

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 13**

[Docket No. FAA-2000-7554; Notice No. 00-07]

RIN 2120-AF04

Flight Operational Quality Assurance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to codify an FAA policy encouraging the voluntary implementation of Flight Operational Quality Assurance (FOQA) programs and clarifying the circumstances under which information obtained from voluntary FOQA programs could be used in enforcement actions against air carriers, commercial operators, or airmen. The rule would require air carriers participating in FOQA programs to submit aggregate FOQA data to the FAA for use in monitoring safety trends. Under the proposed rule, the FAA may use aggregate FOQA data as a basis to promulgate safety rulemakings or to address situations calling for remedial enforcement action, *e.g.*, a lack of qualification on the part of an operator or aircraft.

DATE: Comments on this proposal must be submitted on or before October 3, 2000.

ADDRESSES: Address your comments to the Docket Management system, U.S. Department of Transportation Room Plaza 401, 400 Seventh St., SW., Washington, DC 20590-0001. You must identify the docket number FAA-2000-7554 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards

Service, AFS-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (703) 661-0260.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposal contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2000-7554." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202-512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800

Independence Ave, SW., Washington, DC 20591, or by calling (202) 267-9677. Communications must identify the docket number of this NPRM.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Flight Operational Quality Assurance Program Description

The primary purpose of a Flight Operational Quality Assurance Program (FOQA) is the enhancement of air safety. A FOQA program involves the routine analysis of flight data generated during line operations in order to reveal situations that require corrective action and to enable early corrective action before problems occur. To institute such a program, airlines would need to develop a system that captures flight data, transforms the data into an appropriate format for analysis, and generates reports and visualizations to assist personnel in analyzing the data. The information and insights provided by FOQA programs significantly enhance line operational safety, training effectiveness, operational procedures, maintenance and engineering procedures, ATC procedures, and airport surface issues.

Data is collected and aggregated from numerous operations. The value of using the aggregate FOQA data greatly exceeds that of single flight assessment when trying to determine the root causes of systemic problems that need to be corrected. Individual data records are typically aggregated along various dimensions (*e.g.*, event category as a function of aircraft type, phase of flight, and geographical location) to assist the analyst in looking for trends and patterns. Aggregation is defined as a transformation process that groups and mathematically combines (*e.g.*, count, total, average, standard deviation) individual data elements based on some criterion. Each aggregation is based on factors of interest to the analyst at a particular point in time. For example, the average approach maximum rate of descent below 2000 feet by airport by fleet type (event category) may be useful to better understand the data once counts of related events indicate that this is an area that might be useful to study. This analysis may suggest that all fleets are experiencing high descent rates at a certain airport or just a specific aircraft type is involved. This type of information can be used to pinpoint the potential source of a problem and the nature of the corrective action.

Under the rule, program participations would submit aggregate FOQA data to the FAA. The FAA plans to publish an advisory circular, which would provide program participants with guidance on submission procedures. In general, it is envisioned that aggregate FOQA data would be supplied monthly to the FAA through secure electronic means similar to the existing process for submitting automated operations specifications. The aggregate data would be reviewed by various organizational elements within the FAA to identify trends pertinent to the areas of safety oversight or NAS management for which they are responsible. In particular, the FAA expects the principal operations inspector (POI), his aircrew program managers (APMs), the principal maintenance inspector (PMI) and the principal avionics inspector (PAI) would monitor trends to identify areas in need of corrective action, if any; to review planned strategies for taking corrective action where warranted; and to verify that such corrective action has been effective. In general, the information obtained from aggregate FOQA information would be used to provide an improved basis for agency decisions based on objective data from line operations. Periodic reviews of trends and lessons learned from the FOQA program will help both the airline and FAA inspectors decide where to concentrate future safety efforts.

Background

Since the mid-1940s the civil air transport accident rate has significantly decreased. This decrease is due in part to the air transport industry's practice of discovering, understanding, and eliminating factors that lead to accidents and incidents. For many years, industry, the FAA, and the National Transportation Safety Board (NTSB) have used information from flight data recorders (FDRs) and digital flight data recorders (DFDRs) to identify the causes of accidents and to attempt to eliminate those causes systematically.

