U.S. Department of Transportation
Federal Aviation Administration

Advisory Circular

Subject:	AVIATION SAFETY ACTION PROGRAMS (ASAP)	Date:	3/17/00	AC No:	120-66A
		Initiated by:	AFS-200	Change:	

1. PURPOSE. This Advisory Circular (AC) provides guidance for establishing air transportation Aviation Safety Action Programs (ASAP). The objective of ASAP is to enhance aviation safety through the prevention of accidents and incidents. Its focus is to encourage voluntary reporting of safety issues and events that come to the attention of employees of certain certificate holders. The program provides for the collection, analysis, and retention of safety data that would otherwise be unobtainable. Ultimately, the safety data which is collected and analyzed will be used to develop corrective actions for identified safety concerns and to educate the appropriate parties to prevent a reoccurrence of the same type of safety event. To encourage an employee to voluntarily report safety issues even though they may involve an alleged violation of Title 14 of the Code of Federal Regulations (14 CFR), enforcement-related incentives have been designed into the program. An ASAP is based on a safety partnership that will include the Federal Aviation Administration (FAA) and the certificate holder, and may include any third party such as the employee's labor organization.

a. Information obtained from these programs will permit the ASAP participants to take corrective action as necessary to remedy defects or deficiencies in their respective programs. The reports may also provide data for improving the current system and assist in planning for a future system. In order to gain the greatest possible positive benefit from ASAP, it may be necessary for certificate holders to develop programs with compatible data collection, analysis, storage, and retrieval systems. The information and data, which are collected and analyzed, can be used as a measure of the aviation safety system.

b. These programs provide a vehicle whereby employees of certain air carriers and certain repair station certificate holders can identify and report safety issues to management and the FAA for resolution generally without fear the FAA will use those reports to take enforcement action against them.[1] These programs are designed to encourage participation from employee groups, such as flight crewmembers, mechanics, flight attendants, and dispatchers.

c. The elements of ASAP are set forth in a Memorandum of Understanding (MOU) between the FAA, certificate holder management, and any third party such as an employee's labor organization or their representatives.

[1] The FAA reserves its discretion to use ASAP reports for enforcement purposes where such reports disclose events that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

2. CANCELLATION. This AC cancels AC 120-66, Aviation Safety Action Programs (ASAP), dated January 8, 1997.

3. BACKGROUND. In recent years, the FAA and the air transportation industry have sought alternative means for addressing safety problems and identifying potential safety hazards. To this end, the FAA, in cooperation with industry, established several demonstration ASAP's in an effort to increase the flow of safety information to both the air carrier and FAA. Among these programs were the USAir Altitude Awareness Program, the American Airlines Safety Action Program, and the Alaska Airlines Altitude Awareness Program. These programs included incentives to encourage employees of air carriers participating in the programs to disclose information which may include possible violations of 14 CFR without fear of punitive enforcement sanctions. Events reported under a program that involved an apparent violation by the air carriers of the regulations were handled under the Voluntary Disclosure Policy, provided that the elements of the policy were satisfied.

4. KEY TERMS. The following key terms and phrases are defined for the purposes of ASAP to ensure a standard interpretation of the guidance.

a. Administrative Action. Under paragraph 205 of FAA Order 2150.3A, Compliance Enforcement Program, administrative action is a means for disposing of violations or alleged violations that do not warrant the use of enforcement sanctions. The two types of administrative action are a warning notice and a letter of correction.

b. Air Carrier. A person who undertakes directly by lease, or other arrangement, to engage in air transportation.

c. Certificate Holder. Refers to a person authorized to operate under 14 CFR part 121, or who holds a certificate issued under 14 CFR part 145.

d. Certificate Holding District Office (CHDO). The Flight Standards District Office (FSDO) having overall responsibility for all FAA reporting requirements, technical administration requirements, and regulatory oversight of a certificate holder.

e. Consensus of the Event Review Committee (ERC). Under ASAP, consensus of the ERC means the voluntary agreement of all representatives of the ERC to each decision required by the MOU.

(1) For example, the ERC should strive to reach a consensus on the recommended corrective action to address a safety problem such as an operating deficiency or airworthiness discrepancy reported under ASAP. The corrective action process would include working to resolve the safety issue(s) with the appropriate departments at the certificate holder and the FAA that have the expertise and responsibility for the safety area of concern.

(2) Recognizing that the FAA holds statutory authority to enforce the necessary rules and regulations, it is understood that the FAA retains all legal rights and responsibilities contained in Title 49, United States Code, and FAA Order 2150.3A. In the event there is not a consensus of the

ERC on decisions concerning a report involving an apparent violation(s), a qualification issue, or medical certification or qualification issue, the FAA ERC representative will decide how the report should be handled. The FAA will not use the ASAP report in any subsequent enforcement action except as described in paragraph 11c(2).

f. Corrective Action. For the purposes of ASAP, corrective action refers to any safety-related action determined necessary by the ERC based upon a review and analysis of the reports submitted under an ASAP. Corrective action may involve joint or individual action by the parties to the ASAP MOU.

g. Covered Under the Program/Qualified for Inclusion/or Included in ASAP. For the purposes of ASAP, these terms all have the same meaning. They mean that the enforcement-related incentives and other provisions of the ASAP apply to the employee who submitted the report.

h. Enforcement-Related Incentive. Refers to an assurance that lesser enforcement action will be used to address certain alleged violations of the regulations to encourage participation by certificate holder employees.

i. Event Review Committee (ERC). A group comprised of a representative from each party to an ASAP. The group reviews and analyzes reports submitted under an ASAP. The ERC may share and exchange information and identify actual or potential safety problems from the information contained in the reports. The ERC is usually comprised of a management representative from the certificate holder, a representative from the employee group, and a specially qualified FAA inspector from the CHDO. Previous demonstration ASAP's used the ERC concept. However, the parties may agree to use an alternative process.

j. Intentional Falsification. For the purposes of ASAP, intentional falsification means a false statement in reference to a material fact made with knowledge of its falsity. It does not include mistakes, inadvertent omissions, or errors.

