DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2000–7554; Amendment No. 13–30]

RIN 2120–AF04

Flight Operational Quality Assurance Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule codifies enforcement protection for Flight Operational Quality Assurance (FOQA) programs. It states that except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an 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. The rule requires air carriers participating in approved FOQA programs to submit aggregate FOQA data to the FAA for use in monitoring safety trends.

EFFECTIVE DATE: November 30, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Longridge, Flight Standards Service, AFS–230, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (703) 661–0275, email: *thomas.longridge@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

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Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us 9–AWA–SBREFA@faa.gov.

Background

The primary purpose of a Flight Operational Quality Assurance program (FOQA) is to enhance aviation safety. A FOQA program involves the analysis of digital flight data generated during routine line operations in order to reveal situations that may require corrective action, to enable early intervention to correct adverse safety trends before they can lead to accidents, and to provide an objective means of following-up on corrective action to determine whether it has been effective. To institute such a program, an operator would need to develop a system that captures digital flight data, transforms the data into an appropriate format for analysis, analyzes the data, and generates reports and visualizations to assist personnel in interpreting the results of analysis.

In 1995 the FAA initiated a voluntary FOQA demonstration program in cooperation with interested operators. The demonstration study determined that the information and insights provided by a FOQA program can significantly enhance line operational safety, training effectiveness, operational procedures, maintenance and engineering procedures, ATC procedures, and airport surface issues. The demonstration study found that FOQA programs can provide objective safety related information from line operations that is not available from any other source.

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (known as AIR–21). Section 510, entitled *Flight Operations Quality Assurance Rules,* directed the Administrator to issue a Notice of Proposed Rulemaking to protect air carriers and their employees from enforcement actions for violations of title 14, Code of Federal Regulations, (other than criminal or deliberate acts) that are reported or discovered as a result of voluntary reporting programs, such as FOQA.

Airlines and pilot associations have strongly endorsed the voluntary establishment of FOQA programs in the interest of safety. However, they have also stated that they will not continue to voluntarily participate in FOQA programs unless the FAA codifies regulatory protection from the use of FOQA information in enforcement action against operators or their employees, except for criminal or deliberate acts.

On July 5, 2000 (65 FR 41528), the FAA published a Notice of Proposed Rulemaking (NPRM) to provide protection from the use of FOQA information for punitive enforcement purposes, subject to certain conditions, and to retain FAA discretion to use FOQA data or aggregate FOQA data in remedial enforcement action. The FAA carefully considered all of the comments that were submitted, along with the duty of the FAA to address adverse safety conditions. This final rule codifies a level of enforcement protection for FOQA information that is consistent with the congressional direction provided in Section 510 of AIR–21. Namely, it provides operators and their employees with protection from the use of FOQA information for enforcement, except for criminal or deliberate acts. The FAA anticipates that this final rule will encourage the further growth of voluntary FOQA programs in the United States, and will thereby enhance public safety, as well as provide the FAA with trend information to better manage its safety oversight and regulatory decision making responsibilities.

This final rule does not require any operator to implement a FOQA program, nor does it require any operator who desires to voluntarily implement such a program to obtain FAA approval to do so, or to submit FOQA information from such an internal program to the FAA. However, in order to qualify for the enforcement protection afforded by this rule, the rule provides that FAA initial and continuing approval of the proposed program would be required, as well as the submission of aggregate FOQA information to the FAA.

Discussion of Comments and Section-by-Section Analysis

The FAA received six written comments on the proposed rule, one of which was a consolidated comment from multiple airline and pilot association groups (Air Transport Association of America, the Air Line Pilots Association, the Aerospace Industries Association, the Coalition of Airline Pilots Association, the Independent Association of Continental Pilots, and the Regional Airline Association). Additional organizational commenters were the Transportation Trades Department, the Advocates for Legitimate and Fair Aviation Regulations, and an additional comment from the Regional Airline Association. Two individuals submitted comments. The FAA also participated in two meetings with industry representatives to hear their comments about the NPRM. The contents of those meetings as well as a list of the participants appear in the docket. The comments are discussed below, along with the provisions of the final rule.

