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NOTICES

DEPARTMENT OF TRANSPORTATION

Commercial Aviation Safety Team Safety Enhancements
Federal Aviation Administration
70 FR 5500-03 2005 WL 227101 February 2, 2005 Docket No. FAA-2004-19400]

Commercial Aviation Safety Team Safety Enhancements

Wednesday, February 2, 2005

AGENCY: Federal Aviation Administration, DOT.

***5500 ACTION:** Notice of order designating information as protected from disclosure.

SUMMARY: The Federal Aviation Administration (FAA) is designating information provided to the agency from approved voluntary compliance with safety enhancements recommended by the Commercial Aviation Safety Team (CAST) as protected from public ***5501** disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123, the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws. The designation is intended to encourage sharing of information between the FAA and operators implementing the CAST safety enhancements.

DATES: Effective February 2, 2005.

FOR FURTHER INFORMATION CONTACT: Margaret Gilligan, Deputy Associate Administrator, Regulation and Safety, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7804.

SUPPLEMENTARY INFORMATION:

Availability of This Designation Order

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemakings' Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202-267-9680. Be sure to identify the docket number of this order.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (65 FR 19477-19478) or you may visit <http://dms.dot.gov>.

Background

Under 49 U.S.C. 40123, certain **voluntarily provided safety information** is protected from disclosure in order to encourage persons to provide the information to the FAA. The FAA must first issue an order specifying why the agency finds that the information should be protected in accordance with that section. The FAA's rules for implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under section 40123, that information will not be disclosed under the Freedom of Information

Act (5 U.S.C. 552) or other laws except as provided in section 40123, part 193, and the order designating the information as protected. This FAA order to protect CAST information from disclosure is issued under 14 CFR 193.11, which sets out the notice procedure for designating information as protected.

A notice of proposed order designating CAST information as protected from disclosure was published in the Federal Register on October 26, 2004 (69 FR 62503). The FAA received three comments in response to the notice. See "Summary of Comments Received and the FAA's Responses" below.

Applicability

This order is applicable to any FAA office that receives information covered under this designation from a CAST member. This order is also applicable to any other government agency that receives such information from the FAA. In order for any other government agency to receive CAST information protected from disclosure under this designation from the FAA, an agency must first stipulate, in writing, that it will abide by the provision of 14 CFR part 193 and this order.

Description of the Safety Information To Be Protected

In December 1997, the National Civil Aviation Review Commission recommended that all elements of the civil aviation community join together to establish an integrated safety agenda that would continue to drive down the fatal accident rate for commercial aviation. To respond to this recommendation, the aviation community created the Commercial Aviation Safety Team (CAST). CAST is a voluntary organization made up of government agencies, air operators, manufacturers and aviation labor organizations dedicated to reducing the commercial aviation accident rate by 80% by 2007. The team's work has centered on the analysis of past accidents in particular categories. Based on the analysis, CAST identifies safety enhancements, which, if implemented, will reduce the risk of these types of accidents happening in the future. Its focus in the future will be on incident/precursor data to mitigate risks prior to fatal mishaps.

The safety enhancements may call for action by government agencies manufacturers, operators, or aircrew.

CAST has identified 47 safety enhancements in its current plan, and future safety enhancements included in later revisions to the CAST plan, which CAST members have agreed to implement. Because implementation is voluntary, and may be different at various operators or manufacturers, CAST members agree that it is important to collect information to evaluate the level of implementation. This information will be invaluable to measuring CAST's effectiveness in reducing the fatal accident rate and reducing future risk in civil aviation.

Summary of the Protected Safety Information

A. Who may participate? Air operators, crewmembers and manufacturers who are targeted to implement safety enhancements recommended by CAST.

B. What voluntarily provided information will be protected from disclosure under this designation?

1. All information related to whether an operator, crewmember, or manufacturer has implemented a safety enhancement recommended by CAST that is reported to an FAA inspector or other FAA representative.
2. All information related to the level of implementation, the methods used to implement and the results of implementation provided by an operator, crewmember or manufacturer to an FAA inspector or other FAA representation.
3. All information related to whether an operator, crewmember or manufacturer has implemented a safety enhancement recommended by CAST that is reported to the FAA by a CAST member organization.
4. All information related to the level of implementation by an operator, crewmember or manufacturer reported to the FAA by a CAST member organization.
5. Reports prepared by the FAA, any CAST member organization, or any team or workgroup established by or associated with CAST that is based on information related to the implementation of safety enhancements.

