



U.S. Department
of Transportation
**Federal Aviation
Administration**

Advisory Circular

**Subject: AVIATION SAFETY
ACTION PROGRAM (ASAP)**

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Change:**

1. PURPOSE. This Advisory Circular (AC) provides guidance for establishing an air transportation Aviation Safety Action Program (ASAP). The objective of the ASAP is to encourage air carrier and repair station employees to voluntarily report safety information that may be critical to identifying potential precursors to accidents. The Federal Aviation Administration (FAA) has determined that identifying these precursors is essential to further reducing the already low accident rate. Under an ASAP, safety issues are resolved through corrective action rather than through punishment or discipline. The ASAP provides for the collection, analysis, and retention of the safety data that is obtained. ASAP safety data, much of which would otherwise be unobtainable, is 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. An ASAP is based on a safety partnership that will include the FAA and the certificate holder, and may include a third party, such as the employee's labor organization. To encourage an employee to voluntarily report safety issues, even though they may involve the employee's possible noncompliance with Title 14 of the Code of Federal Regulations (14 CFR), enforcement-related incentives have been designed into the program.

a. Information obtained from these programs will permit ASAP participants to identify actual or potential risks throughout their operations. Once identified, the parties to an ASAP can implement corrective actions in order to reduce the potential for reoccurrence of accidents, incidents, and other safety-related events. 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 aviation system safety.

b. An ASAP provides a vehicle whereby employees of participating air carriers and repair station certificate holders can identify and report safety issues to management and to the FAA for resolution, without fear that the FAA will use reports accepted under the program to take legal enforcement action against them, or that companies will use such information to take disciplinary action. These programs are designed to encourage participation from various 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 an appropriate third party, such as an employee's labor organization or their representatives.

2. CANCELLATION. This AC cancels AC 120-66A, Aviation Safety Action Programs (ASAP), dated March 17, 2000.

3. BACKGROUND. The FAA's safety mission requires it to take action to reduce or eliminate the possibility or recurrence of accidents in air transportation. Over the past several years, the FAA and the air transportation industry have sought innovative means for addressing safety problems and identifying potential safety hazards. To this end, the FAA, in cooperation with industry, established several demonstration ASAPs in an effort to increase the flow of safety information to both the air carrier and FAA, and issued an ASAP AC in January 1997. Among these programs were the USAir Altitude Awareness Program, the American Airlines Safety Action Partnership, 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 or company disciplinary action. 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. In view of the positive safety results from those programs, the FAA issued a revised ASAP AC in March 2000, which established industry-wide guidelines for participation. Based on the lessons learned from over two dozen programs established since that date, the present AC contains revised guidance to facilitate achievement of ASAP's safety goals, as well as to encourage wider participation in the program. This revised guidance is based upon the recommendations of an ASAP Aviation Rulemaking Committee, comprised of representatives from airlines, labor associations, and FAA management.

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 and 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) or Certificate Management Office (CMO) 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.

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/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 MOU. 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 labor association (if applicable), and a specifically qualified FAA inspector from the CHDO.

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 or inadvertent omissions or errors.

k. Major Domestic Repair Station. Refers to a Part 145 certificated repair station located in the United States that is 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 purposes of ASAP, the ERC shall consider a report to be sole-source when all evidence of the event available to the FAA outside of ASAP is discovered by or otherwise predicated on the ASAP report. It is possible to have more than one sole-source report for the same event.

(Similarly, for the purpose of any additional action taken by the company outside of ASAP, an airline considers a report to be sole-source when all evidence of the event known to the airline is discovered by or otherwise predicated on the ASAP disclosure. The company does not use any information obtained through ASAP to initiate or support disciplinary action outside of ASAP, with the exception of those events excluded from ASAP due to the appearance of possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.)

q. Sufficient Evidence. Sufficient evidence means evidence gathered by an investigation not caused by, or otherwise predicated on, the individual's safety-related report. There must be sufficient evidence to prove the violation, other than the individual's safety-related report. In order to be considered sufficient evidence under ASAP, the ERC must determine through consensus that the evidence (other than the individual's safety-related report) would likely have resulted in the processing of a FAA enforcement action had the individual's safety-related report not been accepted under ASAP. Accepted ASAP reports for which there is sufficient evidence will be closed with administrative action.

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 the current version of AC 00-58, Voluntary Disclosure Reporting Program.

5. APPLICABILITY. ASAPs are intended for air carriers that operate under Part 121. They are also intended for major domestic repair stations certificated under Part 145. ASAPs 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.

a. Development Considerations. The development and implementation of an ASAP is a multifaceted task:

(1) 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.

(2) The process for report review must be outlined in detail.

(3) Safety data collection, analysis, and retention processes must be developed and agreed upon.

(4) Event investigation tasks must be assigned.

(5) Prior to the implementation of the ASAP, a comprehensive company employee and management education program must be undertaken.

(6) The ASAP process may require cultural change for all parties involved.

(7) Continuity of ERC representation personnel during the early stages of program implementation will promote the desired partnership relationship between program members.

b. 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 that it meets the safety objectives of the specific ASAP.

(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 extended 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.

c. Continuing Programs. After a demonstration program is reviewed and determined to be successful by the parties to the agreement, it may be accepted as a continuing program, subject to review and renewal every 2 years by the FAA.

d. 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 be 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.

(1) 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.

(2) 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

(3) 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. The success of ASAP is built on the ability of the ERC to achieve consensus on each event that is reported. Consensus of the ERC means the voluntary agreement of all representatives of the ERC.