k. Major Domestic Repair Station. Refers to a part 145 certificated repair station located in the United States certificated to perform airframe and/or engine maintenance for certificate holders operating under part 121.

l. Memorandum of Understanding (MOU). Refers to the written agreement between two or more parties setting forth the purposes for, and terms of, an ASAP.

m. Party/Parties. Refers to the certificate holder, the FAA, and any other person or entity (e.g., labor union or other industry or Government entity) that is a signatory to the MOU.

n. Person. A person refers to an individual, firm, partnership, corporation, company, association, joint stock association, or government entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

o. Safety-Related Report. Refers to a written account of an event that involves an operational or maintenance issue related to aviation safety reported through an ASAP.

p. Sole-Source Report. For the purpose of ASAP, the FAA considers a report to be sole-source when all evidence of the event is discovered by or otherwise predicated on the report. It is possible to have more than one sole-source report for the same event.

q. Sufficient Evidence. Sufficient evidence means evidence gathered by an investigation not caused by, or otherwise predicated on, the individual's safety-related report. For apparent violations covered under an ASAP, no more than administrative action will be taken against an individual for an apparent violation reported under the program. There must be sufficient evidence to prove the violation, other than the individual's safety-related report.

r. Voluntary Disclosure Policy. A policy under which regulated entities may voluntarily report apparent violations of the regulations and develop corrective action satisfactory to the FAA to preclude their recurrence. Certificate holders that satisfy the elements of the Voluntary Disclosure Policy receive a letter of correction in lieu of civil penalty action. Voluntary disclosure reporting procedures are outlined in AC 00-58, Voluntary Disclosure Reporting Program.

5. APPLICABILITY. ASAP's are intended for air carriers that operate under part 121. They are also intended for major domestic repair stations certificated under part 145. ASAP's are entered into voluntarily by the FAA, a certificate holder, and if appropriate, other parties.

6. DEVELOPMENT. Certificate holders may develop programs and submit them to the FAA for review and acceptance in accordance with the guidance provided. Ordinarily, programs are developed for specific employee groups, such as flight crewmembers, flight attendants, mechanics, or dispatchers. The FAA will determine whether a program is accepted. The FAA may suggest but may not require that a certificate holder develop an ASAP to resolve an identified safety problem. The development and implementation of an ASAP is a multifaceted task. The certificate holder, employee group, and the FAA must first develop a relationship that will promote the ASAP concept. The reluctance of one or more parties to commit to the program is detrimental to the process. The process for report review must be outlined in detail. Safety data collection, analysis, and retention processes must be developed and agreed upon. Event investigation tasks must be assigned. Prior to the implementation of the ASAP, a comprehensive employee education program must be undertaken. The ASAP process may require cultural change for all parties involved. Continuity of ERC representation personnel during the early stages of program implementation will promote the desired partnership relationship between program members.

a. Demonstration Programs. Certificate holders initially must develop a separate demonstration program for each employee group sought to be covered by an ASAP. The objective of a demonstration program is to measure its effectiveness and ensure the safety objectives of the specific ASAP have been met.

(1) The initial demonstration program, which shall be limited to the period of time needed to achieve the desired goals and benefits articulated in the program, should have a duration of no longer than 18 months.

(2) At the conclusion of the initial demonstration program, all parties will review the program. Demonstration programs that require modification may be renewed for an additional time, not to exceed 12 months, to effectively measure any change(s) made to the original program to address a deficiency identified by any of the parties to the MOU.

b. Continuing Programs. After a demonstration program is reviewed and determined to be successful by the parties to the agreement, it may continue in effect, subject to review and renewal every 2 years by the FAA.

c. Withdrawal. Regardless of the duration of a program, any party to the ASAP MOU may withdraw from the program at any time.

7. RESOURCES. An ASAP can result in a significant commitment of both human and fiscal resources by the parties to the program. During the development of a program, it is important that each party is willing to commit the necessary personnel, time, and monetary resources to support the program.

8. PROCESSING OF REPORTS.

a. Event Review Committee (ERC) Process. The determination of whether reports qualify for inclusion in the ASAP will be made by a consensus of the ERC. The ERC is composed of one designated representative and an alternate each from the FAA, the certificate holder, and any third party, e.g., the employee's union or representative organization. The ERC will review and analyze reports submitted under the ASAP, determine whether such reports qualify for inclusion, identify actual or potential problems from the information contained in the reports, and propose solutions for those problems. For official meeting purposes, a quorum exists when all designated ERC representatives, or their alternates, are present. Some reported events may involve matters that are complex or sensitive, or that require the expertise of other FAA or industry persons. The ERC representatives are encouraged to consult with such persons as needed during the ASAP process.

b. Consensus of the ERC. Under ASAP, consensus of the ERC means the voluntary agreement of all representatives of the ERC. The ERC representatives will strive to reach consensus on whether a reported event qualifies for inclusion in the ASAP. In the event there is not a consensus of the ERC, the FAA ERC representative will decide how the report should be handled. The FAA will not use the ASAP report in any subsequent enforcement action except as described in paragraph 11c (2).

c. Reports Involving Medical Certification or Medical Qualification Issues. When the ERC becomes aware of an issue involving the medical qualification or medical certification of an airman, the ERC must immediately advise the appropriate Regional Flight Surgeon about the issue. The ERC will work with the Regional Flight Surgeon and the certificate holder's medical department or medical consultants to resolve any medical certification or medical qualification issues or concerns revealed in an ASAP report, or through the processing of that report. The FAA ERC member must follow the direction(s) of the Regional Flight Surgeon with respect to any medical certification or qualification issue(s) revealed in an ASAP report.

