SEC. 1015. EXEMPTION FROM FREEDOM OF INFORMATION ACT FOR DATA FILES OF THE MILITARY FLIGHT OPERATIONS QUALITY ASSURANCE SYSTEMS OF THE MILITARY DEPARTMENTS.

(a) EXEMPTION.—Chapter 134 of title 10, United States Code, is amended by inserting after section 2254 the following new section:

"§ 2254a. Data files of Military Flight Operations Quality Assurance systems: exemption from disclosure under Freedom of Information Act

"(a) AUTHORITY TO EXEMPT CERTAIN DATA FILES FROM DISCLOSURE UNDER FOIA.—

"(1) The Secretary of a military department may exempt information contained in any data file of the Military Flight Operations Quality Assurance system of that military department from disclosure under section 552 of title 5. The preceding sentence shall be considered a statute described in paragraph (3) of section 552(b) of title 5.

"(2) In this section, the term 'data file' means a file of the Military Flight Operations Quality Assurance system (in this section referred to as 'MFOQA') that contains information acquired or generated by the MFOQA system, including—

"(A) any data base containing raw MFOQA data; and

"(B) any analysis or report generated by the MFOQA system or which is derived from MFOQA data.

"(3) Information that is exempt under paragraph (1) from disclosure under section 552(b)(3) of title 5 shall be exempt from such disclosure even when such information is contained in a data file that is not exempt in its entirety from such disclosure.

"(4) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section and which specifically cites and repeals or modifies those provisions.

"(b) REGULATIONS.—The Secretary of each military department shall prescribe regulations for the administration of this section. Such regulations may not delegate the Secretary's authority under this section to an officer or employee of that military department at a level lower than a member of the Senior Executive Service or to a member of the armed forces at a level below a general or flag officer.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter II of such chapter is amended by inserting after the item relating to section 2254 the following new item:

"2254a. Data files of Military Flight Operations Quality Assurance systems: exemption from disclosure under Freedom of Information Act.".

Section-by-Section Analysis

This proposal would authorize the Secretary of each military department to withhold certain data files of that military department's Military Flight Operations Quality Assurance (MFOQA) system from release pursuant to a request made under section 552 of title 5, United States Code, the Freedom of Information Act (FOIA). The data sought to be protected from such release contains information which, in the aggregate or when combined with other information already in the public domain or already subject to release under the FOIA, could reveal sensitive information regarding the tactics, techniques, procedures, processes, and operational and maintenance capabilities concerning military combat aircraft, units, and aircrew.

MFOQA is a new military capability based on the highly successful commercial process known as Flight Operations Quality Assurance (FOQA). The implementation of FOQA by commercial aviation found that regular, detailed, and automated analysis of aircraft post-flight data could provide immediate visibility into how aircraft are being flown by aircrew and how aircraft systems are performing. MFOQA's knowledge management capability seeks to deliver improvements to aviation maintenance, operations, training, and safety through the systematic use of an organization's knowledge based on existing data. MFOQA collects data from previously independent and "stove piped" systems which is then aggregated, analyzed, and presented to authorized users. MFOQA is a risk mitigation tool which will provide a proactive approach to identify human errors and failing material components so that corrective actions can be taken prior to an aircraft mishap or costly maintenance failure. Changes in flight procedures,

habit patterns, training methods, and maintenance practices based upon MFOQA analysis have the potential to significantly reduce the flight mishap rate and increase readiness.

During development of MFOQA, concerns were raised regarding the sensitivity of the data and the adverse impacts that might result if such data were released in response to a FOIA request. MFOQA data includes information concerning aircraft flight operations, aircrew training and readiness, and the assignment of aircraft and aircrew to specific units. The aggregation and analysis of previously independent and "stove piped" data elements could result in the creation of sensitive information regarding the tactics, techniques, procedures, processes, and operational and maintenance capabilities concerning military combat aircraft, units, and aircrew. The release of such data could jeopardize the ability of the Department of Defense (DoD) to maintain a tactical and technical advantage over its adversaries and perform its vital national security missions. The ability of the DoD to perform these missions, to maintain a tactical and technical advantage, and to maintain effective, efficient, and safe aircraft, units, and aircrew far outweighs any benefit which would be achieved by release of the data to the public.

The data sought to be protected from release under FOIA is not "classified" data, but if released, it could be aggregated or combined with other MFOQA data previously approved for release, or with other non-MFOQA data already subject to release under the FOIA, and reveal sensitive information regarding the operational and maintenance capabilities of military combat aircraft and the tactics, techniques, and procedures used by units and aircrew to employ those capabilities in training and in combat.

This proposal would not prevent the discovery of information pursuant to an order of a court of competent jurisdiction. The protections afforded by the rules of civil procedure and evidence should provide adequate protection for this data under those circumstances. It is believed that data in the MFOQA system would not be of compelling interest to the general public in their oversight of Government activities. The data may, however, be of interest to an actual or potential adversary who could use a FOIA request to gather information which could then be used to gain a tactical, technical, or operational advantage or to negate our existing advantage.

This proposal would require the Secretary of each military department to prescribe regulations for the administration of this section. It also limits delegation of the Secretary's authority to an employee of the Department who is a member of the Senior Executive Service or a general or flag officer. This would allow the decision to withhold release to be delegated to appropriate personnel at, for example, the Naval Air Systems Command, the Commander of Naval Air Forces, the Deputy Commandant of the Marine Corps for Aviation, or the Naval Safety Center.

Budget Implications: There are no costs associated with the implementation of the provisions of this proposal. Alternatively, if this legislative proposal is not enacted into law, there could be substantial costs to the Department of Defense to implement changes to the MFOQA system to protect some of the more critical data in order to mitigate national security concerns.

Changes to Existing Law: This proposal would add a new section to title 10, United States Code. The text of the new section appears in the legislative proposal above.