voluntary safety reporting system to collect safety data and safety information not captured by mandatory safety reporting systems.

(3) The Authority may grant other organisations responsible for the implementation of state safety performance access to the SDCPS referred to in subregulation (1) as set out in Schedule 3.

(4) The database system established under subregulation (1) shall use standardised taxonomy to facilitate safety information sharing and exchange.

13. (1) A service provider shall notify and write a mandatory occurrence report to the Authority on an accident, incident or other safety related occurrence within —

Mandatory safety reporting

- (a) 24 hours in the case of an accident;
- (b) 48 hours in the case of a serious incident; or
- (c) 72 hours in the case of an incident or other safety related occurrence.

(2) A service provider shall, as part of his or her SMS, be responsible for investigating all incidents that occur during the service provider's operation.

(3) The Director of Accident Investigation shall investigate an accident or serious incident, and may delegate investigation of certain serious incidents to the Authority.

14. (1) A service provider shall establish a voluntary safety reporting system to facilitate collection of information on an actual or potential safety deficiency that may not be captured by the mandatory safety reporting system.

Voluntary safety reporting

(2) A voluntary safety reporting system established by a service provider shall be non-punitive and shall afford protection to the sources of the information.

(3) An organisation's voluntary and confidential reporting system shall set out —

- (a) the objective of the reporting system;
- (b) the scope of the aviation sector or area covered by the system;
- (c) who can make a voluntary and confidential report;
- (d) when to make the report;
- (e) how the report is to be processed; and
- (f) the contacting manager.

15. The Authority shall establish and maintain a process to analyse safety data and safety information from the SDCPS and associated safety databases.

Safety data and safety information analysis

16. (1) The Authority shall accord protection to safety data captured by, and safety information derived from, mandatory and voluntary safety reporting systems under these Regulations in accordance with Schedule 3.

Safety data and safety information protection

(2) The Authority shall not make available or use safety data or safety information collected, stored or analysed in accordance with these Regulations for purposes other than maintaining or improving safety, unless a competent authority determines in accordance with Schedule 3, that the principle of exception applies.

(3) Notwithstanding subregulation (2), the Authority shall not be prevented from using safety data or safety information to take a preventive, corrective or remedial action that is necessary to maintain or improve aviation safety.

(4) The Authority shall take necessary measures, including the promotion of a positive safety culture, to encourage safety reporting through the systems referred to in regulation 12 (2) and (3).

17. (1) Safety data and safety information protection referred to in regulation 16 shall be provided with regard to the confidentiality and access by the public to ambient workplace recordings.

Ambient workplace recordings

(2) Ambient workplace recordings shall be treated as privileged protected data, subject to the principles of protection and exception in accordance with these Regulations.

Safety
information
sharing and
exchange

18. (1) Where the Authority, in the analysis of the information contained in its SDCPS, identifies safety matters considered to be of interest to another state, the Authority shall forward such safety information to that state as soon as possible.

(2) The Authority shall, before sharing information referred to in subregulation (1), agree with such state on the level of protection and conditions on which safety information shall be shared as set out in Schedule 3.

(3) The Authority shall promote the establishment of safety information sharing and exchange networks among users of the aviation system.

(4) Subject to any law of Botswana, the Authority shall facilitate the sharing and exchange of safety information.

Part V — *General provisions*

Administrative
sanctions

19. A service provider who fails to comply with these Regulations, may have his or her licence, certificate or authorisation suspended or revoked, in addition to any other administrative sanction as prescribed under the Act.

Transitional
provision

20. An acceptance, authorisation or certificate issued or granted by the Authority before the commencement of these Regulations shall be deemed to be valid and shall remain operational until it is revoked, annulled, replaced or it expires.

SCHEDULE 1

State Safety Oversight (SSO) system Critical Elements (CEs)

(Regulation 4 (3))

1. Primary aviation legislation (CE-1)
 - 1.1. The Civil Aviation Act is a comprehensive and effective aviation law commensurate with the size and complexity of Botswana's aviation activity and consistent with the requirements contained in the Convention on International Civil Aviation, to enable the oversight and management of civil aviation safety and the enforcement of regulations.
 - 1.2. The Act shall provide personnel that performs a state safety oversight function access to the aircraft, operations, facilities, personnel and associated records as applicable, of individuals and organisations performing an aviation activity.
2. Specific operating regulations (CE-2)