Airplanes used in operations conducted under 14 CFR part 121 and certain types of aircraft used in operations conducted under parts 91, 125, and 135 are required to have flight data recorders. Any operator who has installed approved flight recorders is required to keep the recorded information for at least 60 days after an accident or incident requiring immediate notification to the NTSB (14 CFR 91.609(g), 121.343(i), 125.225(g), and 135.152(e)). The flight data recorder information can thus be analyzed to

determine causes of an accident or incident.

In the past 10 years, technological advances in cockpit equipment and in data analysis have increased the potential for obtaining and analyzing information on the flight characteristics of an aircraft during its operation. This information can be used to determine the causes of an accident. More importantly, it can also be used to obtain and analyze on a routine basis data that are recorded in line operations in order to prevent an accident. In recent years, many countries have developed programs to encourage the routine recordation and analysis of operational data on a voluntary basis. This NPRM is intended to accomplish the same for the United States through an FAA-approved FOQA program. In this NPRM, the term "FOQA program" means an FAA-approved program for the routine collection of in-flight operational data by means of a DFDR and the analysis of that data to discover trends affecting operational safety. It is hoped that by gathering and analyzing this data, the FAA and the aviation industry will be able to develop corrective actions, to improve flight crew performance, air carrier training programs, operating procedures, air traffic control procedures, airport maintenance and design, and aircraft operations and design. The key potential safety benefit of FOQA is that the routine analysis of flight data would enable the FAA and aircraft operators to take early action to prevent accidents. This benefit contrasts with the current situation, where the agency and industry rely on after-the-fact accident- or incident-driven data extraction and analysis used to develop safety fixes to prevent later accidents. Because of its capacity to provide early identification of safety shortcomings, FOQA offers significant potential for accident avoidance.

In 1995, in response to a recommendation of the Flight Safety Foundation, the FAA sponsored a FOQA Demonstration Study. The FOQA Demonstration Study has been conducted over the past several years in cooperation with four major airlines in the U.S. It has provided substantial documentation of the benefits of FOQA. For example, analysis of FOQA data has indicated that for domestic operations to major U.S. cities, the frequency of approaches for which the rate of descent exceeds 1000 feet per minute at 500 feet descent height is generally much higher than was realized previously. Analysis further determined that there is a correlation between the frequency of unstable approaches and specific airport

locations. Such information has important implications for airline procedures, pilot training, and FAA Air Traffic Control procedures. Dissemination of FOQA information on this problem to pilots has been effective in reducing the frequency of such events. The data available from the Demonstration Study also provided a basis for the FAA to modify the approved instrument approach procedures for one U.S. airport, and to update the instrument approach equipment available at one runway.

FOQA data also have indicated that the manufacturer's recommended maximum speed for a given flap setting in a given aircraft type is exceeded more frequently than had been realized previously. Although pilots have been required to monitor and report the occurrence of flap exceedences for many years, flight crewmembers can miss them because they can occur for very brief intervals during the busy approach-to-landing phases of flight.

FOQA data have indicated that there are particular procedures and maneuvers that warrant increased emphasis in training. For example, analysis of FOQA data suggests that more emphasis on the safe and proper execution of visual approach maneuvers is needed. This result is of interest since the emphasis in pilot training programs previously has been primarily on the execution of instrument approach procedures. FOQA data indicated, however, that few performance problems are occurring with instrument approaches. Results from the Demonstration Study at one airline have indicated that the modification of recurrent training content to better emphasize the visual approach has produced quantifiable improvements in individual performance on that maneuver during line operations.

The FOQA program has been employed by one U.S. airline to create a database of wake turbulence events, and the information on how to conduct analyses of digital flight data for that purpose has been shared with other U.S. airlines.

FOQA data also have been used to pinpoint runway surface anomalies at U.S. airports. The documentation of these anomalies has been instrumental in correcting a long-standing problem at one such location.

FOQA data have provided a hitherto unavailable means of establishing a database of TCAS alerts, and of documenting specific aircraft responses to the occurrence of TCAS events. This type of hard data is essential to the integration of TCAS technology with air traffic control modernization.

