



November 10, 2016

Mr. Brian Rushforth
Manager, Airport Safety & Operations Division (AAS-300)
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Dear Mr. Rushforth:

Thank you for the opportunity to submit comments regarding draft Advisory Circular (AC) 150/5200-37A, *Safety Management Systems for Airports*. This AC is extremely important for those airport operators that will be required to develop safety management systems (SMS) under 14 CFR Part 139 when the Final Rule regarding SMS Programs for Airports is issued.

ACI-NA and AAEE developed our comments jointly with our members, including several participants in the FAA's SMS pilot programs. Although we have provided our detailed comments in Attachment 1, we do want to emphasize the following overarching comments:

1. As both ACI-NA and AAEE noted in our comments regarding the Supplemental Notice of Proposed Rulemaking (the SNPRM) for Airport Safety Management Systems, flexibility in the development, implementation, and operation of airport SMS programs will be critical to the success of these programs. To this end, we encourage the FAA to keep its own discussion of scalability in the AC in mind when reviewing SMS implementation plans, SMS manuals or Airport Certification Manual sections, and ultimately, operational SMS programs.
2. Regulatory requirements need to be clearly differentiated from best practices guidance and other advisory content throughout the AC. This is extremely critical to alleviate confusion for airport operators and airport safety certification inspectors between what airport operators *must do* to comply with their federal obligations (either under 14 CFR Part 139 or through their acceptance of federal grant assurances) and what they *optionally may consider doing*. The latter category includes guidance regarding best practices or suggested approaches to airport SMS implementation not explicitly referenced in the Final Rule regarding Airport SMS.
3. Examples provided for guidance purposes should be clearly denoted as such—examples—and should not be presumed to represent either the preferred approach or preferred means of compliance to a particular SMS document or process. When possible, we suggest including multiple examples, either in the AC itself or by reference, to reinforce the idea that there are multiple acceptable ways to implement the four SMS components.

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4. Regulatory requirements stated in the AC must align with those described in the Final Rule. As noted in our detailed comments, there are several areas where we found apparent discrepancies between the requirements described in the SNPRM and the corresponding descriptions of these requirements in the draft AC. These include (1) discussion of the roles of the Accountable Executive, (2) descriptions of training requirements and training record maintenance in Chapter 6, (3) definitions in both the main text of the AC and Appendix A.
5. As we noted in our 2010 comments on an earlier version of this AC, airport operators need clear descriptions of how FAA airport safety certification inspectors will review airport SMS programs. We believe the AC is an excellent vehicle for disseminating this information to the airport community. Accordingly, we recommend adding a section to the AC that describes how the FAA intends to review/oversee airport SMS programs and assess compliance with FAA SMS requirements. We presume that this description will be based in large part on the FAA's Compliance Philosophy¹, which was formally announced by the FAA Administrator earlier this year. Such review processes should also incorporate elements from the FAA's preamble to the SNPRM, including (1) a focus on systemic reviews of SMS processes and procedures, rather than on "traditional checklist driven inspection" methods and (2) avoidance of "second guessing" safety decisions made by airport operators through their use of their SMS.
6. As both AAAE and ACI-NA noted in our comments regarding the SNPRM, the protection of safety data collected as part of SMS programs from inappropriate and potentially counterproductive public disclosure is an extremely significant unresolved issue for U.S. certificated airports, almost all of which are owned and operated by public agencies—whether airport authorities, port authorities, cities, counties, or states. With few exceptions, these public agencies are subject to sunshine acts, open records acts, freedom of information acts and ordinances or other state and local open government provisions that make protection of safety data from public disclosure very difficult or impossible. Although some safeguards may exist for *some* airport operators, there is no reasonable expectation that airports will be able to establish protections similar to those the airlines and FAA Air Traffic Organization have established for safety data collected under other existing SMS programs. The FAA needs to recognize in the AC that it may be difficult or impossible for airport operators to obtain safety data from private companies and/or from non-punitive reporting systems because of legitimate concerns about public disclosure. Also, the effectiveness of safety reporting by an airport's own personnel may be compromised by this disclosure problem.
7. Additional guidance is needed in the AC regarding the expectations, roles, responsibilities and mechanisms regarding the interoperability of SMS programs among airport sponsors, airlines, other flight operators, the FAA Air Traffic Organization, and other aviation service providers.
8. Both ACI-NA and AAAE believe that heightened collaboration is needed among the FAA, airport operators, and other key safety partners for NAS-wide implementation of airport SMS programs to be successful. To this end, we strongly recommend that the FAA establish processes to involve these stakeholders directly in the refinement of the

¹ <https://www.faa.gov/about/initiatives/cp/>

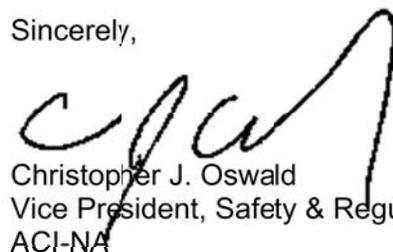
provisions as new information and best practices emerge from individual airport SMS implementations.

These overarching comments and the more detailed comments in the comment matrix must be read in conjunction with the comments both ACI-NA and AAAE submitted regarding the SNPRM in September 2016. For ease of reference, these are included as Attachments 2 and 3. As we noted in those comments, airport operators have important and substantive concerns about many aspects of the FAA's proposed airport SMS requirements, including mechanisms for protecting safety-critical data, mandatory inclusion of non-movement areas in SMS programs, SMS training requirements, implementation timelines, and interoperability with other entities' SMS programs, among others.

* * * * *

ACI-NA and AAAE appreciate this opportunity to submit comments regarding AC 150/5200-37A. We will contact you next week to set up a meeting to discuss them and the next steps we all need to take. If you have questions before then, please contact either one of us at coswald@aci-na.org or Melissa.Sabatine@aaae.org.

Sincerely,



Christopher J. Oswald
Vice President, Safety & Regulatory Affairs
ACI-NA



Melissa Sabatine
Senior Vice President, Regulatory and
International Affairs
AAAE

cc: Mr. Michael O'Donnell, Director-Office of Airport Safety & Standards, FAA

Attachments (3)

ATTACHMENT 1
ACI-NA/AEEE ADVISORY CIRCULAR COMMENT MATRIX



ACI-NA/AAAE Comments, Draft AC 150/5200-37A, Safety Management Systems for Airports

Reviewer Name	Reviewer Org	Reviewer Phone#	Page#	Para#	C,E, or F	Comment/Rationale	Recommended Change/Proposed Rewrite	A or D (For OPR Use Only)	Resolution of Comments (For OPR Use Only)
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/ 703.578.2502	General comment	General comment	C	Regulatory requirements should be clearly differentiated from best practices guidance and other advisory content throughout the AC. This is extremely critical to alleviate confusion for airport operators and airport safety certification inspectors between what airport operators must do to comply with their federal obligations (either under 14 CFR Part 139 or through their acceptance of federal grant assurances) and what they can optionally consider doing. The latter category includes guidance regarding best practices or suggested approaches to airport SMS implementation not explicitly referenced in the Final Rule regarding Airport SMS.	Summarize regulatory requirements related to each component of SMS-- as stated in final airport SMS rule that is enacted--at the start of their associated chapters of the Advisory Circular. Regulatory requirements associated with SMS implementation schedules, required documentation, and compliance should be summarized at the start of Chapter 2. Requirements related which airports must implement SMS (i.e., applicability) should be summarized at the start of Chapter 1. The guidance text provided following these summaries of requirements should be clearly preceded by statements similar to "The following discussion describes some of the possible ways/practices/approaches to implementing airport SMS programs but do not represent the only ways in which airport sponsors can or should implement them. The FAA recognizes that best practices for a particular airport sponsor's SMS program may only emerge after the airport sponsor implements and becomes proficient in the use of the program."		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/ 703.578.2502	General comment	General comment	C	Examples provided for guidance purposes should be clearly denoted as such—examples—and should not be presumed to represent either the preferred approach or preferred means of compliance to a particular SMS document or process. When possible, we suggest including multiple examples, either in the AC itself or by reference, to reinforce the idea that there are multiple acceptable ways to implement the four SMS components.	In cases where single examples are provided, we recommend that either (1) other examples be added or (2) acknowledge that other approaches are acceptable. Examples should provide insight into how airports of various sizes might approach particular SMS components and requirements.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/ 703.578.2502	General comment	General comment	C/E	Regulatory requirements stated in the AC must align with those described in the Final Rule. As noted in our detailed comments, there are several areas where we found apparent discrepancies between the requirements described in the SNPRM and the corresponding descriptions of these requirements in the draft AC. These include (1) discussion of the roles of the Accountable Executive, (2) descriptions of training requirements and training record retention in Chapter 6, (3) definitions in both the main text of the AC and Appendix A, particularly regarding hazards.	Ensure AC text is aligned with requirements and definitions provided in the ultimately enacted Final Rule for Airport SMS.		

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Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	General comment	General comment	C	Airport operators need clear descriptions of how FAA airport safety certification inspectors will review airport SMS programs. We believe the AC is an excellent vehicle for disseminating this information to the airport community. Accordingly, we recommend adding a section to the AC that describes how the FAA intends to review/oversee airport SMS programs and assess compliance with FAA SMS requirements. We presume that this description will be based in large part on the FAA's Compliance Philosophy, which was formally announced by the FAA Administrator earlier this year. Such review processes should also incorporate elements from the FAA's preamble to the SNPRM, including (1) a focus on systemic reviews of SMS processes and procedures, rather than on "traditional checklist driven inspection" methods and (2) avoidance of "second guessing" safety decisions made by airport operators through their use of their SMS.	<p>Although we understand that much of the guidance requested in this comment will ultimately be provided in FAA Order 5280-5, <i>Airport Certification Program Handbook</i>, we recommend that the FAA add text either to Chapter 2 or as a new Chapter 7 regarding how the FAA will (1) review required airport SMS submittals (i.e., the SMS Implementation Plan and SMS Manual/ACM incorporating an SMS section) and (2) review operational SMS programs after these submittals are accepted and/or approved.</p> <p>With respect to reviews of SMS submittals, the FAA should describe the criteria for submittal acceptance/approval, the anticipated timelines for issuance of acceptance/approval, and mechanisms for submittal refinement in the event acceptance/approval is not initially granted.</p> <p>With respect to evaluations of operational SMS programs, the discussion should explicitly incorporate language from the preamble to the FAA's SNPRM that "the purpose of [airport SMS] review would not be to second guess the certificate holder's actions, but rather to ensure the certificate holder is following its own processes as documented in the SMS manual and/or ACM." [81 Fed. Reg. 45889]</p>		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	General comment	General comment	C	Additional guidance is needed in the AC regarding the expectations, roles, responsibilities and mechanisms regarding the interoperability of SMS programs among airport sponsors, airlines, other flight operators, the FAA Air Traffic Organization, and other aviation service providers.	We recommend adding a section to the AC that specifically addresses SMS program interoperability. This discussion should provide guidance regarding how to establish "lines of demarcation" among airport, airline, and ATO SMS programs (e.g., the areas where each of these entities has primary safety responsibility) as well general descriptions regarding the areas in which various entities' SMS programs are expected to overlap or will need to operate in an interoperable manner. This section would be enhanced with examples from SMS pilot studies regarding how airports, ATO, the airlines and other third parties established interoperable SMS programs.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	1 through 4	Chapter 1	C	We believe that collaboration is needed among the FAA, airport operators, and other key safety partners for NAS-wide implementation of airport SMS programs to be successful. To this end, we strongly recommend that the FAA establish processes to involve these stakeholders directly in the refinement of the draft AC. We also suggest that the FAA treat the AC as a living document and modify its provisions as new information and best practices emerge from individual airport SMS implementations.	We recommend that the FAA add a section in Chapter 1 that discusses the need for collaboration between airport operators, their safety certification inspectors, and other stakeholders in the initial development of airport SMS programs. We also recommend that the FAA also note in Chapter 1 that the AC will be refined as airport operators and the FAA collectively learn from these initial development processes.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	1	"Background", second paragraph, second sentence	E	Sentence can be simplified.	For clarity, we recommend replacing the phrase, "both certificated and other airports", with "airports".		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	3	"Current Applications of SMS", second paragraph	E	First sentence of the second paragraph should limit the scope of the AC to the airside, at least from an FAA regulatory perspective.	First sentence of second paragraph should be reworded to state: "This AC focuses on developing and implementing SMS in the airport <i>airside</i> environment, including airport movement and non-movement areas)."		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	4	"Scalability", first paragraph	E	Clarify text.	Recommend replacing the sentence "Therefore, a one-size fits all approach to SMS is not advisable." with the sentence "Therefore, SMS programs will need to be tailored to each airport at which they are developed."		