6. Any database containing information related to the implementation of safety enhancements and/or the effectiveness of these safety enhancements in eliminating or mitigating the underlying safety hazard.
 7. All information related to changing risk, emerging threats, or accident precursors. Incident data (e.g., FOQA and ASAP) used as a diagnostic tool will be included.
- C. How can persons participate? An operator, crewmember or manufacturer can participate by voluntarily providing data related to implementation of safety enhancements to an FAA inspector, to *5502 another FAA representative or to CAST through a CAST member organization.
- D. What is the duration of this protection? Information related to implementation of safety enhancements recommended by CAST will be protected indefinitely.

Summary of Findings

The FAA designates information received from operators and manufacturers related to implementation of CAST safety enhancements as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

1. Summary of why FAA finds that the information will be provided voluntarily—The very essence of CAST is voluntary participation. Those who are members of CAST, who take part in the accident analysis, determine the feasibility of safety enhancements, and agree to implement the enhancements do so voluntarily. The key to CAST success now rests on understanding the level and effectiveness of implementation. Operators, crewmembers and manufacturers who have taken part in the program voluntarily to this point can be expected to provide information voluntarily to support achieving a shared goal of improving safety.
2. Description of the type of information that may be voluntarily provided under the program and why FAA finds that the information is safety-related—CAST participants will provide information as to safety enhancements implemented, the method of implementation, the process to evaluate the implementation and any other information, such as best practices related to the implementation of safety enhancements. The FAA finds this information is safety-related because it will aid in measuring whether the safety goal—reducing the commercial fatal accident rates by 80% by 2007—is being achieved.
3. Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information—Because the safety enhancements are not required by regulation, operators, crewmembers and manufacturers have wide discretion when they implement them. Industry is concerned that if disclosed, there is the potential for the information to be used for purposes other than improving aviation safety, which was the primary reason for establishing CAST. Withholding such information from disclosures is consistent with FAA's safety responsibilities because without information on implementation of the safety enhancements, the FAA and CAST will not be able to determine the effectiveness of safety enhancements. If the FAA and CAST do not receive the information, the FAA and the public will be deprived of the opportunity to determine whether the safety goal can be reached.
4. Summary of why receiving the information aids in fulfilling the FAA's safety responsibilities—With this information, the FAA and industry will be able to determine whether the safety enhancements are effective. If the data suggests the goal to reduce the fatal accident rate will not be achieved, additional safety enhancements could be identified and implemented.
5. Summary of why withholding the information from disclosure is consistent with FAA safety responsibilities—Withholding the information from disclosure is consistent with FAA safety responsibilities because, to reach the FAA's safety goal, the FAA must be able to evaluate the implementation and effectiveness of safety enhancements identified through CAST.
6. Summary of when withholding the information from disclosure would not be consistent with FAA safety responsibilities as described in 14 CFR 193.9—The FAA will release information, as set forth in part 193, to explain the need for changes in FAA policies, procedures and regulations. The FAA may release de-identified, summarized information derived from information reported about implementation of the CAST safety enhancements. When necessary to correct a condition that may compromise safety, or to encourage more complete and timely implementation of safety enhancements, the FAA may release information to the members of CAST. The FAA will give information to CAST members who are government agencies only if each agency meets the requirements 14 CFR 193.7(e). The

FAA will give information to CAST members that are not government agencies only if each member provides adequate assurance that it will protect the information from further release and it will limit access to those with a need to know to carry out safety responsibilities.

7. Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources—Operators, crewmembers and manufacturers will provide information related to the implementation of CAST safety enhancements directly to the FAA inspectors or other FAA employees designated to receive such information. In this way, the information protected under this order will be easily identified and distinguished from other information the FAA receives from other sources.

Summary of Comments Received and the FAA's Response

A proposed FAA order designating CAST information as protected from disclosure under part 193 was published on October 26, 2004 in the Federal Register (69 FR 62503). The FAA received three comments in response to the proposed order.

Comment: One commenter suggested that CAST had completed its work and the order was not necessary.

FAA Response: CAST has not completed its work. In fact, the members of CAST have committed to a goal that will maintain a continuous reduction in the fatality risk in the United States and international commercial aviation beyond 2007. The future vision of CAST is: Key aviation stakeholders acting cooperatively to lead the worldwide aviation community to the highest levels of global commercial aviation safety by focusing on the right things.

Comment: Two commenters supported the order. One commenter from industry stated, "Absent clear protection, some carriers may choose not to participate in CAST". * * * Such a result would clearly contradict the public interest." The commenter urged the FAA to issue a final order.

The other commenter, also from industry, while supporting the order, suggested several minor changes regarding the definition of eligible participants and the nature of the protected information. The FAA has made those editorial changes.

Designation

Accordingly, the Federal Aviation Administration hereby designates the above-described information submitted to demonstrate implementation of CAST safety enhancements to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on January 26, 2005.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety,

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