

**With several aviation safety action programs out of commission, the industry is looking for ways to bolster voluntary safety-reporting endeavors.**

# REBUILDING

Aviation safety action programs (ASAPs) and other voluntary, confidential safety-reporting efforts have been praised since their inception as vital to the ongoing drive to improve aviation safety. Nevertheless, labor disputes at several airlines in the United States have put four pilot ASAPs temporarily out of business — in one case for more than two years before its reinstatement in January.

Pilot participation in ASAPs at three airlines — American Airlines, Comair and US Airways — lapsed in late 2008 as the programs came up for their required biennial renewal. At Delta Air Lines, where pilot participation ended in 2006, officials announced an agreement on Jan. 28 to reinstate a revised ASAP, which resembles an existing program at Northwest Airlines. Delta and Northwest merged in October 2008.

In each case, the lapse came amid disagreements between the airline and its pilots union over the fairness of the airline's treatment of employees who filed ASAP reports.

The airlines and the unions said they support ASAP; their differences involved the issue of if and when an airline should penalize a pilot who has admitted in an ASAP report that he or she made a mistake.

Officials of the airlines where pilot ASAPs still are out of commission and their pilot unions report varying degrees of success in talks to restore the programs, which all parties insist they want to see back in operation.

The programs have faltered because of the relatively fragile structure of ASAP, developed in the 1990s as an experimental program with a key provision that required renewal every two years, and allowed an individual airline's program to expire unless the airline, union representatives and the U.S. Federal Aviation Administration (FAA) unanimously agreed to terms for its continuation.

"ASAP is still set up like a pilot program that can be turned off if anything goes wrong," said William R. Voss, president and CEO of Flight Safety Foundation. "But ASAP has become part of the backbone of safety management in the

United States, and it's time for us to treat it as though it's here to stay."

The first ASAP was established at American Airlines in 1994 as the Safety Action Partnership, one of several demonstration programs implemented even before the FAA issued an advisory circular (AC) in 1997 that described ASAP characteristics and objectives and provided guidance on how they should be developed.

The current version of AC 120-66B, revised in 2002, says, "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. ... Identifying these precursors is essential to further reducing the already low accident rate."<sup>1</sup>

ASAPs typically are developed as a partnership between the operator, the FAA and the employees' labor organization. In most ASAPs, the partners establish an event review committee (ERC), which reviews reports on situations that employees believe may present safety risks, and develops plans to correct any problems.

"The ASAP provides for the collection, analysis and retention of the safety data," the AC said. "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."

Under an ASAP, education and corrective action are intended to take the place of FAA penalties or company disciplinary measures. In fact, the AC specifies that operators should not use information obtained through an 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."

Over the past 14 years, ASAPs have become increasingly common, and at the end of 2008,

the FAA said that nearly 170 were in place at more than 70 operators across the United States. Many of these operators have programs not only for pilots but also for maintenance personnel, dispatchers, flight attendants or other groups. Among the newest ASAPs is an American Airlines program that began operating in January for more than 18,000 flight attendants — a program the airline says is the largest in the world.

Both the FAA and the U.S. National Transportation Safety Board (NTSB) have urged wider use of ASAP, and both have called for a resolution of the differences that led to suspension of the four airline programs for pilots.

ASAP and other similar programs "are crucial to ensuring aviation safety and identifying problems before they lead to accidents," the NTSB said. Acting NTSB Chairman Mark V. Rosenker said that the safety board "urges all parties to do what is needed to reinstate proactive safety programs and keep existing programs viable and fully functioning."

Robert A. Sturgell, acting FAA administrator until he stepped down in January, characterized ASAP and other voluntary reporting programs as "crucial to safety," adding, "It's in everyone's best interest to separate safety from labor issues."

FAA Associate Administrator for Aviation Safety Peggy Gilligan urged representatives of the other airlines operating without ASAPs for their pilots to follow Delta's lead in resolving their differences.

"ASAP gives us invaluable insight into the day-to-day activities of people in our aviation system," Gilligan said.

And Voss praised Delta and its labor union representatives for "being persistent and putting safety above all other considerations."

### Unanimous Support

In addition, a recent examination of the FAA's handling of safety issues by an independent review team (IRT) appointed by U.S. Transportation Secretary Mary E. Peters found that ASAP

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and two other major voluntary safety-reporting programs are vital to the future of aviation safety (ASW, 11/08, p. 10). The other two programs are flight operational quality assurance (FOQA), which involves the collection and analysis of data recorded during flight to improve the safety of flight operations, air traffic control procedures, aviation maintenance, and airport and aircraft design; and the voluntary disclosure reporting program (VDRP) — which encourages airlines, repair stations and other regulated entities to submit reports of regulatory noncompliance to the FAA for analysis and subsequent monitoring of corrective actions.

In their final report, the members of the IRT said that they had discussed the voluntary reporting programs with virtually everyone they interviewed during their research and found that the programs had the unanimous support of industry representatives and regulators.<sup>2</sup>

“They all understand that the majority of the information on which such enhancements now depend would not surface at all if not voluntarily disclosed,” the report said. “The IRT emphatically reaffirms the value of these programs.”

