

*Lessons Learned and Best
Practices for ERC Members*

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ASAP Reporting Guide

Development Considerations.

The development and implementation of an ASAP is a multifaceted task that includes the following:

1. The certificate holder, employee group, and the FAA should first develop a culture that will promote the ASAP concept. They should not initiate an ASAP until all parties commit to the provisions of the program as described in this AC. Include all stakeholders in discussions regarding program development. Encourage open discussion regarding potentially divisive issues.
2. Integrate the ASAP into the organization's safety culture.
3. Institute cultural change, if required, for all parties involved in the ASAP process.
4. Plan for resources needed.
5. Develop a safety risk matrix that best represents their operational environment.
6. Outline the ASAP report review process in detail.
7. Outline the safety data collection, analysis, and retention processes.
8. Consider employee needs in the submission process.
9. Ensure that the ERC assigns responsibilities for event investigation tasks.
10. Develop comprehensive company employee and management education program prior to the implementation of the ASAP.
11. Utilize a standardized approach to ASAP training.
12. Train all stakeholders in the content of the MOU.
13. Identify the appropriate individuals to serve on the ERC.
14. Select a method of disseminating ASAP information.
15. Develop a processes and procedures manual.

Note:

Continuity of ERC members during the early stages of program implementation will promote the desired partnership relationship. ASAP participants should choose highly experienced personnel as ERC representatives. 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 the ASAP. However, ERC members should communicate with FAA management, certificate holder's management and labor group management (if applicable) when potentially controversial issues and high profile events have been submitted for consideration under ASAP. The ERC may provide briefings and information on the nature of the safety event and associated results of the ERC investigation, to ensure that stakeholders have a better understanding of the nature of the event and its disposition. Care should be taken during the above processes to protect confidential details of the report.

Quorum.

For official meeting purposes, a quorum exists when all designated ERC representatives or their alternates are present (either in person or in remotely situated communication). Some reported events may involve matters that are complex or sensitive, or that require the expertise of other FAA or industry personnel. The ERC representatives are encouraged to consult with such personnel as needed during the ERC process.

Reckless Conduct.

Exists when an individual #1 deviates #2 from established risk controls #3 in gross disregard for safety. Risk controls are established by the FAA through regulations (i.e., 14 CFR) and by company policies implemented by the entity. Thus, risk controls can be both regulatory and non regulatory. Established risk controls put the individual on notice of both the kinds of conduct and scenarios that increase the probability of harm, as well as the procedures necessary to eliminate hazards or to mitigate their effects by reducing the severity and/or likelihood of harm associated with those hazards. Thus, where an individual knows (through established risk controls) how to eliminate or reduce a risk of harm, but nonetheless acts or fails to act in a manner consistent with the established risk control, then that individual has deviated from the established risk control. “Reckless conduct” occurs when that deviation is in gross disregard for safety. Under a risk assessment matrix, “gross disregard for safety” would be indicated by an increase in likelihood and/or severity of consequences to a high level (unacceptable risk). An intentional deviation from an established risk control with the intent to reduce risk (i.e., emergency or abnormal situations) does not constitute “reckless conduct.”

Note:

In both civil and criminal liability contexts, reckless conduct involves a person acting with knowledge that there is a risk that harm would probably result from the conduct and, foreseeing the harm, nevertheless taking the risk. It differs from negligence, where negligence is the failure to recognize a risk that a reasonable person would have recognized.

Report Deidentification.

An ASAP provides for confidentiality of reporter identity outside of the ERC, but not reporter anonymity within the ERC itself. The ASAP manager may elect to remove the employee’s name (but should not remove any other information, such as date of the event, tail number, etc.) for initial ERC report review prior to an ERC meeting. The purpose of removing the reporter’s name for review prior to an ERC meeting is simply to reduce the likelihood that an ERC member’s personal knowledge of the reporting individual may bias that ERC member’s initial evaluation of the event. The FAA ERC member needs the specifics (other than employee identity) concerning the event (e.g., date, location, etc.) to determine whether the FAA has received independent information outside of the ASAP (e.g., a preliminary pilot deviation (PD) report) concerning the event, and if so, to obtain that information for the ERC. The ERC needs this independent information to determine whether it must request further information from the individual, the operator, or from the FAA in order to determine report acceptability and, if appropriate, corrective action.