The Rule in General

The proposed rule was intended to codify certain protection from the use of FOQA information for punitive enforcement purposes for operators of voluntary FOQA programs that have been approved by the FAA. The proposal would require operators of approved FOQA programs to submit aggregate FOQA data to the FAA. Operators who do not seek such enforcement protection would not be required to obtain FAA approval of their voluntary programs, nor would they be required to submit FOQA data to the FAA. The proposed rule would not require any operator to establish a FOQA program.

Comment: One commenter asserted that under 49 U.S.C. 44701 the FAA is only empowered to issue regulations that establish minimum standards required in the interest of safety, and there is therefore no legal basis for this proposed rule.

FAA Response: As noted by the commenter, 49 U.S.C. Section 44701(a) also authorizes the FAA to issue regulations and minimum standards for other practices, methods, and procedures that the Administrator finds necessary for safety in air commerce. Under this section the FAA is clearly authorized to issue regulations for programs that the Administrator has determined will enhance safety, and to establish minimum standards for such programs, including voluntary programs. The Administrator has determined that voluntary FOQA programs enhance safety, and further, that this final rule is necessary in order to establish the necessary conditions for voluntary participation by airlines and pilot associations in FOQA programs. There are already examples of other voluntary safety enhancement programs that have been codified in 14 CFR, such as the Aviation Safety Reporting Program (ASRP).

Comment: One commenter noted that an operator who elects to establish a FOQA program without complying with the proposed rule would not be in violation of the regulations.

FAA Response: The FAA concurs. Nothing in the proposed regulation or in the final rule would compel an operator who does not seek the enforcement protection afforded by the rule to comply with the provisions of the rule.

§ 13.401(a) Applicability (Proposed § 13.401(a)). Who Is Eligible for the Enforcement Protection Afforded by This Rule?

The NPRM stated that the rule applies to any operator of an aircraft who operates that aircraft under an FAA approved FOQA program. It is not necessary for an operator to be a certificated air carrier in order to be eligible for the enforcement protection afforded by the rule, so long as they are operating in compliance with an FAA approved FOQA program. An operator who elects to operate a FOQA program that is not approved by the FAA in accordance with this rule may do so, but will not be afforded the enforcement protections of this rule. No comments specific to the applicability of this rule to operators were received and the subparagraph is adopted as proposed.

§ 13.401(b) Definitions (Proposed § 13.401(b)). What Is the Meaning of the Key Terminology Employed in This Rule?

No comments specific to the definitions in the proposed rule were received, although one commenter asserted that there is general ambiguity in the proposed rule language, and several of the other commenters' comments appear to indicate a misunderstanding of the proposed language. The FAA has therefore clarified the definitions of each such term. In addition, the definitions for remedial and punitive enforcement have been deleted, as they are no longer applicable to the final rule.

§ 13.401(b)(1) Flight Operational Quality Assurance (FOQA) Program (Proposed § 13.401(b)(1)) What Constitutes a FOQA Program?

The NPRM stated that a 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 under existing regulations. The final rule definition inserts the words ''digital flight'' before data, to clarify that the data to be collected is digital flight data. The reference to ''DFDR'' is deleted in the definition of a FOQA program in the final rule. This is because the technology used to acquire FOQA data is expected to evolve over time, and it is not necessary to define a FOQA program on the basis of the technology that is used to record the data. The final definition was also modified to clarify that data that operators currently collect under the regulations will not be included in FOQA data unless it is identified for inclusion in an approved FOQA program. An operator may elect, for example, to establish a FOQA program using only the data recorded by the mandatory DFDR, rather than by using the supplementary recorder commonly employed in current airline FOQA programs. Indeed, as the technological capabilities of the mandatory flight data recorder continue to evolve, operators may find that there is no longer a need for a supplementary recorder to collect all of the parameters an operator desires to include in a FOQA program, since a single recorder may be sufficient to meet both regulatory and FOQA program requirements. The final definition adds the words ''when such data is included in an approved FOQA program'' to the proposed language. This change was made to clarify that data currently collected under the regulations will be considered by the FAA to be included in a FOQA program only when it has been identified for inclusion in an approved program.

§ 13.401(2) FOQA Data (Proposed § 13.401(2)). What Is FOQA Data?