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Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	4	"Scalability", second paragraph	C	Flexibility in the development, implementation, and operation of airport SMS programs will be critical to the success of these programs. To this end, we encourage the FAA to keep its own discussion of scalability in the AC in mind when reviewing SMS implementation plans, SMS manuals or Airport Certification Manual sections, and ultimately, operational SMS programs.	We suggest that the FAA add text below the second Scalability paragraph in Chapter 1 that recognizes that airport SMS programs--and the FAA's guidance regarding them--will be refined over time, as airport sponsors become more familiar SMS concepts and programs. This paragraphs should also note that the identification of "best" or "preferred" practices will be an ongoing process based on FAA and airport sponsor experiences as SMS programs are implemented.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	4	"Scalability", second paragraph	E	Clarify text.	For clarity and document flow, we recommend removing the first three sentences and replacing them with the following: "At small airports or those airports having only a manager and minimal support staff, the manager may be responsible for the SMS. At medium and large airports, the complexity and departmentalization of duties may require that more personnel be involved in the SMS".		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	5	"Introduction", second paragraph, second sentence	E	The shorthand term "SMS Champion" is an informal one and does not appear necessary to define, particularly since it refers to an individual rather than an "individual or team" as cited in the preceding sentence.	Delete the reference to "SMS Champion" and associated Footnote 4.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	5	"Documentation", first paragraph	E	The paragraph refers to three levels of SMS documentation, but does not connect these levels explicitly to documentation explanations (SMS implementation plans, SMS Manuals) in the following paragraphs.	Recommend deleting the first paragraph, which does not appear to add substantive guidance to airport operators and rather introduces confusing terminology that is not references again in the AC.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	5	"Documentation" subsection, second paragraph	C/E	Clarify text.	<p>Recommend replacing the second paragraph with the following:</p> <p>"Under 14 CFR Part 139, certain airport sponsors are required by the FAA to implement SMS programs. These sponsors must submit an SMS Implementation Plan to the FAA for review and approval. These sponsors must also develop documentation that describes its compliance with FAA SMS requirements. This documentation can be provided in one of two ways (1) as a new section to the sponsor's Airport Certification Manual (ACM) or (2) in a stand-alone Airport SMS Manual. If the sponsor opts to produce a stand-alone Airport SMS Manual, the sponsor's manual must be incorporated into the ACM by reference. Airports that are required to implement SMS programs also face FAA submittal deadlines for Implementation Plans and SMS program documentation (e.g., SMS section in the ACM or stand alone Airport SMS Manual). The former must be submitted to the FAA for approval no later than 12 months after a final airport SMS rule is effective; the latter must be submitted to the FAA for approval (ACM) or acceptance (SMS Manual) no later than 24 months after the final rule is effective.</p> <p>Airport sponsors that are not subject to the FAA's airport SMS requirements still may find it helpful to use similar documents--an SMS Implementation Plan and an Airport SMS Manual--in their programs. However, those airports that are not required to implement SMS programs should not include their SMS Manual or similar documentation in their ACM's either directly or by reference, since doing so would make the program part of their regulatory program, enforceable by FAA."</p> <p>We also suggest that FAA include an assessment of the pros and cons of both approaches to documenting a sponsor's SMS--via ACM or as a stand-alone SMS manual.</p> <p>+H18</p>		

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Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	5	"Documentation" subsection, second paragraph	E	ACM Revision/Clarification is needed on how to reference the SMS Manual in the ACM.	Provide an example of how a stand-alone Airport SMS Manual should be referenced in an ACM.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	5	"SMS Implementation Plans" subsection, first paragraph	C	Updated information is needed to reflect the Implementation Plan language in the SNPRM.	We recommend updating the paragraph to reflect the Implementation Plan language found within the supplemental rule, including adding dates.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	7	"SMS Implementation Plans" subsection	C	The subsection seems more focused on the areas where airport sponsors may already have elements of the four SMS components than on what the content of an Implementation Plan needs to include.	Please restructure this section to clearly articulate the minimum elements the FAA expects to see in SMS Implementation Plans submitted to the FAA for approval.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	7	"SMS Implementation Plans", first paragraph following Table 2-1	C	The statement, "airports should update their SMS Implementation Plans frequently", is confusing, particularly in the regulatory context. Circumstances will dictate the need for updates of these plans (e.g., unforeseen challenges in SMS development and/or resource constraints that slow implementation timelines), not merely the need to update them for their own sake. The statement also raises questions about whether such updates would be subject to FAA review and approval.	We recommend deleting the sentence.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	7	"SMS Manual", fourth paragraph	C	The AC states that it focuses on SMS applications on the airside, however airports may choose to apply SMS to terminal and landside, but these should remain separate. This could make SMS throughout the airport environment cumbersome. Having separate manuals will cause confusion with airport users on which manual to reference.	The FAA should recognize if an airport takes a proactive approach to SMS and incorporates the terminal and landside environments into the SMS manual, it should not degrade that program by requiring a separate manual. The FAA should enforce and review only sections relating to the regulations. Many areas from terminal and landside may cross lines in the manual so it is important to keep all information in one place. The ability to denote sections not applying to the regulation should be permitted.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	7	"SMS Manual", fourth paragraph	C	Clarification is needed on how and when airports should update their manual.	We recommend providing guidance on the process of updating the SMS Manual, particularly how airport sponsors can make the SMS Manual a "living document" in light of FAA review and acceptance requirements.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	9	"Developing and Implementing the Safety Policy/ Identifying the accountable executive" subsection	C	The "accountable executive" is a formal title, unique to SMS and should written as a proper noun.	We recommend capitalizing the term "Accountable Executive" throughout the AC.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	12	Figure 3-3, Safety Committee	C	The AC specifically notes (page 10, second paragraph) that airports should refrain from calling the individual responsible for daily oversight and administration as 'Safety Manager' because it infers that managing safety is the responsibility of that manager alone and not of other airport departments. Since the AC advises using SMS Manager, SMS Coordinator and SMS Administrator in lieu of "Safety Manager" the same logic should apply to the usage of a "Safety Committee"	We recommend replacing the term "Safety Committee" with "SMS Committee" throughout the AC.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/7 03.578.2502	16	"Developing and Implementing the Safety Policy/ Establish and maintain safety objectives", first paragraph	C	Clarification is needed on what happens if an objective is not met within the timeline such as should the timeline not be met the airport should reconstruct the goals to obtain the timeline and re-establish a new approach.	We recommend clarifying the language to ensure the airport will not be held to the timeline in a compliance standard but rather needs to show good faith and effort in changing the approach and continuing to try.		

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Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	17 through 35	Safety Risk Management Chapter	C	The FAA should use the more current industry guidance regarding SMS processes in the development of the SRM chapter, specifically guidance provided in ACRP Report 131, <i>A Guidebook for Safety Risk Management for Airports</i> .	Please update the chapter, incorporating practices and recommendations from ACRP Report 131 in favor of older guidance provided in ACRP Report 1.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	17	Figure 4-1: Elements of SRM	C	The text in boxes describing record retention requirements does not appear to be consistent with requirements proposed in the SNPRM for Airport SMS.	References to record retention requirements must be consistent with requirements established in the Final Rule for Airport SMS.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	18	"Developing and Implementing Safety Risk Management/ Establish a systematic process to analyze hazards and their associated risks", first paragraph, fourth sentence ("The airport should have processes...")	C	The airport should not be required to process every report received through the Hazard Reporting System through the 5-step process. As with the entire 5-step process, the airport should have the flexibility to decide which reports, received through the Hazard Reporting system, are processed through the 5-step process.	Sentence should be deleted.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	18	"Establish a systematic process to analyze hazards and their associated risks" subsection	C	Consider referencing safety risk assessment triggers from ACRP Report 131, <i>A Guide Book Safety Risk Assessments for Airports</i> , Table 16-1.	We recommend adding a reference to the SRA Triggers from ACRP Report 131, <i>A Guidebook Safety Risk Assessments for Airports</i> , Table 16-1, page 85, Common Airport SRA Triggers.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	18	"Developing and Implementing Safety Risk Management" subsection-Establish a system for identifying safety issues	C	The AC identifies that a tenant operational change and general Ramp Operations as ways to identify hazards. However, these specific issues should be addressed and managed through the tenant SMS program and not the airport's SMS program, especially for exclusive leased areas.	Exclusive leasehold areas should be exempt from airport SMS programs. AC guidance should suggest that airport lease documents include the requirement for leaseholders to "have in place an SMS program that is congruent with the airport SMS program.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	20	"Identify the hazards" subsection	C	The definition of hazard should be reviewed. It needs to be both consistent with other FAA SMS documents and specific to the airport environment. The definition in the draft AC seems particularly focused on aircraft accidents and there is a sense among ACI-NA and AA AE members that it should be broadened to reflect other airport concerns.	As noted in later comments, we recommend using the definition of "Hazard" provided in FAA Order 5200.11: "Hazard: Any existing or potential condition that can lead to injury, illness, or death to people; damage to or loss of a system, equipment, or property; or damage to the environment. A hazard is a condition that is a prerequisite of an accident or incident. A hazard might or might not result in a situation of high risk." We also recommend that the FAA needs to provide clarification about the types of hazards over which it has regulatory authority (e.g., those involving the safety of aircraft operations) versus those hazards that airport operators may want to voluntarily consider in their SMS.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	21	Figure 4-4	C	Additional explanation is needed regarding the preliminary hazard assessment tool (PHT), which is used widely by airports.	We recommend adding a section that explains the PHA Tool fields.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	23	Table 4-1, Sample Severity and Likelihood Definitions	C	These reflect definitions aside from just an aircraft crash which conflicts with description of hazards found on page 20.	Table 4-1 needs to be adapted for the airport environment.		

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Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	31	"Integrated SRM Efforts" subsection	C	The AC discusses integrated SRM efforts with airlines, FBOs, etc.; however, it does not go into detail on who is the leader on issues that are specific to one airline or another.	We recommend adding language to specify who takes the lead regarding SRM, documentation, etc.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	24	Last paragraph	C	Referencing that airports do not need to use FAA definitions using the term "FAA led" is not accurate. If the FAA is leading a panel they use their internal order definitions from 5200.11. When the FAA requests an "Airport Sponsored" assessment, then the airport needs to utilize the tools from the FAA Desk Reference, 5200.11.	We recommend clarified language in this paragraph.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	27	Figure 4-8: FAA Office of Airports' Predictive Risk Matrix	C	An individual should not conduct most of the 5 step process or else there will be a tendency to sway the data outcome. Rather, a committee keeps checks and balances in place and should be encouraged.	We recommend discouraging individual assessment.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	31	"Integrated SRM Efforts" subsection	C	There is no guidance on how to effectively prepare for an SRA. ACRP Synthesis Report 71, <i>Airport Safety Risk Management Panel Activities and Outcomes</i> , has the necessary guidance needs to be incorporated in the Advisory Circular.	We recommend adding a reference to Chapter 4 of ACRP Synthesis Report 71, <i>Safety Risk Assessment Process for Airports</i> , after the "Integrated SRM Efforts" subsection.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	31	"Integrated SRM Efforts" subsection	C	There is no guidance on how to effectively conduct an SRM Panel. The ACRP Synthesis Report 71, <i>Airport Safety Risk Management Panel Activities and Outcomes</i> , has the necessary guidance needs to be incorporated in the Advisory Circular.	We recommend adding reference to Chapter 6 of ACRP Synthesis Report 71, <i>Facilitation of Airport-LED Safety Risk Assessment</i> , in the Advisory Circular after the "Integrated SRM subsection".		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	39 and 40	"Confidentiality concerns" subsection	C	<p>The protection of safety data collected as part of SMS programs from inappropriate and potentially counterproductive public disclosure is an extremely significant unresolved issue for U.S. certificated airports, almost all of which are owned and operated by public agencies—whether airport authorities, port authorities, cities, counties, or states. With few exceptions, these public agencies are subject to sunshine acts, open records acts, freedom of information acts and ordinances or other state and local open government provisions that make protection of safety data from public disclosure very difficult or impossible.</p> <p>Although some safeguards may exist for some airport operators, there is no reasonable expectation that airports will be able to establish protections similar to those the airlines and FAA Air Traffic Organization have established for safety data collected under SMS programs.</p>	<p>The FAA needs to recognize in the AC that it may be difficult or impossible for airport operators to obtain safety data from private companies and/or from non-punitive reporting systems because of legitimate concerns about public disclosure. Also, the effectiveness of safety reporting by an airport's own personnel may be compromised by this disclosure problem.</p> <p>It is crucial for all of stakeholders involved in implementing and operating SMS systems at airports--airport operators, the FAA, flight operators, and other service providers/tenants--to work together to identify solutions to the significant hurdles lack of data protection poses to airport SMS programs. Until remedies to these data protection issues can be implemented, the AC needs to recognize more explicitly that airline and other third party safety reporting may be limited.</p>		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	40	"Confidentiality concerns", third paragraph, last sentence ("Note: Where tenants remain...")	C	Forcing tenants to use the confidential hazard reporting system goes against the principals of developing an organization's Safety Culture.	We recommend deleting the sentence.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	44	Figure 6-1: Safety Promotion	C	The figure seems to lean toward the original philosophy of training, where you had to fully train/document each employee at the airport on SMS vs. doing general awareness and promotion training. The chart is very specific and says "each employee and tenant with access to airport areas..."	Language in the paragraph should be modified to reflect expected training requirements for airport SMS programs.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	44	Figure 6-1: Safety Promotion, second box	C	The second box in Figure 6-1 is not correct according to the SNPRM. The FAA has said for all individuals not directly related to the program the training could be a flyer distributed by the airline or other station manager/supervisor.	The airport needs only to document it gave a flyer to be distributed to XX's employees, not by individual employee and date.		

ACI-NA/AAAE Comments, Draft AC 150/5200-37A, Safety Management Systems for Airports

Reviewer Name	Reviewer Org	Reviewer Phone#	Page#	Para#	C,E, or F	Comment/Rationale	Recommended Change/Proposed Rewrite	A or D (For OPR Use Only)	Resolution of Comments (For OPR Use Only)
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	45	"Providing safety training" subsection	C	Since SMS is an FAA initiative-mandatory for airports to implement, FAA should help support it as well. FAA should examine OSHA in terms of their outreach efforts. OSHA makes a whole host of training materials available to private and public entities through their Federal and most state offices and websites.	We recommend the FAA provide additional guidance regarding what minimum requirements for training materials/and or programs. Consistent with our prior comments, we recommend that this guidance be developed collaboratively and jointly with airport operators--particularly those that have already implemented SMS programs at their facilities.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	45	"Specialized SMS training" subsection	C	As articulated many times in the SNPRM and the draft AC, training is an important component of an airport's SMS and an area where FAA expects to evaluate airport compliance with airport SMS rules. The training for individuals and managers, as stated in this section, should have a detailed curriculum for airports to consider and satisfy what the FAA perceives to be specialized training suitable for establishing rule compliance. We encourage the FAA to be clearer on their training expectations necessary for SMS rule compliance. Consider including an appendix that presents examples of specialized training curriculums. We also note that the terminology "specialized training" seems to conflict with the requirements expressed in the SNPRM, which uses the term "comprehensive training" for this type of training.	We recommend that the FAA provide a more complete description/definition of "specialized training" needed for airport SMS rule compliance. The FAA should also consider including an appendix that presents examples of specialized training curriculums that are acceptable for fulfilling these regulatory requirements. If such programs are not currently available, then we suggest that they be developed collaboratively between the airport operators and the FAA. Ensure that terminology used to define the training programs for SMS specialists is consistent with the SNPRM/final rule (i.e., "comprehensive training" rather than "specialized training")		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	45	Second paragraph , beginning with "Even where training..."	C	ACI-NA and AAAE members disagree with the statement that it is "hard to change culture when there is little to no turnover." Their experiences have led them to the opposite conclusion--namely that instituting consistent safety culture is most difficult in environments with high turnover in which it is difficult to establish safety culture due to employees' short tenures and associated lack of commitment to the employing organization.	This paragraph does not appear to represent actual airport experience and moreover does not add much guidance to readers of the AC. Consequently, we recommend deleting the paragraph.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	46	"Maintaining training records" subsection	C	The SNPRM requires all types of training documentation to be kept for 24 months. It's not a "good practice", it's a requirement.	We recommend removing the phrase "good practice" and replace it with "required".		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	47	"Maintaining communications records" subsection	C	The SNPRM requires communication documentation to be kept for 12 months. It's not a "good practice", it's a requirement.	We recommend removing the phrase "good practice" and replace it with "required".		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	48	Appendix A: Definition and Acronyms-Hazard definition	C	Hazard definition is based on the SMS Part 121 rule centered on airworthiness and aircraft accidents which is not inclusive of the airport environment.	We recommend replacing hazard definition found in FAA Order 5200.11. Hazard: Any existing or potential condition that can lead to injury, illness, or death to people; damage to or loss of a system, equipment, or property; or damage to the environment. A hazard is a condition that is a prerequisite of an accident or incident. A hazard might or might not result in a situation of high risk.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	48	Appendix A: Definition and Acronyms-Risk definition	C	Risk Definition is based on the SMS Part 121 rule centered on airworthiness and aircraft accidents which is not inclusive of the airport environment.	We recommend replacing the risk definition found in FAA Order 5200.11 Risk: The composite of predicted severity and likelihood of the potential effect of a hazard in the worst credible system state. There are three types of risk: Initial: The severity and likelihood of a hazard when it is first identified and assessed, including the effects of preexisting risk controls in the current environment. Current: The predicted severity and likelihood of a hazard at the current time. Residual: The remaining risk that exists after all risk mitigations have been implemented or exhausted and all risk mitigations have been verified.		