(1) The ERC must reach a consensus when deciding whether a report is accepted into the program and when deciding on corrective action recommendations arising from the event, including any FAA administrative action. It does not require that all members believe that a particular decision or recommendation is the most desirable solution, but that the result falls within each member's range of acceptable solutions for that event in the best interest of safety. In order for this concept to work effectively, the ERC representative must be empowered to make decisions within the context of the ERC discussions on a given report. Senior management and supervisors should not preempt their respective ERC representative's decision-making discretion for an event reported under ASAP. If the parties to an ASAP MOU do not permit their respective ERC representative to exercise this discretion, the capacity of the ERC to achieve consensus will be undermined, and the program will ultimately fail.

(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 of the United States Code (49 U.S.C.), 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 content of an 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 either sign the same report or submit separate signed reports.

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. In order to be considered timely, a report must be submitted in accordance with either of the following two criteria:

(a) Within a time period following the event that is defined in the MOU, such as within 24 hours of the end of the duty day in which the event occurred. If this criterion has been met, a report would not be rejected for timeliness, even if the FAA was already aware of the possible noncompliance with the regulations, and may have brought it to the attention of the employee;

(b) Within 24 hours of having become aware of possible noncompliance with 14 CFR in accordance with the following criteria: If a report is submitted later than the time period after the occurrence of an event stated in the MOU, the ERC will review all available information to determine whether the employee knew or should have known about the possible noncompliance with 14 CFR within that time period. If the employee did not know or could not have known about the apparent noncompliance with 14 CFR within that time period, then the report would be included in ASAP, provided the report is submitted within 24 hours of having become aware of possible noncompliance with 14 CFR, and provided all other ASAP acceptance criteria have been met. If the employee knew or should have known about the apparent noncompliance with 14 CFR, then the report will not be included in ASAP.

(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.

(4) Sole-source reports that meet all of the above acceptance criteria except timely submission will be accepted under ASAP.

c. Repeated Violations. Reports involving the same or similar possible noncompliance with 14 CFR that were previously addressed with administrative action under ASAP will be accepted into the program, provided they otherwise satisfy the acceptance criteria under paragraphs 9a and 9b above. The ERC will consider on a case-by-case basis the corrective action that is appropriate for such reports.

d. Non-Reporting Employees Covered Under an ASAP MOU. If an ASAP report identifies another covered employee of the certificate holder in a possible violation, and that employee has neither signed that report nor submitted a separate report, the ERC will determine on a case-by-case basis whether that employee knew or reasonably should have known about the possible violation. If the ERC determines that the employee did not know or could not have known about the apparent violation(s), and the original report otherwise qualifies for inclusion under ASAP, the ERC will offer the non-reporting employee the opportunity to submit an ASAP report. If the non-reporting employee submits a report within 24 hours of notification from the ERC, that report will be afforded the same consideration under ASAP as that accorded the report from the original reporting employee, provided all other ASAP acceptance criteria are met. However, if the non-reporting employee fails to submit a report within 24 hours of notification, the possible violation by that employee will be referred to an appropriate office within the FAA for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement authorities, if warranted.

e. Non-Reporting Employees Not Covered Under the MOU. If an ASAP report identifies another employee of the certificate holder who is not covered under the MOU, and the report indicates that employee may have been involved in a possible violation, the ERC will determine on a case-by-case basis whether it would be appropriate to offer that employee the opportunity to submit an ASAP report. If the ERC determines that it is appropriate, the ERC will provide that employee with information about ASAP and invite the employee to submit an ASAP report. If the employee submits an ASAP report within 24 hours of notification, that report will be covered under ASAP, provided all other ASAP acceptance criteria are met. If the employee fails to submit an ASAP report within 24 hours of notification, the possible violation by that employee will be referred to an appropriate office within the FAA for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement agencies, if warranted.

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 9b(1) or reports where a consensus on acceptance under paragraph 9 is not reached by the ERC.

(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. FAA Investigation of Events Involving Possible Noncompliance with 14 CFR. By public law and FAA orders, the FAA is responsible for the proper investigation and disposition of all suspected cases of noncompliance with 14 CFR. The FAA establishes investigative and enforcement jurisdiction and responsibility regarding events reported to the ASAP ERC.

(1) The FAA CHDO ERC representative is empowered to complete ASAP investigations and is responsible for coordinating all corrective and administrative actions in accordance with the current versions of the following FAA orders, as applicable:

(a) Order 2150.3, Compliance and Enforcement Program;

(b) Order 8020.11, Aircraft Accident and Incident Notification, Investigation, and Reporting;

(c) Order 8400.10, Air Transportation Operations Inspector's Handbook; and/or

(d) Order 8300.10, Airworthiness Inspector's Handbook.

(2) The determination of whether or not a reported event meets the criteria for inclusion into ASAP will be made in accordance with the applicable orders and through the ERC process. If an event meets the criteria for participation and is accepted into ASAP by the ERC, the FAA shall transfer all jurisdiction and responsibility for compliance and enforcement investigations related to the event to the CHDO, even if an enforcement investigation has been previously opened outside of ASAP.

b. Reports Covered Under ASAP.

(1) Those non-sole-source reports included in ASAP with sufficient evidence (see paragraph 4q for the definition of sufficient evidence) to support a violation of 14 CFR will be closed with administrative action. Those non-sole-source reports without sufficient evidence to support a violation of 14 CFR will be closed with a FAA Letter of No Action.

(2) Those sole-source reports that are included in ASAP will be closed with no action.

(3) Those reports included in ASAP that demonstrate a lack of qualification or raise a question of a lack of qualification will be addressed with appropriate corrective action recommended by the ERC.

c. Reports Excluded From ASAP.

(1) Reported events that are excluded from ASAP will be referred to the FAA for possible enforcement action and/or re-examination under 49 U.S.C., Subtitle VII, and as prescribed in FAA Order 2150.3A.

(2) Reports of events 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. If upon completion of subsequent investigation it is determined that the event did not involve any of the aforementioned activities, then the report will be referred back to the ERC for a determination of acceptability under ASAP. Such reports will be accepted under ASAP provided they otherwise meet the acceptance criteria contained in paragraph 9 of this advisory circular.

