

paragraph 5b. The FAA may disclose de-identified, summarized ASAP information that identifies a systemic problem in the aviation system, when other people need to be advised of the problem in order to take corrective action. The FAA may release the name of an air carrier or repair station that has an ASAP that has been accepted by the FAA. Under the current version of Advisory Circular (AC) 120-66, Aviation Safety Action Program (ASAP), reported events and possible violations may be referred to the FAA for appropriate action, including investigation, reexamination, and/or enforcement action. Although the report itself and the content of the report are not used as evidence, the FAA may use the knowledge of the event or possible violation to generate a separate investigation, and, in that regard, the information is not protected from disclosure. To withhold information from such limited release would be inconsistent with the FAA's safety responsibilities because the limited situations in which this is done do not involve matters that are covered by ASAP. In addition, reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification will be referred to an appropriate FAA office for further handling. The FAA may use such reports for any enforcement purposes, and will refer such reports to law enforcement agencies, if appropriate. To withhold information in these circumstances would be inconsistent with the agency's safety responsibilities because it could prevent the agency, or at least diminish its ability, to effectively address such egregious misconduct.

f. *Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.*

(1) All employee ASAP reports are clearly labeled as such. A single report must be signed by all employees seeking the enforcement incentives available under an ASAP for the event, or each such employee must submit a separate signed report.

(2) Any other information received by the FAA from the certificate holder concerning the content of ASAP reports, except for ASAP reports involving possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification (such as statistical analyses, program review reports, and trend information), must be clearly labeled as follows in order to be protected under this designation:

Warning: The information in this document may be protected from disclosure under 49 U.S.C., section 40123 and 14 CFR part 193.

7. *Designation.* The FAA designates the information described in paragraph 5b to be protected from disclosure in accordance with 49 U.S.C., section 40123, and 14 CFR part 193, when submitted pursuant to an accepted ASAP.

Nicholas A. Sabatini,  
Associate Administrator for Regulation and Certification.

## Appendix 1.—Summary of Significant Comments Received and the FAA's Response

A proposed Federal Aviation Administration (FAA) order designating Aviation Safety Action Program (ASAP) information as protected from disclosure under Title 14 of the Code of Federal Regulations (14 CFR) part 193 was published in the **Federal Register** on September 5, 2002 (**Federal Register**, Volume 67, Number 172, pages 56774-56776). Comments were received from four commenters, including one major airline trade association and one major pilots labor association. These comments and the FAA responses are as follows:

(1) The information may already be available to the public through the National Aeronautics and Space Administration (NASA) Aviation Safety Reporting Program (ASRS).

(a) *Comment.* If ASAP reports are sent to the NASA ASRS as part of an ASAP program, it would render moot any attempt by the FAA to keep information private. Therefore, if operators share this information with NASA, thereby voluntarily making it public information, any attempt by the FAA to protect the information would be a waste of time. I do not feel there is a need to adopt the proposed order.

(b) *The FAA Response.* While it is certainly the case that most ASAP Memorandums of Understanding (MOU) include provisions for submitting events reported under ASAP to the NASA ASRS, this circumstance does not preclude the need to protect the information specified in this order from public disclosure. All information that could be used to derive the identity of the submitting pilot is removed from an ASRS report before it is entered into the ASRS database, whereas only the employee name is redacted from an ASAP report entered into an ASAP database. In addition, the information protected under this order includes evidence and other information gathered during an Event Review Committee (ERC) investigation by persons other than the FAA that is not obtained by the ASRS. Unlike ASAP, ASRS does not include such followup information on individual events reported under that program.

(2) ASAP MOU content and signatories should not be disclosed.

(a) *Comment.* The content of ASAP MOUs and signatories to these MOUs should not be disclosed. While acknowledging the existence of an ASAP MOU is not problematic, ASAP programs are highly confidential and, at times, have been the subject of discovery disputes in civil litigation. Furthermore, it is very likely the MOUs will contain information about ASAP programs that operators would keep confidential under normal circumstances. For these reasons, we urge the FAA to determine that it will not release or disclose the content of MOUs, including the identification of the signatories. The public does not have a need to know exactly who signs an MOU on behalf of an operator. An identification of that person could lead to unwanted public inquiries.

(b) *The FAA Response.* The FAA does not agree that ASAP MOUs should contain information that operators would keep confidential under normal circumstances. The appropriate content of an ASAP MOU is fully described in FAA advisory materials available to the public. Certainly there is nothing in those advisory materials that would require or recommend inclusion of confidential information in the MOU. Because it involves an agreement by the FAA to take lesser enforcement action than might otherwise be taken for alleged violations of 14 CFR (when voluntarily reported by an employee in accordance with the ASAP MOU), the public has a right to know the provisions of the MOU on which basis the FAA has modified its enforcement policy for a particular operator and employee group. Similarly, since this modified enforcement policy does not take effect until an ASAP MOU is signed by an authorized representative of each party to the MOU, it is not appropriate for the identities of such signatories to be withheld from public disclosure.

Use of the term "information-sharing program" is not accurate.

(a) *Comment.* Two commenters took exception to the characterization of ASAP programs in the notice as "information-sharing program". One commenter stated that these characterizations are not quite accurate since they would suggest that a formal ASAP information-sharing program exists. The commenter states that is not the case. The commenter notes that the process by which the industry will share ASAP information with the FAA is evolving through the efforts of the ASAP Aviation Rulemaking Committee (ARC) and the combined ASAP/Flight Operation Quality Assurance (FOQA) Information-Sharing Subcommittee. For this reason, the commenter recommends that the FAA delete the phrase "information-sharing program" from the final order. The commenter states that it is not necessary to characterize the ASAP as an information-sharing program at all. The goal of ASAP is to prevent accidents. The means by which certificate holders share information is ancillary to the corrective and preventative action process. The second commenter stated that although not adverse to a formal ASAP information-sharing program, such a program should be developed and implemented through the ASAP ARC.

(b) *The FAA Response.* As employed in this order, use of the phrase "information-sharing program" simply refers to ASAP information that is voluntarily provided to the FAA. The order would provide protection from disclosure of the information specified in paragraph 5b herein, regardless of the means of submission, including any such means to be developed for ASAP in the future through the efforts of the ASAP ARC and the combined ASAP/FOQA Information-Sharing Subcommittee. The FAA notes that ASAP information is already being shared with the FAA by virtue of the participation of an FAA representative on every ASAP ERC for every existing such program. The present order would extend part 193 protection to such information as specified.