9. GUIDELINES FOR ACCEPTANCE OF REPORTS UNDER ASAP.

a. General. Participation in ASAP is limited to certificate holder employees and to events occurring while acting in that capacity. Each employee participating in ASAP must individually submit a report in order to receive the enforcement-related incentives and benefits of the ASAP policy. However, in cases where an event may be reported by more than one person, each individual who seeks coverage under ASAP may sign the same report.

b. Criteria for Acceptance. The following criteria must be met in order for a report involving a possible violation to be covered under ASAP:

(1) The employee must submit a report in a timely manner, usually within 24 hours after the occurrence of the event or as defined in the MOU. If submitted within 24 hours from the time of the event or the time period stated in the MOU, a report would be included if the ERC reaches consensus that all ASAP acceptance criteria have been met, even if the FAA was already aware of the possible violation and may have brought it to the attention of the employee.

(2) The alleged regulatory violation must be inadvertent, and must not appear to involve an intentional disregard for safety.

(3) The reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

c. Conditional Acceptance. If a report is submitted later than 24 hours or the time period stated in the MOU after the occurrence of an event, the ERC will review all available information to determine whether the employee knew or should have known about the possible violation within 24 hours or the time period stated in the MOU of its occurrence. If the employee did not know or could not have known about the apparent violation(s), then the report would be included in ASAP, provided all other ASAP acceptance criteria have been met. If the employee knew or should have known about the apparent violation(s), then the report will not be included in ASAP.

d. Repeated Violations. Reports involving the same or similar alleged violations previously covered under ASAP that satisfy the criteria in paragraphs 9a and b may also be included in ASAP. The ERC will determine on a case-by-case basis whether such a report will be included in ASAP, based upon the facts and circumstances surrounding the alleged violation.

10. GUIDELINES FOR EXCLUDING REPORTS FROM ASAP.

a. Exclusion. The following types of reports are excluded under an ASAP:

(1) Reports involving an apparent violation that is not inadvertent or that appears to involve an intentional disregard for safety.

(2) Reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

(3) Untimely reports excluded under paragraph 9c, or reports of repeated violations excluded under paragraph 9d, or reports where consensus is not reached by the ERC under paragraph 9b.

(4) Reports of events that occurred when NOT acting as an employee of the certificate holder.

b. Failure to Complete Corrective Action. Reports initially included in an ASAP will be excluded from the program if the employee fails to complete the recommended corrective action in a manner satisfactory to all members of the ERC. In those cases, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or qualification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

11. ENFORCEMENT POLICY.

a. Use of the ASAP Report. The content of the ASAP report will not be used to initiate or support any company disciplinary action, or as evidence for any purpose in an FAA enforcement action, except as provided in paragraph 11c(2). The FAA may conduct an independent investigation of an event disclosed in a report. Any safety-related event that concerns an apparent violation(s) that is excluded from ASAP will be referred to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

b. Enforcement–Related Incentive for Reports Covered Under an ASAP.

(1) General. ASAP may include an enforcement-related incentive(s) to encourage participation by certificate holder employees. Any enforcement-related incentive should be limited to what is needed to achieve the desired goal and results of the program.

(2) Included Reports. For reports covered under an ASAP, the following enforcement-related incentives are applicable:

(a) Alleged violations by certificate holder employees disclosed through safety-related reports that are not sole-source reports and where sufficient evidence exists will ordinarily be addressed with administrative action, notwithstanding the criteria in paragraph 205 of FAA Order 2150.3A;

(b) Alleged violations by certificate holder employees disclosed through safety-related reports that are sole-source reports will ordinarily be addressed with no action.

(c) **Reports Involving Qualifications Issues.** Reports that demonstrate a lack, or raise a question of a lack, of qualification of a certificate holder employee will be addressed with corrective action, if appropriate, and recommended by the ERC. If an employee fails to complete the corrective action in a manner satisfactory to all members of the ERC, then his or her report will be excluded from ASAP. In these cases, the ASAP event will be referred to an appropriate office within the FAA for any additional investigation, reexamination, and/or enforcement action, as appropriate.

c. Enforcement Policy for Reports Excluded Under ASAP.

(1) **Reports Involving Intentional Disregard for Safety.** The following policies apply to alleged violations involving an intentional disregard for safety that are disclosed in ASAP reports:

(a) Reports involving an apparent intentional disregard for safety that do not demonstrate a lack, or raise a question of a lack, of qualification will be addressed with no more than administrative action, provided the ASAP reports are sole-source reports.

(b) Reports involving an apparent intentional disregard for safety that also demonstrate a lack, or raise a question of a lack, of qualification or medical certification or medical qualification, will be referred to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(2) **Criminal Activity, Substance Abuse, Controlled Substances, Alcohol, or Intentional Falsification.** 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.

(3) **Failure to Complete Corrective Action.** Reports initially covered under an ASAP will be excluded from the program if the employee fails to complete the recommended corrective action in a manner satisfactory to all members of the ERC. In those cases, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or qualification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

(4) **Other Excluded Events.** Any safety-related event that concerns an apparent violation(s) that is excluded from ASAP, will be referred to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

12. REOPENING REPORTS BASED ON NEW EVIDENCE. All safety-related reports should be fully evaluated and, to the extent appropriate, investigated by the FAA. A closed ASAP case, including any related enforcement investigative report (EIR), involving a violation addressed with administrative action or for which no action has been taken, may be reopened and appropriate enforcement action taken if evidence later is discovered that establishes that the violation should have been excluded from the program.

13. VIOLATIONS OF CERTIFICATE HOLDERS. Apparent violations of certificate holders disclosed through a safety-related report under an ASAP may be handled under the Voluntary Disclosure Policy, provided the certificate holder voluntarily reports the apparent violations to the FAA and the other elements of that policy are met. (See AC 00-58 and FAA Order 2150.3A, Appendix 1: Compliance/Enforcement Bulletin No. 90-6.)

