

The FAA intends to work in a collaborative fashion with airlines and labor associations towards that end. A FOQA Aviation Rulemaking Committee (ARC) comprised of airline, labor association, and FAA representatives has been established for that purpose.

(2) The FAA anticipates that the venue for submission to the FAA of aggregate FOQA data or other FOQA information, as specified in this order, will evolve over time in a fashion acceptable to all stakeholders. In order to be protected under this designation, all such submissions, regardless of the venue, must be clearly labeled as follows:

**Warning:** This FOQA information is protected from disclosure under 49 U.S.C. 40123 and 14 CFR part 193. It may be released only with written permission of the Associate Administrator for Regulation and Certification.

### Designation

The FAA designates information described above to be protected from disclosure, in accordance with 49 U.S.C. section 40123 and 14 CFR part 193, when submitted pursuant to an approved FOQA program.

Issued in Washington, DC, on June 19, 2003.

**James J. Ballough,**

*Acting Associate Administrator for Regulation and Certification.*

### Appendix 1 of Order 8000.81 (Summary of Significant Comments Received and the FAA's Response)

A proposed FAA order designating FOQA information as protected from disclosure under part 193 was published in the **Federal Register** on September 5, 2002 (**Federal Register**, Volume 67, Number 172, pages 56770–56774). Comments on the proposed order were received from one major trade association and one major labor association. These comments and the FAA responses are as follows:

#### A. Disclosure To Support Rulemaking/Regulatory Action

1. *Comment:* Disclosure to support rulemaking/regulatory action should be limited. The FAA should not disclose de-identified (no operator or pilot identity), summarized information that has been derived from FOQA aggregate data or extracted from protected information. Instead, to support regulatory or policy changes, the FAA should disclose only its generalized findings and conclusions derived from its review of protected data and related information.

2. *The FAA Response:* The FAA's intent in its proposed use of the word "summarized" appears to be consistent with the commenter's concerns regarding the specificity of any information that is disclosed to explain the basis for rulemaking, procedural changes, or policy changes.

However, the language of this order must retain use of the word "summarized" rather than "generalized", because that is the regulatory language specified in part 193 concerning the circumstances under which the FAA may release information obtained from an approved FOQA program.

#### B. Protected Data

1. *Comment:* Protected data should be more broadly defined in the FOQA Order. The proposed order defines FOQA data as any digital data collected pursuant to a FAA-approved FOQA program, and the order would provide disclosure protection only to data obtained from such approved programs. In the course of aggregating, reviewing, or analyzing FOQA data, other data may be inadvertently (or purposefully) included, in order to make the information more robust or complete. In such instances, the fact that the data was not obtained or collected "pursuant to an FAA-approved FOQA program" should not prevent the data or aggregated data or analysis from being protected from disclosure. The commenter believes that it is consistent with the statute and Congressional intent to protect such data. The commenter recommends that the FAA revise the final order to protect all data shared with the FAA pursuant to an approved FOQA program, even if such data does not fall within the precise definition of FOQA data as it is defined in the proposed order.

2. *The FAA Response:* The FAA cannot anticipate when to protect undefined information in accordance with the notice procedure of 14 CFR part 193. Since the digital data that would be collected pursuant to an FAA-approved FOQA program is specified in an FAA-approved FOQA Implementation and Operations Plan, there is no ambiguity as to the nature of the information protected under this order. However, that protection cannot be extended through this order to "other data" without specifying what that "other data" is. Otherwise, it would be possible for an operator to inappropriately acquire disclosure protection by virtue of simply including other information together with submitted FOQA data. The FAA notes that the most likely category of "other data" that might be included with FOQA data, in order to provide more robust or complete information, would be from an Aviation Safety Action Program (ASAP). The FAA is in the process of establishing disclosure protection for ASAP data and information in a separate order of designation under 14 CFR part 193.

#### C. Protecting Reports and the Identity of the Operator

1. *Comment:* The proposed order is unduly restrictive with regard to only protecting reports prepared by the operator or the FAA and the identity of an operator associated with FOQA data or reports, when such reports or information are prepared "pursuant to an FAA-approved FOQA program." If a report is based on FOQA data or analysis of FOQA data, then the report should be protected. It need not necessarily have been prepared "pursuant to an FAA-approved FOQA program." The identity of an

operator associated with FOQA data or a report based on FOQA data should always be protected. The analysis need not have been developed "pursuant to an FAA-approved FOQA program."

2. *The FAA Response:* The FAA concurs that a report or analysis of FOQA data, as well as the identity of an operator associated with FOQA data, should be protected from disclosure. As 14 CFR part 13, section 13.401 requires operators of FAA-approved FOQA programs to provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator, the principal intent of this order is to make clear that any FOQA data submitted to the FAA pursuant to an approved FOQA program will be protected from disclosure in accordance with the provisions of part 193 and this order. In addition, the FAA believes that the first prerequisite for establishing what is to be protected through the part 193 notice procedure is an unambiguous specification of what constitutes the FOQA data to be protected. As part 13 requires that operators who seek the enforcement protection of that rule identify their FOQA data in an FAA-approved FOQA Implementation and Operations Plan, the language of this order, which limits disclosure protection to data submitted pursuant to an approved FOQA program, provides the needed specificity. This order does not preclude operators who do not have an approved FOQA program from submitting digital flight data to the FAA under the no-notice procedure of part 193 or from petitioning the FAA to issue a separate designation specific to pre-identified digital flight data outside of an approved FOQA program under the notice procedure of part 193.

#### D. Corrective Actions

1. *Comment:* The proposed notice protects corrective actions, but only if based on an analysis of that operator's FOQA data. Here, any corrective action based on any FOQA data, including reports, analyses, or recommendations from the FAA based on another operator's FOQA data, should be protected from disclosure. The FAA contemplates that it will notify operators of systemic problems it uncovers. Thus, corrective actions taken by an operator may not, in fact, be based on its own FOQA data.

2. *The FAA Response:* Although section 13.401 requires operators to undertake corrective action, which analysis of its own FOQA data has determined is necessary in the interest of safety (and this order protects such operator specific corrective actions from disclosure), the rule does not require operators to undertake corrective action based solely on analysis of another operator's FOQA data. However, if FOQA data or aggregate FOQA data provided to the FAA from multiple operators indicates a systemic problem for which corrective action on a national basis is warranted in the interest of safety, the FAA anticipates that it would initiate appropriate procedural, policy, or regulatory changes to correct the problem. The FAA anticipates that summarized FOQA information might be released to the public to explain or justify such changes. It is also theoretically possible that analysis of a single