ERC Interviews of Reporting Employees.

The ERC may elect to interview a reporting employee prior to making an acceptance decision on a report, or at any time prior to report closure, if the ERC determines that the interview is required to make an informed decision on the disposition of a report. The FAA considers information obtained from an employee during an ERC interview to be an extension of the employee's ASAP report itself and therefore subject to all of the same protections that apply to the report itself under FAA ASAP policy. This means that the FAA will not use the content of an interview in any legal enforcement action against a reporting employee in the event the employee's report is excluded from the program unless the event involves criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

Closing a Report.

The ERC should not close a report until all member investigations concerning the event are completed.

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 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.

Reopening a Closed ASAP.

A closed ASAP case may be reopened if new evidence requires the ERC to reconsider its acceptance or rejection decision in the case.

Annual Review.

The ERC conducts an annual 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.

Reaching a Consensus.

The ERC must reach a consensus when deciding whether to accept a report into the program and when deciding on corrective action recommendations arising from the event. 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. 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.

Not Reaching a Consensus.

Recognizing that the FAA holds statutory authority to enforce the 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 2150.3, FAA Compliance and Enforcement Program, as amended. In the event there is not a consensus of the ERC on decisions concerning a report involving an apparent violation(s), a qualification or medical certification issue, the FAA ERC representative will decide how to

handle the report. The FAA will not use the content of an ASAP report, information gathered by the ERC investigation, or an ERC interview of a reporting employee in any subsequent legal enforcement action against the reporting employee. This policy applies regardless of whether an ASAP report is accepted or excluded by the ERC. The FAA may use the knowledge of the event independent of an ASAP report to conduct such investigation of an apparent violation(s) as the FAA deems appropriate. However, for an accepted ASAP report, no enforcement action will be taken.

Criteria for Acceptance.

The following criteria must be met for a report involving a possible violation to be covered under an ASAP:

1. If the employee submits a report later than the period stated in the MOU after the occurrence of an event and provided the report has met all other acceptance criteria, the ERC will review all available information to determine whether it is in the best interest of safety to accept the untimely report.
2. Timeliness considerations do not apply to the reports that are determined to be sole source.
3. ERC Consensus. The ERC must determine through consensus that the apparent regulatory violation did not involve reckless conduct.
4. Exemptions. Exemptions would include violations that occur while exercising the captain's emergency authority in order to pursue the safest course of action.
5. The Big Five. The reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification (The Big Five) by the reporting employee.
6. Previously Involved with The Big Five. Reports initially excluded due to possible involvement of the Big Five may be readmitted for handling under the ASAP if there is consensus of the ERC that the evidence of a subsequent investigation has determined that the employee was not involved in such behavior.

Guidelines for Excluding Reports From an ASAP.

The following types of reports are excluded under an ASAP:

Reckless Conduct.

Reports involving an apparent violation that are determined by consensus of the ERC to involve reckless conduct by the reporting employee.

Provision Violation.

Reports that appear to involve an intentional violation of a provision of 14 CFR or 49 U.S.C.

The Big Five.

Reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification (The Big Five) by the reporting employee.

Untimeliness.

Untimely reports excluded or reports where the ERC does not reach a consensus on acceptance except under the provisions wherein the FAA representative to the ERC assumes control of the decision to accept or exclude.

Not an Employee During Time of Event.

Reports of events that occurred while not acting as an employee of the certificate holder that directly involves that employee.

Repeated Noncompliance.

The ERC may determine through consensus to exclude a report that reflects an additional instance of a previously repeated act of the same or similar noncompliance, by the same individual, due to a common root cause, and that was previously accepted and addressed with corrective action under an ASAP.

Repeated Violations.