14. EXAMPLES. The following are examples of events that might be reported under an ASAP and the probable action that would be taken by the FAA for an apparent violation disclosed by the safety-related report:

a. Administrative Action. Examples of events where an apparent violation ordinarily would be addressed with administrative action:

(1) A pilot reports an altitude deviation where the aircraft was assigned by air traffic control (ATC) to climb to an altitude of 10,000 feet MSL, but actually levels off at 11,000 feet MSL. Evidence of the violation, other than the safety-related report (e.g., air traffic control tape, air traffic controller's statements), is gathered by an investigation not caused by, or otherwise predicated on, the filing of the safety-related report. The pilot's apparent violation does not involve conduct that is excluded from the ASAP. The apparent violation therefore would be addressed with administrative action.

(2) A repair station technician reports that he or she was assigned to accomplish a required inspection item (RII); however, he or she inadvertently neglected to sign the checksheet that the inspection was completed. Evidence of the apparent violation, other than the technician's safety-related report, reveals that the inspection was accomplished and the checksheet was not signed. This evidence was gathered by an investigation not caused by, or otherwise predicated on, the filing of the safety-related report. The apparent violation does not involve conduct that is excluded from the ASAP. The apparent violation therefore would be addressed by administrative action.

b. Excluded Events. Examples of events involving an apparent violation that are excluded from the ASAP:

(1) Sufficient Evidence (Pilots). A pilot submits a report indicating that after takeoff he or she operated an aircraft below an altitude of 1,000 feet AGL over a congested area. Investigation of this event revealed that the aircraft was deliberately flown at an altitude of 500 feet AGL over a city ten miles from the airport. Due to the deliberate nature of the pilot's conduct, it would not be covered under the ASAP. The FAA investigates and discovers that a pilot deviation was reported by air traffic and referred to the local FSDO which is now preparing an EIR. Because there is sufficient evidence of the apparent violation and the ASAP report is not a sole-source report, enforcement action would be taken against the pilot.

(2) Sole-Source Report (Pilots). A pilot submits a report indicating that after takeoff he or she operated an aircraft below an altitude of 1,000 feet AGL over a congested area. Investigation of this event revealed that the aircraft was deliberately flown at an altitude of 500 feet AGL over a city ten miles from the airport. Due to the deliberate nature of the pilot's conduct, it would not be covered under the ASAP. Based on the knowledge gained from the report, the FAA further

investigates and is able to obtain controller's statements and air traffic tapes that substantiate the event. However, air traffic did not file a pilot deviation and there was no independent investigation concerning the alleged violation. Because the report is a sole-source report, administrative action would be taken against the pilot.

(3) **Sufficient Evidence (Maintenance).** A technician submits a report stating that he or she used a lubricant other than what was stated in the maintenance manual for an engine valve installation. No authorized substitute lubricants were available. The investigation revealed that the technician intentionally used a substitute nonapproved lubricant. These actions were not in accordance with the maintenance manual or company procedures. The FAA investigates and discovers that the local FSDO has opened an investigation concerning this alleged violation based on a recent inspection. Because there is sufficient evidence of the apparent violation and the ASAP report is not a sole-source report, enforcement action would be taken against the technician.

(4) **Sole-Source Report (Maintenance).** A technician submits a report stating that he or she used a lubricant other than what was stated in the maintenance manual for an engine valve installation. No authorized substitute lubricants were available. The investigation revealed that the technician intentionally used a substitute nonapproved lubricant. These actions were not in accordance with the maintenance manual or company procedures. Based on the knowledge gained from the report, the FAA further investigates and is able to obtain additional evidence to substantiate the event. Because the report is a sole-source report, administrative action will be taken against the technician.

c. Report Accepted under ASAP. Examples of events where no action would be taken for an alleged violation disclosed through a safety-related report that is considered sole-source:

(1) A pilot reports an altitude deviation where the aircraft was assigned by ATC to climb to an altitude of 10,000 feet MSL, but actually levels off at 11,000 feet MSL. The investigation of this event reveals that the apparent violation is covered under the program. However, the only evidence of the deviation is the pilot's safety-related report filed under the ASAP. Since the pilot's safety-related report will not be used as evidence to support taking administrative action against the pilot, there is not sufficient evidence to support a violation of the regulations. Therefore, the case would be closed with no action.

(2) A technician reports that during a preflight inspection, he or she did not replace a brake pad that was worn past allowable wear limits. The report indicated at the time of the inspection, the technician unknowingly used the wrong gauge for that aircraft to measure brake pad wear for that aircraft. The aircraft departed and later returned to the station where the brake pad was replaced. The investigation of this event reveals that the apparent violation is covered under the program. However, the only evidence of the aircraft operating with an out-of-limit brake pad was the technician's safety-related report filed under the ASAP. Since the technician's safety-related report will not be used as evidence to support taking administrative action against the technician, there would not be sufficient evidence to support a violation of the regulations. Therefore, the case would be closed with no action.

15. CORRECTIVE ACTION. The ERC will work with a certificate holder to develop acceptable corrective action that should be taken based on information obtained under an ASAP. The corrective

action must be completed in a manner satisfactory to all members of the ERC. Failure of a certificate holder to follow through with corrective action acceptable to all members of the ERC to resolve any safety deficiencies will ordinarily result in termination of the program. In addition, failure of any individual to complete corrective action for an apparent violation, a qualification issue, or medical certification or qualification issue in a manner acceptable to all members of the ERC, may result in the reopening of the case and referral of the matter for appropriate action.

16. MOU. The provisions of an ASAP that is acceptable to the FAA should be set forth in an MOU signed by each party. A program will be implemented in accordance with the provisions of its MOU. A sample MOU is provided in appendix 1. Each MOU will be based on the parties' different needs and purposes for an ASAP.

a. MOU Elements. The MOU should set forth the elements of the ASAP, including at least the following which must be consistent with the guidance of this AC:

(1) The identification of what type of operator the program applies to: Part 121 Air Carrier or a Major Domestic Repair Station.

(2) The identification of the type of program and the employee group(s) to whom it pertains. The types of programs are Demonstration Program, Renewal of Demonstration Program, Continuing Program, or Renewal of a Continuing Program.

