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# Special Edition ASAP (Aviation Safety Action Program) Newsletter

October 2010

ASAP Meeting Review

Medallion Foundation, Inc.

## In This Issue

[The Discussion](#)

[Overview of Meeting](#)

[Pre-Test-Try-It](#)

[More info](#)

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We had our first general ASAP meeting on September 21st, 2010 in Anchorage, Alaska. The newsletter is dedicated to reporting on the issues which we discussed at the meeting.

If you missed it, you missed a good opportunity to discuss the issues and exchange ideas with other ASAP users. If you did attend, I hope this will help reinforce the material we covered and provide additional information you can use.

Kent Adams ASAP Program Manager

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## THE DISCUSSION

We had a good discussion of lots of issues and topics. A few items came up which I would like to review.

We talked about the decreasing number of reports per month and spent some time discussing the reasons why that may be happening. Unfortunately, there is still a lot of distrust and suspicion out there. There is a feeling among some report submitters that they were penalized for submitting a report. As this "information" gets passed on it often gets even more negative. Of course, this has an impact on the number of reports we receive.

**Let's discuss some of the issues.**

Title 49 Paragraph 44709 is the regulation that allows and requires the FAA to 're-examine' any airman who has demonstrated a "lack of qualification" to hold a FAA certificate. This makes sense in terms of making sure people who hold certificates have the skill and knowledge to perform the tasks they are allowed particularly when the safety of the flying public is involved. Generally a "709 re-exam" results from an accident or incident when there is a question about a pilot's (or more rarely a mechanic's) skill, knowledge, or ability. Since accidents and incidents are non sole source (the FAA knew about them outside of an ASAP report) the investigating Inspector may require a 709 re-exam. None of the 709's which have occurred in our program were initiated by the ERC reviewing an ASAP report. The pilots in question would have received a 709 re-exam even if they didn't file an ASAP report. Unfortunately, some of them are making a connection which does not exist. That is, thinking that since they filed an ASAP report they received a 709 re-exam. This is one of the misunderstanding which is circulating which has contributed to our lack of ASAP participation. Please help make sure people correctly understand this issue.

**Use of ASAP reports for enforcement.** There is a rumor going around that the FAA is using ASAP reports as evidence. That is NOT True. Please help us dispel that rumor. The FAA attorneys would never include an ASAP report in the file anymore than they would use an NTSB Accident report. A judge would immediately throw it out. The FAA inspectors also have been trained on this and know it is not acceptable.

**Handling of excluded reports.** There are two types of excluded reports. One type involve the "Big 5" issues; criminal activity, substance abuse, controlled substances, alcohol, and intentional falsification. The ASAP report itself may be used for violations of the Big 5. That is very rare and has never occurred in our program.

There are several other reasons a report can be excluded by the ERC however. These are listed in paragraph 11 of the MOU. They include reporting within the timelines specified. The event must also be inadvertent and not involve an intentional disregard for safety. If the ERC excludes these reports they are referred to the appropriate FAA office for additional investigation and action as needed. (MOU

11-E) The FAA can not use the information in the ASAP report in their enforcement action. They will have a de-identified report which they received when it was distributed to them from the FAA ERC representative when the report was first received by the ASAP manager. The FAA can take enforcement action (normally a certificate suspension) if they can establish that a violation occurred without using the ASAP report. Depending on the gravity of the event, they can also take administrative action such as issuing a warning letter or doing counseling. If the FAA can not prove a violation occurred they will take no action.

The ERC's have accepted 97% of the reports reviewed. There have been 9 reports excluded by the ERC's for issues related to timeliness, being inadvertent or involving intentional disregard for safety. Here is a summary of the 9 excluded reports.

Five reports were excluded for not being timely. These were all well beyond the 24 hour time limit for non sole source reports. One was 11 days late. One was six weeks late. One was after the pilot received an LOI from the FSDO.