FOQA data from two airlines, related to the impact of wind gusts, turbulence, and landing on airframe lifespan integrity, has proven to be invaluable for use by the FAA for the purpose of updating airframe certification standards.

Results from the Demonstration Study have indicated that, in addition to the utility of FOQA for safety monitoring and corrective action follow-up, there are numerous direct cost-savings benefits to an airline from FOQA. For example, FOQA data acquired by one airline have documented that autothrottle performance in one aircraft type was not in accordance with the manufacturer's specification, and that this circumstance was responsible for chronic engine temperature exceedences in that aircraft type. This information, which had not been available until the implementation of FOQA in that aircraft type, was successfully employed by the airline to modify takeoff power setting procedures in order to compensate for the autothrottle deficiency, as well as to initiate communications with the manufacturer targeted at correcting the problem. As a result, the airline was able to achieve savings from fewer engine removals, as well as increased aircraft availability, for that aircraft type.

Besides reducing engine removals, the Demonstration Study has documented many other examples of savings that are achievable through FOQA. Prominent examples include engine on-wing extension programs, detection of out-of-trim conditions, improved fuel management, reduced hard landing inspections, brake wear reduction, and insurance premium reductions.

The Demonstration Study's findings on the benefits of FOQA for U.S. operators are very similar to the results obtained by European air carriers, many of who have long experience in the use of this technology. A lengthy listing of FOQA benefits that have been observed by the Safety Regulation Group of the United Kingdom Civil Aviation Authority, for example, includes documenting unusual autopilot disconnects, GPWS warnings, hard landings, and rushed approaches. They include use of FOQA data for monitoring fuel efficiency, engine condition, crew procedures, noise violations, in-flight ATC delays, and aircraft structural fatigue. They also include the use of FOQA data for Category III landing certification. These results clearly validate the value of FOQA for both safety enhancement and cost management purposes.

In December 1995, the FAA sponsored a Safety Conference to review

progress and to refine the originally proposed safety initiatives. At that conference, industry requested that the FAA codify in the regulations the enforcement protection policy letter on FOQA that had been issued by former Administrator Hinson. The FAA agreed to initiate rulemaking to address this issue. Subject to FAA action on this item, industry representatives committed themselves not only to continue support for voluntary implementation of FOQA at U.S. airlines, but to initiate a process that could ultimately lead to the wide scale sharing of FOQA information among airlines and the FAA to enhance safety. In this way the FAA will see not only the specific trends and corrective actions at an individual carrier, but can look for and correct trends across the industry.

Both air carrier operators and pilot groups have expressed concern about data confidentiality and use. There are significant concerns about increased tort liability as a potential result of the existence of FOQA data, as well as concerns from pilot groups about possible punitive actions by airline management based on FOQA information. Neither of these concerns are within the purview of the FAA to resolve. Both airlines and pilots groups have expressed concern about possible punitive enforcement actions by the FAA for regulatory violations revealed by FOQA data. This issue is addressed later in the preamble. Both airlines and pilots have also expressed concern that FOQA data made available to the government could be subject to public disclosure through the Freedom of Information Act (FOIA). However, Congress included specific provisions pertinent to the latter concern in the Federal Aviation Reauthorization Act of 1996. Specifically, the Reauthorization Act added a new section, 49 U.S.C. 40123, to the FAA's governing statute to protect voluntarily submitted information under certain circumstances. New section 40123 provides:

(a) In General.—Notwithstanding any other provision of the law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that—

(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

(2) withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

(b) Regulations.—The Administrator shall issue regulations to carry out this section.

In a separate NPRM entitled, *Protection of Voluntarily Submitted Information; Proposed Rule*, published July 26, 1999 in the **Federal Register** (Volume 24, Number 142, pp 40472–40482), the FAA proposes to add a new part to provide that certain information submitted to the FAA on a voluntary basis would not be disclosed to the public. Under proposed 14 CFR part 193, a regulatory procedure would be established for designating certain voluntarily submitted safety related information, such as FOQA aggregate data and trend analyses, as protected from such disclosure. Other types of voluntarily submitted safety related information could also be designated as protected from disclosure to the public.

