

outcome was consistent with, if not mandated by, the safe harbor provision incorporated into the Board's fuel surcharge rules.

Railroads have the initiative to set rates under 49 U.S.C. 10701(c), and a regulated railroad rate can be set aside as unreasonable only if the Board finds market dominance. 49 U.S.C. 10701(d), 10707(c). Railroad *practices* can be found unlawful under 49 U.S.C. 10702 without a finding of market dominance, but it is well settled that the Board may not evade the limits on its rate review process by treating a rate matter as an unreasonable practice case. *Union Pacific R.R. v. ICC*, 867 F.2d 646 (D.C. Cir. 1989). Although there can be a "conceptual overlap between railroads' 'practices' and their 'rates,'" *id.* at 649, when a practice is "manifested *exclusively* in the level of rates that customers are charged," *id.*, a challenge to such a practice is in reality a challenge to the rate and may only be brought under the Board's rate reasonableness procedures. *See id.*

To me, the fuel surcharges that the Board is addressing are clearly components of the overall rates charged for the underlying transportation. To be sure, the "truth-in-advertising" aspect of the *Rail Fuel Surcharges* decision comes a bit closer to the "practices" arena, but the relief sought in *Cargill*, and that the Allied Shippers urge here, is still, at base, rate relief.

For all of these reasons, in my view, the Board should not have issued the *Rail Fuel Surcharges* decision in 2007, which created the fuel surcharges rules and their safe harbor provision. Today, I would take steps to reverse that decision in its entirety. However, no majority exists for such action.

**Jeffrey Herzig,**  
Clearance Clerk.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2019-0690]

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight Operations Quality Assurance (FOQA) Program

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Notice and request for  
comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the voluntary submission of information gained through the Flight Operations Quality Assurance (FOQA) Program. FOQA is a voluntary safety program designed to improve aviation safety through the proactive use of flight-recorded data. The information collected will allow operators to use this data to identify and correct deficiencies in all areas of flight operations.

**DATES:** Written comments should be submitted by November 4, 2019.

**ADDRESSES:** Please send written comments:

*By Electronic Docket:*  
[www.regulations.gov](http://www.regulations.gov) (Enter docket number into search field).

*By mail:* Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS-270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.  
*By fax:* 412-239-3063.

**FOR FURTHER INFORMATION CONTACT:**

Sandra Ray by email at: [Sandra.ray@faa.gov](mailto:Sandra.ray@faa.gov); phone: 412-329-3088.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120-0660.

*Title:* Flight Operations Quality Assurance (FOQA) Program.

*Form Numbers:* There are no forms associated with this collection.

*Type of Review:* Renewal of an Information Collection.

*Background:* Flight Operations Quality Assurance (FOQA) is a voluntary safety program designed to improve aviation safety through the proactive use of flight-recorded data. Operators will use these data to identify and correct deficiencies in all areas of flight operations. Properly used, FOQA data can reduce or eliminate safety risks, as well as minimize deviations from regulations. Through access to de-identified aggregate FOQA data, the Federal Aviation Administration (FAA

can identify and analyze national trends and target resources to reduce operational risks in the National Airspace System (NAS), air traffic control (ATC), flight operations and airport operations.

The FAA and the air transportation industry have sought additional means for addressing safety problems and identifying potential safety hazards. Based on the experiences of foreign air carriers, the results of several FAA-sponsored studies, and input received from government/industry safety forums, the FAA concluded that wide implementation of FOQA programs could have significant potential to reduce air carrier accident rates below current levels. The value of FOQA programs is the early identification of adverse safety trends, which, if uncorrected, could lead to accidents. A key element in FOQA is the application of corrective action and follow-up to ensure that unsafe conditions are effectively remediated.

*Respondents:* 71 Air Carriers (62 with existing programs and 9 carriers with new programs).

*Frequency:* Once for a certificate holders seeking approval of a program, monthly for certificate holders with an approved program.

*Estimated Average Burden per Response:* 100 Hours for certificate holders seeking approval of a new program, 12.0 hour per year for certificate holders with an approved program.

*Estimated Total Annual Burden:* 100 hours per new respondent, 12 hours annually per existing respondents.

Issued in Washington, DC, on August 29, 2019.

**Sandra L. Ray,**  
Aviation Safety Inspector, FAA, Policy  
Integration Branch, AFS-270.

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Diversity Self-Assessment Template for OCC-Regulated Entities

**AGENCY:** Office of the Comptroller of the  
Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.