

2. The FAA finds that this information is safety related because FOQA data and FOQA aggregate data provide objective information on the extent to which aircraft are operated in accordance with established procedures and acceptable margins of safety.

C. *Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.* The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Operators are reluctant to share information from FOQA programs with the FAA, if such information might be subject to public disclosure.

(1) A significant impediment to the sharing of FOQA information with the FAA is the aviation industry's concern over public disclosure of the information and, if disclosed, the potential for it to be used for purposes other than the safety enhancement purposes that constitute the primary reason for the establishment of such programs. As a result, before this order, U.S. airlines participating in FAA-approved FOQA programs have not permitted aggregate FOQA data, and any written information derived from analysis of such programs, to leave the airline's premises. This information is considered to be confidential by the participating operators and their pilots.

(2) The FAA finds that reports prepared by an individual operator based on analysis of the individual operator's FOQA data or aggregate data, should be protected from public disclosure because the identity of the operator may be derived from that information. Unless the FAA can assure protection of identity information, such reports will not be submitted by the operator or specific information that could enhance the safety value of the report will not be included in the submission.

D. *Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.* The FAA finds that receipt of FOQA information aids in fulfilling the FAA's safety and security responsibilities. Because of its capacity to provide early objective information on emerging adverse safety trends, which enables remedial intervention, FOQA offers significant potential for incident and accident avoidance. Currently, FAA experience has clearly established that a FOQA program can produce objective safety-related data that is not available from any other source. For example, FOQA data concerning the frequency of unstable approaches on landing as a function of

specific airport and runway environment has identified areas where improvements were needed in airline approach and landing checklists, airline training, air traffic control procedures, and published airport approach and landing procedures. Receipt of this previously unavailable objective information enabled airlines and the FAA to modify procedures and policies in order to improve safety and efficiency. If operators voluntarily support providing the FAA with aggregate FOQA data, the FAA can better serve as a national safety information resource for aircraft operators.

E. *Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9.* The FAA finds that withholding FOQA data or aggregate FOQA data provided to the FAA from an approved FOQA program is consistent with the FAA's safety and security responsibilities.

(1) An approved FOQA Implementation and Operations Plan specifically provides that corrective action for adverse safety trends will be initiated by the operator and that the operator will inform the FAA about that action. For example, an operator could modify its pilot training program to place greater emphasis on approach and landing procedures and inform the FAA of that training program modification. The FAA can then monitor the implementation of that modification, as well as review follow-on FOQA trend data pertinent to approach and landing maneuvers, to determine the effectiveness of the corrective action. The FAA can therefore accomplish its safety responsibilities without disclosure of FOQA data to the public. Withholding the information is consistent with the FAA's safety responsibilities, because, except for disclosure protection the FAA would not receive the information, and by virtue of its receipt, the FAA is able to not only assure that the corrective action necessary to maintain public safety has been taken, but that such action continues to be effective for that purpose.

(2) The FAA will release FOQA information submitted to the agency, as specified in part 193 and this proposed order. For example, in order to explain the need for changes in FAA policies,

procedures, and regulations, the FAA may disclose de-identified (no operator or pilot identity), summarized, information that has been derived from FOQA aggregate data or extracted from the protected information listed under paragraph 6b of Order 8000.81 [and under Findings, paragraph B, of this notice]. The FAA may disclose de-identified, summarized FOQA information that identifies a systemic problem in the aviation system, when other people need to be advised of the problem in order to take corrective action. The FAA may release the names of operators who have approved FOQA Implementation and Operations Plans. In addition, in accordance with 14 CFR section 13.401(e), the FAA may release FOQA information in support of enforcement actions that involve criminal or deliberate acts. To withhold disclosure of information in circumstances that involve criminal or deliberate acts would be inconsistent with the agency's safety responsibilities because it could prevent the agency, or at least diminish its ability, to effectively address such misconduct.

F. *Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.* An operator's approved FOQA Implementation and Operations Plan must specifically identify what digital flight data will be considered FOQA data, how that data is defined, and provisions for FAA access to aggregate FOQA data. Since an operator's aggregate FOQA data is derived by a process of aggregation from the operator's FOQA data, as defined in the FOQA Implementation and Operations Plan, and reports and other FOQA information, as specified in this order, are derived from analysis of the FOQA data as defined in that plan, the FOQA Implementation and Operations Plan on file with the FAA will serve as the primary reference source for distinguishing information protected under part 193 from information the FAA receives from other sources.

(1) The FAA acknowledges that operators are highly reluctant to share sensitive FOQA information with the FAA, in part because of concerns that even if the information is designated as protected under part 193, it may still be inappropriately released by someone in the agency. Therefore, the FAA anticipates that, to be successful, any program for FOQA information sharing will have to proceed on an incremental basis. The FAA must demonstrate, on a stepwise basis, that the measures it puts in place to protect FOQA information from disclosure are completely effective.