Congressional Direction

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform act for the 21st Century. Section 510 of the Act requires the Administrator to issue a notice of proposed rulemaking proposing "Flight Operations Quality Assurance Rules." The proposed rules in this notice respond to section 510 and provide safeguards that will ensure that aviation safety is not compromised.

Section 510 provides that the protection should be proposed for each voluntary reporting program, such as FOQA and the Aviation Safety Action Program (ASAP). These proposed rules apply only to FOQA. However, as directed by Congress, the FAA invites comments on how the principles presented in this notice might be applied to other voluntary reporting programs, including ASAP. The FAA seeks comments on what would be a reasonable framework for protection of air carriers and their employees who submit information under voluntary programs.

Discussion of the Proposed Rule

The language of the proposed rule is consistent with the intent of the FOQA program, which is to provide air carriers and the FAA with (a) data from line operations that can be analyzed to identify trends for safety assessment; and (b) a basis for initiating corrective action when needed to improve pilot performance, aircraft maintenance practices, standard operating procedures, and aircraft system designs. The proposed rule would require that an

air carrier's FOQA program receive initial and continuing approval from the Administrator. To receive such approval, the rule would require a certificate holder to submit a FOQA Implementation and Operations Plan acceptable to the Administrator. The minimum requirements for a FOQA Implementation and Operations Plan would include (1) a description of the operator's plan for collecting and analyzing flight recorder data from line operations on a routine basis, (2) internal procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety, (3) procedures for providing the FAA with aggregate FOQA data, and (4) procedures for informing the FAA of corrective actions, including providing aggregate trend analyses to the FAA.

In general, the proposed rule would provide that certificate holders will provide the FAA with their aggregate FOQA data (summary statistical indices associated with FOQA event categories) without providing the underlying FOQA data (DFDR data obtained from individual aircraft). Thus, the FAA would be able to (1) monitor the effectiveness of the certificate holder's approved FOQA program, (2) monitor the certificate holder's compliance with its approved FOQA program, and (3) determine whether the certificate holder's aggregate trend analysis indicates a need for rulemaking.

In addition to its use as a self-auditing tool for the certificate holder, the FAA foresees a possible need for underlying FOQA data in two circumstances (although other uses may become apparent as the program develops). The first foreseeable circumstance would arise if the FAA concludes that the aggregate FOQA data obtained from one or more certificate holders indicate that safety rulemaking should be undertaken.

The second circumstance would arise if an aggregate FOQA data indicates a possible need for remedial action. Whenever possible and appropriate, if the certificate holder takes corrective action, this will be taken into consideration by the FAA in determining what, if any, investigation and enforcement action is warranted. With respect to punitive enforcement action, the proposed rule would prohibit the FAA from using FOQA data collected for punitive enforcement action. This prohibition would extend to DFDR data from required parameters that have been downloaded into a FOQA analysis program in accordance with an operator's approved FOQA Implementation and Operations Plan. The FAA would be permitted to use the

data in the DFDR itself (*i.e.*, the black box) in any enforcement action if an apparent violation is discovered by means other than a review of the aggregate FOQA data.

Why the FAA Cannot Provide Regulatory Protection From Remedial Enforcement

Remedial enforcement action is most often taken to stop the continued operation of equipment that is not in a condition for safe operation, or to revoke or suspend indefinitely the certificate of an unqualified operator or person. This limited potential use of FOQA data is necessary because the FAA cannot anticipatorily foreclose its ability to take remedial enforcement action. Remedial enforcement action is taken to prevent entities or individuals that the FAA has determined are no longer qualified from operating in air transportation and to halt continuing noncompliance. The availability of remedial enforcement action would also apply to equipment that the FAA has determined is not in a condition for safe operation in air transportation. The agency is required to act in the best way to prevent accidents in air transportation. Often the best way to prevent an accident is to take remedial enforcement action against those who lack qualifications. Likewise, the FAA is statutorily obligated to, at a minimum, issue an order of compliance, which is a remedial action, when the FAA finds continuous violations of the safety rules.

