

March 14, 2022

Docket Operations, M-30
U.S. Department of Transportation (DOT)
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue
Washington, DC 20590

NBAA Comments to Docket Number FAA-2002-13236 Aviation Safety Action Program

The National Business Aviation Association (NBAA) represents the interests of more than 11,000 members who own, operate, maintain, design, and build business aircraft, and organizations that train the people serving in these roles. A significant number of those members have incorporated a Safety Management System (SMS) into their organizations, and utilize an Aviation Safety Action Program (ASAP) to accomplish safety reporting within the SMS. NBAA holds safety as a core value and we continue to work with the FAA and industry to encourage business aviation organizations to implement an SMS as a safety best practice.

NBAA's work on SMS began with our work with the International Business Aviation Council on the International Standard for Business Aircraft Operations (IS-BAO). This program has been in existence in business aviation for 20 years and it contributes greatly to risk management and enhanced safety.

On behalf of NBAA and the business aviation community, we submit these comments in response to the FAA's notice of availability and request for comments in docket number FAA-2002-13236 Aviation Safety Action Program which would amend FAA Order 8000.82.

NBAA Supports the Expansion of Protections from Public Disclosure for Aviation Safety Action Programs

NBAA supports the expansion of ASAP protections from public disclosure designated in Order 8000.82 to include air carriers beyond the Part 121 operator community, repair stations, and other entities who have an ASAP, and their covered employees. We agree with the agency's assessment that protecting such information helps to create an environment whereby employees feel comfortable reporting safety hazards. The knowledge gained from such reporting enhances the decision-making capabilities of aviation organizations to address the associated risks inherent in their operations and activities.

Disclosure and Enforcement Protections Should Also Cover Contract Professionals

Safety is a team effort. The best safety programs in business aviation engage all employees and other organizations (contractors, training providers, airport management, suppliers, etc.) to bring a comprehensive solution to bear. Of note in reviewing the notice was the extensive use of the word employee. A significant number of business aviation operators utilize contract professionals to fulfill pilot, flight attendant, technician, and scheduler/dispatcher duties. NBAA finds it equally important to protect from disclosure the ASAP reports of contract professionals for the same reasons it is important to protect from disclosure ASAP reports of employees.

Part 91 business aviation operators regularly use contract professionals to augment their employee ranks who may be unavailable for duties due to training, out for medical needs, or on vacation. Similarly, a significant number of business aviation professionals working in the aircraft management segment of business aviation are employees of an aircraft owner, and serve as agents of a Part 135 air carrier, per

FAA Operations Specification A008, where the aircraft is listed on the Part 135 operator's Operations Specification D085. The Part 135 air carrier is often the eligible entity with an ASAP.

FAA Advisory Circular 120-66C does describe in its applicability paragraph 8, that:

"The eligible entity's ASAP may cover employees of a contractor only if contractual arrangements between the parties specifically provide that the contractor and its employees abide by the terms of the applicable ASAP Memorandum of Understanding (MOU) and the decisions of the eligible entity's ERC. In order for the program to cover contract employees, the applicable ASAP MOU stipulates that such contractual arrangements are in place."

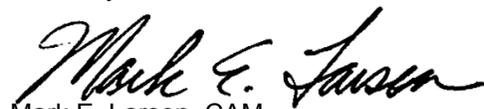
This Advisory Circular language appears to provide a pathway to protect an ASAP report provided by a contracted individual who is an employee of an aircraft owner or staffing firm. It also seems appropriate to protect an ASAP report provided by an employee of a contracted company indirectly involved in the operation, e.g. de-ice crew, ground personnel, fuelers, cleaners, etc. However, a number of contract professionals, e.g. contract pilots and contract flight attendants, directly contract with Part 91 operators that have an ASAP. NBAA recommends that FAA Order 8000.82A include language that definitively affirms that individuals who are performing duties/responsibilities directly on behalf of an eligible entity have all the same ASAP access rights and nondisclosure/enforcement protections as an employee of the eligible entity, regardless of other circumstances related to labor arrangements, such as the number of hours worked, full-time or part-time status, etc.

Contract professionals are able to provide safety insight through ASAP and other forms of narrative safety reports. FAA policy should be supportive of efforts to get all safety reports into an SMS or ASAP, with protections.

Conclusion

In conclusion, NBAA is broadly in support of this policy notice as an aid to increasing the adoption of Aviation Safety Action Programs and Safety Management Systems within aviation organizations. NBAA appreciates the FAA's consideration of these comments. We look forward to continuing to work with the FAA and industry towards our shared goal of enhancing safety.

Sincerely,



Mark E. Larsen, CAM

Director, Safety & Flight Operations