ACI-NA/AAAE Comments, Draft AC 150/5200-37A, Safety Management Systems for Airports

Reviewer Name	Reviewer Org	Reviewer Phone#	Page#	Para#	C,E, or F	Comment/Rationale	Recommended Change/Proposed Rewrite	A or D (For OPR Use Only)	Resolution of Comments (For OPR Use Only)
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	48	Appendix A: Definition and Acronyms	C	The list of definitions should be expanded. Also, as exemplified by the prior two comments, it appears that some definitions have been adapted from sources that are not germane to airport operations.	We recommend using the list of definitions from ACRP Report 131, <i>A Guidebook for Safety Risk Management for Airports</i> , possibly supplemented by definitions provided in airport SMS program documentation developed by SMS pilot study airports. All definitions should be either generally applicable or reflective of the airport context. Definitions specifically applicable to airline/aircraft operations or air traffic operations should not be used if either airport specific or general definitions are available.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	51	Appendix B: Related Reading Material	C	Appendices from ACRP Synthesis Report 71, <i>Airport Safety Risk Management Panel Activities and Outcomes</i> , has the guidance that should be to incorporated into the Advisory Circular either directly or by reference.	We recommend adding references to the following appendices SRA tools resources: 66 APPENDIX B List of Organizations and Consultants Participating in the Survey 67 APPENDIX C Sample Checklist for Inspection of Risk Control Actions 68 APPENDIX D Quick Reference Guide for Safety Assessments 75 APPENDIX E Checklist for Airfield Construction 76 APPENDIX F Template for SRA Planning 77 APPENDIX G Briefing Template for Safety Assessments 92 APPENDIX H Sample Checklist for SRA 95 APPENDIX I Sample Worksheets for Safety Assessments 99 APPENDIX J SRA Report Example 112 APPENDIX K SRA Report Template 115 APPENDIX L Simple SRA Report 117 APPENDIX M Common SRA Triggers (ACRP Report 131 2014) 118 APPENDIX N Risk Register 120 APPENDIX O Safety Risk Management Worksheet—Action Plan		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	55	Appendix C: Sample SMS Implementation Plan Template and Checklist	C	Multiple examples of Airport SMS Implementation Plans should be provided either in the AC itself or by reference both to provide both airport sponsors and airport safety certification inspectors better understandings of what constitute an "approvable" Implementation Plan. Also, since the AC itself notes that the Implementation Plan should not be a merely checklist, we recommend deleting the term "checklist" from the title of the appendix and from the introductory paragraph in the Appendix.	We recommend providing examples of Implementation Plans either directly in the AC or by reference. To the extent possible, these should reflect a range of airport sizes. We also recommend deleting the term "Checklist" from the title of the appendix and replacing the term "Checklist" with "Plan" in the introductory statement on Page 55.		
Chris Oswald & Melissa Sabatine	ACI-NA/AAAE	202.293.4539/703.578.2502	60	Appendix D: Sample SMS Manual	C	Multiple examples of Airport SMS Manuals should be provided either in the AC itself or by reference both to provide both airport sponsors and airport safety certification inspectors better concepts regarding of what constitutes an acceptable SMS Manual. Ideally, these examples would include at least one where SMS Manual content was integrated directly into an ACM, rather than being produced as a stand-alone document.	We recommend providing more than one example of Airport SMS Manuals either directly in the AC or by reference. To the extent possible, these should reflect a range of airport sizes and organizational structures.		

**ATTACHMENT 2
ACI-NA COMMENTS REGARDING THE
SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING (SNPRM)
FOR AIRPORT SAFETY MANAGEMENT SYSTEMS**



September 15, 2016

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Room W12-140
Washington, DC 20590-0001

Re: Comments, Amended Proposed Rule—Airport Safety Management Systems,
Docket No. FAA-2010-0997

Airports Council International—North America (ACI-NA) is pleased to submit comments regarding the Federal Aviation Administration’s revised proposal to amend 14 CFR Part 139, incorporating requirements for certain certificated United States airport operators to implement safety management systems (SMS). This Revised Proposal was published as a Supplemental Notice of Proposed Rulemaking (SNPRM) in the *Federal Register* on July 14, 2016 and is included as part of Docket No. FAA-2010-0997.¹

ACI-NA represents local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. ACI-NA’s member airports enplane more than 95 percent of the domestic and virtually all of the international airline passenger and cargo traffic in North America. Over 380 aviation-related businesses are also members of ACI-NA, providing goods and services to airports.

We developed these comments in collaboration with the American Association of Airport Executives (AAAE), which represents over 3,000 individual airport executives and professionals.

Both organizations have a long history of promoting safety in the aviation industry. We believe these comments serve to further that goal of safe operations at US airports.

COMMENT OVERVIEW

We appreciate the FAA’s careful and thorough consideration of both our and our member airports’ comments regarding the Original Proposed Rule. We and our members generally believe that the Amended Proposed Rule effectively addresses a number of key concerns including:

- Limiting the applicability of the SMS Rule largely to those airports where a net safety benefit from SMS implementation could be demonstrated.

¹ The original set of proposed changes to 14 CFR Part 139 published as a Notice of Proposed Rulemaking on October 7, 2009 (75 Fed. Reg. 62008-62023) are referred to in these comments as the “Original Proposed Rule”. The revised set of changes published as a Supplemental Notice of Proposed Rulemaking on July 14, 2016 (81 Fed. Reg. 45872-45909) are referred to in these comments as the “Amended Proposed Rule”.

- Extending compliance deadlines for airport operators that are required to implement SMS programs.
- Providing important clarifications regarding SMS training requirements and the individuals working at airports to whom they apply.
- Explicitly recognizing the need for flexibility and scalability when it comes to the scope, sizes, and implementation timelines for SMS programs at individual airports and a general commitment to the principal that when it comes to SMS, one size will assuredly not fit every airport.

However, ACI-NA and our members still have a number of significant concerns about the Amended Proposed Rule that have not been resolved. These concerns include:

- The requirement for very small airports that currently serve as international ports of entry to implement SMS programs even though the FAA's own regulatory assessment demonstrates that the present value of costs of doing so will greatly exceed safety benefits.²
- The mandatory inclusion of non-movement areas within airport SMS programs.
- The need for additional clarification regarding the FAA's expectations at the 12 month deadline required for submittal of an SMS implementation plan and at the 24 month deadline required for submittal of a final SMS manual (or Airport Certification Manual [ACM] incorporating an SMS section).
- Serious and complex legal and regulatory issues associated with protecting safety data collected as part of an airport SMS program which are exacerbated by U.S. certificated airports' status as public entities that are subject to state and local open records/sunshine laws.
- Ongoing concerns about the potential for well-functioning SMS programs to increase—rather than reduce—airport liability exposure, especially when coupled with implied new airport safety responsibilities within non-movement areas and in functional areas over which airport operators have limited or no control and where they may have limited or no subject matter expertise.

These concerns and our comments regarding how the Amended Proposed Rule can be modified to address them are described in greater detail in subsequent sections of this letter.

FAA COMMENT REQUESTS

In the SNPRM, the FAA requested comments regarding six specific areas. The following paragraphs respond directly to this request.

Methods to Determine Rule Applicability

ACI-NA generally agrees with the methods the FAA has used in the Amended Proposed Rule to determine rule applicability, namely the addition of the minimum annual activity level that would

² Comparison of benefit and cost estimates provided on Page 58 of *Regulatory Evaluation: Safety Management System for Certificated Airports*, FAA Office of Aviation Policy and Plans, Regulatory Analysis Division, APO-300, July 2016.

need to be met before an airport operator would be required to implement an SMS. The introduction of this activity level addresses one of our primary concerns about the Original Proposed Rule, which was that the benefits of SMS implementation were unlikely to be worth the costs of its implementation and operation, especially at small airports.

However, we are concerned about the criteria used to apply the Amended Rule to small “international airports” as described in the next section of this letter.

We concur with other commenters regarding the need for clarification regarding when and how airport applicability determinations will be reviewed. These clarifications should include defining when airports’ SMS applicability status would be reviewed, what data would be used in these reviews, and how soon following FAA notification that an airport surpassing the 100,000 annual operations threshold would need to begin SMS implementation plan development.

We also think that consideration should also be given to airports that have surpassed the threshold in one year but experience a decline in activity below the threshold the next.

With respect to data used in the applicability reviews, we suggest using averages of the three most recent years of airport operations counts submitted through FAA Form 5010-1 as the criteria for determining activity-based applicability of the SMS rule. Using averages would address the aforementioned activity variations issue and ensure that airports are reliably exceeding the 100,000 annual operations threshold.

All applicability determinations should be made on the basis of the most current calendar year, or most recent 3-year data if appropriate, that is available and should not be fixed at a particular year.

Methods to Identify International Airports

We are concerned about the applicability of the SMS rule to international airports with less than 100,000 annual operations. Our concerns stem primarily from the lack of any convincing benefit cost justification to require these airports to adopt an SMS. The FAA’s own regulatory evaluation demonstrates that costs of including these airports would exceed the benefit of doing so by between \$40 and \$50 million over a ten year period depending on the discount rate used. The table below shows how these values were calculated.

Estimated Costs and Benefits Over 10 Years (millions of 2014 dollars)	Discount Rate	
	3%	7%
Present Value of Benefits, Preferred Alternative	\$ 297.7	\$ 225.9
Present Value of Benefits, L, M, S and > 100K Ops	285.9	216.9
Calculated Present Value of Benefits, International Airports ≤ 100,000 Ops	\$ 11.8	\$ 9.0
Present Value of Costs, Preferred Alternative	\$ 198.2	\$ 157.5
Present Value of Costs, L, M, S and > 100K Ops	136.3	108.8
Calculated Present Value of Costs, International Airports ≤ 100,000 Ops	\$ 61.9	\$ 48.7
Net Present Value (benefits-costs), International Airports ≤ 100,000 Ops	\$ (50.1)	\$ (39.7)
Factor by which costs exceed benefits (costs ÷ benefits)	5.2	5.4

Requiring these international airports to implement SMS will waste resources that could otherwise be put to effective use elsewhere, such as on other types of safety improvements.

The criteria that FAA uses to define international airports include a large number of airports—70—that do not have scheduled international service. Of these, 20 are classified as either reliever or general aviation airports.

Given these observations, we suggest that the FAA modify its international airport applicability criteria either to (1) eliminate the “international” category of applicability entirely (i.e., the Amended Proposed Rule would only apply to Large, Medium and Small Hub airports with greater than 100,000 annual operations) or (2) establish an activity level threshold for international airports based on the minimum activity level that is necessary to produce a positive net present value for this class of airports. We note that any airport that would have been included within the ambit of the SMS Rule retains the ability to adopt an SMS voluntarily if it determines that the total benefits of implementing an SMS exceed the costs of such a program.

In either case, we believe that the Final Rule should not be applicable to general aviation and reliever airports, regardless of their international status.

We also recommend that the FAA use the most current data available to establish international airport applicability. CBP regularly publishes an updated list of such airports in a document titled “List of Airports Where CBP Inspection Services Are Normally Available”. These include airports defined under 19 CFR 122.13, 122.14, and 122.15. As with activity level-based applicability determinations, we recommend updating international airport applicability annually and basing applicability determinations on consecutive three-year periods of being included in the aforementioned CBP document.

Types of Data or Other Information Certificated Airports Could Provide Under a National Reporting Database

As noted under the “Data Protection” header below, ACI-NA—together with other commenters—supports the development of a national reporting database for voluntary reporting of SMS data, *but only if the data provided to this database are not subject to FOIA*.

Like other voluntary safety reporting databases, an SMS database would need to have mechanisms in place to de-identify reported data to ensure that these data are not identifiable as to the airport, the reporter, or the entity or individual about which/whom the report was made.

We strongly believe that—as was the case with other voluntary safety reporting databases (e.g., ASAP, ASIAS or FOQA)—planning and development should take place collaboratively—led by FAA but directly involving key airport associations (e.g., ACI-NA, AAAE, the National Association of State Aviation Organizations), a representative sample of airport operators, and other key stakeholders (e.g., Airlines for America, the Air Line Pilots Association).

Accuracy of FAA Estimates of Airport Employees Needing Comprehensive SMS Training

The information provided in the SNPRM and associated Regulatory Evaluation is aggregated across airport classes, which makes it extremely difficult to evaluate the accuracy of the average number of employees that require comprehensive SMS training. Moreover, very little guidance is provided in the SNPRM, the Regulatory Evaluation, or draft Advisory Circular (AC) 150/5200-37A, *Safety Management Systems for Airports* regarding what “comprehensive SMS training” will entail.

As in our comment regarding a national voluntary SMS reporting database, we think that the scope, content, and delivery mechanisms for SMS training program should be developed collaboratively by the FAA and the airport community, drawing on extensive SMS experience

gained in other countries, particularly Canada, and existing training programs that are already established.

Job Roles that would Require Comprehensive SMS Training

Based on experiences in other countries, job roles that would most likely require comprehensive SMS training include the Accountable Executives and SMS managers. Depending on the scale and scope of a particular airport's SMS program, training may also be appropriate for SMS data analysts, safety assurance specialists, and select airport operations staff.

However, in the same way that there is not a one-size-fits-all SMS program, there isn't a one-size-fits-all SMS staffing plan. Accordingly, we recommend that the FAA and the airport community work collaboratively to develop and refine training requirements as the industry builds SMS programs.