Specific regulations shall address at a minimum, a national requirement emanating from the primary aviation legislation for a standardised operational procedure, product, service, equipment and infrastructure in conformity with the Annexes to the Convention on International Civil Aviation.
3. State system and functions (CE-3)
 - 3.1. There shall be established authorities or agencies as appropriate, supported by sufficient and qualified personnel who shall be provided with adequate financial resources for the management of safety.
 - 3.2. The authorities or agencies shall state safety functions and objectives to fulfil their safety management responsibility.
 - 3.3. The Authority shall take necessary measures such as remuneration and conditions of service, to ensure that qualified personnel that performs state safety oversight functions are recruited and retained.
 - 3.4. The Authority shall ensure that personnel that performs state safety oversight functions are provided with guidance that addresses ethics, personal conduct and the avoidance of actual or perceived conflict of interest.
 - 3.5. The Authority shall use a methodology to determine its staffing requirements for personnel that performs state safety oversight functions, taking into account the size and complexity of the aviation activities in Botswana.
4. Qualified technical personnel (CE-4)
 - 4.1. The Authority shall establish a minimum qualification requirement for the technical personnel that performs state safety related functions and provide for appropriate initial and recurrent training to maintain and enhance their competence at the desired level.
 - 4.2. The Authority shall implement a system for the maintenance of training records for technical personnel.
5. Technical guidance, tools and provision of safety-critical information (CE-5)
 - 5.1. The Authority shall provide appropriate facilities, comprehensive and up to date technical guidance material and procedures, safety critical information, tools, equipment and transportation means applicable to the technical personnel, to enable them to perform their state safety oversight functions effectively and in accordance with the established procedure in a standardised manner.
 - 5.2. The Authority shall provide technical guidance to the aviation industry on the implementation of relevant regulations.

6. Licensing, certification, authorisation and approval obligations (CE-6)

The Authority shall implement documented processes and procedures to ensure that an individual or organisation that performs an aviation activity meets the established requirements before they are allowed to exercise the privileges of a licence, certificate, authorisation or approval to conduct the relevant aviation activity.

7. Surveillance obligations (CE-7)

The Authority shall implement documented surveillance processes, by defining and planning inspections, audits and monitoring activities on a continuous basis, to proactively assure that aviation licence, certificate, authorisation and approval holders continue to meet the established requirements. This includes the surveillance of personnel designated by the Authority to perform state safety oversight functions on its behalf.

8. Resolution of safety issues (CE-8)

8.1. The Authority shall use a documented process to take an appropriate action including enforcement measures, to resolve an identified safety issue.

8.2. The Authority shall ensure that an identified safety issue is resolved in a timely manner through a system which monitors and records progress, including actions taken by individuals or organisations performing an aviation activity, in resolving such an issue.

SCHEDULE 2

Framework for a Safety Management System (SMS)

(Regulation 6 (2), 10 (2) (b))

This Schedule specifies the framework for the implementation and maintenance of an SMS. The framework comprises of four components and twelve elements as the minimum requirements for SMS implementation.

1. Safety policy and objectives —
 - 1.1. Management commitment
 - 1.2. Safety accountability and responsibilities
 - 1.3. Appointment of key safety personnel
 - 1.4. Coordination of emergency response planning
 - 1.5. SMS documentation
 2. Safety risk management —
 - 2.1 Hazard identification
 - 2.2 Safety risk assessment and mitigation
 3. Safety assurance —
 - 3.1 Safety performance monitoring and measurement
 - 3.2 The management of change
 - 3.3 Continuous improvement of the SMS
 4. Safety promotion —
 - 4.1 Training and education
 - 4.2 Safety communication
-
1. Safety policy and objectives —
 - 1.1. Management commitment
 - 1.1.1 The service provider shall define its safety policy in accordance with international and national requirements.
 - 1.1.2 The safety policy shall —
 - (a) reflect organisational commitment regarding safety, including the promotion of a positive safety culture;
 - (b) include a clear statement about the provision of the necessary resources for the implementation of the safety policy;
 - (c) include safety reporting procedures;
 - (d) clearly indicate which type of behaviour is unacceptable, related to the service provider's aviation activities and include the circumstances under which disciplinary action shall not apply;
 - (e) be signed by the accountable executive of the organisation;
 - (f) be communicated with visible endorsement throughout the organisation; and
 - (g) be periodically reviewed to ensure the safety policy remains relevant and appropriate to the service provider.
 - 1.1.3 Taking due account of its safety policy, the service provider shall define safety objectives.