(3) Neither the written ASAP report nor the content of the written ASAP report will be used to initiate or support company discipline or as evidence for any purpose in a FAA enforcement action except as provided for in 11c(2). The FAA may conduct an independent investigation of an event disclosed in a report.

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 the current version of AC 00-58 and FAA Order 2150.3A, Appendix 1: Compliance/Enforcement Bulletins, Bulletin No. 90-6.)

14. EXAMPLES. The following are examples of the disposition of events involving possible noncompliance with 14 CFR reported under ASAP:

a. Accepted Reports.

(1) Non-Sole-Source Report with Sufficient Evidence (Pilot). 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. The report is submitted within 24 hours of the end of the flight sequence for the day in accordance with the airline's ASAP MOU. Following review of the report, the FAA ERC member determines that ATC has filed a pilot deviation report for this event, and obtains a copy of the ATC tapes, radar data, and a statement from the air traffic controller concerning this event. A review by the ERC determines that the pilot deviation was inadvertent. The ERC further determines through consensus that since this event was disclosed in a non-sole-source report for which there was sufficient evidence (i.e., evidence gathered by an investigation not caused by, or otherwise predicated on, the filing of the safety-related report), the event should be closed with administrative action. The ERC determines that the appropriate administrative action is a FAA Letter of Correction. Following verification by the ERC that the employee has satisfactorily completed the recommended corrective action to the satisfaction of all members of the ERC, the ERC closes the report.

(2) Sole-Source Report (Mechanic). A repair station discovered that the check sheet for a required inspection item (RII) accomplished seven days prior had not been signed. The company immediately informed the responsible mechanic that the required signature on the check sheet was missing. The mechanic filed an ASAP report within 24 hours of having been informed by the company of the omission. Prior to signing the check sheet, the mechanic had become distracted by an aircraft that had unexpectedly returned to the maintenance facility. The ERC determined that the mechanic did not know or could not have known about the possible noncompliance with 14 CFR within 24 hours of its occurrence. An investigation by the ERC determined that the inspection was in fact properly accomplished by the reporting employee, although the check sheet had not been signed. The ERC determined through consensus that the omission by the mechanic was inadvertent, and that the report met all ASAP acceptance criteria. As there was no evidence of the event available to the FAA, other than the employee's ASAP report, the ERC determined that the report should be considered sole-source. The report was closed with an ERC response. However, the company had evidence of the event from information outside of ASAP and elected to counsel the individual concerning the possible impact of distractions.

(3) Sole-Source Report (Mechanic). An airline mechanic reported that he had inadvertently employed an improper lubricant on a rudder component during a heavy maintenance check. The report was submitted three days following the event. An investigation by the ERC determined that in fact the wrong lubricant had been used, but that the only evidence of the event is obtained from the investigation that was predicated upon the employee's report. Upon interviewing the mechanic, the ERC determined that the employee only became aware of the possible mistake while working on a similar aircraft three days after the event, and that he had submitted the report in a timely manner thereafter. While working on the subsequent aircraft he learned that the maintenance manual had been updated to remove a previously authorized substitute lubricant, and that he had used that lubricant because he was not employing the most

recently updated revision of the manual at the time of the event. The ERC determined through consensus that the mistake was in fact inadvertent, that the employee submitted the report within 24 hours of having become aware of the event, and that the event should be accepted under ASAP as a sole-source report. The ERC recommended that changes be made to the maintenance department's procedures for timely distribution of the most recent manual revisions, in order to preclude repetition of this event by others, and the report was closed with no action other than an ERC response to the reporting employee. The ERC followed-up with the maintenance department to verify that the recommended procedural change for timely distribution of documentation revisions had been accomplished.

(4) Untimely Sole-Source Report (Pilot). A pilot reported an altitude deviation where the aircraft was assigned by ATC to climb to an altitude of 10,000 feet MSL, but actually leveled off at 11,000 feet MSL. The report was not submitted within the timeframe following the event that was specified in the MOU. The ERC investigation of this event revealed that the deviation was due to an incorrect entry into the FMS that was not noticed by either flight crewmember. The ERC also determined that the only evidence of the deviation was the pilot's safety-related report filed under the ASAP. The ERC therefore concluded that the report should be considered sole-source. Although the report was not submitted on a timely basis, the ERC determined that it otherwise met ASAP acceptance criteria. Since the pilot's safety-related report was determined to be sole-source, it was accepted under ASAP, and the ERC closed the event with no action, other than a recommendation that the pilot complete training on compliance with altitude clearances. The ERC monitored the completion by the pilot of the recommended corrective action. The ERC also solicited and received a sole-source report from the co-pilot concerning this event. That pilot's report was closed in the same fashion, including corrective action.

b. Excluded Events. Examples of events involving possible noncompliance with 14 CFR that would be excluded from the ASAP:

(1) Intentional Disregard for Safety (Pilot). An aircraft being ferried in winter from a maintenance repair facility to another station for a revenue flight experienced a compressor stall in one of its engines shortly after lift-off, followed by a compressor stall in a second engine. The flightcrew declared an emergency and returned without further mishap to the departure airport. Post flight examination of the aircraft revealed that ice was still attached to the upper wing surface near the wing root area. The captain and the first officer filed individual ASAP reports on this event. An investigation by the ERC determined that the flightcrew had been dispatched from operations via a company vehicle to the maintenance hanger at the departure airport, and had been dropped off at the forward aircraft door, from which position they could observe most, but not all, of the aircraft. The captain instructed the first officer to conduct the exterior pre-flight inspection, and proceeded to the cockpit to prepare the aircraft for departure. Thereafter the first officer entered the cockpit and reported that the exterior of the aircraft was ready for flight. The ERC investigation determined that the first officer had not performed a complete walk-around inspection of the aircraft, including inspection of the top surface of the wing. The ERC concluded that this behavior constituted intentional disregard for safety on the part of the first officer, and the event as disclosed in the first officer's report was excluded from ASAP. The ERC determined that the Captain did not violate the regulations.