We also believe that flexibility and scalability will be essential as these comprehensive SMS training requirements are developed and refined. What might be appropriate for a large-hub airport with extensive financial resources, a large SMS team, and well-established training programs may not work for a small hub that doesn't have the resources for a dedicated SMS team, let alone self-provided SMS training. Thus, we recommend that the Final Rule include a limited list of employees that are required to undergo SMS training at each airport, while recognizing that each airport may choose to include a wider range of its employees in such training based upon the airport's own unique circumstances and needs.

Feasibility of Proposed Accountable Executive Definition

ACI-NA appreciates the FAA's efforts to refine the definition of "Accountable Executive" to address the concerns expressed by ACI-NA, AAAE, multiple airport operators, and others regarding the authority and responsibilities these individuals need to have. Although the revised definition is an improvement over the definition that appeared in the Original Proposed Rule, we believe additional changes are warranted.

First and foremost, while we support the concept that the Accountable Executive will not be personally liable to FAA, and appreciate FAA's willingness to say so explicitly, such a statement is too narrow and could be interpreted to imply that FAA does not intend to foreclose the possibility of other persons or entities seeking to hold the Accountable Executive personally liable. Because it is not broad enough, therefore, we believe that the statement "the Accountable Executive should not be personally liable to the FAA" should be stricken from the preamble of the Amended Proposed Rule.³

Instead, we request that the FAA include a broader, clearer statement of intent in the preamble regarding the designation of Accountable Executives that is consistent with the overarching intent of SMS. Similar to our comments regarding the Original Proposed Rule, we believe that an appropriate statement is:

The Accountable Executive (and any other safety managers) is acting in his or her official capacity as an officer of the airport operator, and not personally, and therefore, he or she will not be personally liable for an airport operator's acceptance of risk, except in cases of recklessness or willful misconduct.

³ 81 Fed. Reg. 45877.

This statement is consistent with the widely held principle of law that holds a government official harmless from personal liability where he or she acts in good faith in his or her official capacity on behalf of a governmental entity.

Other changes that would make the concept of the Accountable Executive more feasible to implement are:

- Permitting flexibility in individual airport SMS implementation plans to address the range of organizational changes—including possible state or local legislative action to facilitate such changes—that may be necessary to designate the Accountable Executive.
- Recognizing that in the U.S. there are often political, legal, or administrative limits to the control senior executives of airport operators—even those named as Accountable Executives—have over their organization’s human and financial resources.

We also agree with our colleagues at AAAE regarding the following suggested changes to the rule language itself, with additions noted in bold:

- Revise the definition of Accountable Executive in § 139.5 to state:

*Accountable Executive means an individual designated by the certificate holder to act on its behalf for the implementation and maintenance of the Airport Safety Management System. The Accountable Executive has control **to the extent practicable under the circumstances applicable to the certificate holder** over the certificate holder’s human and financial resources for operations conducted under the Airport’s Operating Certificate. Subject to local legislative authorization, the Accountable Executive has ultimate responsibility to the FAA, on behalf of the certificate holder, for the safety performance of operations conducted under the certificate holder’s Airport Operating Certificate. The Accountable Executive shall coordinate with SMS programs applicable to the Air Traffic Organization, Part 121 operators, and other entities independently subject to SMS requirements. **For areas or functions not subject to Part 121 or Part 139 SMS requirements**, the Accountable Executive may delegate authority to a specific -named person within a tenant organization, and that person shall have ultimate responsibility to the FAA for purposes of the implementation and maintenance of the Airport Safety Management System within the tenant’s leasehold.*

- The definitions section, § 139.5, should include a definition of “ultimate responsibility” **that takes into consideration the range of political, legal, and administrative realities policies and requirements that U.S. airport operators face.**
- In § 139.402(a), subpart (6) should be revised to read “Establishes and maintains safety objectives within the certificate holder’s control.”
- Section 139.401 should include a provision explicitly allowing the Accountable Executive to seek indemnification from tenants with respect to SMS compliance issues within their leaseholds, and permitting the Accountable Executive to appoint a tenant Accountable Executive for that purpose.

ADDITIONAL COMMENTS

Implementation Timelines and Document Submittal Deadlines

ACI-NA appreciates several of changes that the FAA made to airport SMS program implementation timelines and document submittal deadlines. We were particularly appreciative of the following statement in the preamble to the Amended Proposed Rule that noted:

To facilitate maximum flexibility and scalability the FAA does not propose to mandate a one-size-fits-all implementation approach. A certificate holder can phase implementation, either by SMS component or by movement versus non-movement area.⁴

As noted earlier in this letter, we strongly support this type of flexible and phased approach to airport SMS implementation.

This said, we would like to see this approach explicitly acknowledged in the text of the rule itself and emphasized in training and guidance materials that are distributed to FAA airport safety certification inspectors as they prepare to review airport-submitted SMS implementation plans and airport SMS Manuals/amended ACMs incorporating SMS requirements.

Additionally, we suggest that the FAA explicitly state that it does not expect airport SMS programs to be operational at the time airport SMS Manuals or amended ACMs are submitted or accepted.

Based on historical airport experience, both in the U.S. and globally, such full implementation can and usually does take much longer than 24 months, typically ranging between four and eight years, depending on how one measures the maturity of the safety risk management and safety assurance components of airports' SMSs.

We also suggest that the FAA not limit implementation flexibility to the broad major components of SMS programs, but rather permit airport operators to customize implementation timelines for subcomponents of these major components—such as SMS training, safety data collection, and safety data analysis—as appropriate for their individual situations.

Finally, we request that the FAA recognize that SMS implementation plans and SMS Manuals/amended ACMs incorporating SMS are inextricably linked, with content of the latter document being critically dependent on the implementation timeframes established in the former. Consequently, we urge the FAA to make the submittal deadlines for SMS manuals/amended ACMs incorporating SMS dependent on the date the FAA approves the airport operators' SMS implementation plan.

In accordance with the discussion above, we recommend modifying § 139.403 (c) to read:

(c) Each certificate holder required to develop, implement, maintain, and adhere to an Airport Safety Management System under this subpart must submit its amended Airport Certification Manual and Airport Safety Management System Manual, if applicable, to the FAA in accordance with its implementation plan but not later than [DATE 24 MONTHS AFTER EFFECIVE DATE OF THE FINAL RULE] or 12 months after FAA approval of the certificate holder's SMS Implementation Plan, whichever is later. This submittal deadline does not represent the date on which the FAA expects the certificate

⁴ 81 Fed. Reg. 45879.

holder to have implemented a fully functioning SMS. Deadlines for the implementation of the components and subcomponents of a certificate holder's SMS should be established by the certificate holder in its SMS Implementation Plan based upon its unique circumstances and may and often will occur after the deadline specified in this Section.

We also request that the FAA consider incorporating mechanisms outside of the Final Rule for airports to amend their SMS implementation plans and associated implementation timelines in the event that circumstances arise that preclude an airport operator from meeting its original implementation schedule. While we recognize the importance of having effective SMS programs in operation at U.S. airports as soon as is reasonably practicable, we also want to stress the importance of allowing each airport operator to develop an SMS that is responsive to and effective for the unique situation at that airport.

Finally, we believe that, working with airport operators and other key stakeholders, the FAA should develop and publish a template for SMS implementation plans, which will expedite their development, help, ensure consistency of content, and facilitate rapid review and approval by FAA airport safety certification inspectors. We recommend that development of this template begin as soon as possible and that it should be published before or concurrently with the publication of the Final Rule.

SMS Rule Applicability in Non-Movement Areas

ACI-NA does not believe that the FAA has the statutory authority to require airport operators to adopt an SMS applicable to aircraft operations in the non-movement areas. We seek flexibility for airport operators to develop their SMS programs in a manner that is consistent with their own safety and operational realities.

As we noted in our comments regarding the original NPRM:

...the Proposed Rule has been promulgated pursuant to the FAA's power to issue airport operating certificates under 49 U.S.C. § 44706. Section 44706 addresses, among other things, the FAA's obligation to require that certificated airports have the ability to provide adequate safety equipment with "rapid access to any part of the airport for landing, takeoff, or surface maneuvering of an aircraft; and friction treatment for primary and secondary runways." The FAA's regulations governing airport certification, codified at 14 CFR Part 139, address only the movement areas of certificated airports. Non-movement areas are defined to include "the area, other than that described as the movement area, used for the loading, unloading, parking and movement of aircraft on the airside of the airport (including without limitation ramps, apron areas, and on-airport fuel farms)." Nowhere in Part 139 (other than the Proposed Rule) does the FAA regulate the non-movement areas as a condition to certification of an airport. Rather than make SMS applicable to non-movement areas under Part 139, the FAA should provide guidance to airports under advisory circulars and other means to permit airport operators in their discretion to extend SMS voluntarily to other areas of the airport.

For these reasons, as well as the complexity and potential for overlapping or confusing delineation of SMS responsibilities among flight operators, service providers, and airport operators, we still strongly believe that application of SMS to non-movement areas should be voluntary and remain outside of the 14 CFR Part 139 regulatory framework.

In the SNPRM, the FAA dismissed these concerns, stating in part, "...based on reports from numerous airports [that participated in SMS pilot studies], it was "difficult to apply SMS concept

to only the movement area because aircraft and airside personnel routinely flow between movement and non-movement area.”⁵

Although a number of airports—including many of our members—have found it worthwhile to extend their SMS programs *voluntarily* into non-movement areas, a number of our members that have SMS programs have also extended them voluntarily into terminal buildings and landside areas, neither of which the FAA proposes to include in SMS regulations. We must emphasize that these choices are *voluntary ones* and are entirely consistent with our position that airport operators know best how to develop and implement SMS programs at their airports. In our view, these cases clearly demonstrate the value of enabling airport operators to use their expert judgment, knowledge of their facilities, and their understanding of relationships with customers and tenants and these entities’ safety programs to develop effective SMS programs that meet their airports’ safety needs.

If, notwithstanding our strong objections, the FAA nonetheless proceeds with inclusion of non-movement areas in airport SMS programs in its Final Rule, we urge the FAA to give airport operators considerable flexibility in the scope, implementation schedules, and coordination with aircraft operators and other stakeholders. Specifically, we recommend the following:

- Airport SMS programs in non-movement areas should only be required for airport operators’ functional responsibilities already existing under 14 CFR Part 139. These include infrastructure condition, driving, airport provided/required marking and lighting, and public protection. Other functions, particularly those that are explicitly described in FAA rules, orders and advisory circulars (e.g., 14 CFR Part 91, 14 CFR Part 121, 14 CFR Part 135) as being the primary safety responsibilities of other parties should be required to be included in the SMS of the entity that has responsibility for them. These “other functions” include pushback and towing operations, aircraft servicing, jet bridge operations, and baggage/cargo handling procedures that are the responsibilities of air carriers. Consistent with this principle, these functions should be included in an airport operator’s SMS **only if the airport operator has responsibility for them** (e.g., operates as a ground handler at the airport). To require airports to incorporate into their SMS programs functional areas that others (such as airlines) are responsible for would likely cause confusion and conflict between various SMS plans and thus undermine the safety goal of the FAA’s collective SMS regulations.
- Flexibility should also be provided to airport operators to enable them to allocate primary SMS responsibilities to tenants or leaseholders based on which of the entities controls the areas subject to the requirements (e.g., within an exclusively leased apron area), when the airport determines this to be appropriate.
- The FAA should provide clear direction and allocate responsibility among air carriers, other flight operators, service providers and other third parties governed by the FAA’s other SMS regulations in non-movement areas. We do not believe that simply asserting the FAA’s commitment to interoperability of SMS programs⁶ is sufficient in this regard. It is unclear and likely to create conflict because there is no order of precedence among the various parties’ SMS responsibilities, and different participants in the national aviation system will develop their SMS in differing manners.

⁵ 81 Fed. Reg. 45881.

⁶ 81 Fed. Reg. 45882.

- The FAA should recognize that it may not be simple or straightforward to modify leases, contracts, and other use agreements to incorporate SMS provisions in non-movement areas, particularly within areas in which third parties have long-term leases or other exclusive use arrangements over apron areas, aircraft parking stands, or other facilities within non-movement areas. To avoid potentially disruptive, costly, and litigious situations with non-movement area tenants, we strongly recommend that the FAA allow airport operators to phase in non-movement area SMS requirements on a timeline that facilitates introduction of new requirements as leases and other agreements are renewed. Many current Airport Use and Lease Agreements have terms of 10 to 20 years. Although most of such agreements include a clause subordinating the agreement to federal requirements, the general nature of the FAA's provision in the SNPRM may make it difficult to invoke these provisions. Imposition by airport operators of new, substantive responsibilities on tenants is likely to create conflict and could lead to litigation and unwarranted cost and delay.
- We strongly support the FAA's statement that that non-movement areas can be phased into an airport's SMS program over time, such as after SMS requirements are introduced in the movement area.⁷ We request that this phased implementation approach be included in the Final Rule itself and explicitly allow airports to implement SMS in non-movement areas *after* implementation of SMS in movement areas.
- Finally, we agree with our colleagues at AAAE that the explicit inclusion of fuel farms as part of non-movement areas imposes an inappropriate additional burden on airports and considerably expands their responsibilities into areas that are typically controlled by third parties, including airlines, consortia of airlines, or other third parties. The FAA should make the inclusion of fuel farms as part of the non-movement area optional, or only require them to be included where the airport operator actually controls or operates the fuel farm itself.

We suggest that the definition of "Non-movement area" be revised to read as follows:

Non-movement area means the area of an airport, other than that described as the movement area, not under the exclusive control of a party other than the airport operator, used for the loading, unloading, parking, and movement of aircraft on the airside of the airport (including ramps and apron areas). Certificate holders may, at their discretion (but shall not be required to), designate on-airport fuel farms as being within the non-movement area.

We also suggest that proposed section 139.401(b) be revised to read as follows:

The scope of an Airport Safety Management System must encompass aircraft operations in the movement area, aircraft operations in the non-movement area that are under the airport operator's control and other airport operations addressed in this part. Where a portion of the non-movement area is under the control of multiple parties, each subject to regulation by the FAA, the party with the functional control of, or federal regulatory responsibility for, the operations being undertaken shall be responsible for adopting a Safety Management System addressing such operations.

⁷ 81 Fed. Reg. 45879.

Data Protection

Airport operators remain concerned about data developed through an airport's SMS program becoming available to the public under federal, state, and local open records laws. We and AAAE agree that unless the FAA takes an aggressive position to protect data and findings developed as part of airport SMS programs from disclosure under both the federal Freedom of Information Act *and* similar state and local open records laws, these data will almost certainly become public records subject to disclosure. Allowing public disclosure of data collected as part of an airport operator's SMS could create a serious chilling effect on the effectiveness of SMS programs as well as on the critical foundation of these programs: self-reporting and fostering a just culture of safety.

