

operator's FOQA might identify a problem for which corrective action applicable to all operators might be warranted in the interest of safety (e.g., a safety related engineering or maintenance issue specific to a particular aircraft make, model, series, or variant). Under either of the preceding two circumstances, the FAA does not believe that it is in the public interest to protect identification of the corrective action to be undertaken.

E. Submission of FOQA Data versus Aggregate FOQA Data

1. *Comment:* One commenter stated that paragraph C in the proposed order, "How Persons Would Participate," requires operators to voluntarily share FOQA data and information with the FAA in order to participate. This statement contradicts paragraph B1 of the proposed notice, which states that operators are "not expected or required" to provide FOQA data as a condition of approval of their FOQA Implementation and Operations Plans. The paragraph is confusing and should be deleted. In a similar vein, another commenter stated that since there is a requirement to submit "aggregate FOQA data" and there is no requirement to submit "FOQA data", the commenter believes that the references in the proposed order to the submission of "FOQA data" to the FAA, and the use of "FOQA data" by the FAA for the production of reports, should be removed.

2. *The FAA Response:* As noted by the second commenter, part 13, section 13.401 distinguishes between FOQA data and aggregate FOQA data. The rule only requires that operators provide the FAA with aggregate FOQA data. The intent of the referenced language from paragraph B1 in the proposed order was not only to acknowledge this distinction, but to also make clear, with reference to FOQA data (not aggregate FOQA data), that "if an operator elects on its own initiative to voluntarily provide such information to the FAA, it will be protected from disclosure under the proposed order of designation," as is stated in the remainder of the referenced paragraph of the proposed order. The intent of the reference to FOQA data is not to establish or imply a requirement for submission of that data to the FAA. Rather, it is to provide disclosure protection for FOQA data in the event that, although not required to do so, an operator submits that data to the FAA. However, the FAA agrees that the related language of paragraph C could be confusing on this point. In the final designation, paragraph 6c has therefore been modified to read, "* * * and by voluntarily sharing FOQA data, aggregate FOQA data, or other FOQA information as specified in this order with the FAA."

F. Electronic Data

1. *Comment:* In Finding 6 of the proposed order, the FAA states that it hopes to establish an internet-based method for receiving aggregate FOQA data. We are concerned in this particular instance about assuming that an internet-based system will be the best system. Given the sensitive nature of FOQA (and ASAP) data, it may be the case that a different method of delivering this data

in electronic format to the FAA will be preferred. Likewise, it may not be the case that initial submissions under part 193 will be in the form of paper reports, as this finding contemplates. The statement also suggests that the FAA intends to be a repository of FOQA data, an issue which is outside the scope of part 193. Furthermore, appropriate consideration has not been given to how FOQA data might be aggregated, analyzed, and used. FAA should work with industry to allow flexibility in the manner in which initial reports are submitted and to address issues associated with the maintenance and disposition of FOQA data. The discussion of this finding should be revised accordingly.

2. *The FAA Response:* The FAA concurs with this comment and has revised the language in Finding 6 accordingly.

Appendix 2 of Order 8000.81 [Summary of significant changes to the Notice of Proposed Order Designating FOQA information as protected from disclosure (Federal Register, Volume 67, Number 172, Pages 56770–56774, September 5, 2002)]

In addition to minor editorial corrections, the following changes from the above referenced proposed notice were made in the final order to assure consistency with 49 U.S.C. 40123 and 14 CFR 13.401, as well as in response to those public comments with which the FAA concurred as described in Appendix 1:

A. The word "proposed" is deleted in the final order from wherever it appeared in the notice.

B. Paragraph B2 of the notice has been modified by inserting the words "provided to the FAA who are" in the final order.

C. Paragraph B3 has been modified by replacing the word "obtained" with "provided" in the final order.

D. Paragraph B4 of the notice has been modified by deleting the words "or the FAA" and by adding the following parenthetical in the final order: (Before release of any such reports prepared by the FAA, information protected from disclosure under this order will be redacted.).

E. Paragraph B6 of the notice has been modified by replacing the words "is obtained" with "has been provided" and by adding the following language, "and the release of the specific results would constitute the release of FOQA data or aggregate data" in the final order.

F. Paragraph B7 of the notice has been modified by inserting the words "reported to the FAA that are" in the final order.

G. Paragraph B9 of the notice has been modified by deleting the word "reports" and the word "and" and inserting the words "and reports prepared by an operator" in the final order.

H. Under paragraph C of the notice, the words "and by voluntarily sharing data and information from the FOQA program with the FAA" have been replaced in the final order with, "and by voluntarily sharing FOQA data, and aggregate FOQA data, or other FOQA information as specified in this order with the FAA."

I. Under proposed findings, paragraph (3) of the notice, the following sentence has been deleted from the final order: "Withholding such information from public disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide an assurance that it will not be disclosed, the FAA will not receive the information. If the FAA does not receive the information, the FAA and the public will be deprived of the opportunity to make the safety improvements that receipt of the information enables."

J. Under proposed findings, paragraph (4) of the notice, the grammar in the example cited in the paragraph has been changed from conditional tense to past tense in the final order, i.e., "could identify" has been replaced with "has identified", "are needed" has been replaced with "were needed", etc.

K. Under proposed findings, paragraph (5) of the notice, the following sentence has been deleted from the final order, "Corrective action under FOQA can be accomplished without disclosure of protected information." The following sentences have been added to the final order: "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."

L. Under proposed findings, paragraph (5) of the notice, the following sentences have been added to the final order, "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."

M. Under proposed designation in the notice, the word "hereby" has been deleted, the reference to paragraph 6b has been corrected to 5b, and the words "with the exceptions noted in paragraph 6(e)(2)" have been added.

N. Under proposed findings, paragraph 6, of the notice, the last paragraph referring to a secure internet based methodology has been deleted in its entirety from the final order.

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