(2) Intentional Disregard for Safety (Mechanic). An FAA inspection determined that an unauthorized lubricant was employed on an engine valve installation for an aircraft currently undergoing maintenance. The local FSDO immediately opened an EIR concerning the observed noncompliance with 14 CFR. Shortly thereafter, a newly hired maintenance technician submitted an ASAP report stating that he or she had used a lubricant other than what was authorized in the maintenance manual for the engine valve installation, because no authorized substitute lubricants were available in the maintenance facility at the time he or she was performing the work. As an ASAP report had been submitted, the EIR was transferred from the local FSDO to the certificate holding district office at its request. An ERC investigation revealed that the technician knowingly used a substitute non-approved lubricant at the direction of his/her immediate supervisor in order not to delay completion of the job order. The ERC determined the action by the technician in using an unauthorized lubricant constituted intentional disregard for safety, in spite of his/her having been directed to do so by his/her supervisor, and the report was excluded from the program. The event was then referred back to the FSDO having jurisdiction for further investigation, including possible enforcement action and/or reexamination against the technician and his/her supervisor under 49 U.S.C., Subtitle VII, and as prescribed in FAA Order 2150.3A.

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. MEMORANDUM OF UNDERSTANDING. 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 which is available as an automated template (accessible on the Flight Standards Service (AFS) ASAP webpage at <http://www.faa.gov/avr/afs>) 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 which it pertains. The types of programs are:

(a) Demonstration Program;

(b) Renewal of Demonstration Program;

(c) Continuing Program; or

(d) 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. All records and documents relating to an ASAP must be appropriately kept in a manner that ensures compliance with 14 CFR and all applicable law, including the Pilot Records Improvement Act.

(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 statement of the 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) A statement that the ERC shall be comprised of one representative from each party to the MOU, and a description of the duties of the ASAP manager. The ASAP manager may either be the same individual assigned as the company management representative to the ERC, or it may be another individual assigned by the company who will not serve as a voting member of the ERC.

(14) A description of the process for training and distributing information about the program to certificate holder employees and management, as well as 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, e.g., 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 and how they will be used:

- (a)** Event Review Committee;
- (b)** Consensus of the ERC;
- (c)** Sole-source reporting;
- (d)** Sufficient evidence; and
- (e)** Enforcement-related incentive.

(21) A statement that repeated instances involving the same or similar possible noncompliance with 14 CFR that were previously addressed with administrative action under the ASAP will be accepted into the program, provided that they otherwise meet the acceptance criteria of ASAP. The ERC will consider on a case-by-case basis the corrective action that is appropriate for such reports.

(22) ASAPs 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 that 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.

(28) A statement that the ASAP manager will maintain an electronic data base that tracks each event through and including closure of that event by the ERC and enables trend analysis.

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. If the proposed MOU does not employ the automated template from the Flight Standards Service (AFS) ASAP webpage (accessible at <http://www.faa.gov/avr/afs>), a completed ASAP checklist (found in Appendix 2 to this AC and on the webpage) should accompany the proposed MOU for review. The CHDO and the certificate holder will jointly review the MOU to ensure that it satisfies the guidance in AC 120-66, as amended, FAA Order 2150.3A, and the FAA Handbook Bulletins for Air Transportation and Airworthiness, entitled Establishment of Aviation Safety Action Programs (ASAP), as applicable. 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 an electronic copy of the proposed MOU as well as the CHDO's recommendation for acceptance to the respective Flight Standards Division regional office and to the headquarters ASAP program office (Voluntary Safety Programs Branch, AFS-230). If the proposed MOU does not employ the automated template from the AFS ASAP webpage, the completed ASAP checklist (found in Appendix 2 to this AC and on the webpage) should accompany the proposed MOU for processing. All programs, except for renewals of Continuing programs, shall receive authorization for final acceptance from the Director, Flight Standards Service, AFS-1. AFS-1 will indicate acceptance authorization for the MOU by FAA memorandum to the CHDO manager through the regional division manager. The program office will be responsible for preparing the memorandum for AFS-1's signature and shall submit it with the ASAP package to AFS-1. Following receipt of acceptance authorization from 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.

NOTE: 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.

c. 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 ASAP program office (AFS-230) in writing, 60 days in advance of renewing a Continuing ASAP program.

d. MOU Amendments. Any amendments to an MOU that has already been accepted must be coordinated with the FAA headquarters ASAP program office (AFS-230) prior to CHDO manager signature, unless those amendments employ the exact language contained in the MOU template on the AFS ASAP webpage. Amendments which employ such pre-approved language may be accepted by the CHDO manager without further coordination, as long as an information copy is provided to the ASAP program office.

e. Revision Control. It is recommended that the certificate holder employ standard revision control methodology with respect to amendments to the MOU. The original and subsequent revisions thereto should include:

- (1) For each revision to an original MOU:
 - (a) A change control page, identifying the revision number;
 - (b) A brief synopsis of each change to the original document; and
 - (c) Which pages are to be removed and replaced.

- (2) A list of effective pages.
- (3) A table of contents.
- (4) On each page of the MOU, a calendar date for when that page was prepared or revised.
- (5) For all revisions to an original MOU, a revision number on each page which is revised.
- (6) Sequential page numbers on all pages of the MOU (except the cover page, if applicable, which shall be understood to constitute page "i").

18. RECORDKEEPING. The parties should maintain those records necessary for a program's administration and evaluation. Records submitted to the FAA for review relating to an ASAP are protected to the extent allowed by law under applicable exemptions of the Freedom of Information Act. All records and documents relating to an ASAP must be appropriately kept in a manner that ensures compliance with 14 CFR and all applicable law, including the Pilot Records Improvement Act.