The NPRM stated that FOQA data means any raw data that has been collected by means of a DFDR pursuant to an FAA-approved FOQA program. The final rule definition replaces the reference to ''raw data'' with ''digital flight data'', inserts additional language indicating that for the purposes of this rule, FOQA data is collected ''from an individual aircraft'', inserts additional language ''regardless of the electronic format of that data'', and deletes the

proposed definition language ''by means of a DFDR''. The term ''raw data'' was deleted because it is subject to varying interpretations (e.g. binary data or engineering units). The reference to DFDR was deleted for the reasons cited above. Reference to individual aircraft was added to clarify that for the purposes of this rule, FOQA data refers to digital flight data gathered from an individual aircraft. The languagee ''regardless of electronic format'' was added to clarify that for the purposes of this rule any digital data collected from an individual aircraft in an FAA approved FOQA program shall be considered to be FOQA data, regardless of whether it is in binary format, engineering unit format, FOQA exceedence event format, or another electronic format.

§ 13.401(b)(3), Aggregate FOQA Data. What Is Aggregate FOQA Data?

The NPRM stated that 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. The proposed definition was modified to delete ''recorded by digital flight data recorders (DFDRs)'' for the reasons cited above. The proposed language ''during aircraft operations'' was replaced with ''from multiple aircraft operations.''. The latter change was made to clarify that for the purposes of this rule the term aggregate data only applies to multiple aircraft operations. The definition of aggregate FOQA data in the final rule retains the basic meaning provided in the proposed rule, namely that aggregate FOQA data means the summary statistical indices that are associated with FOQA event categories, based on analysis of FOQA data. Individual data records (FOQA data) may be aggregated along various dimensions (*e.g.,* event category as a function of aircraft type, phase of flight, and geographical location) to identify trends and patterns. Aggregation is simply a statistical process that groups and mathematically combines (e.g., count, total, average, standard deviation) individual FOQA data elements based on some criterion (e.g. the average approach maximum rate of descent below 2000 feet by fleet type by airport).

Proposed definitions § 13.401(b)(4), Remedial Enforcement Action, and § 13.401(b)(5), Punitive Enforcement Action, have been deleted from the definitions section of the final rule, as these terms are no longer applicable to the final rule for the reasons discussed below.

§ 13.401(c) Requirements (Proposed § 13.401(c)). What Is an Operator Required To Do To Be Eligible for the Enforcement Protection Provisions of This Rule?

The NPRM proposed that, to be eligible for the enforcement protection provisions of the rule, an operator would have to submit and adhere to a FOQA Implementation and Operations (I & O Plan) approved by the Administrator that would include the following:

(1) The operator's plan for collecting and analyzing flight data,

(2) Procedures for taking corrective action,

(3) Procedures for providing the FAA with aggregate data, and

(4) Procedures for informing the FAA of each corrective action.

Comment: One commenter objected to the requirement to obtain FAA approval of a voluntary program, and asserted that the FAA has no authority to require such approval.

FAA Response: The rule only requires that operators who seek the enforcement protection afforded by the rule must submit a FOQA Implementation and Operations Plan for FAA approval. Operators who do not seek such protection are not required to submit or adhere to an approved plan. The FAA cannot extend enforcement protection to an undefined program. The requirement for operators to submit and adhere to an FAA approved plan is intended to assure that in return for certain enforcement protection, the FAA's goals for the enhancement of public safety will be achieved. Just as the FAA has the authority and responsibility to enforce the aviation regulations, it clearly has the authority to define the conditions on which basis any enforcement protection from those regulations will be afforded. The Aviation Safety Reporting Program is an existing example of the exercise of that authority to extend enforcement protection in the overall interest of safety enhancement, subject to certain conditions.

Comment: One commenter questioned the language of § 13.401(c)2 that requires a FOQA I & O Plan to identify procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety. The commenter questioned whether the operator or the FAA makes the determination of whether corrective action is needed and raised the question of the consequences of a disagreement between the FAA and the operator on that issue.