(3) The duration of the program should be limited to the period of time needed to achieve the desired goals and benefits articulated in the program. Demonstration programs initially should have a duration of no longer than 18 months and should be reviewed prior to renewal. Demonstration programs that undergo changes after their initial review may be renewed for no longer than 12 months. Programs that are classified as Continuing must be reviewed and renewed every 2 years.

(4) A statement that all parties to the ASAP have entered into this agreement voluntarily.

(5) A description of the objective(s) including the essential safety information that is reasonably expected to be obtained through the program, any specific safety issues that are of a concern to any of the parties, and the benefits to be gained through the use of the program.

(6) A description of any enforcement-related incentive that is needed to achieve the desired goal and results of the program.

(7) A statement that all safety-related reports shall be fully evaluated and, to the extent appropriate, investigated by the ERC.

(8) A description of the manner in which ASAP records and reports shall be kept. ASAP records and reports shall be kept in a manner acceptable to the ERC and described in the MOU.

(9) A description of the process for timely reporting to the FAA all events disclosed under the program.

(10) A description of the procedures for the resolution of those events that are safety-related, and procedures for continuous tracking and analysis of safety-related events.

(11) A description of the ERC ASAP Report acceptance and exclusion criteria.

(12) A description of the frequency of periodic reviews by the parties to determine whether the program is achieving the desired results. These reviews are in addition to any other review conducted by the FAA or any other party individually.

(13) Identification of the point(s) of contact within each party who is responsible for oversight of the program.

(14) A description of the process for training and distributing information about the program to certificate holder employees and procedures for providing feedback to individuals who make safety-related reports under the program.

(15) A statement that modifications of the MOU must be accepted by all parties.

(16) A statement that termination or modification of a program will not adversely affect anyone who acted in reliance on the terms of a program in effect at the time of that action, i.e., when a program is terminated, all reports and investigations that were in progress will be handled under the provisions of the program until they are completed.

(17) A statement that the program can be terminated at any time, by any party.

(18) A statement that failure of any party to follow the terms of the agreement ordinarily will result in termination of the program.

(19) A statement that failure of a certificate holder to follow through with corrective action acceptable to the FAA to resolve any safety deficiencies ordinarily will result in termination of the program.

(20) A detailed description of the following concepts if they are included in the program and, if appropriate, how they will be used: Event Review Committee, consensus of the ERC, sole-source reporting, sufficient evidence, and enforcement-related incentive.

(21) A statement that repeated instances involving the same or similar type of misconduct previously addressed with administrative action under the ASAP may also be covered under the program. The determination whether a repeated violation will be covered under a program will be made by the ERC on a case-by-case basis, upon consideration of the facts and circumstances surrounding the misconduct. (See paragraph 9d.)

(22) ASAP's that may include ATC events should include procedures in the MOU to identify the date, time, location or fix, altitude, flight number, and ATC frequency at the time the event occurred.

(23) A statement that employees initially covered under an ASAP will be excluded from the program and not entitled to the enforcement-related incentive if they fail to complete the

recommended corrective action in a manner satisfactory to all members of the ERC. These cases may result in the reopening of the case and referral of the matter for appropriate action.

(24) A statement that any safety-related ASAP event that concerns an apparent violation(s) that is EXCLUDED from ASAP, will be referred by the FAA ERC representative to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

(25) A statement that a closed ASAP case, including a related EIR, that involves a violation addressed with administrative action or for which no action has been taken, may be reopened if evidence is later discovered that establishes the event should have been excluded from the program.

(26) A statement that when the ERC becomes aware of an issue involving the medical qualification or medical certification of an airman, the ERC must immediately advise the appropriate Regional Flight Surgeon about the issue. The ERC will work with the Regional Flight Surgeon and the certificate holder's medical department or medical consultants to resolve any medical certification or medical qualification issues or concerns revealed in an ASAP report, or through the processing of that report. The FAA ERC member must follow the direction(s) of the Regional Flight Surgeon with respect to any medical certification or qualification issue(s) revealed in an ASAP report.

(27) A statement that 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, as appropriate.

b. Signatories. The MOU must be signed by an authorized representative of each party.

17. ACCEPTANCE/RENEWAL PROCEDURES.

a. Review. The certificate holder should initially develop and present the program to the CHDO for review. The CHDO and the certificate holder will review it to ensure that it satisfies the guidance in AC 120-66, as amended, FAA Order 2150.3A, and the applicable FAA Handbook Bulletins for Air Transportation and Airworthiness, entitled Establishment of Aviation Safety Action Programs (ASAP). Prior to acceptance, the program should be reviewed to ensure that FAA resources are available to administer the program effectively. Program proposals that require excessive agency resources should be modified, or not accepted.

b. Procedures. When the CHDO is satisfied that the program is acceptable under the guidance of ASAP, the CHDO manager forwards two copies of the MOU, the CHDO's recommendation for acceptance, and the completed ASAP checklist (found in the applicable FAA Handbook Bulletins for Air Transportation and Airworthiness, entitled Establishment of Aviation Safety Action Programs (ASAP)) through the respective Flight Standards Division regional office to the appropriate headquarters program office(s) (i.e., Air Transportation Division, AFS-200, for operations programs and Continuous Airworthiness Maintenance Division, AFS-300, for airworthiness programs, including repair stations). For programs that encompass both operations and airworthiness, the MOU and checklist go to both offices. The program offices shall review and forward a copy of the

MOU to the Office of the Chief Counsel, Enforcement Division, AGC-300, for appropriate legal review. All programs, except for renewals of Continuing programs, shall receive final acceptance from the Director, Flight Standards Service, AFS-1. AFS-1 will indicate acceptance of the MOU by FAA memorandum to the CHDO manager through the regional division manager. The program office(s) will be responsible for preparing the memorandum for AFS-1's signature and submit it with the ASAP package to AFS-1. Following acceptance by AFS-1, the CHDO manager shall sign the MOU on behalf of the FAA. The certificate holder should allow a minimum of 60 days for the FAA acceptance process to be completed once its ASAP program is received at FAA headquarters for review.

c. ASAP Demonstration programs, renewal of a Demonstration program, and the initial acceptance of a Continuing program are processed in the same manner as described in paragraphs 17a and b.

d. Renewal of a Continuing Program. The renewal of a Continuing program is accomplished every 2 years after a review by the parties to the MOU to ensure the particular ASAP program is meeting its objectives. The renewal may be accomplished at the local CHDO level by the CHDO manager signing the MOU on behalf of the FAA. The CHDO manager shall notify the appropriate program office (AFS-200 or AFS-300) in writing 60 days in advance of renewing a Continuing ASAP program.

e. MOU Amendments. Any amendments to an MOU that has already been accepted, must be coordinated with the respective program office(s) (AFS-200 and AFS-300) prior to FAA acceptance.