19. ASAP AVIATION RULEMAKING COMMITTEE. The Administrator has determined that a government/industry forum is needed to provide the FAA with advice on FAA ASAP policy and to prepare recommendations on whether rulemaking applicable to ASAP would or would not be appropriate. Accordingly, an ASAP Aviation Rulemaking Committee (ARC) was established by FAA Order 1110.129, Aviation Safety Action Program Aviation Rulemaking Committee, issued June 20, 2001, to serve as a forum for interaction among the FAA, industry employee groups, airlines, and repair stations regarding ASAP goals, issues, and concerns. The FAA order states that the Associate Administrator for Regulation and Certification shall have the sole discretion to appoint members of the committee, and shall receive all committee recommendations and reports. The ARC shall present whatever input, guidance, and recommendations that the members of the committee consider relevant to the disposition of ASAP issues, and ultimately to the achievement of the program's safety goals.



James J. Ballough
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. The sample is identical to the automated template available on the Flight Standards Service (AFS) ASAP webpage located at <http://www.faa.gov/avr/afs>. In order to be accepted by the Federal Aviation Administration (FAA), the MOU should address the elements of an ASAP that are set forth in FAA guidance material on which this sample is based.

EXECUTIVE STAR AIRLINES

AVIATION SAFETY ACTION PROGRAM (ASAP) FOR PILOTS

MEMORANDUM OF UNDERSTANDING

1. GENERAL. Executive Star Airlines (ESA) is a Title 14 of the Code of Federal Regulations (14 CFR), air carrier operating under Part 121 engaged in scheduled passenger service within the U.S., Europe, Asia, and South America. ESA operates 300 aircraft, and employs approximately 5000 pilots. The pilots are represented by the Executive Pilots Labor Association (EPLA).

2. PURPOSE. The Federal Aviation Administration (FAA), ESA, and EPLA are committed to improving flight safety. Each party has determined that safety would be enhanced if there were a systematic approach for pilots to promptly identify and correct potential safety hazards. The primary purpose of the ESA Aviation Safety Action Program (ASAP) is to identify safety events, and to implement corrective measures that reduce the opportunity for safety to be compromised. In order to facilitate flight safety analysis and corrective action, ESA and EPLA join the FAA in voluntarily implementing this ASAP for pilots, which is intended to improve flight safety through pilot self-reporting, cooperative follow-up, and appropriate corrective action. This Memorandum of Understanding (MOU) describes the provisions of the program.

3. BENEFITS. The program will foster a voluntary, cooperative, nonpunitive environment for the open reporting of safety of flight concerns. Through such reporting, all parties will have access to valuable safety information that may not otherwise be obtainable. This information will be analyzed in order to develop corrective action to help solve safety issues and possibly eliminate deviations from 14 CFR. For a report accepted under this ASAP MOU, the FAA will use lesser enforcement action or no enforcement action, depending on whether it is a sole-source report, to address an event involving possible noncompliance with 14 CFR. This policy is referred to in this MOU as an “enforcement-related incentive.”

4. APPLICABILITY. The ESA ASAP applies to all pilot employees of ESA and only to events that occur while acting in that capacity. Reports of events involving apparent noncompliance with 14 CFR 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. Events involving possible noncompliance with 14 CFR by ESA that are discovered under this program may be handled under the Voluntary Disclosure Policy, provided that ESA voluntarily reports the possible noncompliance to the FAA and that the other elements of that policy are met. (See the current version of 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. This is a Demonstration Program the duration of which shall be 18 months from the date this MOU is signed by the FAA (following signature by the other parties). If the program is determined to be successful after a comprehensive review and evaluation, the parties intend for it to be a Continuing Program. This ASAP may be terminated at any time for any reason by ESA, 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 ESA 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 a safety-related event, he or she should note the problem or event and describe it in enough detail so that it can be evaluated by a third party.

a. ASAP Report Form. At an appropriate time during the workday (e.g. after the trip sequence has ended for the day), the employee should complete ESA ASAP Form (ESA Form ASAP-1234) for each safety problem or event and submit it by company mail to the Director of Flight Safety, ATTN: ASAP Manager. If the safety event 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 to fully describe the event and any perceived safety problem.

b. Time Limit. Reports that the ERC determines to be sole-source will be accepted under the ASAP, regardless of the timeframe within which they are submitted, provided that they otherwise meet the acceptance criteria of paragraphs 11a(2) and (3) of this MOU. Reports which the ERC determines to be non-sole-source must meet the same acceptance criteria, and must also be filed within one of the following two possible timeframes:

(1) Within 24 hours after the end of the flight sequence for the day of occurrence, absent extraordinary circumstances. For example, if the event occurred at 1400 hours on Monday and a pilot completes the flight sequence for that day at 1900 hours, the report should be filed no later

than 1900 hours on the following day (Tuesday). In order for all employees to be covered under the ASAP for any apparent noncompliance with 14 CFR resulting from an event, they must all sign the same report or submit separate signed reports for the same event. If the company mail system is not available to the flight crewmember at the time he or she needs to file a report, the employee may contact the ASAP manager's office and file a report via fax or telephone within 24 hours after the end of the flight sequence for the day of occurrence, absent extraordinary circumstances. Reports filed telephonically within the prescribed time limit must be followed by a formal report submission within three calendar days thereafter.

