



The ACSF believes that actively seeking information about safety and regulatory issues within an operation is critical to a healthy safety culture and is a clear indicator to the FAA and public that an operator is safety and compliance conscious. In support of the goal of improving the safety of FAA-certificated Part 135 operators and Part 91K-authorized fractional ownership programs, ACSF has developed and is making available to the industry the AVSiS program at no cost.

AVSiS, the Aviation Safety Information System, is a safety event reporting and management system for FAA-certificated Part 135 operators and Part 91K-authorized fractional program managers. It is designed to assist the company safety manager with the detection of safety issues and trends, and the development of mitigation and intervention strategies for the same. ACSF believes AVSiS is a critical safety-enhancing tool with far-reaching benefits.

In discussing the implementation of this tool with many ACSF members and certificate holders, we have heard several concerns raised about potential liability associated with tracking and maintaining this safety data. We would like to take this opportunity to review some of these concerns and the information we have been able to identify regarding them.¹

Regulatory Violation Revealed

One of the main issues identified by our members in evaluating the AVSiS was the potential for discovering apparent regulatory violations and how that information would relate to potential enforcement actions. From our research, it appears that if an AVSiS report reveals an apparent regulatory violation, a certificate holder's options for dealing with that issue should be similar to the options available if an apparent violation is revealed internally by any means. A certificate holder who identifies such an issue must take immediate corrective action to come into compliance, and may evaluate whether participation in one of the FAA voluntary reporting programs (such as the Voluntary Disclosure Program AC 00-58A) is a viable option.

Voluntary Disclosure Program. There are five main conditions that must be met for the Voluntary Disclosure Program to be an available option: (1) the certificate holder must notify the FAA of the apparent violation "immediately after detecting it and before the Agency has learned of it by other means," (2) the apparent violation must be inadvertent, (3) the apparent violation must not indicate "a lack, or reasonable question, of qualification of the certificate holder," (4) immediate action, satisfactory to the FAA, must be taken upon discovery, and (5) the certificate holder must develop and implement a comprehensive fix that is satisfactory to the FAA. If these five conditions and the other requirements outlined in the Advisory Circular are met, there are several benefits to participating, including the fact that the FAA will issue a letter of correction in lieu of

¹ This information is an informal discussion and should in no way be considered legal advice. Operators with specific concerns about their company liability are strongly encouraged to consult with their attorney(s).

civil penalty action. The information managed within AVSiS is directly applicable to completing a voluntary disclosure report for the FAA and should enhance your ability to use this FAA program effectively when applicable to the particular apparent violation.

Other Available Programs. In addition to the Voluntary Disclosure Program, the government also provides several other programs designed to allow certificate holders to disclose certain safety and regulatory compliance issues with some protection from certificate action. These options include but are not limited to: Aviation Safety Reporting System (AC 00-46D), Aviation Safety Action Program (AC 120-66B), and Flight Operational Quality Assurance Program (AC 120-82). In many instances it may be possible to integrate the AVSiS information collection process into these programs, and/or draw from the information collected to complete a report under one of these programs.

The decision to participate in an FAA disclosure program should be evaluated carefully, keeping in mind the deadlines of each particular program. Whether to disclose proactively an apparent violation to the FAA (whether in accordance with a disclosure program or not) is a decision best made in consultation with appropriate legal counsel. However, participation in AVSiS should not alter a certificate holder's ability to make use of these programs, and may in fact become a valuable tool for streamlining use of the programs.

FAA Inspection

Like any other system used to support the operation of the air carrier, the FAA may seek to "inspect" AVSiS data. However, whether an operator informs the FAA that AVSiS is being used is an internal decision. Clearly, if an operator wishes to use AVSiS as part of any required recordkeeping system, or perhaps as an element of an ASAP program, the FAA must know of its use. The implementation of AVSiS (especially with respect to programs like ASAP or a required SMS), and questions regarding whether the data should be on the FAA's list of items to inspect in specific situations, should be evaluated with appropriate legal counsel. Depending on how AVSiS is implemented in certain organizations, the certificate holder's procedures for participating in a program like the Voluntary Disclosure Program may need to be modified to ensure that apparent violations are identified and brought to the FAA's attention in accordance with the requirements of that program.

Litigation

For many certificate holders, another common concern relating to maintaining safety reporting information is the inevitable litigation following an accident. It is possible that attorneys in such litigation may seek copies of the information maintained on AVSiS for many reasons. Just as with any documentation there is always the possibility that the AVSiS information would be deemed to be discoverable in litigation, in which case the certificate holder and/or ACSF may be required to produce the information. Although this information may be potentially damaging in some litigation, the absence of participation in a program like AVSiS could be damaging in and of itself. Each jurisdiction may have differing laws that would be evaluated in litigation over an aviation accident; however, most courts look to industry standards at least in part to determine whether a particular member of that industry has been negligent. Not participating in any form of safety reporting and analysis program, where industry best practices call for such participation, could be a critical fact in determining whether a certificate holder has been negligent.