



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA-2006-24855]

Voluntary Disclosure Reporting Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Order Designating Information as Protected from Disclosure.

SUMMARY: This notice describes a proposed order through which the Federal Aviation Administration plans to designate a certain category of information as protected from public disclosure pursuant to a Voluntary Disclosure Reporting Program. The Federal Aviation Administration is required to protect the information from disclosure to the public, including disclosure required by statute, such as the Freedom of Information Act, following issuance of an order designating the information as protected. The instant designation is intended to encourage participation in the Voluntary Disclosure Reporting Program.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Send comments identified by Docket Number FAA-2006-24855 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- **Mail:** Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, S.E., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. § 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Scott Crosier, ASI / Manager, Voluntary Disclosure Reporting Program (VDRP), Air Carrier Training Systems and Voluntary Safety Programs Branch, AFS-280, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone: (703) 661-0278; email: scott.crosier@faa.gov. Or, Hillary Heintz, AIR Compliance and Enforcement Program Manager, Aircraft Certification Service, AIR-150, 950 L'Enfant Plaza N S.W. Washington, DC 20024; telephone (202) 267-1446; email: hillary.heintz@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority for this Designation

The FAA sets forth this designation pursuant to title 49 of the United States Code (49 U.S.C.) section 40123 and title 14, Code of Federal Regulations (14 CFR), part 193.

II. Overview of Proposed Designation

On August 17, 2006, the Federal Aviation Administration (FAA) issued FAA Order 8000.89, Designation of Voluntary Disclosure Reporting Program (VDRP) Information as Protected from Public Disclosure under part 193. The FAA published the Notice of Order in the Federal Register. 71 FR 54405 (Sept. 15, 2006).

This Proposed Order Designating Information as Protected from Disclosure will retain the current protection provided for disclosures under FAA Order 8000.89 while also designating disclosures to the agency by entities as provided in Advisory Circular (AC) 00-68 as protected from public disclosure in accordance with the provisions of part 193. The comment period for the contents of AC 00-68 opened on June 12, 2015 and closed on August 7, 2015.

III. Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order making certain findings before the information is protected from disclosure. The FAA's rules implementing that section are in part 193. If the Administrator issues an order designating information as protected under 49 U.S.C. 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 49 U.S.C. 40123, 14 CFR part 193, and the order designating the information as protected. This proposed order is issued under § 193.11, which sets out the notice procedure for designating information as protected.

IV. Discussion of the Proposal

Summary of the VDRP Voluntary Information Sharing Program

A. Who may participate: Regulated entities as provided in AC 00-58, as amended, AC 00-68, and AC 121-37.

B. What voluntarily provided information would be protected from disclosure under this proposed designation: The content of all submissions by a regulated entity that are accepted under the VDRP, including, but not limited to, all of the items listed under Proposed Findings, Paragraph IV D(2) below.

C. How persons would participate: Regulated entities participate by notification of an apparent violation to the FAA by the regulated entity in accordance with the VDRP reporting procedures, and completion of corrective actions in accordance with AC 00-58, as amended, AC 00-68, and AC 121-37.

D. Duration of this information sharing program: This information sharing program would continue in effect indefinitely, unless the FAA terminates the VDRP, or until the order of designation under part 193 for the VDRP is withdrawn by the FAA.

Proposed Findings

The FAA proposes to designate information received under the VDRP as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

(1) Summary of why the FAA finds that the information will be provided voluntarily.

The FAA finds that the information will be provided voluntarily. No regulated entity is required to participate in the VDRP. Initiation of submissions under the VDRP are indicative of the willingness of regulated entities to identify and correct their own instances of regulatory noncompliance, develop long term comprehensive fixes or corrective action plans, and foster safe operating practices.

(2) Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety or security related.

The information that would be voluntarily submitted under a VDRP is described in AC 00-58, as amended, AC 00-68, and AC 121-37. Because the Federal Aviation Regulations

specify the minimum requirements for safety, and VDRP submissions entail violations of those regulations, the information is inherently safety related. It would include the following:

(a) Information contained in an initial notification to the FAA:

—A brief description of the apparent violation, including an estimate of the duration of time that it remained undetected, as well as how and when it was discovered;

—Verification that noncompliance ceased after it was identified;

—A brief description of the immediate action taken after the apparent violation was identified, the immediate action taken to terminate the conduct that resulted in the apparent violation, and the person responsible for taking the immediate action;

—Verification that an evaluation is underway to determine if there are any systemic problems;

—Identification of the person responsible for preparing the comprehensive fix for disclosures under AC 00-58, as amended, and AC 121-37, or the corrective action plan for disclosures under AC 00-68; and

—Acknowledgment that a detailed written report will be provided to the designated FAA official within the timeframe specified in AC 00-58, as amended, AC 121-37, or AC 00-68, as amended.

(b) Information contained in a detailed written report:

—A list of the specific FAA regulations that may have been violated;

—A description of the apparent violation, including the duration of time it remained undetected, as well as how and when it was detected;

—A description of the immediate action taken to terminate the conduct that resulted in the apparent violation, including when it was taken, and who was responsible for taking the action;

—An explanation that shows the apparent violation was inadvertent;

—Evidence that demonstrates the seriousness of the apparent violation and the regulated entity's analysis of that evidence;

—A detailed description of the proposed comprehensive fix or corrective action plan, outlining the planned corrective steps, the responsibilities for implementing those corrective steps, and a time schedule for completion of the fix; and

—Identification of the company official responsible for monitoring the implementation and completion of the comprehensive fix.