### ‘Quite Healthy’

Despite the interruption of ASAPs at four major air carriers, Voss said that “a number of programs today are quite healthy. They’ve been working well for a long time.”

He believes, however, that the overall health of the programs would improve if the biennial renewal requirement were eliminated.

“With the renewal requirement, it’s too easy for these programs to be derailed,” Voss said. “We set up ASAP as an experiment, but that was 14 years ago. We’re still treating it like a pilot program, and it is far too fragile for that.”

In addition — with ASAPs at risk because of differing opinions about whether a “just culture”<sup>3</sup> provides absolute protection for employees who file ASAP reports or whether, in some cases, penalties may be justified — a

solution also may require new guidance material to specify which types of reports should be covered by ASAP protections and which should not. Resolution of the issue ultimately may require regulatory action or legislation, Voss said.

The suggestions have generated a mixed response.

Rory Kay, Air Line Pilots Association, International (ALPA) safety chairman, endorsed the concept of legislation “to provide stronger protections, to ensure that the data collected is only used for intended safety purposes.”

However, Kay was skeptical about any move to eliminate biennial renewals.

“Remember, these are voluntary programs,” he said. Some sort of renewal time period or process is needed because individuals — individual personalities, beliefs, etc. — can change. These are programs built on trust, and with new people, new trust needs to be developed, re-established.”

Billy Nolen, manager of flight/operations safety at American Airlines, said the FAA should consider action to make ASAP permanent and that removal of the renewal requirements would ease operation of the program. He noted that FOQA operates without such restrictions.

“If there had been no FAA requirement to renew every two years, problems probably would not have come up,” Nolen said.

### Legal Proceedings

Another threat to ASAP, FOQA, VDRP and other voluntary data-gathering programs is the prospect that lawyers and judges will seek access to ASAP data for use in criminal or civil trials, Voss said. The solution may involve legislation to extend to ASAP the same statutory protections that now prohibit courtroom use of cockpit voice recorder transcripts, Kenneth P. Quinn, the Foundation’s general counsel, said.

“Since prosecutors and courts are not protecting the confidentiality of voluntarily supplied safety information, legislatures need to

step in to prevent critical sources of safety data from drying up,” Quinn said.<sup>4</sup>

The Foundation and others have estimated that about 98 percent of the safety information obtained from voluntary disclosure programs would no longer be available if participants were subject to prosecution and penalties.

The Foundation’s first call for legal protection of ASAP data came late in 2008, after court rulings in a case involving the Aug. 27, 2006, crash of a Comair Bombardier CRJ100ER during an attempted takeoff from the wrong runway at Blue Grass Airport in Lexington, Kentucky, U.S.<sup>5</sup> A federal district court judge upheld a lower court’s order calling for the release of Comair ASAP reports, ruling that Congress had the authority to pass legislation protecting the confidentiality of ASAP information but had never done so.

### Continuing Discussions

Participants in preliminary discussions have concluded that further conversations among the practitioners of ASAP would help, Voss said.

“There’s a need to get together the people who work with ASAP so they can document what’s working, the best practices,” he said. “They need to decide first what everyone can agree on and what still needs to be talked out. People shouldn’t have to reinvent their ASAP every time there’s a personnel change.

“We need to close this up like a zipper and continue to narrow down the differences so we don’t have as much room for disagreement.” ➔

### Notes

1. FAA. Advisory Circular 120-66B, *Aviation Safety Action Program (ASAP)*. Nov. 15, 2002.
2. Independent Review Team. *Managing Risks in Civil Aviation: A Review of the FAA’s Approach to Safety*. Sept. 2, 2008.
3. A “just culture” in which everyone is treated fairly is considered a primary element of safety culture. Safety specialists agree that in a just culture, people usually are not punished for unintentional errors. The International Civil Aviation Organization, in its Safety Management Manual, says a just culture is one that recognizes that, although punishment “serves little purpose from a safety perspective,” punitive action may be necessary in some circumstances, and there is a need to define the line between acceptable and unacceptable actions.
4. Flight Safety Foundation. *FSF Calls for Stronger Protection of Volunteered Aviation Safety Information*. Oct. 30, 2008.
5. Forty-nine of the 50 people in the CRJ were killed, and the only survivor, the first officer, was seriously injured in the crash, which destroyed the airplane. The NTSB said that the probable causes were “the flight crewmembers’ failure to use available cues and aids to identify the airplane’s location on the airport surface during taxi and their failure to cross-check and verify that the airplane was on the correct runway before takeoff.”

### Further Reading From FSF Publications

Stimpson, Edward W.; McCabe, William O. “Managing Risks in Civil Aviation.” *AeroSafety World* Volume 3 (November 2008): 10–14.

Rosenkrans, Wayne. “Preventive Fusion.” *AeroSafety World* Volume 3 (May 2008): 25–29.

Rosenkrans, Wayne. “Speaking Up.” *AeroSafety World* Volume 3 (February 2008): 34–39.

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