

The following comments are submitted in reference to Docket Number FAA-2000-7554.

The NPRM covering FOQA is the single worst action undertaken by the FAA in memory, for it will undermine proactive efforts to improve aviation safety. The preamble to this proposed rule states that "The primary purpose of a Flight Operational Quality Assurance Program (FOQA) is the enhancement of air safety." Yet the emphasis and focus of the preamble is on enforcement rather than safety.

It is incredible that the FAA considers that this proposed rule could be thought to fulfill the requirements of section 510 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. It goes far beyond what the elected representatives of the people directed, which was really quite simple -- provide protection from civil enforcement action resulting from information gathered under voluntary reporting programs. The contempt with which the FAA seems to hold this congressional mandate is evidenced in the language of the preamble and the proposed rule.

It is important to note that there is nothing in the language of the law that curtails the FAA's ability to exercise its responsibilities for regulatory enforcement. It merely removes the use voluntarily collected FOQA data from being used for any enforcement purpose. Without the commitment of air carriers, after considerable investment in manpower and technology to gather these data, there would be no data for the FAA to use.

In this NPRM, the FAA is demanding that air carriers turn over all FOQA data for use by the FAA to focus their surveillance efforts. While the FAA claims to only want de-identified aggregates, they insist that it be identified by air carrier. If the FAA only wanted these data for safety trend analyses, there would be no need for these data to be identified by air carrier. Air carriers rightly fear that any data submitted will be misused to "grade" the relative safety of air carriers. They further fear that such data would be made public, either through policy or by leaks within the FAA. In the final analysis, however, the FAA has made its intention clear that the data will be used to focus the FAA's enforcement efforts. The FAA is asking air carriers and their pilots to supply the bullets for the gun with which the FAA intends to shoot them.

The FAA has stated that "This proposed rule is an enabling initiative intended to promote the voluntary establishment of FOQA programs." The adoption of this rule will have the opposite effect. It will kill the greatest aviation safety tool that has been implemented in the last ten years. Air carriers will withdraw from approved FOQA programs and conduct FOQA as part of a self-critical analysis program or similar internal auditing system. Data will not be shared, either between air carriers or with the FAA, and safety problems will be concealed rather than be illuminated.

If the air carriers don't take this action, the pilots, represented by their various unions, will withdraw their support. Virtually all air carriers with FOQA programs have contractual agreements with their pilot union that allows the union to shut down the program. With their pilots being held at higher risk of "focused surveillance" they would be remiss in their representational duties to allow such a program to continue.

The adoption of this rule will result in the destruction of FOQA in the United States and be a true disservice to the cause of improved aviation safety. In order to prevent this, the FAA should take the following course of action:

-- This poorly constructed and ill-conceived rule should be withdrawn immediately. Any delay in doing so will cause unions to withdraw their support (shutdown) existing FOQA programs. Air carriers without FOQA programs will not seek FAA approval nor will they make the investment in these programs in the present climate of regulatory uncertainty.

-- A new NPRM should be drafted that complies with both the spirit and the language of section 510 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. To that end, such a rule should provide protection from any sort of enforcement action, either remedial or punitive.

-- This new rule should be based on the existing, and very successful, policy statement issued by the FAA Administrator on December 2, 1998.

-- As is currently the case with FAA-approved FOQA plans, the FAA should never have access to "underlying FOQA data." This should be embodied in the new rule.

-- In the new proposed rule, any sharing of de-identified aggregate data with the FAA must be truly de-identified, including by air carrier. Such data must only be used to assist the FAA in improving safety in the National Airspace System. Such data could be valuable in helping the FAA keep its own house in order.

If the FAA is serious about improving aviation safety, it needs to engage in cooperative efforts with air carriers. Until this NPRM, the FAA has demonstrated a progressive attitude in the development of FOQA programs to enhance safety. Their commendable efforts to foster this development should not be undermined by a rule that not only reinforces adversarial relationships, but also will have the effect of destroying FOQA in this country. Write a rule that complies with the law and builds trust and cooperation to improve safety.

Thank you for the opportunity to comment on these vital matters.