(c) FAA generated documentation and electronic information that is directly associated with an accepted VDRP submission, including, but not limited to:

—Acknowledgment of receipt of a VDRP submission;

—Notification of VDRP acceptance, request for modification, or rejection;

—Routine correspondence directly associated with a VDRP submission;

—FAA records directly associated with FAA monitoring of a comprehensive fix or corrective action plan;

—FAA Letter of Correction in accordance with AC 121-37 or, written notification in accordance with AC 00-58, as amended, and AC 00-68, as amended, for an accepted VDRP submission; and

—All FAA electronic databases of VDRP submissions and FAA responses.

(d) Information contained in a report submitted to the FAA under the informal voluntary disclosure reporting process described in AC 00-68, as amended, including, but not limited to:

—A description of the apparent noncompliance;

—A causal analysis of the apparent noncompliance;

—The corrective action(s) taken or planned; and

—The date by which the regulated entity will complete the corrective action(s).

(3) Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.

The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Regulated entities are reluctant to voluntarily disclose instances of regulatory noncompliance if such submissions might be subject to public disclosure. A significant impediment to participation in the VDRP is concern over public disclosure of the information, and, if disclosed, the potential for it to be used for other than the system safety enhancement purposes for which the VDRP was created. Withholding such information from disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide assurance that it will not be disclosed, regulated entities will be reluctant to participate in the program. Information received under the VDRP will be identified as such in each FAA line of business's central database used to track submissions. To encourage continued use of the VDRP, the FAA will not keep the identity of persons reporting, or detailed information about disclosures, under that program in any central database.

The FAA finds that by virtue of designating information provided under the VDRP as protected under part 193, the reluctance of regulated entities to participate due to concerns about possible disclosure of the information will be mitigated. In addition, FAA will be able to retain more information about the disclosures, including the identity of the reporters, in an FAA database, without negatively impacting participation in the VDRP. Disclosures under the VDRP enable the FAA to become aware of many more instances of regulatory noncompliance than it otherwise would and, moreover, the VDRP permits the FAA to assure that appropriate corrective action is taken. If regulated entities do not participate, the FAA and the public will be deprived of the opportunity to make the system safety improvements that receipt of the information otherwise enables.

(4) Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.

The FAA finds that receipt of VDRP information aids in fulfilling the FAA's safety and security responsibilities. A primary purpose of FAA regulations is to assure public safety. Because the VDRP identifies and corrects instances of regulatory noncompliance of which the FAA may be otherwise unaware, the program offers significant potential for enhancement of public safety. Receipt of this otherwise unavailable information would also provide the FAA with an improved basis for modifying procedures, policies, and regulations to improve safety and efficiency.

(5) Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in § 193.9.

The FAA finds that withholding VDRP information provided to the FAA is consistent with the FAA's safety responsibilities. The VDRP specifically provides that appropriate corrective action must be taken by the regulated entity for all instances of regulatory noncompliance accepted under the program. To be accepted by the FAA, apparent violations disclosed under the program must be inadvertent, and, where applicable, must not indicate a lack, or reasonable question of a lack, of qualification of the regulated entity. Corrective action under the VDRP can be accomplished by the regulated entity and verified by the FAA without disclosure of the protected information. If the FAA determines that the steps taken by the entity are not those documented in the written report, the submission may be excluded from the VDRP, and appropriate legal enforcement action may be initiated.

The FAA will release information submitted under a VDRP as specified in part 193 and this proposed order. The FAA may disclose de-identified summary information to explain the need for changes in FAA policies, procedures, and regulations. The term “de-identified” means

that the identity of the source of the information and the names of the regulated entity, employees, and other persons, as well as any other information that could be used to ascertain the identity of the submitter have been redacted. The FAA may disclose de-identified, summarized VDRP information that identifies a systemic problem in the aviation system, when other persons need to be advised of the problem so that they can take corrective action. The FAA may disclose de-identified aggregate statistical information concerning VDRP submissions. The FAA may disclose independently obtained information relating to any event disclosed in a VDRP report, unless the FAA determines that in the case of an accepted VDRP submission, release of such independently obtained information would be inconsistent with the provisions of this order, or would otherwise be prohibited by public law or regulation. The FAA also may disclose information concerning enforcement action taken for a regulatory violation initially identified in a VDRP submission, when that submission is not accepted by the FAA, or, if accepted, it is later excluded by the FAA because of the regulated entity's failure to comply with the criteria of the VDRP. The FAA also may disclose any information about a disclosure initially submitted under the VDRP that is not accepted, or accepted but later excluded because of the regulated entity's failure to comply with the criteria of the VDRP.

(6) Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.

In accordance with AC 00-58, as amended, AC 00-68, and AC 121-37, all VRDP submissions must be clearly identified as such by the regulated entity making the submission. Any other information received by the FAA from the regulated entity concerning the content of a VDRP submission must be clearly labeled as follows to be eligible for protection under this designation: "WARNING: The Information in this Document is Protected from Disclosure under 49 U.S.C. 40123 and 14 CFR part 193." If the information is submitted electronically, the

warning notice must be appropriately embedded in the electronic submission in a fashion that assures the visibility of the warning to any viewer.

Proposed Designation

Accordingly, the FAA proposes to designate the above-described information submitted under a VDRP to be protected under 49 U.S.C. § 40123 and part 193, when obtained by the FAA pursuant to an accepted VDRP submission.

V. Additional information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

B. Availability of This Proposed Designation

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Aircraft Certification Office, AIR-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-8235. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued under authority provided by 49 U.S.C. 106(f) and 40123 in Washington, DC, on September 7, 2016.

David W. Hempe
Deputy Director, Aircraft Certification Service, AIR-1
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