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Regional Airline Association

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September 24, 1999

U.S. Department of Transportation Dockets
Docket No. FAA-1999-6001 -22
400 Seventh St. SW., Room Plaza 401
Washington, DC 20590

PROPOSED RULE: Protection of Voluntarily Submitted Information - Part 193

Gentlemen/Madam:

The Regional Airline Association (RAA) submits the following comments to the subject proposed rule on behalf of its membership (Attachment A). RAA encouraged its members to submit comments directly to the docket. RAA comments should be considered as supplemental to any comments individually submitted to the docket by RAA members.

RAA generally supports the intent of the proposed rule but believes it should not be adopted until the ASAP/FOQA program rulemaking actions are accomplished. RAA members are still waiting for the release of proposed rulemaking actions to define the protections afforded to ASAP and FOQA or similar programs. RAA believes that our members need to see the content of these proposals before they can support the changes proposed for Part 193.

The preamble to the proposed rule states that "the FAA anticipates that if will propose to designate the national FOQA and ASAP programs as protected under Sec. 40123. The proposed designations would include all of the items in Sec. 193.9, such as a description of the type of information that may be voluntarily provided. If, after public comment, the FAA decides to designate these programs for protection under Sec. 40123, then individual air carriers would receive the protections of Sec. 40123 without each obtaining a designation under part 193 for their individual FOQA and ASAP programs."

If FOQA and ASAP programs are later proposed as programs protected under Section 40123, then RAA assumes the purpose of Section 193.9 is intended to describe other similar programs. RAA cannot adequately comment on the proposed Part 193 rule until we read these other proposals. Programs similar to FOQA and ASAP cannot be defined by regulation until we see FOQA and ASAP defined by regulation.

The premature release of Part 193 leaves the regulatory intent of Part 193.7 unclear. If ASAP and FOQA programs are later protected from disclosure by regulations, then Part 193.7 must be written for programs other than ASAP and FOQA. If the ASAP and FOQA rules are written such that the programs are not completely protected from disclosure, then Part 193.7 applies. The preamble suggests that *under certain circumstances, ASAP and FOQA information may be used by the FAA for enforcement and may be disclosed.* We assume then that 193.7(b) was written with ASAP and FOQA in mind yet there is no regulation yet to define such programs.

Clearly, adoption of Part 193.7 rule before the adoption of the ASAP and FOQA protection rules makes Part 193.7 applicable for existing ASAP and FOQA programs. Part 193.7(a)(2) states that information may be "disclosed to correct a condition that may compromise safety or security." We believe that such vague language may discourage air carriers from initiating or continuing FOQA

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and/or ASAP programs. It can also lead to air carriers excluding the FAA from participation in these programs. The proposed rule, as written, will have the unintended effect of denying the FAA access to information that the FAA views as having 'significant safety value' to the FAA.

The preamble attempts to further define this provision with examples such as *"evaluating airworthiness conditions, assuring that the holder of an FAA certificate is qualified for that certificate, and preventing on-going violations of the safety or security regulations."* RAA does not view these examples as sufficiently egregious for the FAA to disclose information derived from a FOQA/ASAP program unless the operator/individual clearly violated the terms of the FOQA/ASAP program.

FOQA and ASAP programs that exist today contain policies related to FAA enforcement. Generally these policies include protective provisions concerning enforcement. The proposed 193.7(a)(2) is not consistent with the language contained in existing programs or the language contained in existing labor agreements. Most labor agreements contain language that authorizes the pilot union to cancel the ASAP and/or FOQA program if the FAA does not provide assurances, through rulemaking, that pilots will be protected from enforcement. Proposed Part 193 does not provide that assurance.

RAA requests that FAA reissue the proposed rule as a supplemental notice for comment concurrently with the expected proposals defining ASAP and/or FOQA program protections.

Your consideration of the comments and requests of RAA and its member's, is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "David Lotterer", written in a cursive style.

David Lotterer
Vice President, Technical Services

Attachment A