As we noted in our comments regarding the Original Proposed Rule, Congress recognized the importance of protecting the confidentiality of safety data and those who supply such data when it enacted 49 U.S.C. § 40123 ("Section 40123"), which enabled the FAA's Aviation Safety Action Program ("ASAP"). In Section 40123, Congress exempted from disclosure under the federal freedom of information act ("FOIA") voluntarily-provided safety or security information where the FAA finds that the disclosure of that information would inhibit the voluntary provision of that type of information. This action recognized that protecting the confidentiality of this data leads to more honest and complete reporting of hazards and more fully informed analysis of risks and how to mitigate them. ASAP has been operated successfully by a number of air carriers for some time, and in the notice of proposed rulemaking for an SMS program for Part 121 certificate holders, the FAA has gone to great lengths to retain the benefits of confidentiality available under Section 40123.⁸

It is the act of reporting the safety data to the FAA that potentially makes such data subject to disclosure under FOIA. The air carriers themselves, as private corporate entities, are not subject to the disclosure obligations imposed on the federal government by FOIA. Thus, these safety data would not otherwise be subject to disclosure, similar to the ability of Canadian airport operators that are private, non-stock corporations to protect such data because they are not subject to Canadian public records laws.

U.S. airport operators, however, have even greater difficulty than air carriers in protecting safety information from disclosure, as most—if not all—affected airports in the United States are owned and operated by a governmental entity that is subject to its state's freedom of information laws. Although these laws vary from state to state, they generally provide that a document in the possession of a governmental entity is presumed to be a public document and subject to disclosure, except for stated exceptions, which are generally statutorily defined and very limited. Thus, absent effective measures by FAA, most airports could be required to disclose all safety data gathered as part of its SMS processes, including the list of hazards, the risk matrix, the mitigation measures undertaken, and internal reports concerning the effectiveness of the SMS program.

Air carriers and other third parties operating at airports remain almost universally opposed to requests by an airport operator to share a third party's safety-related information with the airport

⁸ See Notice of Proposed Rulemaking, Safety Management Systems for Part 121 Certificate Holders, Docket No. FAA-2009-0671; Notice No. 10-15 75; Fed Reg. 68224, 68231 (Nov. 5, 2010) (the "Part 121 SMS NPRM") ("The [Aviation Rulemaking Committee ("ARC")] was also concerned with the protection of SMS safety information and proprietary data. ... According to the ARC, protecting safety information from use in litigation (discovery), Freedom of Information Act (FOIA) requests, and FAA enforcement action is necessary to ensure the availability of this information, which is essential to SMS.")

operator, because such data are easily accessible through state open records and sunshine laws. If safety data are not exempted from disclosure, a strong incentive will exist for such third parties not to report such information to airport operators and for airports not to maintain such data. Effective action—either legislative or regulatory—that ensures the confidentiality of safety data will foster the important goals of sharing these data among the various stakeholders in the aviation industry as well as creating incentives that are aligned with the goals of SMS. Protecting such data will encourage all participants in the national air transportation system to gather and share SMS data and permit the use of a much wider range of data in the predictive safety risk management analyses central to SMS, as has been amply demonstrated by the ASAP, ASIAs and FOQ programs.

As we noted in our comments regarding the Original Proposed Rule, the ideal solution to the problem of disclosure of safety information would be for Congress to enact an amendment to Section 40123 that grants the FAA the ability to exempt all safety-related information provided under SMS, whether voluntarily or pursuant to the FAA's regulations, from disclosure under FOIA and that expressly preempts disclosure of such safety information pursuant to state freedom of information, open records, or sunshine laws. A legislative solution is consistent with the recommendations of the Future of Aviation Advisory Committee (FAAC), which stated that "the Secretary [of the Department of Transportation] should pursue essential legislative action that is vital to provide ongoing protection of safety information sharing systems in the United States, and work with Congress to introduce such legislation at the soonest possible opportunity."⁹ We continue to believe strongly that, as the entity promulgating SMS requirements, the FAA should take the lead in seeking a legislative solution to this problem.

Even in the absence of Congressional action, we believe that the FAA has the legal authority to exempt data maintained by airport operators under their SMS programs from disclosure under both federal and state and local freedom of information and sunshine laws. Congress has imposed upon the FAA the responsibility for overseeing and regulating aviation safety within the United States. Pursuant to that authority, the FAA has adopted a comprehensive regulatory scheme for certain aviation activities. In a long line of decisions, U.S. courts have consistently held that, where an FAA regulation of an aspect of aviation safety conflicts with a state law or regulation, the FAA's regulation "preempts the field" and, accordingly, the courts have invalidated the state law or regulations to the extent they conflict with FAA safety regulations.

Given the undisputed fact that an aviation safety program that maintains the confidentiality of safety data will receive more and more accurate data, thereby leading to greater aviation safety, there can be little question that adoption by the FAA of a requirement pursuant to its Congressionally established powers to regulate aviation safety that provides that SMS data shall be exempt from disclosure under both federal *and* state and local freedom of information laws would be upheld as consistent with the FAA's statutory obligation to maintain aviation safety. We strongly believe that the benefits to aviation safety and the demonstrated authority of the FAA to regulate aviation safety are an appropriate use of the FAA's regulatory authority and would support such an action.

We and our colleagues at AAAE urge the FAA to exercise its existing statutory authority to protect safety data collected as part of airport SMS programs to the greatest extent possible. This may include determining what safety data can be treated as security sensitive information (SSI), working with the Department of Justice to develop robust guidelines regarding the

⁹ U.S. Department of Transportation Future of Aviation Advisory Committee (FAAC) Recommendations, December 15, 2010, Recommendation #18 (Safety) Legal Protection of Voluntary Safety Data and Information.

protection of safety-critical information, establishing a voluntary SMS database to afford airports in some states protection from state disclosure requirements, and—in collaboration with airport operators and national and state aviation associations—developing model state aviation data protection statutes. These steps will help to ensure that SMS programs function in the way that they are intended to function.

The FAA itself recognizes mandatory SMS data reporting requirements would impair FAA's ability to protect data from FOIA disclosure under 49 USC 44735.¹⁰ We agree with this view. We and our colleagues at AAEE in recommend that the Final Rule explicitly limit the type and quantity of SMS-related data that airports are required to report to FAA until the aforementioned data protection issues have been resolved satisfactorily.

The final rule should also explicitly permit airport operators to redact from FAA filings those data and records that are especially sensitive such as data that could (1) be used to identify individuals submitting voluntary reports, (2) reveal proprietary information, or (3) undermine legal proceedings.

In the preamble to the Final Rule, we urge the FAA to explicitly state, in the strongest possible terms, the agency's firm view that the protection of SMS data and analyses is essential to providing the full safety benefits of SMS programs and that such information should not be disclosable under state FOIA, open records or sunshine acts. Moreover, FAA should press for federal legislation to protect such information, as recommended by the FAAC and, in the absence of such legislation, we urge the FAA to adopt regulations that exempt such SMS data from disclosure under its statutory authority to regulate aviation safety. This is a very important issue, of critical importance to the success of SMS programs, and it is not sufficient for FAA to simply say that these are state law issues. FAA should actively pursue all possible means of protecting this information from disclosure if the agency is serious about achieving the full benefits of SMS programs.

Liability Issues

We recognize the FAA's efforts to clarify liability issues that ACI-NA and other commenters raised regarding the Original Proposed Rule and appreciate the thought behind its statement that "the FAA does not intend for this proposed rule to create or modify state tort liability law or create a private right of action under federal or state law."¹¹

However, we are concerned that these vague intentions will not be sufficient to protect airports in the highly litigious U.S. legal environment. As we noted in our comments regarding the Original Proposed Rule, the concept of "acceptable risk" that rests at the heart of SMS program safety risk assessment processes runs counter to U.S. tort practices. Accordingly, we continue to believe that to ensure SMS functions as the FAA intends, the FAA should take every action within its authority to protect airport operators and their personnel from liability resulting from the adoption and implementation of an airport SMS in accordance with Part 139.

We urge the FAA to work with Congress to expressly limit the liability of airports that adopt SMS and to protect the Accountable Executive from liability. We recommend that the FAA seek and support legislation providing that an airport operator and its Accountable Executive will have no liability in tort where the airport has adopted and implemented an FAA-approved SMS program in accordance with Part 139 and the airport's SMS. Such legislation would be consistent with

¹⁰ 81 Fed. Reg. 45883.

¹¹ 81 Fed. Reg. 45884.

Congressional support for the FAA's safety initiatives as well as for limiting tort actions in appropriate cases. ACI-NA will assist in this effort.

At the least, the FAA should clearly state in the Final Rule or the preamble that it is the FAA's intent that if an airport operator acts in accordance with an SMS program adopted by the airport and approved by the FAA, including mitigating identified risks and not taking further action with respect to "acceptable risks," the airport operator and its staff will not incur any liability or, at a minimum, will be subject to a rebuttable presumption that their actions (or inactions) were not negligent and do not give rise to liability. We explained this issue and its potential consequences at length in our prior comments.

We also noted in our prior comments our concerns about increased airport liability for incidents within non-movement areas given the explicit expansion of airport operator safety responsibilities into geographic areas such as exclusive-use leaseholds or functional areas such as baggage or aircraft ground handling where airport operators are currently not responsible to assess and address key aspects of safe or unsafe operations. Accordingly, we believe that it is essential for the FAA to incorporate the changes to the Amended Proposed Rule described in the "Non-Movement Area" section above that explicitly recognize the other entities—whether airlines, other types of flight operators, or service providers—have such responsibility.

Finally, as noted earlier in this letter, we believe that the descriptions of Accountable Executive roles and responsibilities in the preamble should be refined to reflect that the implementation of airport SMS programs and associated designation of Accountable Executives are not intended to increase or create personal liability for such designated individuals in any circumstances, except recklessness or willful misconduct.

FAA Oversight

ACI-NA appreciates the FAA's recognition in the Amended Proposed Rule that FAA airport safety certification inspectors will be charged with assessing whether an airport operator is implementing and operating its SMS in accordance with its SMS Implementation Plan and SMS Manual/amended ACM, respectively, rather than evaluating specific safety determinations, safety risk assessment results, or other safety actions taken under the Program.

As the FAA states in the preamble to the Amended Proposed Rule,

Unlike traditional checklist-driven inspections, a systems-based approach [used to evaluate SMS programs] would verify [that] the certificate holder has processes in place to proactively identify hazards, mitigate risk, and address non-compliance issues. The FAA would evaluate whether the certificate holder has effective SMS policies, processes, and procedures to identify, analyze, and mitigate safety hazards and risks.¹²

We agree with this systems-based approach to the FAA's oversight of SMS, with a focus on ensuring that airport operators have put the SMS processes in place as described in their SMS Manual/amended ACM. FAA oversight should not and must not include second-guessing the specific risk mitigation actions, hazard prioritization, or SMS data analysis that an airport performs consistent with its SMS program.

To ensure this mutually desired outcome, we encourage the FAA to develop SMS oversight guidelines that explicitly describe and define the systems-based approach and how it changes airport aviation safety inspector responsibilities and activities. We urge the FAA to develop this

¹² 81 Fed. Reg.

guidance in collaboration with airport operators that already have functioning SMS programs as well as other stakeholders. These guidelines should then be incorporated into airport aviation safety inspector training, with clear guidance about what the inspectors' responsibilities are and are not.

Proposal for an Airport SMS Advisory Committee

ACI-NA has recommended in a number of sections above a collaborative approach among the FAA, aviation associations, airport operators, and other key stakeholders in a variety of areas. These include the development and refinement of SMS training materials, national voluntary SMS database specifications, SMS implementation plan templates, and SMS interoperability processes and expectations, among others.

Several ACI-NA member airports have also commented to us that they would like to assist the FAA with collaborative development and refinement of Advisory Circular 150/5200-37A, *Safety Management Systems for Airports*.

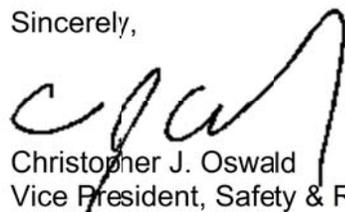
We do not believe there is a currently available mechanism for the FAA Office of Airports to engage a broad group of stakeholders in the collaborative development of these types of materials. To address this limitation, we request that the FAA establish an Airport SMS Advisory Committee or provide an alternate process to engage industry directly in the development of airport SMS programs and associated training materials and guidance, safety database specifications, and best practices. Similar federal advisory committees perform valuable functions in the areas of NextGen, air traffic operations, flight procedure development, and aircraft certification, among others. ACI-NA and several of our member airports are ready to serve on this advisory committee.

* * * * *

ACI-NA appreciates your consideration of these comments regarding the Amended Proposed Rule. We hope that you find these comments helpful and look forward to working with you and the rest of the aviation industry on this important safety initiative.

Please contact me at 202.293.4539 or via e-mail at coswald@aci-na.org if you need additional information or require clarification regarding our comments.

Sincerely,



Christopher J. Oswald
Vice President, Safety & Regulatory Affairs

**ATTACHMENT 3
AAAE COMMENTS REGARDING THE
SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING (SNPRM)
FOR AIRPORT SAFETY MANAGEMENT SYSTEMS**

**COMMENTS ON
SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING
SAFETY MANAGEMENT SYSTEM
FOR CERTIFICATED AIRPORTS
Docket FAA-2010-0997**

SUBMITTED BY

AMERICAN ASSOCIATION  OF AIRPORT EXECUTIVES

SEPTEMBER 12, 2016

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**COMMENTS ON
Supplemental Notice of Proposed Rulemaking
Safety Management System
for Certificated Airports**

I. INTRODUCTION

The American Association of Airport Executives (AAAE) is the world's largest professional organization for airport executives, representing thousands of airport management personnel at public-use commercial and general aviation airports. AAAE's members represent some 850 airports and hundreds of companies and organizations that support airports. AAAE appreciates the opportunity to submit comments on behalf of its member airports in response to the Federal Aviation Administration's (FAA) Supplemental Notice of Proposed Rulemaking (SNPRM), Safety Management Systems (SMS) for Certificated Airports.

Our members support safety improvements and commend FAA for its efforts to promote the best possible safety culture at our nation's airports. AAAE appreciates that the SNPRM addresses many of the concerns that our members had with FAA's 2010 NPRM, and AAAE generally supports the revisions reflected in the SNPRM. Although our members support many of the principles behind SMS, they have concerns about some of the SNPRM provisions and explanations. The summary section below highlights the key concerns that AAAE members have with the SNPRM. AAAE stands willing to work with the FAA to address these concerns so that the final SMS rule is effective and optimizes the balance of safety effectiveness and cost burden for airports.