Four reports were excluded because they were considered to be intentional by the ERC. A pilot made a revenue flight knowing there was a problem with the baggage door that had not been written up or cleared by maintenance. A pilot made a test flight without the engine cowling attached. A pilot flew an aircraft after it had been damaged in what was reported as a cargo shift. A mechanic towed one airplane into another while the 'wing walker' was riding with him on the tug.

Not all the excluded reports were excluded by the FAA representative.

Remember the ERC must reach a consensus and all agree to accept reports or they will be excluded.

**Retention of Administrative Actions by the FAA.** We discussed this issue at the meeting and have covered the topic in a previous newsletter. There still seems to be some confusion about the issue, however. Legal Enforcement usually involves a suspension of an airman's certificate. It is a formal legal process in which the airman

has an opportunity to present a defense in front of a judge. Administrative Action, on the other hand, is not a legal finding of a violation but a way to advise an airman that the FAA believes a violation of the regulations occurred but it was a relatively minor issue. This is a tool to put an airman on notice. During our discussion the issue of retention of these records came up. A record of an Administrative Action is maintained in Oklahoma City for two years and then it is removed. During that time the record will not be released during a Pilot Records Improvement Act (PRIA) request. A record of Legal Enforcement actions would be released, of course. Reference FAA Order 8900.1.

We opened with a test for all the attendees. We got 42 tests back. I will cover the five most missed questions. The entire test is included (along with the answers) at the end of this newsletter. If you didn't attend the meeting please review the test and see how you do.

Here are the questions which were missed the most and an explanation of the answers.

Question 3. To be considered timely, all pilot ASAP reports must be submitted to the web-based system with 24 hours after the completion of the flight sequence.

Answer: False. Remember that Sole Source reports have no time limits (MOU Para 9-C). Also there are provisions for a fax or telephone report if a crewmember is unable to submit an electronic report. (MOU 9-B)

Question 5. When an employee representative to the ERC is not available, the MOU provides that a member of management may serve as an alternate.

Answer: False. There is no such provision in the MOU. The intent is to have a representative of Management and Employees participate as they have different roles and perspectives. It is important for companies to get enough people trained to provide a 'back up' for key people on the ERC.

Question 8. The ERC recommended corrective action was not completed to the satisfaction of the pilot rep on the Committee. Therefore, the ERC may exclude the report.

Answer: True. This is the leverage the ERC's have to make sure the corrective actions they develop are completed. All members of the ERC must be satisfied the corrective actions have been satisfactorily completed. (MOU 8-G).

Question 13. A pilot submits a report indicating he felt dizzy and nauseated in flight and that is why he missed an ATC instruction. The ERC should submit this report immediately to the FAA Regional Flight Surgeon for action.

Answer: True. The MOU states that when the ERC becomes aware of any issue involving the medical qualification of an airman they must immediately advise the FAA Regional Flight Surgeon. (MOU 8-F)

Question 14. A mechanic files a report and states he falsified an AD sign off because he was under pressure to get the airplane back on line. He indicated he knows he did something wrong and wants to make it right. The FAA could use this report to take enforcement action against the mechanic.

Answer: True. The key word here is 'falsified.' Falsification is one of the "Big 5" exclusions. Reports that involve criminal activity, substance abuse, controlled substances, alcohol or falsification can be used by the FAA or other law enforcement agencies as evidence. This is the exception to the rule; remember the FAA can NOT use ASAP reports as evidence if they don't involve any of these Big 5 issues. (MOU 11-A-3 and the Flow Chart from AC 120-66B)

## Copy of the Pre-course Test See how you do.

1. In order for a crewmember to participate in ASAP, that person or their manager must believe a violation of the Federal Aviation Regulations has occurred. (True/False)
2. ASAP reports that are excluded from the program will result in FAA enforcement action. (True/False)
3. To be considered timely, all pilot ASAP reports must be submitted to the web-based system within 24 hours after the

