



FLIGHT-WATCH



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FEDERAL EXPRESS DEVELOPING AN AVIATION SYSTEM ACTION PROGRAM

Pilots who believe they may have been guilty of a FAR infraction may file an Aviation Safety Report with the National Aeronautics and Space Administration (“NASA”). The Aviation Safety Report must be filed with NASA within ten days of the incident. A more complete discussion of the pilot’s options in filing such a report is set forth in Paragraph 7-6-1 of the Aeronautical Information Manual. If the incident does not involve an accident or criminal act or an intentional violation of the Federal Aviation Regulations, generally the pilot will be entitled to a waiver of sanction, even if a finding is made by the FAA of a violation of the FARs.



Years ago, the airlines decided that they wanted to be able to self-disclose their violations to avoid civil penalties or mitigate civil penalties for their FAR infractions. This program came to be embodied in AC 00-58 dated May 4, 1998. The idea of air carriers self-reporting to the FAA with regard to FAR infractions has been taken one step further in the Aviation Safety Action Program (“ASAP”). Under ASAP, a pilot must report his FAR infraction within twenty-four hours (in contrast to the ten days allowed in filing an Aviation

Safety Report with NASA). The filing of ASAP reports is based on a safety partnership of the FAA, the air carrier, and any labor organization that represents the pilot group. ASAP was first implemented in AC 120-66A dated March 17, 2000. It has subsequently been modified in AC 120-66B dated November 15, 2002.



Both of the Advisory Circulars which deal with ASAP contemplate the signing of a Memorandum of Understanding (“MOU”) between the FAA, the company and the labor organization which may represent the pilots. In very general terms, if the pilot self-discloses his FAR violation within twenty-four hours to the company, then he or she will get a letter of warning or a letter of non-compliance from the FAA as opposed to any action being taken against his or her certificate. There are, of course, exceptions in appropriate circumstances if the flightcrew acted with willful disregard to the FARs.

In simple cases, it may be relatively easy for a flightcrew to determine that it violated an FAR. However, there are circumstances where a flightcrew may not fully appreciate or understand exactly what happened within twenty-four hours after the event. Also, while a first officer might believe an FAR infraction took place or there was a violation of the operating specifications of the carrier, the captain might not agree. Also, when I pilot files an Aviation

Safety Report with NASA, he or she has identifying information deleted from the report. The FAA does not know who the pilot was that filed the report with NASA. On the other hand, it is not clear that ASAP will afford the pilot the privilege of having his or her information de-identified either from the records maintained by the company or the records employed by the FAA.

ASAP may be a desirable or well-intentioned program. However, there may be issues with this program that may make it controversial and problematic in years to come. For a more complete discussion of ASAP, please obtain a copy of Advisory Circular AC 120-66B dated November 15, 2002. The adoption of ASAP is currently being evaluated at Federal Express.



U.S.C. § 1982 (a civil rights violation). The passenger challenged the policy of the airport authority and the airline of searching bags without a reasonable suspicion that the bags contained weapons or explosives. The District Court granted the defendants' motion for judgment on the pleadings reasoning that the passenger, by placing his bag on the x-ray belt, consented to have his bag searched. The United States Court of Appeals for the Ninth Circuit affirmed and declared that citizens who desire not to undergo random searches should not fly. The Court also reasoned that once a passenger or prospective passenger enters the airport and allows his or her bag to be placed on the x-ray conveyor belt, the person has, at that time, consented to a random search of his or her bag. Any such search does not violate the Fourth Amendment.

Torbet v. United Airlines, Inc., 298 F.3d 1087 (9th Cir. 2002)



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A passenger who had allowed his bag to go through the x-ray conveyor belt was selected by airport security personnel to undergo a random search. The passenger refused the search saying he would prefer not to fly. The security personnel then told the passenger that he was not free to leave the airport until his bag was searched. The search was conducted resulting in the detection of no suspicious items. The passenger then boarded the flight.

The passenger then sued the airline and the municipal airport authority alleging violations of his Fourth Amendment rights under 42



The aircraft pictured in this issue of Flightwatch were taken by Alan Armstrong at a fly-in in Gainesville, Georgia.

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