These comments are organized into 12 key topic areas. Within each topic area, the comments explain the key concerns and questions of our members followed by specific proposed language to include in the preamble to the final rule or in the actual regulation, as appropriate. The final section of these comments contains several questions concerning implementation and administration of the proposed new rule.

II. SUMMARY

AAAE members' concerns about the SNPRM are organized into 12 general areas. The primary concerns are provided in this summary while the more detailed and specific comments and proposed revisions to the rule are provided in the remainder of this document.

Applicability

- FAA should create an exception for small international airports where international service is limited to general aviation operations and that do not otherwise qualify for the applicability of the rule. Airports that do not meet any of the other criteria and have no scheduled international flights should not be included.
- FAA should not use the AC 150/5000-16 Guide to determine international airport status because it is an outdated document that was last updated in March 2008. FAA should use the latest available information from U.S. Customs and Border Protection as the method to determine international airport status.
- In the preamble of the final rule, FAA should clarify the process and timetable by which FAA will review each airport sponsor's status annually.
- In the preamble, FAA should state that FAA will use the most up-to-date information in FAA Form 5010-1 to determine an airport's annual operations during its annual status review.

Accountable Executive

- FAA's revised definition of Accountable Executive is appropriate. However, the final rule should either explicitly allow the Accountable Executive to delegate SMS oversight and supervisory responsibility to a specific named person within a tenant organization or by adopting a phase-in approach so that airport sponsors have sufficient time to secure local legislation and then renegotiate contractual arrangements so as to provide the Accountable Executive appropriate authority to direct actions in both the movement and non-movement areas.
- FAA should state clearly in the rule that the SMS requirements and revised definition of Accountable Executive are in no manner intended, under either federal or state law, to increase or create personal liability for the Accountable Executive in any circumstances.
- FAA should make clear that it will not permit third parties to enforce compliance with SMS requirements and that no private right of action for enforcement is contemplated by the rule.
- The Accountable Executive should be explicitly allowed to seek indemnification from tenants and other users with respect to SMS compliance within their leaseholds.

Training

- Airport sponsors are concerned that the FAA has underestimated the number of personnel needing training. FAA should provide an explanation for how it developed its estimates and guidance regarding the 3 to 10 employees or managers who will need comprehensive training.
- FAA should make SMS-related material available to airport sponsors on its website and provide a list of required elements of training.
- FAA should allow an airport sponsor to justify a phased-in approach for training based on the characteristics of the particular airport environment, funding constraints, and other airport-specific concerns. The phase-in should not be one-size-fits-all but tailored to each airport's unique needs.

Data Protection

- Airport sponsors remain concerned about data becoming available to the public under federal, state, and/or local open records laws. Unless FAA takes an aggressive position to protect any sponsor submissions, under both the federal FOIA and the counterpart state open records laws, the information collected as part of both the development and implementation of the SMS could become public records subject to disclosure. Allowing public disclosure of data collected as part of an airport sponsor's SMS could create a serious chilling effect on the effectiveness of the SMS program and on the entire self-reporting, safety culture.

Because voluntary submissions of safety data are protected from FOIA by federal law, FAA should offer to receive any information that a sponsor desires to submit voluntarily. While the agency may have little or no need for such information, such an approach would allow sponsors to take advantage of the narrow FOIA exemption. Such submissions may have the additional advantage, in some states, of protecting the information from disclosure under the state law in those states that have exceptions in their statutes for information that is explicitly exempt from disclosure under FOIA.

Implementation/Timeline

- The proposed rule is unclear with respect to implementation timetables. There are several elements of the timeline about which the SNPRM is silent where sponsors may need guidance. The proposal addresses the deadline for submission of the implementation plan (12 months) and the SMS Manual (24 months) but is silent on such key implementation milestones as completion of training, completion of interoperability testing and implementation, and completion of all implementation tasks.
- The final rule needs to provide clear deadlines because SMS implementation could easily take 5-8 years for some elements within the program. Sponsors assume that FAA

does not expect the full implementation of an SMS Program within 24 months of submission of the SMS Manual, but the agency should be clear in that regard.

Phasing-In Components of SMS

- FAA should phase in the actual implementation requirements for the three categories of airport sponsors required to implement SMS.
- FAA should allow an airport sponsor to justify a phased-in approach for training based on the characteristics of the particular airport environment, funding constraints, and other airport-specific concerns.
- In the preamble to the final rule, FAA should state that FAA authorizes the Accountable Executive to delegate SMS oversight and supervisory responsibility to a designated senior official within a tenant's organization for SMS oversight within non-movement areas that are within the tenant's exclusive control.
- In the preamble to the final rule, FAA should state that the agency expects that the implementation plan will provide that SMS will first be implemented in movement areas where the airport sponsor has complete control. If FAA pursues SMS implementation in the non-movement area, which AAAE believes should be voluntary, the second phase should consist of SMS implementation in areas where third parties have partial control, pursuant to contractual agreements with the airport sponsor. If FAA pursues SMS implementation in the non-movement area, the third phase should consist of SMS implementation in areas where a third party has complete control, except for areas under exclusive control of one or more air carriers subject to Part 121 SMS requirements or military-controlled areas.

Non-Movement Areas

- FAA's proposed application of SMS to the non-movement area is controversial among AAAE members and exceedingly difficult to coordinate because airport sponsors are not accustomed to, or in the business of, overseeing operations by air carriers in areas where they have exclusive control. The proposed rule would create duplicative and cumbersome safety management processes. AAAE believes that SMS implementation in the non-movement area should be voluntary. However, if FAA is to apply airport SMS requirements to non-movement areas, it should explicitly exempt those areas under exclusive control of air carriers, subject to SMS for operators and those areas under military control.
- Although FAA may believe that regulatory expansion into certain non-movement areas is reasonable and appropriate to address the primary areas of concern, determination of compliance must be based on process conformity and not on prescriptive indicators or thresholds.
- FAA should explicitly address the jurisdictional issues that will occur in the non-movement areas.

Interoperability

- FAA should explain how the revised implementation timeline for airport SMS fits within FAA's overall plan to implement SMS throughout the aviation industry. The interaction between Part 121 SMS and airport SMS presents complex practical and legal problems because of the different types of operators subject to Part 121 and Part 139.

Data Reporting

- The creation of a national reporting database for voluntary reporting of SMS data is advisable. FAA should confirm that data submitted to the national reporting database voluntarily will not be subject to FOIA.
- FAA should provide guidelines establishing minimum standards on the types of data that should be sent to FAA. Otherwise, FAA will receive a hodge-podge of information from airport sponsors.

Human Relations/Personnel

- Airport sponsors will need to prescribe or revise internal personnel policies in order to ensure SMS is complied with throughout the movement and non-movement area.

Acceptance v. Approval

- FAA needs to clarify what documents are submitted and reviewed only as to form (accepted) and what documents are submitted and cannot be implemented without formal FAA concurrence (approval). It appears from the SNPRM that FAA intends to approve the airport sponsor's implementation plan but will only accept the SMS Manual. The SNPRM is silent on other, further SMS documentation and what role FAA will play in review of such documentation.
- In § 139.403, or in the preamble to the final rule, FAA should explain the substantive difference between "accepting" and "approving" documents.

Safety Risk Management

- Airport sponsors should have the flexibility to decide which hazards require the five-step process and which hazards simply need a more cursory review and mitigation. FAA should clarify that airport sponsors have the flexibility to decide what measures are appropriate.

III. APPLICABILITY

- A. **Proposed scope of applicability [FAA request for comments]**The following categories of certificated airports would be required to implement SMS: (1) airports classified as a small, medium, or large hub airport in the NPIAS; (2) airports identified by the U.S. Customs and Border Protection (CBP) as a port of entry, designated international airport, landing rights airports, or user -fee airport; or (3) airports that have more than 100,000 total annual operations. FAA is seeking comment on this revised approach and what other methods may be available to identify international airports.¹

Comments

1. *The revised scope of applicability is acceptable to the extent it significantly narrows the number of certificated airports required to develop, implement, maintain, and adhere to SMS. FAA should, however, create an exception for small international airports where international service is limited to general aviation operations and that do not otherwise qualify for the applicability of the rule. Airports that do not meet any of the other criteria and have no scheduled international flights should not be included. There are 70 airports that would be subject to SMS only because of their CBP status. Of these 70 airports, those that do not have any scheduled commercial service should be exempt from SMS until or unless they have scheduled service. The burden on these small international airports outweighs the benefits of their inclusion in the SMS rule given the minimal effect on overall airport safety management.*
2. *Some AAAE members recommend that Class IV airports also should be exempt from SMS because, by definition, they do not have scheduled service.*

B. **FAA annual review of airport sponsor's status**

Comments

1. *The rule also should clarify the process by which FAA will review each airport sponsor's status annually. The proposed rule does not explain when FAA's annual review will take place or how much time an airport sponsor will have to implement an SMS if FAA determines an airport newly qualifies for applicability of the rule. FAA should allow any newly qualified airport a minimum of 24 months after a determination of applicability to comply with the rule.*
2. *FAA should not require an airport sponsor to maintain an SMS if the airport no longer meets the threshold triggering the requirement to implement an*

¹ 81 Fed. Reg. 45878.

SMS. Airport sponsors should have the opportunity to maintain their SMS program but this should be on a voluntary basis only.

- C. **Determination of number of annual operations [FAA request for comments]** FAA will determine whether an airport has more than 100,000 total annual operations based on the airport's operation data submitted through FAA Form 5010-1, Airport Master Record available on August 1, 2012. FAA is seeking comments regarding other methods that may be available to accurately account for and determine the proposed rule's applicability based on annual operations.²

Comments

1. *While the FAA should use FAA Form 5010-1 to determine an airport's annual operations, it should not use the information available on August 1, 2012, as proposed in the SNPRM, and instead should use the most up-to-date information available in Form 5010-1 at the time of the effective date of the final rule. FAA also should use the most up-to-date information available at the time of its annual reviews. The use of the most current available data will provide more accurate information for purposes of determining annual operations.*
2. *For airports without towers or access to air traffic control traffic counts, FAA should use whatever current data is available from the sponsor or other private industry traffic count data. FAA should work with the sponsor to ensure that the agency is using accurate and up-to-date data.*

- D. **Determination of international airport status [FAA request for comments]**. FAA believes the AC 150/5000-16, Announcement of Availability of the Guide for Private Flyers-U.S. International Airports ("Guide") is the best available source to determine international airport status because it is developed based on Title 19 (Customs Duties) of the CFR. FAA is seeking comments regarding other methods that may be available.³

Comment

1. *FAA should not use the Guide to determine international airport status because it is an outdated document that was last updated in March 2008. FAA should use the latest available information from U.S. Customs and Border Protection as the method to determine international airport status.*

² 81 Fed. Reg. 45875.

³ *Id.*

E. Adherence to SMS

Comment

1. *FAA must clarify the difference between “maintenance” and “adherence” to SMS requirements. SMS starts with development, moves to implementation, and then to maintenance and adherence. Based on other requirements in the proposed rule, airport sponsors will need to maintain (update materials) their program and adhere (per SMS Manual and annual Certification Inspections) to their program concurrently. FAA should indicate how it intends to ensure maintenance and adherence – whether it will be through normal certification inspections or another mechanism. The agency should also indicate whether it expects regular or only as-needed revisions to the SMS manual and accompanying documentation.*

F. Recommended revisions to proposed rule

1. Include an exception provision in § 139.401(a) that states, “Small international airports where international service is limited to general aviation operations and that do not otherwise meet the qualification requirements for the applicability of this rule are exempted from these requirements unless or until they receive scheduled international service.”
2. Include an exception provision in § 139.401(a) that states, “Class IV airports that do not otherwise meet the qualification requirements for the applicability of this rule are exempted from these requirements unless or until they receive scheduled international service.”
3. Add a new § 139.401(f) that states, “Any certificate holder or applicant that meets the criteria in § 139.401(a) following an FAA applicability determination shall have a minimum of 24 months after determination of applicability to comply with this rule.”
4. Amend § 139.401(e) to state, “No such submission is required if the certificate holder has not made any changes to such Manual.”
5. In the preamble of the final rule, FAA should clarify the process and timetable by which FAA will review each airport sponsor’s status annually.
6. In the preamble, FAA should state, “FAA shall use the most up-to-date information in FAA Form 5010-1 to determine an airport’s annual operations during its annual status review.
7. In the preamble, FAA should state, “FAA shall use the latest available information from Customs and Border Protection as the method to determine international airport status.”

IV. ACCOUNTABLE EXECUTIVE

- A. **Feasibility of revised definition of Accountable Executive [FAA request for comments]** FAA anticipates the Accountable Executive would be an airport manager or airport director rather than a lower level manager or supervisor. FAA proposes a new definition of Accountable Executive, which (i) eliminates the substantive differences between the Part 121 and Part 139 definitions, and (ii) clarifies that the Accountable Executive should not be personally liable to the FAA through certificate action or civil penalty. FAA requests comment on the feasibility of implementing this proposed definition.⁴

Comments

1. *FAA's revised definition of Accountable Executive is appropriate. However, FAA's proposed rule does not take into account the fact that most airport managers and airport directors do not today have unilateral authority to direct actions by all tenants, users, and non-airport employees. Specifically, airport managers and airport directors often do not have control over activities of entities with which the airport has no contractual privity or which are not subject to rules and regulations. For example, this likely includes baggage handlers who work for an airline or subcontractors to the airline who provide underwing services. Similarly, employees and subcontractors of an FBO that do not have privity of contract with the airport sponsor have traditionally been outside of the airport sponsor's authority (and, therefore, not subject to direction by the Accountable Executive). The final rule should take this into consideration by either explicitly allowing the Accountable Executive to delegate SMS oversight and supervisory responsibility to a specific -named person within a tenant organization or by adopting a phase-in approach so that airport sponsors have sufficient time to secure local legislation and then renegotiate contractual arrangements so as to provide the Accountable Executive appropriate authority to direct actions in both the movement and non-movement areas. The sponsor's implementation plan should provide an estimated timetable for completing necessary procedural and legal steps to secure appropriate authority for the Accountable Executive.*
2. *Section 139.401 (3) (b) is in conflict with the revised definition of Accountable Executive with respect to "aircraft operation"; neither the Accountable Executive nor the holder of the Airport Operating Certificate is responsible for aircraft operations. Aircraft operations are regulated under Part 121.*
3. *Although it is appropriate to further elucidate this role and to ensure prominence within an airport sponsor's organization, FAA should provide further clarity in the definition of terms such as "ultimate responsibility"*

⁴ 81 Fed. Reg. 45877.

and “control” of human and financial resources. In the absence of clear definitions, there is sufficient ambiguity that it would be reasonable to interpret such terms to apply only to the Airport Board or Commission and not the Airport Executive/Manager/CEO as intended. Inclusion of qualifiers such as “under the immediate direction of the governing body” may help explain that the FAA does not intend to eliminate the normal oversight that the local legislative body or authority has over the Accountable Executive.

