

fact that the planned electronic system would be dedicated to the acquisition of aggregate FOQA data. It would automatically include part 193 disclosure warning notices on all opening screen pages, and on each page of any paper printouts.

Proposed Designation

Accordingly, the Federal Aviation Administration hereby proposes to designate the above-described information submitted under an approved FOQA program to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on August 27, 2002.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

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BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA-2002-13236]

Aviation Safety Action Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Order Designating Information as Protected from Disclosure.

SUMMARY: The FAA is proposing that information provided to the agency from a voluntary Aviation Safety Action Program (ASAP) be designated by an FAA order as protected from public disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123, the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws, following issuance of such order. The designation is intended to encourage participation in the ASAP.

DATES: Comments must be received on or before October 7, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-13236 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to this proposed designation in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards Service, AFS-230, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC 20591, telephone (703) 661-0275.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed designation by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates, where appropriate. Comments should identify the notice number and should be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed designation will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed designations. Comments filed late will be considered as far as possible without incurring expense or delay. The proposal contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to the Docket No. FAA-2002-[INSERT DOCKET NUMBER]." The postcard will be date stamped and mailed to the commenter.

Availability of This Proposed Designation

An electronic copy of this document may be downloaded using a modem and

suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202-512-1661).

Internet users may access the FAA's Web page containing this notice at <http://www.faa.gov/avr/afs/asap> or may go to the GPO's Web page at <http://www.access.gpo.gov/nara> for access to recently published notices.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Air Transportation Division, AFS-200, 800 Independence Ave, SW., Washington, DC 20591, or by calling (202) 267-8166. Communications must identify the docket number and title of this designation.

Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure in order to encourage persons to provide the information to the FAA. The FAA must issue an order making certain findings before the information is protected from disclosure. The FAA's rules implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under section 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in section 40123, part 193, and the order designating the information as protected. This proposed order is issued under 14 CFR 193.11, which sets out the notice procedure for designating information as protected.

Description of the Proposed Information Sharing Program

An Aviation Safety Action Program (ASAP) is entered into voluntarily through a Memorandum of Understanding (MOU) signed by the FAA, an air carrier or a repair station (referred to in this notice as "certificate holder"), and, if applicable, an employees' labor union. The intent of the program is to encourage defined groups of certificate holder employees to report possible violations, safety issues and events to an ASAP Event Review Committee (ERC) comprised of one representative from each such party. Because of its capacity to provide early identification of needed safety improvements, an ASAP offers significant potential for incident and accident avoidance. FAA experience to date has clearly established that an ASAP can produce safety-related data

that is not available from any other source. FAA limits enforcement actions it takes against employees covered by an ASAP to encourage them to report possible violations and safety problems. In order for a possible violation to be covered under an ASAP, the employee's ASAP report ordinarily must be submitted within a time limit specified in the MOU, any alleged violation must be inadvertent and must not appear to involve an intentional disregard for safety, and the reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification. FAA policy and further details concerning the ASAP are addressed in Advisory Circular 120-66, Aviation Safety Action Programs, as amended (the advisory circular may be viewed and/or downloaded from the Internet at <http://www.faa.gov/avr/afs/asap>).

For ASAP reports involving alleged violations, the ERC investigates to determine if independence information from FAA sources is available concerning the event (e.g. air traffic control tapes), and whether the reporting employee may have previously reported similar violations under the ASAP. Except for ASAP reports involving possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification, this proposed designation would, if adopted, protect the content of all ASAP reports in the possession of the FAA from public disclosure. Similarly, any other information received by the FAA from the certification holder concerning the content of such ASAP reports, including for example statistical analyses, periodic program review reports, and trend information will be protected from disclosure under this designation, unless the certificate holder authorizes the FAA to disclose that information. Voluntarily provided information listed under paragraph B immediately below that is obtained during periodic FAA audits of ASAP, if any, will be protected from disclosure under this designation.