FAA Response: The rule clearly places the primary responsibility with the operator for determining whether analysis of FOQA data indicates that corrective action is necessary in the interest of safety. This is why the I & O Plan requires the operator to identify the procedures it will follow if corrective action becomes necessary. Further, since only the operator has access to FOQA data from individual flights, only the operator is in a position to determine whether analysis of such data warrants corrective action in that circumstance. The rule does, however, require the operator to inform the FAA of each corrective action it undertakes based on FOQA data. It also requires the operator to submit aggregate FOQA data that the FAA could employ to identify adverse safety trends, which the agency might determine warrant corrective action. Since FOQA is a voluntary program that represents a shared commitment to safety enhancement, the FAA believes that differences of opinion on the necessity and appropriateness of corrective action will be relatively few, and that any such differences will normally be resolved through mutual discussion. The rule clearly provides the operator of an approved program with protection from enforcement action in the unlikely event that differences of opinion on such issues cannot be resolved.

However, § 13.401(g) of the rule also provides that the FAA may withdraw program approval if the agency determines that the operator has failed to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety or the operator has failed to correct a continuing pattern of violations following notice by the agency. Thus while the operator has the primary responsibility for determining when corrective action is warranted, and for determining the nature of that action, the operator and the FAA must ultimately agree on these matters. This approach helps to assure that FOQA programs do in fact enhance public safety. In the event that the FAA and the operator cannot agree, the only potential consequence to the operator is the withdrawal of program approval. In the event that program approval is withdrawn, the operator will not have enforcement protection under this rule for FOQA data obtained subsequent to the withdrawal. However, the operator may continue to conduct its FOQA program if it determines that it is appropriate for it to do so.

Comment: One commenter asserted that the references in the NPRM to the required content of a FOQA I & O Plan did not contain sufficient information. The commenter observes that no doubt the FAA intends to require more in the I & O Plan than the NPRM states. The commenter asserts that the NPRM's reference to a future advisory circular that provides further detail is an ''extra-legal mechanism to create a stealth regulation''.

FAA Response: The FAA does not concur. The FAA believes that the rule contains all of the essential elements that the FAA will require for approval purposes. The intent of the planned advisory circular referenced in the NPRM is to provide applicants with one way, but not the only way, of complying with the provisions of the proposed rule with regard to developing the content of a FOQA I & O Plan. The FOQA Advisory Circular, which is being published concurrently with this final rule, does not add any additional requirements beyond those specified in the rule. Although the issuance of a FOQA Advisory Circular has necessarily been linked to the issuance of a final FOQA rule, the FAA already has made advisory materials, including a detailed I & O Plan template, available to any interested operator for the past 5 years. With regard to the content of a FOQA I & O Plan, the existing advisory materials closely match the requirements of this rule, as well as the FOQA Advisory Circular.

The FAA adopts § 13.401(c) as proposed, with two minor working additions for clarification purposes that do not change the meaning of the section as originally proposed. The word ''maintain'' was inserted into proposed paragraph § 13.401(c), as in ''the operator must submit, maintain, and adhere to a FOQA Implementation and Operations Plan * * *.'' This word was inserted to clarify that under this final rule an operator will be expected to maintain the currency of its FOQA I & O Plan. The phrase ''including identification of the data to be collected'' was added to proposed § 13.401(c)(1), as in ''a description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected.'' The language was added to clarify that the operator's plan must identify the data to be collected. The FAA does not intend to prescribe what data an operator will collect in its FOQA program as a condition for approval of FOQA I & O Plans. However, in order to allow the FAA to accomplish meaningful interpretation and additional processing of the aggregate data received from operators, it must be provided with information in advance that identifies the data to be collected. FOQA I & O plans that have been approved under existing FAA policy already contain that information.

§ 13.401(d) Submission of Aggregate Data (Proposed § 13.401(d), Access to Data). What Data Must Be Submitted to the FAA?

The NPRM proposed that the operator would provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

Comment: One commenter asserted that the FAA has no authority to require submission of data for a voluntary program.

FAA Response: The submission of aggregate FOQA data to the FAA is a condition for the enforcement protection afforded by this rule. Just as the FAA has the authority and responsibility for enforcing the aviation regulations, it clearly has the authority to define the conditions on which basis any enforcement protection from those regulations will be afforded. The Aviation Safety Reporting Program is an existing regulatory example of the exercise of that authority to extend enforcement protection in the overall interest of safety enhancement, subject to certain conditions.

Comment: A number of commenters expressed concern that by virtue of this requirement, the FAA intends to force airlines to comply with FAA prescribed data collection requirements. These commenters stated that any such attempt by the FAA would adversely impact the effectiveness of such programs, and inhibit initiative to explore new areas for data collection.

