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United States Department of Transportation Dockets
Docket No. FAA- 1999-600 1
400 Seventh Street, S.W.
Room - Plaza 40 1
Washington, D.C. 20590

RE: Docket No. FAA-1999-6001 - 32
Notice No. FAA 99-14

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OFFICE OF THE
CHIEF COUNSEL
RULES DOCKET

Dear Administrator Garvey:

The following comments are in response to the Notice of Proposed Rulemaking published by the FAA on July 16, 1999 and titled "Protection of Voluntarily Submitted Information". We respectfully request you consider these comments in connection with the proposed rule.

The objective of the proposed rule is "to furnish a way for people to provide information to the FAA for safety or security purposes, yet protect the information *from* disclosure to others" - presumably meaning others outside of the FAA. The proposed rule does not accomplish that objective for a number of reasons. First, the FAA will not protect voluntarily submitted information from disclosure to virtually all other government agencies. The FBI is an agency that the FAA specifically mentions as being excluded. The FAA has stated that these agencies are under the same obligation as the FAA to protect the information from disclosure but the proposed rule does not specify how other agencies may use the information. Ostensibly, the FAA could take voluntarily submitted information and refer it to other agencies for appropriate action, including criminal prosecution. The proposed rule does not address the circumstances under which the FAA could release information to other agencies and therefore any/all information could be released, without limitation. COMAIR could support release of information to other agencies provided there were controls that adequately defined the circumstances under which the information could be released. Limitations such as those described in AC 120-66 could be used as a basis for developing language to address this concern. Additionally, any other agency should be required to show compelling reason for needing the information and the subpoena procedures proposed in 193.5(f) should be applied before the FAA provided this information to other agencies.

¹ See preamble page 40473 - *General Discussion of the Proposal.*

The safety and security information that is described in this NPRM is not required to be reported to any agency, including the FAA. We are disappointed that the FAA has chosen to use voluntarily submitted information for enforcement action without defining the circumstances that limit its use for enforcement. The proposed rule omits specifying the circumstances under which the FAA could use the information for enforcement and the decision to use or not use any information for enforcement is exclusively within the purview of the FAA. The FAA has stated that this information has significant value insofar as formulation of safety policy is concerned. However, the range of uses that the FAA has proposed seems to be in conflict with, and inconsistent with, the stated purpose. The inclusion of enforcement language in this NPRM appears to go beyond the stated purpose of protecting the information from disclosure to others, and into the area of how the FAA will use the information. We believe that the enforcement language should be omitted from this proposed regulation and should be included in other proposed rulemaking that specifically addresses the FAA's use of voluntarily submitted information for enforcement. Alternatively, we could support inclusion of enforcement language in this proposed rule if there were adequate controls that defined the circumstances under which the FAA could use this information for enforcement. The limitations described in AC 120-66, FAA policy statements, and other FAA publications could be used as a basis for defining the use of the information for enforcement. It should be noted that labor agreements covering FOQA/ASAP programs specifically allow cancellation of these programs if the FAA does not promulgate rules that protect this information from being used in enforcement actions.

The proposed rule appears to be disproportionately written to provide for release of information as opposed to protection of information from release. As stated in the previous paragraph, the FAA has the exclusive right to decide what information is protected and what information is released. The FAA also has the exclusive right to decide how the information can be used. The authority to grant protection from disclosure is reserved for the highest officials within the FAA. The decision to release or use information may be delegated to virtually anyone at any level within the FAA. We believe that the proposed rule should give emphasis to protection of the information as opposed to release of the information. The FAA should not release this information to anyone, including other agencies, except in egregious situations. Except in extreme cases, the FAA should limit its own use of this information to legitimate safety purposes.

We appreciate the opportunity to provide our comments to the FAA concerning this proposed rule.

Kenneth W. Marshall
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