Summary of the ASAP Voluntary Information Sharing Program

A. *Who may participate:* Certificate holders who have an ASAP and their employees.

B. *Except for ASAP reports involving possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification, what voluntarily provided information would be protected from disclosure under this proposed designation:*

1. The content of an employee's ASAP report.

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

3. The name of an employee submitting an ASAP report(s).

4. The findings from other than FAA sources of an ERC investigation concerning an ASAP report.

5. Evidence and other information gathered during an ERC investigation by other than FAA sources.

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

7. A database of reports and events over time from a particular certificate holder's ASAP.

C. *How persons would participate:* Certificate holders participate by executing an ASAP MOU with the FAA, and by voluntarily sharing information from the ASAP with the FAA. Employees covered under the ASAP MOU participate by submitting ASAP reports in accordance with that MOU.

D. *Duration of this information sharing program:* This information sharing program would continue in effect for a given certificate holder until the associated ASAP MOU is terminated by any of the parties to the MOU, or until the order of designation for this program is withdrawn by the FAA.

Proposed Findings

The FAA proposes to designate information received under an ASAP as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

(1) *Summary of why the FAA finds that the information will be provided voluntarily.*

The ASAP 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. The FAA anticipates that information from a certificate holder's ASAP will be shared with the FAA, because the voluntary establishment of an ASAP constitutes a partnership between the FAA and the certificate holder in the interest of achieving joint safety improvement goals.

(2) *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.*

An ASAP is specifically created to provide a means for employees to report safety-related events. All individual 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); and 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). 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 event 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.

(3) *Summary of why the 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. 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. Withholding such 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 the safety improvements that receipt of the information otherwise enables. While the FAA does not anticipate receiving ASAP reports for retention in FAA files or in 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 of perceived contributing factors for runway incursions (extracted from ASAP reports) could be beneficial to the FAA and to airlines in the development of corrective strategies to reduce the probability of such incidents.

(4) *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. FAA experience to date has clearly established that an ASAP can produce safety-related data that is not available from any other source. For example, ASAP reports concerning runway incursions could potentially identify common causal factors in producing such incidents. Receipt of this hitherto unavailable information would provide the FAA with an improved basis for modifying procedures, policies, and regulations in order to improve safety and efficiency. It would also better permit the FAA to serve as a national safety information resource for certificate holders.

(5) *Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9.*

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

The FAA will release information submitted under an ASAP as specified in part 193 and this proposed order. In order to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (i.e. the identity of the source of the information and the names of the certificate holder, the employee, and other persons redacted) summary information that has been extracted from reports under the ASAP. The FAA may disclose de-identified, summarized ASAP information that identifies a systemic problem in the aviation system, when other persons need to be advised of the problem so that they can take corrective action. The FAA may disclose de-identified aggregate statistical information concerning ASAP activities. The FAA may disclose independently obtained information relating to any event disclosed in an ASAP report. The FAA will not release the content of an excluded ASAP report, unless that excluded report involves criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification, in which case it would be contrary to public safety not to disclose such information, because of the egregious nature of such events. The FAA may release the content of ASAP MOU's, including identification of the signatories on such MOUs.

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

All employees ASAP reports are clearly labeled as such, and either 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. 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. 40123 and 14 CFR part 193."

Proposed Designation

Accordingly, the Federal Aviation Administration hereby proposes to designate the above-described information submitted under an ASAP to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on August 14, 2002.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA-222C]

RIN 1117-AA64

Chemical Mixtures Containing Gamma-butyrolactone

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: On July 19, 2002, the Drug Enforcement Administration (DEA) published an Advance Notice of Proposed Rulemaking in the **Federal Register** requesting information regarding chemical mixtures containing the List I chemical gamma-butyrolactone (GBL) (67 FR 47493). This document contained an inaccurate U.S. Code citation. This document corrects this error.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, , Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7183.

SUPPLEMENTARY INFORMATION: On July 19, 2002, the Drug Enforcement Administration (DEA) published an Advance Notice of proposed Rulemaking (ANPRM) in the **Federal Register** regarding chemical mixtures containing the List I chemical gamma-butyrolactone. Within this ANPRM, on page 47493, in the second column, five lines from the bottom, in the sentence