FAA Response: The FAA does not intend to require operators to comply with FAA specified data collection protocols. The FAA acknowledges that were it to do so, it could adversely effect the continued growth and effectiveness of voluntary FOQA programs. The FAA notes that if the agency intended to prescribe data collection requirements, then it would have proposed specific requirements in the NPRM.

Comment: A number of commenters observed that various operators employ different definitions for FOQA events. These commenters stated that it would therefore not be possible for the FAA to accomplish meaningful aggregation of data, and they recommended that this requirement therefore be deleted.

FAA Response: The FAA is aware of the commonalities and differences in how operators define FOQA events. First, any differences among operators would not impact FAA aggregation specific to a particular operator. Second, with regard to aggregation across multiple operators, the FAA has established a statistical approach which will allow it to accomplish meaningful trend analysis that fully takes into account whatever differences may exist in event definitions between operators. One of the functions of a FOQA I & O Plan is to provide the FAA with the information it needs in order to appropriately accomplish aggregation across multiple operators. Proposed § 13.401(d) is adopted without modification, except for the title of the paragraph. The title has been changed from proposed ''Access to data'' to ''Submission of Aggregate Data'' in the final rule in order to more accurately describe the content of the paragraph.

§ 13.401(e) Enforcement (Proposed § 13.401(e)) What Protections Does This Rule Provide Against the Use of FOQA Data by the FAA for Enforcement Purposes?

As proposed in the NPRM, § 13.401(e)(1) would have provided that the Administrator could 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. Proposed § 13.401(e)(2) provided that the Administrator could use any operator's FOQA data and/or aggregate FOQA data in a remedial enforcement action.

Comment: The majority of commenters took strong exception to the provisions of proposed § 13.401(e)(1) and § 13.401(e)(2). They stated that there is one critical paragraph of the proposed rule that must be corrected to ensure industry participation and support regarding FOQA. They stated that § 13.401(e)(1) must be rewritten to read ''The Administrator will not use an operator's FOQA data or aggregate FOQA data in enforcement actions against that operator or its employees except for criminal or deliberate acts''. They noted that this revised language would be consistent with the language of Section 510 of the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR–21) concerning FOQA. These commenters also took strong exception to proposed § 13.401(e)(2), which would have allowed the use of FOQA data and/or aggregate FOQA data for remedial enforcement purposes. These commenters stated that this paragraph must be removed from the rule in order to assure industry participation and

support regarding FOQA programs. They stated that this paragraph utterly destroys the spirit, intent, and operational effectiveness of any FOQA program, and inpugns the credibility of the rule itself. They stated that removing this paragraph from the rule would make the rule workable, acceptable, and supportable from an industry standpoint. They stated that in order to elicit industry support, all references to remedial and punitive actions should be removed from the preamble. One commenter noted that the rationale in the NPRM for retaining remedial enforcement authority as stated in the preamble does not appear to be consistent with the fact that the existing regulations extend protection from both civil penalty and certificate action for the cockpit voice recorder record.

FAA Response: With one minor exception, the FAA concurs with these commenters. The FAA agrees that it is in the best overall interest of encouraging voluntary participation in FOQA, thereby enhancing public safety, to modify the language of the proposed rule regarding the use of FOQA data or aggregate data for enforcement purposes. The FAA further agrees that it is consistent with the intent of Congress as embodied in Section 510 of AIR–21, as well as with existing regulatory precedent, to make this change. However, the FAA believes that it is only appropriate to extend such enforcement protection to a FOQA program that has been approved by the Administrator. Accordingly, the language of the final rule has been modified to delete proposed paragraphs § 13.401(e)(1) and § 13.401(e)(2), and to replace them with a single paragraph § 13.401(e) which states that except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such data or aggregate data is obtained from a FOQA program that is approved by the Administrator.

