

except as provided in 49 U.S.C. section 40123, 14 CFR part 193, and the order designating the information as protected. This order is issued under part 193, section 193.11, which sets out the notice procedure for designating information as protected.

4. *Applicability.* This order is applicable to any FAA office that receives information covered under this designation from an ASAP program. The order also is applicable to any other government agency that received such information from the FAA. In order for any other government agency to receive ASAP information covered under this designation from the FAA, each such agency must first stipulate, in writing, that it will abide by the provisions of part 193 and this order.

5. *Summary of the ASAP Voluntary Information Sharing Program.*

a. *Who may participate?* Certificate holders who have an FAA-accepted ASAP, and their covered employees.

b. *What voluntarily provided information would be protected from disclosure under this proposed designation?* Except for ASAP reports that involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification, the following information would be protected from disclosure when provided in the FAA.

(1) The employee's ASAP report, and the content of that report.

(2) The identity of the certificate holder associated with an accepted ASAP report.

(3) The name of the employee who submits an accepted ASAP report(s).

(4) The information from sources other than the FAA of an Event Review Committee (ERC) investigation concerning an accepted ASAP report.

(5) Evidence and other information gathered during an ERC investigation by persons other than the FAA.

(6) Statistical analysis and trend information provided by the certificate holder that is based on events reported under a particular certificate holder's ASAP.

(7) A certificate holder's database of reports and events collected over time from that certificate holder's ASAP.

(8) Corrective action on sole source reports when such corrective action is successfully completed.

Note: The type of information or circumstances under which the information listed above would not be protected from disclosure is discussed in paragraph 6e(2) of this order.

c. *How do you participate?* Certificate holders participate by executing an ASAP memorandum of understanding (MOU) with the FAA and by voluntarily sharing information from the ASAP with the FAA.

d. *What is the duration of this information-sharing programs?* This information-sharing program continues for a given certificate holder until the associated ASAP MOU is terminated by any of the parties to the MOU.

6. *Findings.* The FAA designates information received from an accepted ASAP as protected under 49 U.S.C., section 40123 and part 193, section 193.7, based on the following findings.

a. *Summary of why the FAA finds that the information will be provided voluntarily.* The

FAA finds that the information will be provided voluntarily. No certificate holder is required to participate in ASAP, and no employee is required to submit reports even if his or her employer participates in ASAP. An ASAP MOU may be terminated at any time by any of the parties to the MOU. Besides access by the FAA ERC representative, the FAA anticipates that information from a certificate holder's ASAP will be more widely shared with the FAA because the voluntary establishment of an ASAP constitutes a partnership between the FAA and certificate holder in the interest of achieving joint safety improvement goals.

b. *Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety- or security-related.*

(1) An ASAP is created specifically to provide a means for employees to report safety-related events. All individuals ASAP reports are clearly labeled as such and must be signed by each employee seeking the enforcement incentives available under an ASAP. Two types of reports are ordinarily submitted under the ASAP:

- Safety-related reports that appear to involve one or more violations of the regulations (e.g., deviating from an Air Traffic Control (ATC)-assigned altitude)
- Reports that identify a general safety concern, but do not appear to involve a violation of the regulations (e.g., flight crewmember concerns that the design of a flight checklist could lead to an error)

(2) Each ASAP report must contain sufficiently detailed information about a safety event so that it can be evaluated by a third party. If the report is submitted by a flight crewmember, and the safety even involves a deviation from an ATC clearance, the ASAP report would include the date, time, place, altitude, flight number, and ATC frequency, along with a description of the safety-related event. The only types of reports that are expected to be submitted under an ASAP are those that are safety- or security-related.

c. *Summary of why FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.* The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Certificate holders and their employees are reluctant to share sensitive safety information with the FAA, including employee self-reports of alleged violations, if such submissions might be subject to public disclosure.

(1) A significant impediment to the sharing of ASAP information with the FAA is the aviation industry's concern over public disclosure of the information, and, if disclosed, the potential for it to be used for other than the safety enhancement purposes for which the ASAP was created. As a result, certificate holders have not permitted ASAP reports and related information to leave the certificate holder's premises, and, except for ASAP information made available for review by the FAA ERC representative at the certificate holder's place of business, no ASAP information is presently submitted to

the FAA. This information is considered to be confidential by the participating certificate holders and their employees who are involved in the program.

(2) While the FAA does not anticipate receiving ASAP reports for retention in FAA files or an FAA database, the FAA believes that the extraction and submission of certain categories of information from such reports for trending purposes could benefit safety. For example, an FAA database or perceived contributing factors for runway incursions (extracted from ASAP reports) could be beneficial to the FAA and airlines in the development of corrective strategies to reduce the probability of such incidents.

d. *Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.* The FAA finds that receipt of ASAP information aids in fulfilling the FAA's safety and security responsibilities. Because of its capacity to provide early identification of needed safety improvements, an ASAP offers significant potential for incident and accident avoidance. Currently, FAA experience has clearly established that an ASAP can produce safety-related data that is not available from any other source. For example, ASAP reports concerning altitude deviations have identified common causal factors in producing such incidents. Receipt of this previously unavailable information has provided the FAA with an improved basis for modifying procedures, policies, and regulations in order to improve safety and efficiency.

e. *Consistencies and inconsistencies with FAA safety and security responsibilities.* The FAA finds that withholding ASAP information provided to be FAA is consistent with the FAA's safety responsibilities. ASAP specifically provides that corrective action will be taken when necessary.

(1) Withholding ASAP information from disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide assurance that it will not be disclosed, the FAA will not receive the information. If the FAA does not receive the information, the FAA and the public will be deprived of the opportunity to make safety improvements that receipt of the information otherwise enables. Corrective action under ASAP can be accomplished without disclosure of protected information. For example, for acceptance under the ASAP, the reporting employee must comply with ERC recommendations for corrective action, such as additional training for an employee. If the employee fails to complete corrective action in a manner satisfactory to all members of the ERC, the ASAP event will be referred to an appropriate office within the FAA for any additional investigation, reexamination, and/or enforcement action, as appropriate.

(2) The FAA will release ASAP information submitted to the agency, as specified in part 193 and this order. For example, in order to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (no operator or employee identity), summarized information that has been derived from ASAP information or extracted from the protected information listed under