(2) Within 24 hours of having become aware of possible noncompliance with 14 CFR provided the following criteria are met: If a report is submitted later than the time period after the occurrence of an event stated in paragraph 6b(1) above, the ERC will review all available information to determine whether the flight crewmember knew or should have known about the possible noncompliance with 14 CFR within that time period. If the ERC determines that employee did not know or could not have known about the possible noncompliance with 14 CFR until informed of it, then the report would be included in ASAP, provided the report is submitted within 24 hours of having become aware of possible noncompliance with 14 CFR, and provided that the report otherwise meets the acceptance criteria of this MOU. If the employee knew or should have known about the possible noncompliance with 14 CFR, then the report will not be included in ASAP.

c. Non-reporting employees covered under this ASAP MOU. If an ASAP report identifies another covered employee in an event involving possible noncompliance with 14 CFR and that employee has neither signed that report nor submitted a separate report, the ERC will determine on a case-by-case basis whether that employee knew or reasonably should have known about the possible noncompliance with 14 CFR. If the ERC determines that the employee did not know or could not have known about the apparent possible noncompliance with 14 CFR, and the original report otherwise qualifies for inclusion under ASAP, the ERC will offer the non-reporting employee the opportunity to submit his/her own ASAP report. If the non-reporting employee submits his/her own report within 24 hours of notification from the ERC, that report will be afforded the same consideration under ASAP as that accorded the report from the original reporting employee, provided all other ASAP acceptance criteria are met. However, if the non-reporting employee fails to submit his/her own report within 24 hours of notification from the ERC, the possible noncompliance with 14 CFR by that employee will be referred to an appropriate office within the FAA for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement authorities, if warranted.

d. Non-reporting employees not covered under this ASAP MOU. If an ASAP report identifies another ESA employee who is not covered under this MOU, and the report indicates that employee may have been involved in possible noncompliance with 14 CFR, the ERC will determine on a case-by-case basis whether it would be appropriate to offer that employee the opportunity to submit an ASAP report. If the ERC determines that it is appropriate, the ERC will provide that employee with information about ASAP and invite the employee to submit an ASAP report. If the employee submits an ASAP report within 24 hours of notification from the ERC, that report will be covered under ASAP, provided all other ASAP acceptance criteria are met. If the employee fails to submit an ASAP report within 24 hours of notification from the

ERC, the possible noncompliance with 14 CFR by that employee will be referred to an appropriate office within the FAA for additional investigation and reexamination and/or enforcement action, as appropriate, and for referral to law enforcement agencies, if warranted.

7. POINTS OF CONTACT. The ERC will be comprised of one representative from ESA management; one representative from the EPLA; and one FAA inspector assigned as the ASAP representative from the Certificate Holding District Office (CHDO) for ESA; or their designated alternates in their absence. In addition, the ESA Safety Department will designate one person who will serve as the ASAP manager. The ASAP manager will be responsible for program administration, and will not serve as a voting member of the ERC.

8. ASAP MANAGER. When the ASAP manager receives the report, he or she will record the date and time of any event described in the report and the date and time the report was submitted through the company mail system. The ASAP manager will enter the report, along with all supporting data, on the agenda for the next ERC meeting. The ERC will determine whether a report is submitted in a timely manner or whether extraordinary circumstances precluded timely submission. To confirm that a report has been received, the ASAP manager will send a written receipt through the company mail system to each employee 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 ERC recommendations.

9. EVENT REVIEW COMMITTEE (ERC). The ERC will review and analyze reports submitted by the pilots 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 ASAP manager will maintain a database that continually tracks each event and the analysis of those events. The ERC will conduct a 12-month review of the ASAP database with emphasis on determining whether corrective actions have been effective in preventing or reducing the recurrence of safety-related events of a similar nature. That review will include recommendations for corrective action for recurring events indicative of adverse safety trends.

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 demonstration 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 or the need to acquire time critical information.

b. The ERC will make its decisions involving ASAP issues based on consensus. Under the ESA ASAP, consensus of the ERC means the voluntary agreement of all representatives of the ERC. It does not require that all members believe that a particular decision or recommendation is the most desirable solution, but that the result falls within each member's range of acceptable solutions for that event in the best interest of safety. In order for this concept to work effectively, each ERC representative shall be empowered to make decisions within the context of the ERC discussions on a given report. 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 an apparent violation(s), a qualification issue, or medical certification or medical qualification issue, the FAA ERC representative will decide how the report should be handled. The FAA will not use the content of the ASAP report in any subsequent enforcement action, except as described in paragraph 11a(3) of this MOU.

c. It is anticipated that three types of reports will be submitted to the ERC: safety-related reports that appear to involve a possible noncompliance with 14 CFR; reports that are of a general safety concern, but do not appear to involve possible noncompliance with 14 CFR; 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 non-safety reports to the appropriate ESA department head for his/her information and, if possible, internal (ESA) resolution. For reports related to flight safety, including reports involving possible noncompliance with 14 CFR, 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 ESA for corrective action for systemic issues. For example, such corrective action might include changes to ESA flight operations procedures, aircraft maintenance procedures, or modifications to the training curriculum for crewmembers. Any recommended changes that affect ESA 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 ESA to develop appropriate corrective action for systemic issues. The ASAP manager will track the implementation of the recommended corrective action and report on associated progress as part of the regular ERC meetings. Any recommended corrective action that is not implemented should be recorded along with the reason it was not implemented.

f. 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.

g. Any corrective action recommended by the ERC for a report accepted under ASAP must be completed to the satisfaction of all members of the ERC, or the ASAP report will be excluded from the program, and the event will be referred to the FAA for further action, as appropriate.

h. Use of the ESA ASAP Report: Neither the written report nor the content of the written ASAP report will 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 11a(3) of this MOU. The FAA may conduct an independent investigation of an event disclosed in a report.