Although the language of the final rule clearly provides protection, except for criminal or deliberate acts, from the use of information obtained from a FOQA program for enforcement purposes, this rule will have no impact on FAA enforcement action based on information obtained from other sources. For example, while the operator has a responsibility to initiate corrective action for adverse safety trends revealed by FOQA data, the FAA has the responsibility to verity that such corrective action is effective. This rule provides no protection from action based on information obtained from surveillance activities, including physical surveillance undertaken by the FAA to verify the effectiveness of corrective actions. One of the principal benefits to the FAA and to public safety of aggregate FOQA data submission will be the opportunity it affords to target the limited resources available for FAA surveillance to those areas where it is most needed. The FAA fully anticipates that it will conduct physical surveillance for that purpose in areas identified by FOQA aggregate trend data. FAA discretion to take action, including enforcement action where appropriate, based on such surveillance activities will not be affected by this final rule.

§ 13.401(f) Disclosure (Proposed § 13.401(f)) What Protections From the Disclosure of FOQA Information Will the FAA Provide?

The NRPM proposed that FOQA data and aggregate FOQA data, if submitted in accordance with the provisions of Part 193, would be afforded the nondisclosure protections of that part.

Comment: One commenter observed that this provision of the NPRM makes reference to a non-existent part.

FAA Response: Part 193 had not yet been issued as a final rule when the NPRM was issued. Part 193 was published on June 25, 2001 (66 FR 33791) as a final rule. Part 193 provides in part that the FAA may issue an order designating certain voluntarily provided safety information as protected from disclosure. The FAA intends to publish in the **Federal Register** a proposed order to protect FOQA data and aggregate FOQA data under part 193. If adopted, the order under part 193 will cover all approved FOQA programs entered into by all operators.

Section 13.401(f) provides that FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of that part.

§ 13.401(g) Withdrawal of Program Approval (Proposed § 13.401(g)) On What Grounds May the Administrator Withdraw Approval of a Previously Approved FOQA Program?

This paragraph states that the Administrator may withdraw program approval for failure to comply with the requirements of the chapter. It further identifies some, but not necessarily all, of the potential grounds for withdrawal, including:

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

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

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

No comments on this paragraph were received, and it is adopted without modification.

Paperwork Reduction Act

The amendment to 14 CFR Part 13 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0660. The FAA received no comments pertaining to the Paperwork Reduction Act.

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 under the regulations. By this amendment, the FAA will require certificate holders who voluntarily establish approved FOQA programs to periodically provide aggregate trend analysis information from such programs 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 uses this information to monitor operation trends, to identify areas in need of corrective action, and to verify that corrective action is effective. The aggregate FOQA information would also be employed by the FAA to monitor national trends and as a source of objective information for agency decision making regarding policy and regulatory issues.

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. They would respond monthly. However, currently twelve certificate

holders, nearly all of which are major airlines, 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 144 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.

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 benefits 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. section 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 sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this rule (1) has benefits which do justify its costs, is ''a significant regulatory action'' as defined in the Executive Order and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; and (3) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

Any costs associated with providing the FAA with aggregate FOQA data is expected to be nominal. The FAA does not propose to require submission of FOQA data from individual flights to the government. 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 final 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 final rule only requires certificate holders who voluntarily establish approved FOQA programs to provide periodically the aggregate trend data from such programs to the FAA, the costs from this rule are nominal. 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 for U.S. standards.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes (as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.) To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action establishes a voluntary program and therefore the FAA expects this rule to impose only nominal cost on small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has 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, the FAA has determined that this rulemaking does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Unfunded Mandates Reform Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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 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) Public Law 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, Aviation safety, Investigations, Law enforcement.

The Admendment

In consideration of the foregoing, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations (14 CFR part 13) 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, consisting of § 13.401 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 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 digital flight data gathered during aircraft operations, including data currently collected pursuant to existing regulatory provisions, when such data is included in an approved FOQA program.

(2) *FOQA data* means any digital flight data that has been collected from an individual aircraft pursuant to an FAA-approved FOQA program, regardless of the electronic format of that data.

(3) *Aggregate FOQA data* means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data from multiple aircraft operations.

(c) *Requirements.* In order for paragraph (e) of this section to apply, the operator must submit, maintain, and adhere to a FOQA Implementation and Operation 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, including identification of the data to be collected;

(2) 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;

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

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

(e) *Enforcement.* Except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data for aggregate FOQA data in an 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.

(f) *Disclosure.* FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of part 193 of this chapter.

(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; or also

(3) Willful misconduct or willful violation of the FAA regulations in this chapter.

Issued in Washington, DC, on October 25, 2001.

Jane F. Garvey,

Administrator.

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