18. RECORDKEEPING. The parties should maintain those records necessary for a program's administration and evaluation. Records submitted to the FAA for review pursuant to the ASAP are protected to the extent allowed by law under applicable exemptions of the Freedom of Information Act. A certificate holder's ASAP records and reporting system must not be contrary to 14 CFR.

19. JOINT ASAP/INDUSTRY ADVISORY COMMITTEE. After issuance of this AC, the FAA will support the establishment of a joint FAA/Industry Advisory Committee for the purpose of reviewing the operation and effectiveness of the ASAP. The committee will be comprised of key FAA personnel and representatives from industry who are involved with the ASAP process. The committee will meet as necessary and make recommendations for improving ASAP or for proposing changes to this AC. Any recommendations should reflect the needs of the government and industry such that continuing ASAP's will provide the maximum aviation safety benefit to the public.

L. Nicholas Lacey
Director, Flight Standards Service

APPENDIX 1. SAMPLE MEMORANDUM OF UNDERSTANDING

This is a sample of an Aviation Safety Action Program (ASAP) memorandum of understanding (MOU) for a flight crewmember employee group at an air carrier operating under Title 14 of the Code of Federal Regulations (14 CFR) part 121. It is for illustrative purposes only; the actual MOU developed by a certificate holder may be different from this sample. However, in order to be accepted by the FAA, the MOU should address the elements of an ASAP that are set forth in FAA guidance material.

MEMORANDUM OF UNDERSTANDING

1. GENERAL. ABC Airlines is a Title 14 of the Code of Federal Regulations (14 CFR) part 121 domestic air carrier engaged in scheduled passenger operations within the United States, Mexico, and Canada. It also conducts passenger charter and cargo operations. ABC Airlines operates 100 turbojet aircraft and has over 5,500 employees including 1,100 flight crewmembers (pilots and flight engineers) represented by ABC Pilot Union.

2. PURPOSE. Over the past six months ABC Airlines has experienced an increase in certain types of incidents that have raised a concern in the flight operations area. Such incidents have occurred during all phases of flight and have involved the following: noncompliance with air traffic control (ATC) clearance (e.g., routing, heading, and altitude deviations), runway and taxiway incursions, and departures without proper flight planned fuel onboard. To obtain valuable safety information that may lead to correcting these issues, ABC Airlines and its flight crewmembers, represented by ABC Pilot Union, are voluntarily entering into an Aviation Safety Action Program (ASAP) with the Federal Aviation Administration (FAA). This Memorandum of Understanding (MOU) describes the provisions of the program. This is a Demonstration program for an 18-month period. If it is determined to be successful after a comprehensive review and evaluation, the parties intend for it to become a Continuing program.

The objective of the program will be to gather safety information from the flight crewmembers that will focus on the incidents described above and to obtain information concerning any additional safety of flight item that a flight crewmember believes should be reported. The information will be analyzed in order to develop and implement solutions to safety issues identified under the program.

3. BENEFITS. The program will provide a voluntary, cooperative, nonpunitive environment for the open reporting of safety of flight concerns. Through such reporting, all parties will have access to valuable information that may not otherwise be obtainable. This information will be analyzed in order to develop corrective action to help solve safety issues and eliminate deviations from 14 CFR. For reports qualified for inclusion in the program, the FAA will use lesser enforcement action, referred to in this document as an "enforcement related incentive," to address certain alleged violations of the regulations by employees of ABC Airlines.

4. APPLICABILITY. The ABC ASAP applies to all flight crewmember employees of ABC Airlines. Reports involving an apparent violation that is not inadvertent or that appears to involve an intentional disregard for safety, criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification are excluded from the program.

a. Apparent violations of the regulations by ABC Airlines that are discovered under this program will be handled under the Voluntary Disclosure Policy, provided that ABC Airlines voluntarily reported the alleged violations to the FAA and that the other elements of that policy are met. (See AC 00-58, Voluntary Disclosure Reporting Program, FAA Order 2150.3A, Compliance and Enforcement Program, and Compliance/Enforcement Bulletin No. 90-6.)

b. Any modifications of this MOU must be accepted by all parties to the agreement.

5. PROGRAM DURATION. The ASAP is designed to identify and correct specific problems related to flight safety at ABC Airlines. The duration of the program will be 18 months, beginning the date it is signed by all parties to this MOU. The program may be terminated at any time for any reason by ABC Airlines, the FAA, or any other party to the MOU. The termination or modification of a program will not adversely affect anyone who acted in reliance on the terms of a program in effect at the time of that action; i.e., when a program is terminated, all reports and investigations that were in progress will be handled under the provisions of the program until they are completed. Failure of any party to follow the terms of the program ordinarily will result in termination of the program. Failure of ABC Airlines to follow through with corrective action acceptable to the FAA, to resolve any safety deficiencies, ordinarily will result in termination of the program.