11. FAA ENFORCEMENT.

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

(1) The employee must submit the report in accordance with the time limits specified under paragraph 6 of this MOU;

(2) Any possible noncompliance with 14 CFR disclosed in the report 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. Reports involving those events will be referred to an appropriate FAA office for further handling. The FAA may use the content of such reports for any enforcement purposes and will refer such reports to law enforcement agencies, if appropriate. If upon completion of subsequent investigation it is determined that the event did not involve any of the aforementioned activities, then the report will be referred back to the ERC for a determination of acceptability under ASAP. Such referred back reports will be accepted under ASAP provided they otherwise meet the acceptance criteria contained herein.

b. Administrative Action. Notwithstanding the criteria in paragraph 205 of FAA Order 2150.3A, possible noncompliance with 14 CFR disclosed in a non-sole-source ASAP report that is covered under the program and supported by sufficient evidence will be addressed with administrative action (i.e., a FAA Warning Notice or FAA Letter of Correction, as appropriate). Sufficient evidence means evidence gathered by an investigation not caused by, or otherwise predicated on, the individual's safety-related report. There must be sufficient evidence to prove the violation, other than the individual's safety-related report. In order to be considered sufficient evidence under ASAP, the ERC must determine through consensus that the evidence

(other than the individual's safety-related report) would likely have resulted in the processing of a FAA enforcement action had the individual's safety-related report not been accepted under ASAP. Accepted non sole-source reports for which there is not sufficient evidence will be closed with a FAA Letter of No Action.

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 be addressed with an ERC response (no FAA action). It is possible to have more than one sole-source report for the same event.

d. **Reports Involving Qualification Issues.** ESA 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 and reexamination and/or enforcement action, as appropriate.

e. **Excluded from ASAP.** Reported events involving possible noncompliance with 14 CFR that are excluded from ASAP will be referred by the FAA ERC member to an appropriate office within the FAA for any additional investigation and re-examination 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. Failure of an employee to complete the ERC recommended corrective action in a manner satisfactory to all members of the ERC may result in the reopening of the case and referral of the matter for appropriate action.

g. **Repeated Instances of Noncompliance with 14 CFR.** Reports involving the same or similar possible noncompliance with the Regulations that were previously addressed with administrative action under ASAP will be accepted into the program, provided they otherwise satisfy the acceptance criteria in paragraph 6 above. The ERC will consider on a case-by-case basis the corrective action that is appropriate for such reports.

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 evidence later is discovered that establishes that the violation should have been excluded from the program.

12. EMPLOYEE FEEDBACK. The ASAP manager will publish a synopsis of the reports received from flight crewmembers in the ASAP section of the monthly publication *Executive Update*. The synopsis will include enough information so that the pilots 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. In addition, each employee who submits a report accepted under ASAP will receive individual feedback on the final disposition of the report.

13. INFORMATION AND TRAINING. The details of the ASAP will be made available to all flight crewmembers and their supervisors by publication in the ESA *Executive Operations Manual*. Each ESA flight crewmember and manager will receive written guidance outlining the details of the program at least 2 weeks before the program begins. Each flight crewmember will also receive additional instruction concerning the program during the next regularly scheduled recurrent training session, and on a continuing basis in recurrent training thereafter. All new-hire flight crewmember employees will receive training on the program during initial training.

14. REVISION CONTROL. Revisions to this MOU shall be documented using standard revision control methodology.

15. RECORDKEEPING. All documents and records regarding this program will be kept by the ESA ASAP manager and made available to the other parties of this agreement at their request. All records and documents relating to this program will be appropriately kept in a manner that ensures compliance with 14 CFR and all applicable law (including the Pilot Records Improvement Act). The EPLA and the FAA will maintain whatever records they deem necessary to meet their needs.

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

President, Executive Pilots Labor Association

Date

Director of Flight Safety, Executive Star Airlines

Date

Manager, FAA CHDO
For Executive Star Airlines

Date

APPENDIX 2. ASAP MOU CHECKLIST

NO.	ITEM	RESPONSE (Circle Yes, No, or NA)	MOU PARAGRAPH REFERENCE
1	Does this program involve a Part 121 Air Carrier or Part 145 Major Domestic Repair Station?	Yes No NA	
2	Is this ASAP:		
a	Specific to an employee group(s)?	Yes No NA	
b	A Demonstration program?	Yes No NA	
c	An Extension of a Demonstration program?	Yes No NA	
d	A Continuing program?	Yes No NA	
e	A renewal of a Continuing program?	Yes No NA	
3	Is the duration of the program 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 extended for no longer than 12 months. Programs that are classified as Continuing must be reviewed and renewed every 2 years.	Yes No NA	
4	Have all parties to the ASAP entered into this agreement voluntarily?	Yes No NA	
5	Is there a description of the objective(s) of the program which includes:		
a	The essential safety information that is reasonably expected to be obtained through the program?	Yes No NA	
b	Any specific safety issues that are of a concern to any of the parties?	Yes No NA	
c	The benefits to be gained through the use of the program?	Yes No NA	
6	Is there a description of any enforcement-related incentive that is needed to achieve the desired goal and results of the program?	Yes No NA	
7	Is there a statement that all safety-related reports shall be fully evaluated and, to the extent appropriate, investigated by the ERC?	Yes No NA	
8	Is there a description of the manner in which ASAP records and reports shall be kept that ensures compliance with 14 CFR, the Pilot Records Improvement Act (PRIA), and any other applicable law?	Yes No NA	

NO.	ITEM	RESPONSE (Circle Yes, No, or NA)	MOU PARAGRAPH REFERENCE
9	Is there a description of the process for timely reporting to the ERC all events disclosed under the program?	Yes No NA	
10	Is there a description of the procedures that provide for:		
a	The resolution of safety-related events?	Yes No NA	
b	Continuous tracking of those events?	Yes No NA	
c	The analysis of safety-related events?	Yes No NA	
11	Is there a statement of ASAP report acceptance and exclusion criteria?	Yes No NA	
12	Is there 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).	Yes No NA	
13	Are the point(s) of contact responsible for oversight of the program identified for each party?	Yes No NA	
14	Is there a description of the process for training and distributing information about the program to certificate holder management and employees and procedures for providing feedback to individuals who make safety-related reports under the program?	Yes No NA	
15	Is there a statement that modifications to the MOU must be accepted by all parties?	Yes No NA	
16	Is there 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, e.g., 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.	Yes No NA	
17	Is there a statement that the program can be terminated at any time, by any party?	Yes No NA	
18	Is there a statement that failure of any party to follow the terms of the agreement ordinarily will result in termination of the program?	Yes No NA	
19	Is there a statement that failure of a certificate holder to follow through with corrective action acceptable to FAA, to resolve any safety deficiencies, will ordinarily result in termination of the program?	Yes No NA	
20	Is there a detailed description of the following concepts and how they will be used:		