FAA Policy on FOQA

The FAA believes that the likelihood that FOQA data will lead to remedial enforcement action is remote. For example, during the FOQA Demonstration Study there were no occurrences that would have resulted in remedial enforcement action under the provisions of this proposed rule. Nevertheless, if aggregate FOQA data or underlying FOQA data are necessary to resolve an issue involving possible lack of qualifications, the Administrator will seek to obtain that information in an effort to reduce or eliminate the possibility, or recurrence, of accidents in air transportation.

The proposed rule would provide protection from punitive enforcement based solely on FOQA data itself. It would not provide protection from punitive enforcement based on information obtained from other sources. For example, it would not provide protection from punitive enforcement where information comes from FAA-initiated activities undertaken when recurring trends in aggregate FOQA data indicate the

possibility of a continuing unsafe condition. Such recurring negative safety trends could occur because a participant had failed to take corrective action or because the corrective action taken was not sufficient to resolve the problem. When appropriate, the detection of a recurring negative safety trend in the aggregate FOQA data would lead the FAA to focus its oversight resources on the problem identified to determine the cause of the recurrence and the corrective action necessary to correct it. Initially, this might mean closer scrutiny of a particular program participant's operation, particularly if the negative trend was evident only in a given participant's data. If the trend appeared in more than one program participant's data, however, FAA surveillance activity would be adjusted accordingly. In some circumstances this increased FAA surveillance could lead to an investigation and enforcement for regulatory violations. This rule would provide no protection from punitive enforcement based on information obtained from such FAA investigate or surveillance activities. Based on its experience with the FOQA demonstration program, the FAA anticipates that situations requiring investigation and enforcement would be extremely rare. Experience indicates that certificate holders willing to expend the resources needed to develop a FOQA program are predisposed to taking appropriate corrective action when a problem is identified. Such certificate holders would also be predisposed to working with the FAA to ensure that the corrective action is effective.

As the implementation and continuance of FOQA programs by airlines would be voluntary, the FAA anticipates that the growth of FOQA in the United States will depend upon the development of mutual trust and a shared commitment to preserving the safety enhancement potential of such programs. This proposed rule, together with the FAA's proposed regulations to implement 49 U.S.C. 40123's protections for voluntarily submitted information, would resolve some of industry's concerns regarding enforcement. Other industry concerns about the use of the DFDR data maintained and analyzed in FOQA programs may be resolved through union and management agreements.

Although the FAA-sponsored FOQA Demonstration Study focused on the use of FOQA for airlines operating under part 121, the study determined that operators operating under the regulatory parts could also realize safety benefits from establishing FOQA programs.

Extending the availability of FOQA to any operator of an aircraft equipped with DFDRs would appear to be in the public interest. The FAA therefore proposes to extend FOQA to allow any operator of aircraft equipped with DFDRs to seek approval of a FOQA program.

If FOQA information reveals that a violation of the FAA's statute or regulations is ongoing and that the operator has not taken or will not take appropriate corrective action, the FAA is required to take appropriate steps to stop the violations and to restore the integrity of the aviation system. In such circumstances, the FAA not only could take whatever remedial enforcement action is appropriate to correct the continuing unsafe situation, but also withdraw approval of the certificate holder's FOQA program. The latter action is appropriate because the regulation would require a certificate holder to initiate corrective action in order to maintain continuing approval of its FOQA Implementation and Operations Plan.

Willful misconduct uncovered in a FOQA program would also be unacceptable. In appropriate cases, the FAA would take remedial enforcement or other appropriate action against a certificate holder for one or more violations resulting from a determination of willful misconduct based on information obtained directly from FOQA aggregate data. If the willful misconduct did not lead the FAA to conclude that remedial enforcement action was necessary, it could nonetheless result in the FAA withdrawing approval of that participant's FOQA program.

Nothing in the proposed rule would preclude the FAA from exercising its subpoena authority, and the proposed rule would not preclude a court of law from ordering the release of FOQA data or information where appropriate. To the extent that FOQA data constitutes evidence of a crime and to the extent that the Department of Justice prosecutes a person or entity, this rule would not bar the use of FOQA data in a criminal prosecution.

