

NAVIGATING THE MINEFIELD OF FAA VOLUNTARY DISCLOSURE PROGRAMS

Presented by:
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APRIL 30 - MAY 3, 2014
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TODAY'S AGENDA

- ✦ Context/Theme re Enforcement
- ✦ Voluntary Disclosure Programs
- ✦ FAA's June 26, 2015 Compliance Philosophy Announcement

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A BETTER APPROACH FOR CERTIFICATE HOLDERS

Avoiding enforcement at the outset → Minimizing it if you can't avoid it → Dealing with it effectively at all stages so that it doesn't become more harmful

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HOW DO YOU AVOID ENFORCEMENT?

- ✦ Good old fashioned management – policies/procedures, training, measuring accountability against the policies/procedures, asking questions (why?), recognizing risk factors e.g. lack of employee engagement
- ✦ SMS, and paying attention to it
- ✦ Periodic third party audits
- ✦ Remaining engaged to spot trends before they affect you (industry groups, trade press, FAA press releases, etc.)

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AND IF YOU CAN'T AVOID ENFORCEMENT

Situational awareness- always understand where you are in the overall process; options available to FAA at that stage

Can you avail yourself of one of these options, e.g. is it timely?

Is there a voluntary disclosure program that applies to the situation? VDRP, ASAP?

Address the matter swiftly and appropriately- immediately stop a safety problem, quick work on a comprehensive fix

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VOLUNTARY DISCLOSURE PROGRAMS

- ✦ Timeliness is the single biggest impediment
- ✦ Initial FAA notification usually required within 24 hours of **anyone** in the company learning about the issue
- ✦ How quickly will that knowledge find its way to the right level within the organization?

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**VOLUNTARY DISCLOSURE PROGRAMS
CONTINUED**

- ✦ When was the last time the decision makers read the relevant AC or program documents?
- ✦ Have you followed the comprehensive fix checklist even where an issue of concern did not rise to the level of a violation?
- ✦ Have employees been trained? Does the organization's communication structure allow you to learn of a reportable issue in time to evaluate and then timely make the report?
- ✦ Are employees trained on interactions with the FAA? Including when asked for records? (hint: keep copies)

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THREE PRIMARY PROGRAMS

- ✦ Safety Management System (SMS)
- ✦ Voluntary Disclosure Reporting Program
- ✦ Aviation Safety Action Program (ASAP)

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SAFETY MANAGEMENT SYSTEMS (SMS)

The Four SMS Components

**Safety policy component requires a system for employee reporting and resolution*

Safety Policy
Establishes senior management's commitment to continually improve safety; defines the methods, processes, and organizational structure needed to meet safety goals

Safety Assurance
Evaluates the continued effectiveness of implemented risk control strategies; supports the identification of new hazards

Safety Risk Management
Determines the need for, and adequacy of, new or revised risk controls based on the assessment of acceptable risk

Safety Promotion
Includes training, communication, and other actions to create a positive safety culture within all levels of the workforce

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VOLUNTARY DISCLOSURE REPORT PROGRAM (AC-0058B)

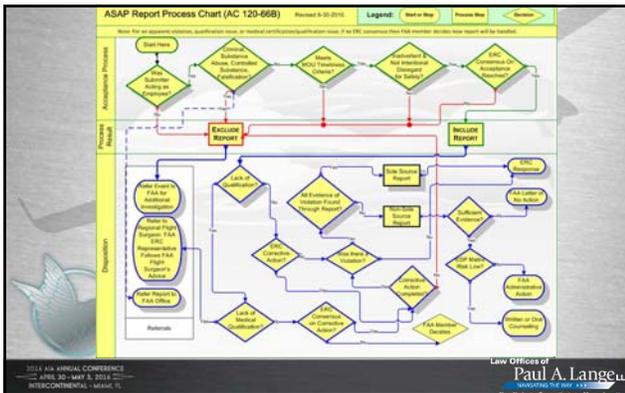
- ✦ Notification required with 24 hours of discovery (can be oral)
- ✦ Web-based system; initial written notification required within 72 hours
- ✦ Notification includes a brief description of apparent violation, of immediate action taken + that noncompliance ceased
- ✦ Complete written report due in 10 working days

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AVIATION SAFETY ACTION PROGRAM (ASAP)

- ✦ The goal of the Aviation Safety Program (ASAP) is to enhance aviation safety through the prevention of accidents and incidents. Its focus is to **encourage voluntary reporting of safety issues and events that come to the attention of employees of certain certificate holders.**
- ✦ To encourage an employee to voluntarily report safety issues even though they may involve an alleged violation of Title 14 of the Code of Federal Regulations (14 CFR), **enforcement-related incentives have been designed into the program.** An ASAP is based on a safety partnership that will include the Federal Aviation Administration (FAA) and the certificate holder, and **may include** any third party such as the employee's labor organization.
- ✦ Notably absent as parties are individual pilots and mechanics

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ASAP CONTINUED

- ✦ 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).*

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WHERE ARE THE MINES?

- ✦ Uninformed/unaware admissions, both at line and management levels
- ✦ Confusion between Part 193 protection and the lack of any evidentiary privilege in civil litigation
- ✦ Reliance upon discretion of FAA inspectors to follow FAA policy
- ✦ Conundrum that having and using these programs has become a standard of care; not having one can be harmful

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2015 COMPLIANCE PHILOSOPHY CONTINUED

- ✈ Each program office has taken a different approach to adopting this philosophy
- ✈ Flight Standards adopted it, but then declared that it applied only to cases not yet referred to legal on the date the Order was issued. So, all the flight standards cases that were already in legal were treated differently than the ones not yet referred to legal. Arbitrary/capricious when the facts are similar?
- ✈ Security Division in OKC has not adopted it at all
- ✈ Notwithstanding the Administrator's written philosophy set forth in an Order, FAA executives and staffs continue to choose on their own whether to follow the policy, and if so, how

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CONCLUSION

- ✈ FAA voluntary disclosure programs can be very helpful to avoid costly penalties as well as to enhance safety
- ✈ Certificate holders must go in with full knowledge and understanding to avoid unintended consequences
- ✈ Unintended consequences of the admissions can be severe
- ✈ Analysis must consider the harm of not having an SMS and not using voluntary disclosure programs

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QUESTIONS?

Thanks for staying until the very end of the program!

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