NO.	ITEM	RESPONSE (Circle Yes, No, or NA)	MOU PARAGRAPH REFERENCE
a	Event Review Committee?	Yes No NA	
b	Consensus of the ERC?	Yes No NA	
c	Sole-source reporting?	Yes No NA	
d	Sufficient evidence?	Yes No NA	
e	Enforcement-related incentive?	Yes No NA	
21	Is there a statement that repeated instances involving the same or similar possible noncompliance with 14 CFR previously addressed with administrative action under the ASAP will be covered under the program, provided that they otherwise meet the acceptance criteria of ASAP? (The determination of appropriate corrective action for such events will be made by the ERC on a case-by-case basis.)	Yes No NA	
22	Does the ASAP include an MOU procedure to identify the date, time, location or fix, altitude, flight number, and ATC frequency at the time the event occurred? (This applies to ASAP MOUs that contain provisions for ATC events.)	Yes No NA	
23	Is there 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.)	Yes No NA	
24	Is there 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?	Yes No NA	
25	Is there 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?	Yes No NA	

NO.	ITEM	RESPONSE (Circle Yes, No, or NA)	MOU PARAGRAPH REFERENCE
26	Is there 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 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.)	Yes No NA	
27	Is there 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.	Yes No NA	

Index

A

acceptance, 4, 6-8, 10, 11, 12, 14-17
Administrative Action, 2, 4, 6, 8, 9, 10, 11, 15, 16, 6, 7, 3
air carrier, 1, 2, 4, 13, 1, 1
Alaska Airlines, 2
alcohol, 4, 8, 9, 10, 16, 2, 6, 4
Altitude Awareness Program, 2
amendment, 17
American Airlines, 2
analysis, 1, 3, 14, 16, 1, 4, 2, 5
APPLICABILITY, 4, 1

B

background, 2
benefits, 5, 7, 14, 1, 1

C

certificate holder, 1-10, 13, 15-17, 4, 6, 7, 2, 4
Certificate Holding District Office, 2, 12, 4
checklist, MOU, 16, 1
consensus, 3, 4, 6, 9, 11, 12, 15, 5, 6, 7, 3
Continuing Programs, 5, 16
controlled substances, 4, 8, 9, 10, 16, 2, 6, 4
coordination, 17, 4
corrective action, 1, 3, 4, 6, 8-13, 15, 16, 1, 2, 4-7, 2, 3
criminal activity, 4, 8, 9, 10, 16, 2, 6, 4

D

demonstration programs, 5, 14, 17, 1
development, 4, 5
duration, 5, 14, 2, 1

E

employee group, 1, 4, 5, 13, 18, 1, 1
enforcement, 1-4, 7-10, 13-16, 1-8, 1, 3, 4
enforcement policy, 9
ERC representative, 6, 9, 16, 5, 3
Event Review Committee, 3, 6, 15, 4, 3
evidence, 4, 10, 11, 12, 15, 16, 6, 7, 3, 4
evidence, new, 10
evidence, sufficient, 4, 10, 11, 15, 6, 7, 3
examples, 11, 12

F

FAA Order 2150.3A, 2, 6, 10, 13, 16, 2, 5, 6
failure to complete, 9
falsification, 3, 4, 8, 9, 10, 16, 2, 6, 4
feedback, 15, 4, 7, 8, 2
Flight Standards District Office, 2, 13

G

guidelines, 2, 7, 8

H

Handbook Bulletin, 16

I

information, 1-8, 13, 14, 17, 18, 1-5, 8, 1, 2
intentional disregard for safety, 7, 9, 12, 13, 6

M

Manager, 14, 16, 17, 2-8
medical qualification/certification, 6-9, 13, 16, 5, 6, 4
MOU, 2, 3, 5-10, 12-18, 1-5, 8, 1-3

N

no action, 10, 12, 16, 7, 8, 3

O

objective, ASAP, 1, 14, 17, 1

P

person, 2, 3, 5, 6, 7, 4
purpose, 1-4, 6, 10, 13, 16, 1, 6, 4

Q

qualification, 6, 7, 9, 10, 13, 16, 5-7, 4

R

Regional Flight Surgeon, 7, 16, 6, 4
renewal, 5, 14, 16, 17, 1
reopening closed cases, 9, 10, 13, 16, 7, 3
repair station, 1, 3, 4, 11, 13, 18, 1
repeated violations, 8
reporting ASAP events, 1, 2, 4, 11, 12, 14, 1, 4, 7
reporting, timely, 14, 2
reports, 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 18, 1, 2, 3,
4, 5, 6, 7, 8, 1, 2, 4
resources, 5, 16
review, 3, 4, 5, 7, 10, 13, 16, 17, 2, 3, 4, 1
reviews, frequency of, 5, 13, 14, 4, 5, 2

S

safety-related report, 3, 4, 10, 11, 12, 14, 5, 7, 1, 2
safety-related event, 1, 14, 2, 4, 2
sample, 13, 1
sole-source report, 4, 9, 10, 11, 12, 15, 1, 7, 3
substance abuse, 4, 7, 8, 10, 16, 2, 6, 4

T

termination, 13, 14, 15, 2, 5, 2, 3
tracking, 14, 4, 2
training, 12, 14, 6, 8, 2

V

Voluntary Disclosure, 2, 4, 10, 2