The FAA believes that the FOQA program will advance public safety by providing an additional means of identifying and correcting potential problems. FAA believes that air carriers are more likely to participate in this voluntary program if the air carriers and pilots believe that FAA will exercise suitable discretion in limiting enforcement actions, based on the voluntarily submitted information. The proposed rule would allow FOQA data to be used in remedial enforcement

actions but not in punitive enforcement actions.

It is widely accepted that enforcement actions, among other things, have a deterrent value in encouraging the self-identification and self-correction of violations, thus advancing public safety. During interagency discussion of the proposed rule, concern was raised that limiting FAA discretion to take enforcement action could reduce this deterrent effect. To fully address these concerns FAA solicits comments on the utility and application of FAA's current and proposed enforcement policies concerning self-reporting, in the context of this proposed rule. In particular, comment is solicited on experiences involving (a) Air Carrier Voluntary Disclosure Reporting Procedures, FAA Advisory Circular #120-56 (January 23, 1992); and (b) Policy on the Use for Enforcement Purposes of Information Obtained from an Air Carrier Flight Operational Quality Assurance (FOQA) Program (63 FR 67505—December 7, 1998). Further, FAA solicits comments on whether FAA should retain its discretion to use FOQA aggregated data (and/or to obtain disaggregated data from air carriers participating in the FOQA program) in order to bring punitive or other enforcement actions, and whether there are any factors which should govern the exercise of such discretion. FAA also invites comment on whether, in the exercise of FAA's enforcement discretion, certain uses of FOQA data (or requests for disaggregated data) should require the approval of particular FAA officials.

Paperwork Reduction Act

The proposed amendment to 14 CFR Part 13 contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for review. Following is a summary of the information requirement that was sent to OMB.

Title: Flight Operational Quality Assurance (FOQA) Rule.

Summary/Need/Uses: Flight Operational Quality Assurance (FOQA) is a program for the routine collection and analysis of digital flight data from airline operations, including but not limited to digital flight data currently collected pursuant to existing regulatory provisions. By this proposed amendment, the FAA would require certificate holders who voluntarily establish approved FOQA programs to periodically provide aggregate trend

analysis information from such program to the FAA.

The purpose of collecting, analyzing, aggregating, and reporting this information is to identify potential threats to safety, and to enable early corrective action before such threats lead to accidents. The submitted aggregate trend information will be reviewed by the FAA principal operations inspector (POI) responsible for oversight of the certificate holding respondent. The POI and his staff make use of this information to monitor operational trends, to identify areas in need of corrective action, and to verify that corrective action is effective.

Respondents and Frequency of Response: The FAA has identified 30 certificate holders who are candidates to take the necessary steps to comply with the rule and gain the benefits of so doing. However, only nine certificate holders have established FOQA programs. Because of the benefits of FOQA participation to both safety and cost containment, it is anticipated that FOQA will be implemented on an industry wide basis in the U.S. within the next twenty years.

Burden Hours: It is estimated that it will take each respondent 1.0 hour to prepare aggregate trend information to be submitted to the FAA. The annual burden per respondent is 12.0 hours for an annual industry burden of 360 hours.

The estimated 1.0 hour burden is the additional time required to send to the FAA the aggregate data already produced monthly by the certificate holder as part of an approved FOQA program.

The FAA considers comments by the public on the proposed collection of information in order to:

- a. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
- b. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- c. Enhance the quality, utility, and clarity of the information to be collected; and
- d. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The agency is soliciting comments to (1) evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Comments on the proposed information collection requirements should be submitted to the rulemaking docket at the address indicated in the **ADDRESSES** section of this notice.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefit of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sectors, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that:

(1) The proposed rule has benefits that justify its costs and is significant under Executive Order 12866. It is also "significant" as defined in DOT's Regulatory Policies and Procedures.

(2) The proposed rule will not have a significant impact on a substantial number of small entities.

(3) The proposed rule reduces barriers to international trade.

(4) The proposed rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

These analyses are available in the docket and are summarized below. The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in the final regulatory evaluation.

Any costs associated with providing the FAA with access to FOQA information is expected to be minimal. The FAA does not propose to require submission of underlying FOQA data to the government. However, this proposed rule would require the participant to provide the FAA with aggregate trend analyses of the data available. The FAA welcomes comments on this issue.