- 1.1.4 The safety objectives shall —
- (a) form the basis for safety performance monitoring and measurement;
 - (b) reflect the service provider's commitment to maintain or continuously improve the overall effectiveness of the SMS;
 - (c) be communicated throughout the organisation; and
 - (d) be periodically reviewed to ensure they remain relevant and appropriate to the service provider.
- 1.2. Safety accountability and responsibilities
- 1.2.1. A service provider shall —
- (a) identify the accountable executive who irrespective of other functions, is accountable on behalf of the organisation for the implementation and maintenance of an effective SMS;
 - (b) clearly define lines of safety accountability throughout the organisation including a direct accountability for safety on the part of senior management;
 - (c) identify the responsibilities of all members of management, including those of employees, on the safety performance of the organisation;
 - (d) document and communicate safety accountability, responsibilities and authorities throughout the organisation; and
 - (e) define the levels of management with authority to make decisions regarding safety risk tolerability.
- 1.3. Appointment of key safety personnel
- 1.3.1. A service provider shall appoint a safety manager who shall be responsible for the implementation and maintenance of the SMS.
- 1.3.2. Depending on the size of the service provider and the complexity of its aviation products or services, the responsibilities for the implementation and maintenance of the SMS may be assigned to one or more persons fulfilling the role of safety manager, as their sole function or combined with other duties, provided that there is no conflict of interest.
- 1.4. Coordination of emergency response planning
- A service provider required to establish and maintain an emergency response plan for accidents and incidents in aircraft operations and other aviation emergencies shall ensure that the emergency response plan is properly coordinated with the emergency response plan of those organisations it may interface with, during the provision of its product and service.
- 1.5. SMS documentation
- 1.5.1. A service provider shall develop and maintain a safety management system manual that describes the service provider's —
- (a) safety policy and objectives;
 - (b) safety management system requirements;
 - (c) safety management process and procedure; and
 - (d) accountability, responsibilities and authorities for SMS processes and procedures.
- 1.5.2. A service provider shall develop and maintain SMS operational records as part of its SMS documentation.
- 1.5.3. Depending on the size of the service provider and the complexity of its aviation product or service, the SMS manual and SMS operational records may be in the form of stand-alone documents or may be integrated with other organisational documents maintained by the service provider.

2. Safety risk management
 - 2.1 Hazard identification
 - 2.1.1 A service provider shall develop and maintain a process to identify hazards associated with the service provider's aviation product or service.
 - 2.1.2 Hazard identification shall be based on a combination of reactive and proactive methods.
 - 2.2 Safety risk assessment and mitigation
 - 2.2.1 A service provider shall develop and maintain a process that ensures analysis, assessment and control of the safety risks associated with identified hazards.
 - 2.2.2 The process may include predictive methods of safety data analysis.
3. Safety assurance
 - 3.1 Safety performance monitoring and measurement
 - 3.1.1 A service provider shall develop and maintain a means to verify the safety performance of the organisation and to validate the effectiveness of safety risk controls.
 - 3.1.2 The service provider's safety performance shall be verified in reference to the safety performance indicators and safety performance targets of the SMS in support of the organisation's safety objectives.
 - 3.2 The management of change

A service provider shall develop and maintain a process to identify a change which may affect the level of safety risk associated with the service provider's aviation product or service, and identify and manage the safety risks that may arise from such a change.
 - 3.3 Continuous improvement of the SMS

The service provider shall monitor and assess his or her SMS processes to maintain or continuously improve the overall effectiveness of the SMS.
4. Safety promotion
 - 4.1 Training and education
 - 4.1.1 A service provider shall develop and maintain a safety training programme that ensures that personnel are trained and are competent to perform their SMS duties.
 - 4.1.2 The scope of the safety training programme shall be appropriate to each individual's involvement in the SMS.
 - 4.2 Safety communication

A service provider shall develop and maintain a formal means for safety communication which —

 - (a) ensures that personnel are aware of the SMS to a degree commensurate with their positions;
 - (b) conveys critical safety information;
 - (c) explains why a particular action is taken to improve safety; and
 - (d) explains why a safety procedure is introduced or changed.

SCHEDULE 3

Principles for the protection of safety data, safety information and related sources (SDCPS)

(Regulations 12 (3), 16 (1), 16 (2), 18 (2))

1. Introduction

- 1.1 The protection of safety data, safety information and related sources is essential to ensure their continued availability, since the use of safety data and safety information for purposes other than maintaining or improving safety may inhibit the future availability of such data and information, with a significant adverse effect on safety.
- 1.2 The principles allow for flexibility to draft laws and regulations in accordance with Botswana's policies and practices.
- 1.3 The principles contained in this Schedule are aimed at assisting in the enacting and adoption of laws, regulations and policies to protect safety data and safety information gathered from safety data collection and processing systems (SDCPS), as well as related sources, while allowing for the proper administration of justice and necessary actions for maintaining or improving aviation safety.
- 1.4 The objective is to ensure the continued availability of safety data and safety information by restricting their use for a purpose other than maintaining or improving aviation safety.
- 1.5 In this Schedule, "SDCPS" means processing and reporting systems, safety databases, schemes for exchange of information, and recorded information including —
 - (a) data and information pertaining to accident and incident investigations in accordance with the Civil Aviation (Accident and Incident Investigation) Regulations;
 - (b) data and information related to a safety investigation by a state authority or aviation service provider;
 - (c) a mandatory safety reporting system, in accordance with regulation 13;
 - (d) a voluntary incident reporting system, in accordance with regulation 14; and
 - (e) a self-disclosure reporting system, including an automatic data capture system in accordance with Civil Aviation Regulations and manual data capture systems.