6. REPORTING PROCEDURES. When a flight crewmember observes a safety problem or experiences an incident during flight, he or she should note the problem or incident and be able to describe it in enough detail so that it can be evaluated by a third party.

a. For example, if the safety incident involves a deviation from an ATC clearance, the pilot should note the date, time, place, altitude, flight number, and ATC frequency, along with enough other information describing the incident and any perceived safety problem. After the trip sequence has ended for that day, the flight crewmember should complete ABC Airlines' ASAP Form number 123 for each safety problem or incident (hereinafter referred to as "report") and submit it by company mail to the Director of Flight Safety, ATTN: ASAP Manager.

b. In order for the flight crewmember who submitted the report to be covered under the ASAP and eligible for any FAA enforcement-related incentive, the report must be mailed within 24 hours after the end of the flight sequence for the day of occurrence, absent extraordinary circumstances. For example, if the incident occurred at 1400 hours (Monday) and the flight crewmember completes his or her flight sequence for that day at 1900 hours, the report should be mailed no later than 1900 hours the following day (Tuesday). In order for all flight crewmembers to be covered under the ASAP for any regulatory violations resulting from an incident, they must all sign the same report or submit separate individual reports for the same incident. If the company mail system

is not available to the flight crewmember at the time he or she needs to file a report, the crewmember may contact the ASAP manager's office and file a report via fax or telephone.

c. When the employee is first made aware of the event by the ASAP Event Review Committee (ERC) or certificate holder management, the ERC will review all available information to determine whether the employee knew or should have known about the apparent violation(s), prior to being notified by the ERC or certificate holder management. If the ERC determines that the employee knew or should have known about the apparent violation(s), then the report will not be covered under ASAP. On the other hand, if the ERC determines that the employee did not know or could not have known about the apparent violation(s), then the report would be covered under ASAP provided all other ASAP criteria have been met.

7. POINTS OF CONTACT. The ERC will be comprised of the ASAP manager, representing ABC Airlines Flight Department management; the ASAP coordinator for ABC Pilot Union; and an FAA inspector from the Certificate Holding District Office (CHDO) for ABC Airlines; or qualified alternates in their absence.

8. ASAP MANAGER. When the report is received by the ASAP manager, he or she will record the date and time of any incident described in the report and the date and time that the report was submitted through the company mail system. The ASAP manager will enter the report, along with all of the supporting data, on the agenda for the next ERC meeting.

The ERC will determine whether a report is submitted in a timely manner and whether extraordinary circumstances precluded timely submission. To confirm that a report has been received, the ASAP manager will send a written receipt (ABC Airlines' ASAP Form number 234) through the company mail system to each flight crewmember who submits a report. The receipt will confirm whether or not the report was determined to be timely. The ASAP manager will serve as the focal point for information about, and inquiries concerning the status of, ASAP reports, and for the coordination and tracking of recommendations.

9. EVENT REVIEW COMMITTEE (ERC). The ERC will review and analyze reports submitted by flight crewmembers under the program, identify actual or potential safety problems from the information contained in the reports, and propose solutions for those problems. The ERC will provide feedback to the individual who submitted the report.

a. The ERC will maintain a data base that continually tracks each event and the analysis of those events. The ERC will conduct a 12-month review of the ASAP with emphasis on any recurring safety-related events of a similar nature to ensure that the comprehensive fix has been effective in preventing or reducing future occurrences. That review will include recommendations for future comprehensive fixes for known recurring events.

b. This review is in addition to any other reviews conducted by the FAA. The ERC will also be responsible for preparing a final report on the program at its conclusion. If an application for a continuing program is anticipated, the ERC will prepare and submit a report with the certificate

holder's application to the FAA 60 days in advance of the termination date of the Demonstration program.

10. ERC PROCESS.

a. The ERC will meet as necessary to review and analyze reports that will be listed on an agenda submitted by the ASAP manager. The ERC will determine the time and place of the meeting. The ERC will meet at least twice a month and the frequency of meetings will be determined by the number of reports that have accumulated.

b. The ERC will make its decisions involving ASAP issues based on consensus. Under the ABC Airlines ASAP, consensus of the ERC means the voluntary agreement of all representatives of the ERC. The ERC representatives will strive to reach consensus on whether a reported event is covered under the program, how that event should be addressed, and the corrective action or any enforcement action that should be taken as a result of the report. For example, the ERC should strive to reach a consensus on the recommended corrective action to address a safety problem such as an operating deficiency or airworthiness discrepancy reported under ASAP. The corrective action process would include working the safety issue(s) with the appropriate departments at the airline and the FAA that have the expertise and responsibility for the safety area of concern.

Recognizing that the FAA holds statutory authority to enforce the necessary rules and regulations, it is understood that the FAA retains all legal rights and responsibilities contained in Title 49, United States Code, and FAA Order 2150.3A. In the event there is not a consensus of the ERC on decisions concerning a report involving apparent violations, a qualification issue, or medical certification or qualification issue, the FAA ERC representative will decide how the report should be handled. The FAA will not use the ASAP report in any subsequent enforcement action except as described in paragraph 10i.

c. It is anticipated that three types of reports will be submitted to the ERC: safety-related reports that appear to involve a violation(s) of the regulations; reports that are of a general safety concern, but do not appear to involve a violation(s) of the regulations; and any other reports, e.g., involving catering and passenger ticketing issues. All safety-related reports shall be fully evaluated and, to the extent appropriate, investigated.

d. The ERC will forward nonsafety reports to the appropriate ABC Airlines department head for his/her information and, if possible, internal (ABC Airlines) resolution. For reports related to flight safety, including reports involving possible violations of the regulations, the ERC will analyze the report, conduct interviews of reporting crewmembers, and gather additional information concerning the matter described in the report, as necessary.

e. The ERC should also make recommendations to ABC Airlines for appropriate comprehensive fixes. Such comprehensive fixes might include changes to ABC Airlines' procedures, aircraft equipment modifications, or additional training for a crewmember. Any recommended changes that affect ABC Airlines will be forwarded through the ASAP manager to

the appropriate department head for consideration and comment, and, if appropriate, implementation. The FAA will work with ABC Airlines to develop acceptable comprehensive fixes. The ASAP manager will track the implementation of the recommended comprehensive fixes and report on the progress of the fixes to the ERC as part of the regular ERC meetings. Any recommended comprehensive fix that is not implemented should be recorded along with the reason it was not implemented.