- completion of the flight sequence. (True/False)
4. Employees must receive permission by the company for submission of any ASAP report (True/False)
  5. When an employee representative to the ERC is not available, the MOU provides for that a member of management may serve as an alternate. (True/False)
  6. If a Captain and a First Officer make a report about the same event, it can't be a 'sole source' report. (True/False)
  7. A mechanic discovered he signed off an item incorrectly when completing a 100 hour inspection four months ago. It is too late to file a report now. (True/False)
  8. The ERC recommended corrective action was not completed to the satisfaction of the pilot rep on the Committee. Therefore, the ERC may exclude the report. (True/False)
  9. A pilot files an ASAP report for an event that occurred while flying her private airplane. That report would not be accepted by the ERC. (True/False)
  10. The ERC can just vote (majority rule) on corrective actions if they can't agree. (True/False)
  11. The ERC uses subjective opinions to determine whether to accept or exclude a report. (True/False)
  12. The ERC meets approximately every six months to review past corrective actions to make sure they are in place and effective. (True/False)
  13. A pilot submits a report indicating he felt dizzy and nauseated in flight and that is why he missed an ATC instruction. The ERC should submit this report immediately to the FAA Regional Flight Surgeon for action. (True/False)
  14. A mechanic files a report and states he falsified an AD sign off because he was under pressure to get airplane back on line. He indicated he knows he did something wrong and wants to make it right. The FAA could use this report to take enforcement action against the mechanic. (True/False)
  15. A pilot reports an altitude deviation in an ASAP report which was accepted by the ERC. Two months later the same pilot reports another altitude deviation. The ERC can accept the second report if it meets the criteria outlined in the MOU. (True/False)
  16. I see a copy of the monthly ASAP summary every month.

(True/False) If you don't and would like to get one directly contact [Kent@medallionfoundation.org](mailto:Kent@medallionfoundation.org)

ANSWERS:

1-F, 2-F, 3-F, 4-F, 5-F, 6-F, 7-F, 8-T, 9-T, 10-F, 11-F, 12-T, 13-T, 14-T, 15-T

## More next time...

There is so much to cover that we will present more information in our next Newsletter. We will include information on the ASAP Steering Committee which was established. In addition we will talk about the structure of the ERC committee and how that differs from the generic model outlined in the Advisory Circular.

### Meeting Power Point Presentation Available

The Power Point presentations we used during the meeting are available on the Medallion Foundation webpage.

### Feedback and New Topics

Your feedback is always welcome. Let me know if you have question or comments about this newsletter. Also, if you have suggested topics you would like discussed, send them to [Kent@medallionsafety.org](mailto:Kent@medallionsafety.org)

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[Copy of Meeting Agenda](#)

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[This is a copy of the meeting agenda for those who were not able to attend.](#)

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[Agenda](#)

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ASAP Update Meeting

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9/21/10

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Welcome and Introductions

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Program update

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Benefits of ASAP-Panel Discussion

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National Program Overview

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Training Session

-  
NIOSH Update

-  
Steering Committee Discussion-Goals for next year

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## **Alaska Aviation Safety Summit**

Aviation is essential to the Alaskan way of life. The entire aviation community and users will meet to explore current and future resources to advance aviation safety in Alaska.

We are committed to safety the top priority.

WHEN: Friday, October 29, 2010 8:00am - 4:30pm

WHERE: Marriott Downtown Hotel, Anchorage

WHY: Aviation crashes from 2000-2009 have declined as a result of several safety initiatives in Alaska. The number of fatal crashes and fatalities to date in 2010 are higher than corresponding average numbers during the previous decade.

WHO:

**Alaska Air Carriers Association**

Medallion Foundation

Alaska Airports Association

Aviation Safety Council of Alaska

**Chapter 42 of the Experimental Aircraft Association  
Alaska Aviation Safety Foundation  
Alaska Airmen's Association**

**PARTNERS:**

The Alaska Governor's Office  
The Office of Senator Mark Begich  
Alaska Department of Transportation & Public Facilities  
National Transportation Safety Board  
Nation Institute for Occupational Safety & Health  
Alaska Pacific Region  
Federal Aviation Administration

**INFO:** [www.alaskaaircarriers.org/servlet/content/2010\\_Safety\\_Summit.html](http://www.alaskaaircarriers.org/servlet/content/2010_Safety_Summit.html)

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