Reports involving the same or similar possible noncompliance with 14 CFR may be accepted into the program, provided they otherwise satisfy the acceptance criteria. The ERC will consider on a case by case basis the corrective action that is appropriate for such reports considering the repeated nature of the violations. Failure of an ASAP to mitigate repeats of the same or similar violations may warrant withdrawal from the program by the FAA.

Failure to Complete Corrective Action.

The ERC will exclude reports initially included in an ASAP program if the employee chooses not to participate, is unable to take corrective action, or 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.

Excluded Report Notification.

Reported events that are excluded from an ASAP will be referred to the FAA for possible enforcement action and/or reexamination under 49 U.S.C. subtitle VII, and as prescribed in FAA Order 2150.3, as amended. Event information such as aircraft tail number, date, location, flight number, and regulatory citation will be referred to the FAA for an investigation.

Reports Involving the Big Five.

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 enforcement purposes or may refer reports to law enforcement agencies if appropriate. Upon completion of a subsequent investigation, if 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 the ASAP. Such reports will be accepted under the ASAP provided they otherwise meet the acceptance criteria.

Violations of Certificate Holders.

Apparent violations of certificate holders disclosed through a safety related report under an ASAP may be handled under the VDRP, provided the certificate holder voluntarily reports the apparent violations to the FAA and the other elements of that policy are met. Refer to AC 00-58, Voluntary Disclosure Reporting Program, FAA Order 2150.3, and Order 8900.1.

Voluntary Disclosures.

If the FAA has learned of an apparent violation by a certificate holder from an ASAP report, a voluntary disclosure can still be accepted by the FAA, even though the FAA has already learned of the violation from the ASAP. In such cases, the certificate holder must file the voluntary disclosure in a timely manner, ordinarily within 24 hours after receiving notification of the apparent violation. The FAA may, at its sole discretion, accept the corrective action recommended by an ASAP ERC for an accepted ASAP report as the comprehensive fix for the voluntary disclosure under the following conditions (even when an apparent employee qualification or competency issue is involved):

1. The FAA determines that the violation is due entirely to the actions of the employee(s) and not to a systematic or procedural deficiency of the company; and
2. Employees involved in events covered under this program will be required to complete the corrective action in a manner satisfactory to all members of the ERC. If corrective action is not completed, 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.

Safety Data Collection, Analysis, and Retention Processes.

Through the electronic collection and aggregation of de identified ASAP data in a comprehensive database, the parties to the MOU will identify and analyze trends and target resources to reduce risks. The parties gather and analyze data from the ASAP reports in order to identify significant safety risks and trends. The ERC will develop corrective actions and will work with the certificate holder to implement those corrective actions in order to counter adverse risks and trends. Data are continually gathered to determine the effectiveness of any corrective actions undertaken. If needed, new or additional corrective actions should be identified and implemented. Through data analysis, the parties will continue to monitor long term success and ensure there is no recurrence. The certificate holder should retain safety related information for a period of time sufficient for the ERC to determine whether its recommended corrective actions have been effective, but not less than two years.

ASAP Database.

Upon initiation of an ASAP, certificate holders should implement a comprehensive electronic database system for report submission, data acquisition, event categorization, risk analysis, and data trending. While the establishment of such an electronic system is a requirement for participation in an ASAP, the certificate holder is free to develop or acquire whatever system best meets its needs for report tracking and program management. A license free, browser based, comprehensive ASAP electronic database may be available from the FAA on request, subject to the availability of FAA resources for that purpose at the time of the request.

Confidential Information Sharing Program (CISP).

CISP is a reliable source of qualitative data that is used to identify risk and improve safety. The CISP supports the collection, assessment, and review of safety events from the perspective of air traffic controllers and pilots and subsequently sharing of information with all parties respective to the MOU. Merging perspectives is critical to understanding the causal factors of both known and previously unknown events. By providing a more complete representation of the National Airspace System (NAS), the FAA, and participating airlines (and may include any third party such as an employee labor organization) can more accurately identify potential hazards and develop more robust mitigation strategies. Sharing data has led to corrective actions, improved training, and enhanced communication with controllers and pilots about lessons learned. The Flight Standards Service (AFS) strongly encourages CMO/FSDO/International Field Unit (IFU) managers adhere strictly to the MOU template and to participate in the CISP through a MOU in support of interdependency, critical thinking, and consistency, which are key components to the Aviation Safety (AVS) SMS and Safety Assurance System (SAS).