4. *If an airport sponsor needs to seek legislative authority for the Accountable Executive to assume the responsibilities contemplated by the SMS rule, it should be allowed additional time to implement SMS, as necessary to secure such legislative authority (e.g., from a city council, county commission, or state legislature). The FAA should allow such additional time if the implementation plan sets forth a proposed schedule for securing such authority.*
5. *Airport sponsors may also need to amend their organizational hierarchy, internal procedures, and obtain approval from local elected bodies prior to delegating authority to the Accountable Executive. The Accountable Executive also may need additional training to fulfill obligations to implement and maintain SMS. The final rule should assess these added burdens, particularly in its overall cost assessment and implementation timeline because it may take many months to amend all necessary documentation.*
6. *FAA should state in the final rule whether it will provide guidance for the adequate training of Accountable Executives.*

B. Limitation of liability for the Accountable Executive

Comments

1. *FAA’s statement, “the accountable executive should not be personally liable to the FAA,” is inappropriate and should be stricken. Under the legal principle of *expressio unius est exclusio alterius*, the statement could actually increase potential liability of the Accountable Executive to parties other than the FAA. The statement does not speak to the potential liability of the Accountable Executive to third parties and that omission (in light of the statement that FAA will not hold the Accountable Executive liable) implies that such liability exists with respect to other parties. FAA should state clearly in the rule that the SMS requirements and revised definition of Accountable Executive are in no manner intended, under either federal or state law, to increase or create personal liability for the Accountable Executive in any circumstances. While the rule cannot change state law, it should provide a clear regulatory intent that the additional burdens on the Accountable Executive are not intended to increase personal liability.*

2. *FAA should make clear that it will not permit third parties to enforce compliance with SMS requirements and that no private right of action (either administratively or judicially) for enforcement is contemplated by the rule. Much as it has done with Grant Assurances, the FAA should be explicit that there is no private right of action and that any enforcement is the sole prerogative of the FAA through its existing administrative enforcement mechanisms. The preamble to the rule should make clear how the FAA intends to enforce SMS requirements and whether such enforcement will be any different from enforcement of other elements of a sponsor's Airport Certification Manual.*
3. *The Accountable Executive should be explicitly allowed to seek indemnification from tenants and other users with respect to SMS compliance within their leaseholds. Because the clear intent of the proposed rule is to make the Accountable Executive ultimately responsible, the rule needs to make it clear that indemnification is nevertheless permissible and does not defeat this principle.*

C. Recommended revisions to proposed rule

1. Revise the definition of Accountable Executive in § 139.5 to state:

Accountable Executive means an individual designated by the certificate holder to act on its behalf for the implementation and maintenance of the Airport Safety Management System. The Accountable Executive has control over the certificate holder's human and financial resources for operations conducted under the Airport's Operating Certificate. Subject to local legislative authorization, the Accountable Executive has ultimate responsibility to the FAA, on behalf of the certificate holder, for the safety performance of operations conducted under the certificate holder's Airport Operating Certificate. The Accountable Executive shall coordinate with SMS programs applicable to the Air Traffic Organization, Part 121 operators, and other entities independently subject to SMS requirements. As to areas or functions not subject to independent SMS requirements, the Accountable Executive may delegate authority to a specific -named person within a tenant organization, and that person shall have ultimate responsibility to the FAA for purposes of the implementation and maintenance of the Airport Safety Management System within the tenant's leasehold.
2. The definitions section, § 139.5, should include a definition of "ultimate responsibility."
3. In § 139.402(a), subpart (6) should be revised to read "Establishes and maintains safety objectives within the certificate holder's control."

4. FAA's statement, "the accountable executive should not be personally liable to the FAA," is inappropriate and should be stricken from the final rule.
5. In the preamble, FAA should be explicit that there is no private right of action to enforce SMS requirements, and that any enforcement is the sole prerogative of the FAA through its existing administrative enforcement mechanisms. The preamble should state that the rule is not intended to create any personal liability.
6. Section 139.401 should include a provision explicitly allowing the Accountable Executive to seek indemnification from tenants on SMS compliance issues within their leaseholds, and that the Accountable Executive can appoint a tenant Accountable Executive for that purpose.

V. TRAINING

- A. **Estimated training burden [FAA request for comments]**FAA anticipates the average pool of employees needing training will be between 3 and 10 employees or managers per airport, and the supplemental initial regulatory evaluation uses this estimate in its cost analysis. FAA requests comments regarding whether these estimates are accurate as an average across all airports affected by this proposal.⁵

Comments

1. *The revised training requirements are appropriate. FAA must clarify, however, how it developed the estimate of between 3 and 10 employees or managers needing training and what “comprehensive SMS training” means. Airport sponsors are concerned that the FAA has underestimated the number of personnel needing training, unless, perhaps, they misunderstand how the agency came up with its estimate. FAA should provide guidance (or at least examples based upon job function) regarding the 3 to 10 employees or managers who will need comprehensive training.*
2. *The estimates of the average pool of employees needing comprehensive SMS training may vary based on size of airport, organization structure, airport operations, traffic activity, sophistication of SMS processes, and the roles and responsibilities outlined in the SMS Manual.*
3. *Some AAAE members recommend that FAA clarify the types of job roles that will require comprehensive SMS training. For example, will the training requirement affect airport general managers, deputy general managers, assistant general managers of operations, assistant general managers of safety and security, airport senior management staff, etc.? Such clarification will help sponsors determine the FAA’s intent with respect to the job functions that should be trained.*
4. *FAA continues to make assumptions and assertions on the impacts of SMS training and its minimal impact on airport sponsors. Training is an area that has been a constant struggle for airports, regardless of size. One way FAA could help lessen the impact is by making more SMS-related training material available to airports on its website. As an example, OSHA makes available on its website an area dedicated to training. One document available is titled, “Training Requirements in OSHA Standards.” The information covers a whole host of workplace safety areas. FAA should commit to taking an active and leadership role in developing training databases, best practices and guidance for sponsors, and, most importantly, such information should be made available immediately (i.e., not months or years after the final rule, after airports have had to develop training protocols and materials on a trial-and-error basis). This is one area where*

⁵ 81 Fed. Reg. 45886.

leadership by the FAA could substantially reduce the burden on airport sponsors.

B. Training materials

Comments

1. *FAA should provide a list of required elements of training.*
2. *More detail on training requirements, materials, persons subject to training and related issues might be clarified and amplified in the Advisory Circular.*
3. *Atlanta Hartsfield-Jackson International Airport’s SMS Manual sets forth the types of specialized SMS and job responsibilities that must receive training. If the FAA concurs in this approach, it should indicate that this type of approach to delineating training for different job functions is appropriate. The Atlanta list is as follows:*

Course	Audience	Topics	Estimated Duration	Frequency/ Recurrence	Delivery Method
SMS Introduction	Airfield Operations (28, 5) Airfield Security (15, 2) C4 Center (12, 0) Police (10, 2) Fire Department (50, 2) Aviation Maintenance - Airfield personnel (25, 5) Environmental Programs (5, 1) Risk Management (3, 1) Planning & Development (50, 1) Engineering (4, 1) Health & Safety (3, 1)	1. Introduction to SMS 2. ATL’s Safety Policy 3. SMS Roles and Responsibilities 4. Tenant Role in SMS 5. Employee Role in SMS 6. Hazard Reporting	60 minutes	Initial ; no refresher or recurrence	In-person
SMS Safety Risk Management	Operations Managers (2, 5) Risk Management Directors (3, 0) Airport Operations Supervisors (17, 0) Airport Operations Agents (5, 0) Safety Action Group (30) Maintenance Liaison (2, 1) Maintenance Lead (2, 1) Risk Management Liaison (2, 1) Health & Safety Liaison (1, 0) Environmental Liaison (1, 0) Construction Liaison (1, 0)	1. Safety Risk Management Process Overview 2. Identify Hazards 3. Analyze Initial Risk 4. Assess Risk 5. Treat Risk	4 hours ; 1 hours	Initial ; annual refresher	In-person; in-person (case study)

Course	Audience	Topics	Estimated Duration	Frequency/ Recurrence	Delivery Method
Investigation Techniques	Safety Action Group Members (30) Airport Operations Supervisors (17, 0) Airport Operations Agents (5, 0) Risk Management Liaison (2, 1)	1. Investigation Approach 2. Investigative Techniques 3. External Support	3 hours	Initial ; no refresher or recurrence	In-person
SMS Safety Assurance	Safety Action Group members (30) Airport Operations Supervisors (17, 0) Airport Operations Agents (5, 0) Risk Management Liaison (2, 1)	1. Introduction to Safety Assurance 2. Ramp Inspections 3. Enforcement Strategies 4. Inspections Tracking and Reporting 5. Leading by Example	2 hours ; 30 minutes	Initial ; annual refresher	In-person ; online
SMS Orientation	ATL Tenants – approximate total 42,000. AOA & AMA Tenant Badge Holders (approximately 7,500) Annual Orientation for Tenants – 4,500	1. Introduction to SMS 2. ATL’s Safety Policy 3. Tenant Role in SMS 4. Hazard Reporting	30 minutes	Initial ; annual recurrence (taken with SIDA)	CBT

Source: ATL SMS Manual

C. Phased-in training

Comments

1. *FAA should allow an airport sponsor to justify a phased-in approach for training based on the characteristics of the particular airport environment, funding constraints, and other airport-specific concerns. The phase-in should not be one-size-fits-all but tailored to each airport’s unique needs. The FAA should encourage airport sponsors to set forth an implementation plan for training in the initial submission.*

D. Recurrent training requirement. FAA proposes a new recurrent training requirement every other year.

Comments

1. *The recurrent training program requirement is appropriate. FAA should evaluate the burden placed on airport sponsors, particularly if the number of employees needing training is more than between 3 and 10, as projected in the SNPRM. If airport sponsors must train more than 10 employees, the final rule should establish a more flexible, staggered training approach whereby airport sponsors are authorized to implement recurrent training*

using a phased approach. The Accountable Executive would be trained first, followed by upper management, management, and employees. A staggered approach would ensure that each year only selected employees would be re-trained so that all employees would not be subject to bi-annual training at the same time.

E. Personnel subject to training

Comments

1. *FAA should clarify or define the term “access to” on page 45876 in the SNPRM. Does this term apply to those individuals who drive, are on foot, or both? Generally, ACMs have different requirements for vehicular access to the AOA; it is not clear whether FAA contemplates that all personnel with AOA access would receive similar training.*
2. *Anyone with an airport-issued credential permitting access to the movement and/or non-movement areas should have awareness of the airport SMS program via an orientation training program. The administrative burden will be reduced if orientation training is associated with a local airport-issued ID badge with access to the movement/non-movement area. This change would simplify and clarify training applicability in part because it appropriately would exclude air carrier employees who have access to the airport through crew member credentials (which generally do not provide access to the non-movement or movement areas). Air carrier employees receive SMS training under Part 121 and should not be subjected to separate airport SMS training requirements. Even requiring “awareness” is problematic for transient flight crews because transient crews will be on the non-movement area only in immediate proximity to their aircraft or operations facilities, but are unlikely to have awareness or access to local SMS training or promotional materials. For clarity, section 139.402(d)(5)(i), which requires communicating awareness, should specifically exclude transient crew.*
3. *While also an interoperability issue, the FAA should clarify whether Part 139 SMS training is required for personnel who have already received Part 121 SMS or FAA internal (ARP, ATO) training. Some AAAE members recommend that, if airport-specific SMS training is required, FAA should indicate (through appropriate internal and external notices) that, in addition to their own SMS training requirements, agency personnel and air carrier personnel are now subject to additional training oversight by the sponsor. (These personnel and their supervisors would otherwise not necessarily be aware of sponsor SMS requirements and may not make themselves available for training without such an explicit statement). The agency should be explicit with respect to which transient air carrier employees are exempt from airport SMS training.*

4. *FAA should explicitly provide that Part 139 SMS training is not required for personnel working in areas where control lies exclusively with one or more Part 121 operators because all training requirements would be completed under the applicable Part 121 SMS.*

F. Recommended revisions to proposed rule

1. Revise § 139.303(e)(7) to read “§ 139.402, Components of airport safety management system as provided in the certificate holder’s SMS Manual.
2. Revise § 139.402(d)(3) to clarify what types of job roles and include a list of required elements of training. In the alternative, state in § 139.402(d)(3) that FAA shall publish guidance clarifying the types of job roles and provide a list of required elements of training.
3. Revise the preamble to final rule to provide the clarifications requested in these comments. The preamble should also indicate whether clarifications will appear in the Advisory Circular in addition to, or instead of, language in the preamble.
4. The final rule should indicate that training is not needed for personnel whose job function is limited to activities within areas under the exclusive control of a Part 121 carrier, so long as such personnel have received requisite Part 121 training.

VI. DATA PROTECTION

- A. Data protection [FAA request for comments]The SNPRM did not resolve data protection concerns that airport sponsors raised in comments to the NPRM.⁶

Comments

1. *Airport sponsors remain concerned about data becoming available to the public under federal, state, and/or local open records laws. FAA did not adequately address the comments submitted on the NPRM. FAA stated in the SNPRM that it is not proposing data reporting requirements for safety-related data created under an SMS and, therefore, commenters' FOIA disclosure concerns are unfounded. While the first part of that statement is true, FAA should address concerns regarding state and local open records laws. Unless FAA takes an aggressive position to protect any sponsor submissions, under both the federal FOIA and the counterpart state open records laws, the information collected as part of both the development and implementation of the SMS could become public records subject to disclosure. Allowing public disclosure of data collected as part of an airport sponsor's SMS could create a serious chilling effect on the effectiveness of the SMS program and on the entire self-reporting, safety culture. For example, tenants, airlines, and other airfield users (whose data would normally not be subject to open records or public scrutiny) could be reluctant to self-report safety issues because of fear of public scrutiny and disclosure of internal private or corporate documents. Self-reporting by employees of entities other than airport sponsors could be hindered if employees are concerned that their reporting (as well as sensitive personnel information) would be available to their employer without personal information scrubbed, and routine safety management decisions could become subject to press and public scrutiny.*
2. *The problems of open records and data protection has not been pivotal for prior SMS implementation because either (a) the data has been collected by, and subject exclusively to, FOIA, which contains some limited protections for such data; or (b) the data has been collected by the private sector and is not routinely shared with government agencies so is not subject to open records acts. The airport SMS is unique in that it requires sharing of data between and among federal, state, and local government agencies and a myriad of private sector entities. Without adequate assurances of confidentiality, airport sponsors are concerned that compliance with reporting requirements will be enormously difficult.*
3. *Because voluntary submissions of safety data are protected from FOIA by federal law,⁷ FAA should offer to receive any information that a sponsor*

⁶ 81 Fed. Reg. 45883.