f. The ERC will review and discuss the evidence available to support an apparent violation(s) reported under the ASAP. The ERC representatives will strive to reach consensus on whether a reported event that involves noncompliance with the regulations, a qualification issue, or medical certification or qualification issue is covered under the program, how that event should be addressed, and the corrective action or any enforcement action that should be taken as a result of the report.

g. When the ERC becomes aware of an issue involving the medical qualification or medical certification of an airman, the ERC must immediately advise the appropriate Regional Flight Surgeon about the issue. The ERC will work with the Regional Flight Surgeon and the certificate holder's medical department or medical consultants to resolve any medical certification or medical qualification issues or concerns revealed in an ASAP report, or through the processing of that report. The FAA ERC member must follow the direction(s) of the Regional Flight Surgeon with respect to any medical certification or medical qualification issue(s) revealed in an ASAP report.

h. Any corrective action recommended by the ERC must be completed to the satisfaction of the ERC, or the ASAP report will be excluded from the program and may be referred to the FAA for further action.

i. Use of the ABC Airlines' ASAP Report: The content of the ASAP report will not be used to initiate or support any company disciplinary action, or as evidence for any purpose in an FAA enforcement action, except when the report is excluded from ASAP and appears to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

11. FAA ENFORCEMENT.

a. Criteria for Acceptance. The following criteria must be met in order for a report involving a possible violation to be covered under ASAP:

(1) The employee must submit a report in accordance with paragraphs 6b and c of this MOU;

(2) The alleged regulatory violation must be inadvertent and must not appear to involve an intentional disregard for safety; and

(3) The reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

b. Administrative Action. Notwithstanding the criteria in paragraph 205 of FAA Order 2150.3A, apparent violation(s) disclosed in ABC ASAP reports that are covered under the program and supported by sufficient evidence will ordinarily be addressed with administrative action. Sufficient evidence means evidence gathered by an investigation not caused by, or otherwise predicated on the individual's safety-related report.

c. Sole-Source Reports. A report is considered a sole-source report when all evidence of the event is discovered by or otherwise predicated on the report. Apparent violations disclosed in ASAP reports that are covered under the program and are sole-source reports will ordinarily be addressed with no action. It is possible to have more than one sole-source report for the same event.

d. Reports Involving Qualification Issues. ABC Airlines' ASAP reports covered under the program that demonstrate a lack, or raise a question of a lack, of qualification of a certificate holder employee will be addressed with corrective action, if such action is appropriate and recommended by the ERC. If an employee fails to complete the corrective action in a manner satisfactory to all members of the ERC, then his/her report will be excluded from ASAP. In these cases, the ASAP event will be referred to an appropriate office within the FAA for any additional investigation, reexamination, and/or enforcement action, as appropriate.

e. Excluded from ASAP. Any safety-related ASAP event that concerns an apparent violation(s) that is EXCLUDED from ASAP will be referred by the FAA ERC member to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

f. Corrective Action. Employees initially covered under an ASAP will be excluded from the program and not entitled to the enforcement-related incentive if they fail to complete the recommended corrective action in a manner satisfactory to all members of the ERC. These cases may result in the reopening of the case and referral of the matter for appropriate action.

g. Repeated Instances. Repeated instances involving the same or similar type of misconduct previously addressed with administrative action under the ASAP may also be covered under the program. The determination whether a repeated instance will be covered under the ASAP will be made on a case-by-case basis by the ERC, upon consideration of the facts and circumstances surrounding the misconduct.

h. Closed Cases. A closed ASAP case including a related enforcement investigative report involving a violation addressed with the enforcement-related incentive, or for which no action has been taken, may be reopened and appropriate enforcement action taken if sufficient evidence later is discovered that establishes that the violation should have been excluded from the program.

i. Reports Involving Intentional Disregard for Safety. The following policies apply to alleged violations involving an intentional disregard for safety that are disclosed in excluded ASAP reports:

(1) Alleged violations involving an apparent intentional disregard for safety that do not demonstrate a lack, or raise a question of a lack, of qualification will be addressed with no more than administrative action, provided the ASAP reports are sole-source reports.

(2) Alleged violations involving an apparent intentional disregard for safety that also demonstrate a lack, or raise a question of a lack, of qualification or medical certification or medical qualification will be referred to an appropriate office within the FAA for any additional investigation and reexamination and/or enforcement action, as appropriate.

12. EMPLOYEE FEEDBACK. The ASAP manager will publish a synopsis of the reports received from the flight crewmembers in the ASAP section of the monthly ABC Airlines Employee Newsletter. The synopsis will include enough information so that the reporting flight crewmembers can identify their reports. Employee names, however, will not be included in the synopsis. The outcome of each report will be published. Any employee who submitted a report may also contact the ASAP manager to inquire about the status of his/her report.

13. INFORMATION AND TRAINING. The details of the ASAP will be made available to all flight crewmembers and their supervisors by publication in section 5 of the ABC Airlines' flightcrew operating manual. Each flight crewmember will receive written guidance outlining the details of the program at least 2 weeks before the program begins. Each flight crewmember also will receive additional instruction concerning the program during the next regularly scheduled recurrent training class. All new-hire flight crewmember employees will receive training on the program during initial training.

14. RECORDKEEPING. All official documents and records regarding this program will be kept by the ASAP manager and made available to the parties of this agreement at their request. All ABC Airlines' records and documents regarding this program will be kept in accordance with the provisions outlined in the "ABC Airlines ASAP Records and Reports Manual." The manual will not be contrary to 14 CFR and the Pilot Records Improvement Act. The ABC Airlines Pilot Union and the FAA will maintain whatever records they deem necessary to meet their needs.

15. SIGNATORIES. All parties to this ASAP are entering into this agreement voluntarily.

_____ _____
Director of Safety, ABC Airlines Date

_____ _____
President, ABC Airlines Pilot Union Date

_____ _____
Manager, FAA CHDO Date

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