2. General principles

- 2.1 Laws, regulations and policies protecting safety data, safety information and related sources, shall ensure that —
 - (a) a balance is struck between the need for the protection of safety data, safety information and related sources to maintain or improve aviation safety and the need for the proper administration of justice;
 - (b) safety data, safety information and related sources are protected in accordance with this Schedule;

- (c) the conditions under which safety data, safety information and related sources qualify for protection are specified;
- (d) safety data and safety information remain available for the purpose of maintaining or improving aviation safety; and
- (e) the protection of safety data, safety information and related sources is not intended to interfere with the proper administration of justice or with maintaining or improving safety.

2.2 Where an investigation under Civil Aviation (Accident and Incident Investigation) Regulations has been instituted, accident and incident investigation records protected under the said Regulations shall be subject to the protection accorded therein, instead of the protection accorded by this Schedule.

3. Principles of protection

3.1 Safety data or safety information shall not —

- (a) be used in disciplinary, civil, administrative or criminal proceedings against an employee, operational personnel or organisation;
- (b) be disclosed to the public; or
- (c) be used for any purpose other than maintaining or improving safety, unless a principle of exception applies.

3.2 Protection to safety data, safety information and related sources shall be accorded by ensuring that —

- (a) the protection is specified based on the nature of safety data and safety information;
- (b) a formal procedure to provide protection to safety data, safety information and related sources is established;
- (c) safety data and safety information shall not be used in a way different from the purpose for which they were collected, unless a principle of exception applies;
- (d) to the extent that a principle of exception applies, the use of safety data and safety information in disciplinary, civil, administrative and criminal proceedings shall be carried out only under authoritative safeguards;
- (e) the formal procedure may include that any person seeking disclosure of safety data or safety information shall provide the justification for its release; or
- (f) authoritative safeguards include a legal limitation or restriction such as a protective order, closed proceedings, in-camera review, and de-identification of data for the use or disclosure of safety information in judicial or administrative proceedings.

4. Principles of exception

4.1 An exception to the protection of SDCPS shall only be granted when a competent authority —

- (a) determines that there are facts and circumstances reasonably indicating that the occurrence may have been caused by an act or omission considered to be conduct constituting gross negligence, willful misconduct or criminal activity;
- (b) after reviewing the safety data or safety information and related sources, determines that their release is necessary for the proper administration of justice, and that the benefits of their release outweigh the adverse domestic and international impact that such release is likely to have on the future collection and availability of safety data and safety information; or

- (c) after reviewing the safety data or safety information and related sources, determines that their release is necessary for maintaining or improving safety, and that the benefits of their release outweigh the adverse domestic and international impact that such release is likely to have on the future collection and availability of safety data and safety information.
- 4.2 When administering the decision, the competent authority shall take into account the consent of the source of the safety data and safety information.
- 4.3 Different competent authorities may be designated for different circumstances and the competent authority may include judicial authorities or those otherwise entrusted with aviation responsibilities.
- 5. Public disclosure
 - 5.1 In the context of a request made for public disclosure, an exception shall be created from public disclosure to ensure the continued confidentiality of voluntarily supplied safety data and safety information. Laws, regulations and policies commonly referred to as right to know laws (open records, or sunshine laws) allow for public access to information held by the state.
 - 5.2 Where a disclosure is made, the Authority shall ensure that public disclosure of the --
 - (a) relevant personal information included in the safety data or safety information, complies with applicable privacy laws; or
 - (b) safety data or safety information is made in a de-identified, summarised or aggregate form.
- 6. Responsibility of the custodian of safety data and safety information

The Authority shall ensure that each SDCPS has a designated custodian to apply the protection to safety data and safety information in accordance with applicable provisions of this Schedule.
- 7. Protection of recorded data
 - 7.1 An ambient workplace recording such as a cockpit voice recorder (CVR), a recording of background communication or the aural environment at an air traffic controller work station, may be perceived as constituting an invasion of privacy for operational personnel that other professions are not exposed to.
 - 7.2 The Authority shall provide a specific measure of protection regarding the confidentiality and access by the public to an ambient workplace recording.
 - 7.4 An ambient workplace recording shall be treated as privileged protected data subject to the principles of protection and exception as provided for in this Schedule.

MADE this 6th day of August, 2020.

THULAGANO MERAPE SEGOKGO
Minister of Transport and Communications.