Corrective Action.

The ERC will work with a certificate holder to develop an acceptable corrective action, including corrective action for systemic issues, that should be taken based on information obtained under an ASAP. The corrective action must be completed in a manner acceptable to all members of the ERC to resolve the noted safety deficiencies. The failure of a certificate holder to complete the corrective action will ordinarily result in termination of the program. In addition, failure of any individual employee 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 will result in the reopening of the case and referral of the matter for appropriate action. The ERC may recommend corrective action for any safety issue identified in an accepted report. Corrective actions can be training, mentoring, counseling, or whatever the ERC determines is the best course of action to take to resolve the issue.

Corrective Action for Qualification Issues.

Matters involving competence or qualification of certificate, license, or permit holders will be addressed with appropriate corrective action, which may include retraining or reexamination.

Reluctance or failure in adopting methods to remediate deviations or instances of repeated deviations may result in enforcement.

Corrective Action for Systemic Issues.

For corrective action regarding systemic issues by a certificate holder:

- a) The ASAP manager should convey such ERC recommendations to the appropriate company department head for consideration.
- b) The certificate holder may implement as recommended, modify, or decline to implement the ERC's recommendations.
- c) The ASAP manager must record, track, and follow up on company response and action.
- d) Any recommended corrective action that is not implemented will be recorded in the ASAP database along with the reason why it was not implemented.
- e) Repeated occurrences of systemic issues should be brought to the attention of company and FAA management.

Employee Feedback.

The value of an ASAP can only be known and understood if the successes and findings of the program are shared openly and honestly with all stakeholders. Making the impact of the ASAP on safety visible and sustaining this visibility over time is important for building and maintaining trust and buy in in the program. The ASAP manager must:

1. Make information about the ASAP meaningful to the intended audience.
2. Select a method of communication that is appropriate for the audience.

Reopening a Closed ASAP Event.

The ERC should not accept or close a report until all member investigations concerning the event are completed, including the determination of whether independent information on the event (i.e. information not obtained from, or predicated upon, the ASAP report) is known to the FAA (thereby making the report non sole source for FAA action under ASAP). If despite best efforts to make this determination prior to acceptance and closure of a report as sole source, information subsequently becomes available to the ERC indicating that the FAA had independent information on the event, it is not considered a best practice to reopen and reclassify the report simply to issue an administrative action letter. To do so undermines employee trust and confidence in the program and is therefore not in the long range best interest of encouraging employees to participate, or to be fully forthcoming on safety related events reported under the program. Rather, as indicated in paragraph 12 of AC120-66B, the circumstances under which reopening of a closed ASAP case based on new evidence is appropriate are limited to those where the new evidence indicates that a violation should have been excluded from the program. It should also be kept in mind that the ERC should make corrective action recommendations for an employee whenever appropriate, regardless of whether a report is classified as sole source or non sole source.

ERC Interviews Prior to Accepting a Report.

It is FAA policy that the ERC may elect to interview a reporting employee prior to making an acceptance decision on a report, if the ERC determines that the interview is needed to make an informed decision on the disposition of a report. The decision to interview an employee must be made through unanimous consensus of the ERC that an employee interview is needed for the ERC to make an acceptance decision, or to decide on the appropriate disposition of an ASAP report. The FAA considers information obtained from an employee during an ERC interview to be an extension of the employee's ASAP report itself, and therefore subject to all of the same protections as apply under FAA ASAP policy to the report itself. This means that the FAA will not use the content of an interview in any legal enforcement action against an employee in the event the employee's report is excluded from the program (unless, as also applies to the report itself, the event involves criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification).

Responsibilities of the FAA member of an ASAP Event Review Committee (ERC).