The FAA anticipates that information obtained by airline FOQA programs will be voluntarily submitted to the FAA in the interest of joint goals to promote safety, and that because of the objective nature of FOQA data, this information will be valuable for formulating future policy, NAS procedures, and rulemaking development. This information will enable the FAA to more accurately compute the estimated cost and benefits of agency decisions. This proposed rule is an enabling initiative intended to promote the voluntary establishment of FOQA programs. The FAA has determined that because the establishment of FOQA programs is voluntary and the proposed rule only requires certificate holders who voluntarily establish approved FOQA programs to provide periodically the aggregate trend information from such programs to the FAA, the costs from this proposal are minimal. Therefore, an economic evaluation is not warranted.

International Trade Impact

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of

international standards and where appropriate, that they be the basis of U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States. In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a significant impact on a substantial number of "small entities" as defined by the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

In accordance with the RFA, the FAA certifies that this proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates reform Act of 1995 (2 U.S.C. 1532–1538) requires the FAA to assess the effects of Federal Regulatory actions on state, local, and tribal governments, and on the private sector of proposed rule that contain a Federal intergovernmental or private sector mandate that exceeds \$100 million in any one year. This action does not contain such a mandate.

Significance

This rule is significant under Executive Order 12866 and is considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Flight operational quality assurance program, Investigations, Law enforcement, Penalties.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 13 of the Federal Aviation Regulations (14 CFR part 13) by adding a new subpart I to read as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461; 49 U.S.C. 106(g); 5121-5124, 40113-40114, 44103-44106, 44702-44703, 44709-44710, 44713, 46101-46110, 46301-46316, 46501-46502, 46504-46507, 47106, 47111, 47122, 47306, 47531-47532.

2. Subpart I is added to read as follows:

Subpart I—Flight Operational Quality Assurance Programs

§ 13.401 Flight Operational Quality Assurance Program: Prohibition against use of data for punitive enforcement purposes.

(a) *Applicability.* This section applies to any operator of an aircraft who operates such aircraft under an approved Flight Operational Quality Assurance (FOQA) program.

(b) *Definitions.* For the purpose of this section, the terms—

(1) *Flight Operational Quality Assurance (FOQA) program* means an FAA-approved program for the routine collection and analysis of data gathered during aircraft operations by means of a DFDR, including data currently collected pursuant to existing regulatory provisions.

(2) *FOQA data* means any raw data that has been collected by means of a DFDR pursuant to an FAA-approved FOQA program.

(3) *Aggregate FOQA data* means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data recorded by digital flight data recorders (DFDRs) during aircraft operations.

(4) *Remedial enforcement action* means an enforcement action other than a civil penalty or a certificate action involving a suspension for a specific period of time.

(5) *Punitive enforcement action* means a civil penalty or certificate action involving a suspension for a specific period of time.

(c) *Requirements.* In order for paragraph (e)(1) of this section to apply, the operator must submit and adhere to a FOQA Implementation and Operations Plan that is approved by the Administrator and which contains the following elements:

(1) A description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis;

(2) Procedures for taking corrective action that analysis of the data indicates if necessary in the interest of safety;

(3) Procedures for informing the FAA with aggregate FOQA data;

(4) Procedures for informing the FAA as to any corrective action being undertaken pursuant to subparagraph (c)(2) of this section.

(d) *Access to data.* The operator will provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

(e) *Enforcement.*—(1) The Administrator will not use an operator's FOQA data or aggregate FOQA data in a punitive enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator.

(2) The Administrator may use any operator's FOQA data and/or aggregate FOQA data as a remedial enforcement action.

(f) *Disclosure.* FOQA data and aggregate FOQA data, if submitted in accordance with the provisions of part 193 of this chapter, will be afforded the nondisclosure protections of that part.

(g) *Withdrawal of program approval.* The Administrator may withdraw approval of a previously approved FOQA program for failure to comply with the requirements of this Chapter. Grounds for withdrawal of approval may include, but are not limited to—

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety; or

(2) Failure to correct a continuing pattern of violations following notice by the agency.

(3) Willful misconduct or willful violation of the regulations.

Issued in Washington, DC, on June 29, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

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