The primary responsibilities of the FAA member of an ASAP ERC are as follows:

1. Determine if the FAA has received independent evidence on a reported event

2. Assist in determination of a possible 14 CFR regulatory violation.
3. Assure ERC investigation ascertains all pertinent facts and circumstances prior to acceptance/exclusion, including, where appropriate, ERC interview of the employee(s) prior to acceptance of a report.
4. Assist in determining event resolution in the best interest of safety.
5. Recommend corrective action whenever it is appropriate.
6. Follow through on corrective action to ascertain satisfactory completion.

Advance Distribution of Name Redacted ASAP Reports to ERC Members.

The ERC is responsible for reviewing and investigating events reported under ASAP. This task may place a significant workload on the respective members of the ERC, especially at those carriers with a large or mature ASAP program in place. In order to facilitate that process, ASAP reports should be distributed in a confidential manner to each member of the ERC in advance of ERC meetings. The name of the reporting employee(s) should be removed from a report distributed to ERC members in advance of an ERC meeting. The policy of name redaction is intended to prevent ERC member personnel knowledge of the individual from potentially biasing initial evaluation of an event. Other identifying information concerning the event should remain on the report distributed to ERC members in advance of an ERC meeting.

Note:

The FAA is aware that employees in newly established programs may be concerned that if a complete report (i.e. a report containing information which could be used to derive the unnamed employee's identity) is distributed to the FAA member in advance of an ERC meeting, the information might be used in an FAA enforcement action against the employee if the report is excluded from the program. However, ASAP policy stipulates that except for the "big five" (reports that involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification), the FAA will not use the report, or the content of the report, in any legal enforcement action against a reporting employee, regardless of whether the report is accepted or excluded from ASAP. In addition, for reports accepted under ASAP, sufficient evidence means evidence gathered by an investigation not caused by, or otherwise predicated on, the individual's safety related report. In such cases, except for the "big five", the FAA does not use the information on the report to generate evidence that would not have been obtained in the absence of the employee's ASAP report. Further, the FAA recognizes that were the agency to violate this policy, voluntary participation in the program would cease. The history of ASAP over the past seven years indicates that the FAA has not done so. If an employee believes that a violation of this FAA ASAP policy has occurred, the matter should be brought to the attention of the FAA ASAP program office, AFS-280.

Question:

Why does the ASAP AC120-66B have two definitions for sole source in Section, one for the FAA, and another for the company?

Answer:

For the FAA enforcement incentive for reports involving possible violations accepted under ASAP, a report is considered sole source when all evidence of the event available to the FAA outside of ASAP is discovered by, or otherwise predicated upon, the employee's ASAP report. Accepted ASAP reports which are sole source to the FAA are closed with an ERC response, and with ERC recommended corrective action, if appropriate, but no FAA action of any type is taken on such reports. Reports of events involving possible violations for which independent evidence of the event is available to the FAA (i.e. evidence obtained outside of ASAP that is not discovered by, or otherwise predicated upon, the ASAP report), are considered non sole source for FAA purposes. Accepted ASAP reports which are non sole source to the FAA for which it is determined under ASAP that there is sufficient evidence of a possible violation are closed either with Administrative Action or with Informal Action in accordance with the Enforcement Decision Tool, as determined appropriate by the ASAP ERC. ASAP reports of events that are known to the company (i.e. knowledge of the event by the company that is not based upon information discovered by, or otherwise predicated upon, the employee's ASAP report) are considered non sole source to the company. Nothing in FAA ASAP policy impacts or otherwise modifies a company's right to follow its standard disciplinary action process based on information obtained by the company entirely outside of, and not predicated upon, information in an accepted ASAP report. However, for ASAP reports of events that are sole source to the company (i.e. events for which all company knowledge of the event is discovered by, or otherwise predicated upon, the employee's ASAP report, it is FAA policy that as a condition for participation in ASAP, the company agrees (and so states in the applicable ASAP MOU) that it will not use information obtained through ASAP to take disciplinary action against an employee outside of ASAP (except for the Big Five).