⁷ 49 U.S.C. § 44735.

desires to submit voluntarily. While the agency may have little or no need for such information, such an approach would allow sponsors to take advantage of the narrow FOIA exemption. Such submissions may have the additional advantage, in some states, of protecting the information from disclosure under the state law because many states have carved out exceptions in their respective statutes for information that is explicitly exempt from disclosure under FOIA. Airport sponsors appreciate that this approach could make the FAA the repository of enormous amounts of data for which the agency would have little use, but until state and federal laws are amended to protect safety reporting data, this may be the most practical way to protect confidentiality.

4. *The final rule should provide guidance and examples of the types of information that the FAA advises can be exempt from disclosure under federal law. For example, some information may be Sensitive Security Information, may disclose proprietary information, may contain personnel data, and may be subject to other FOIA exemptions. FAA should provide guidance, either in the final rule or in the accompanying Advisory Circular, so that airport sponsors can maximize their ability to exempt sensitive safety information from public disclosure.*
5. *Although FAA claims safety-related data will not be subject to FOIA because the agency will not collect the information, airport sponsors, nonetheless, remain concerned that FOIA may be triggered in the future. FAA should, therefore, commit to join with industry groups in working aggressively to seek an explicit and blanket legislative or regulatory exemption from FOIA for all SMS submittals. FAA also should offer to make resources available (such as model state open records exemptions) to state airport organizations to promote enactment of uniform exemptions from state open records acts for safety data.*
6. *The final rule should severely limit the type and quantity of data that airports are required to report to FAA until FOIA issues have been resolved satisfactorily. Instead of providing voluminous documentation in support of the airport SMS, airport sponsors should be given the discretion to make information available to FAA staff in a manner such that the documentation does not become a federal record under FOIA.*
7. *The final rule should allow airport sponsors to redact from FAA filings those portions of their SMS records that they believe are especially sensitive (e.g., personnel records, financial records, proprietary information, and assessments of legal liability) and instead allow FAA informal review in person at the airport (without allowing possession of the data to pass to FAA employees).*
8. *FAA should commit the agency to use FOIA exemptions to the fullest extent allowed by law to protect self-reported safety information from public*

disclosure. FAA should commit to working with the Department of Justice on the development of guidance for protection of safety information.

9. *FAA's assertion that hazards and risk data could not be SSI may not be accurate. There may be instances where hazard reports and risk mitigation procedures could reveal airport vulnerability and could be exploited by those wishing to do harm to the aviation community. Risk assessments provide detailed information about current operations at the airport, mitigation efforts, and unresolved vulnerabilities. Airline-specific information is protected, and reports and actions could be protected once an airline is mentioned.*
10. *FAA should direct sponsors to follow state record retention laws, not the proposed uniform 36-month retention requirement.*
11. *Some AAAE members believe FAA should clarify how long airport sponsors should retain data. FAA's comment that "longer retention is necessary, between 12 and 24 months", is not helpful.*

B. Recommended revisions to proposed rule

1. FAA should provide guidance, either in the preamble to the final rule or in the accompanying Advisory Circular, clarifying the types of information that the agency opines to be exempt from disclosure under federal law so that airport sponsors can maximize their ability to exempt sensitive safety information from public disclosure.
2. FAA should provide examples of safety data that would constitute SSI.
3. In the preamble to the final rule, FAA should state that a certificate holder may voluntarily submit to FAA any information that it desires, in addition to the mandatory requirements, in order for the certificate holder to maximize the applicability of 49 U.S.C. 44735. The FAA should also state that the agency welcomes such voluntary submissions and will protect such submissions pursuant to that statute.
4. In the preamble to the final rule or in the accompanying Advisory Circular, FAA should state that FAA is committed to working with industry groups to seek an explicit exemption from FOIA for all SMS submittals. The agency should appoint a task force to assist in drafting FOIA exemptions and model state legislation.
5. The final rule should explicitly limit the type and quantity of data that airports are required to report to FAA until FOIA issues have been resolved satisfactorily.

VII. IMPLEMENTATION/TIMELINE

- A. **Proposed implementation timeframe [FAA request for comments]**FAA requests comments regarding whether the proposed implementation timeframe (within 12 months of effective date to submit an implementation plan and within 24 months of effective date to submit SMS manual or Airport Certification Manual) is sufficient. FAA requests that comments are supported by specific data demonstrating a different implementation timeframe is necessary.⁸

Comments

1. *The proposed rule is unclear with respect to implementation timetables. There are several elements of the timeline about which the SNPRM is silent where sponsors need guidance. The proposal addresses the deadline for submission of the implementation plan (12 months) and the SMS Manual (24 months) but is silent on such key implementation milestones as completion of training, completion of interoperability testing and implementation, and completion of all implementation tasks. It should be obvious that these tasks will take considerable time and, until approval of the implementation plan, sponsors do not know how much time FAA is likely to allow for such key tasks.*
2. *FAA should adopt a staggered phase-in approach (see discussion below).*
3. *The final rule needs to provide clear deadlines because SMS implementation could easily take 5-8 years for some elements within the program. Sponsors assume that FAA does not expect the full implementation of an SMS Program at the time of submission of the SMS Manual within 24 months, but the agency should be clear in that regard. The ICAO model suggests a phased approach to implementing the SMS elements over a period of 36 months. That appears to be the minimum time appropriate following acceptance of the SMS Manual. As an example, Atlanta Hartsfield-Jackson International Airport has been engaged in SMS implementation for four years and still has additional SMS elements that must be implemented. At Atlanta, the Ramp Safety Standards Notice of Violation development/implementation took three years because of the need to change a city ordinance and secure stakeholder support and approval. Airport sponsors should be given flexibility with SMS implementation timelines.*
4. *The final rule should allow an airport sponsor to include within its implementation plan annual milestones for gradual implementation if the sponsor faces constraints or processes that would make immediate implementation impractical or burdensome.*

⁸ 81 Fed. Reg. 45876.

5. *FAA should take into consideration the fact that its pilot studies were completed with the use of federal dollars to hire consultation services. A number of airport sponsors may choose to develop their SMS without using consultation services and the implementation deadlines and phasing should be adjusted to accommodate those airport sponsors.*

B. Submission of Manual vs. implementation plan

Comments

1. *FAA should clarify in the final rule that airport sponsors are not required to implement SMS 24 months after the final rule but need only to submit the SMS Manual within 24 months. The actual SMS implementation schedule shall be as set forth in the sponsor's implementation plan. FAA should be flexible in allowing a reasonable period of time following adoption of the SMS Manual for implementation.*
2. *It could take the FAA considerable time to review (and **approve**) sponsors' implementation plans. Sponsors will be in limbo during this review period – and this review period could seriously cut into the limited one-year window that sponsors have for submission of the SMS Manual. Therefore, FAA should review the implementation plans in a two-stage process. FAA should allow itself no more than 30 days after submission in which to raise any serious objections to a sponsor's implementation plan or objections to the portion of the implementation plan related to preparation of the SMS Manual. If the FAA raises no objections within 30 days of submission, an airport sponsor should be allowed to proceed with its implementation plan as submitted. The FAA should impose a deadline on its review of the remaining portions of the implementation plan so that, if the FAA has raised no objections within 60 days of submission, the implementation plan will be deemed to be approved. (This is similar to the approach that the FAA uses for submission of noise compatibility programs under FAR Part 150, in which a submission is deemed approved unless FAA acts within a specified period.)*
3. *Similar to imposing deadlines on FAA approval of the implementation plan, the final rule should impose deadlines on FAA acceptance of the SMS Manual. Submission of complete SMS Manuals should be deemed accepted if FAA does not reject the SMS Manual within 60 days of submission.*
4. *FAA should create an implementation plan template. Having a uniform format will allow FAA airport certification inspectors across the country to process all 268 implementation plans in a smoother, more efficient process with all airport sponsors being held to the same standard. The template should be published with the final rule.*

5. *FAA should define what triggers an update to the implementation plan. AAAE understands that SMS programs evolve over time and that the SMS Manual will need to be updated. However, it is unclear how and when the implementation plan, once submitted to FAA, will need updating.*
6. *FAA should clarify the term “completely implemented” as it is used in the first paragraph on page 45881 in the SNPRM.*
7. *It likely will take airport sponsors time to obtain budget approval to implement SMS. The implementation timeline in the final rule should take this into consideration.*
8. *FAA should clarify how it determined the SMS manager’s wage for purposes of calculating the initial costs/burdens on airport sponsors for drafting an SMS Manual and implementation plan on page 45897 of the SNPRM. FAA also should clarify how the information on the charts provided in the SNPRM were calculated.*

C. Recommended revisions to proposed rule

1. Delete the 12 -month and 24 -month timelines in § 139.403(a) and 139.403(c), respectively.
2. Insert language into § 139.403 imposing deadlines on FAA action to approve the implementation plan and accept the SMS Manual, as described above.
3. The preamble should include reference to an implementation plan template that will be made available on the agency website simultaneously with publication of the final rule.
4. In § 139.403(a), insert the following implementation phase-in timetable:

	Submit implementation plan	Submit SMS Manual
Large hub airports	12 months from effective date of final rule	24 months from effective date of final rule
Medium hub airports	18 months from effective date of final rule	30 months from effective date of final rule
Small hub airports	18 months from effective date of final rule	30 months from effective date of final rule
Non-hub international airports	24 months from effective date of final rule	36 months from effective date of final rule
Non hub, non-international airports with over 100,000 operations	30 months from effective date of final rule	42 months from effective date of final rule

VIII. PHASING-IN COMPONENTS OF SMS

- A. **Training of FAA inspectors** The entire premise of the SMS approach – a performance-standard based system of regulation – is fundamentally and philosophically founded on different principles than a rules-based system. The current Part 139 inspection system is largely a prescriptive, rules-based system. It will be enormously difficult, as the FAA appears to recognize in the preamble to the SNPRM, for certification inspectors to inspect for both prescriptive and performance requirements. The FAA should recognize that it will be time-consuming and complex to train its own personnel in their different roles in inspecting for SMS compliance than for the more traditional Part 139 compliance.

Comments

1. *FAA should commit to a timetable and process for training its inspectors for SMS' standards-based requirements instead of rules -based prescriptive requirements. Thus, FAA inspectors need to be more flexible during inspections with the understanding that airport sponsors may adopt different policies, procedures, and approaches to their respective SMS. FAA should clarify that no SMS inspections will take place until the relevant inspectors have been trained in performance-based inspection and have passed proficiency tests for such inspections.*
2. *FAA should invite sponsors (or at least representatives of airport industry organizations like ACI-NA, AAAE and ACC) to participate in any training of FAA certification inspectors so that they can assist in disseminating information about training protocols to airport management.*
3. *FAA should commit to training non-ARP inspectors (e.g., Part 121 inspectors) in airport SMS protocols as part of a meaningful commitment to interoperability. SMS implementation will be seriously stymied if the inspectors of the air carriers' SMS requirements provide different direction or guidance than their counterparts who are inspecting airport compliance with Part 139 SMS.*
4. *FAA's existing inspection practice is based on clear and precise compliance parameters that limit inspector discretionary consideration. However, within the SMS context, such discretionary consideration is essential. Further, given the complexity of the ramp with multiple jurisdictional functions, a lack of harmony may exist that demands flexibility in standards and adherence. Acceptable levels of safety are determined locally and collaboratively and thus cannot be prescribed, nor performance evaluated based on preset benchmarks. FAA should confirm that performance and compliance criteria will be process based and consistent with industry lead compliance standards.*

5. *FAA should clarify what it means by the term “effective” as it is used in the fourth paragraph on page 45889 of the SNPRM (“The FAA would evaluate whether the certificate holder has effective SMS policies, processes, and procedures to identify, analyze, and mitigate safety hazards and risks”). Airport sponsors need to know what the “effective” standard is.*

B. Phase-in of implementation process

Comments

1. *The previous section recommends that FAA should stagger the submission of implementation plans and SMS Manuals. Similarly, FAA should phase in the actual implementation requirements for the three categories of airport sponsors required to implement SMS. There are two independent reasons why a staggered implementation approach makes sense.*
2. *First, it would address concerns that it is impractical for third parties participating in SMS implementation to do so at nearly 300 airports all at once. It is not realistic to expect the FAA ADO inspectors to provide meaningful implementation guidance in an expeditious fashion; for air carriers to address complex, site-specific interoperability issues, and for the largest chains of FBOs to negotiate changes in their lease arrangements at so many airports simultaneously. Airport sponsors will be largely at the mercy of these third parties for effective implementation.*
3. *Second, FAA should allow phased implementation so that the smaller airports (that face the greatest proportional cost burdens) can take advantage of lessons learned from the larger airports’ experience. That experience should help to reduce implementation costs for the most cost-constrained airport sponsors.*
4. *One additional reason for a phase implementation approach is that there are a limited number of SMS professionals who can competently assist sponsors in preparation of the implementation plan and the SMS Manual. If all sponsors are to implement their plans simultaneously, the quality of the implementation will suffer, airports will face pressure for cookie-cutter implementation approaches, and costs will increase because of a shortage in SMS professionals available to assist airport sponsors.*

C. Phase-in of training requirements

Comment

1. *FAA should allow an airport sponsor to justify a phased-in approach for training based on the characteristics of the particular airport environment, funding constraints, and other airport-specific concerns. The phase-in should not be one-size-fits-all but tailored to each airport’s unique needs. In addition, the recurrent training requirement should be staggered so that*

the Accountable Executive is trained first, followed by upper management, management, and other employees. The sponsor's implementation plan should be allowed to adopt a phased training approach.

D. Phase-in of safety oversight within non-movement areas

Comments

1. *The Accountable Executive should explicitly be allowed to delegate SMS oversight and supervisory responsibility to a designated responsible official within a tenant's organization for activities within its non-movement area leasehold if such leasehold is within the tenant's exclusive control.*
2. *A phased-in approach for implementation in the applicable non-movement area would allow the flexibility and added time necessary for airport sponsors to negotiate with tenants and to create a comprehensive plan that properly considers the various interested parties who have preferential control over the non-movement area.*
3. *SMS should first be implemented in non-movement areas where the airport sponsor has complete control. If FAA pursues SMS implementation in the non-movement area, which AAAE believes should be voluntary, the second phase should consist of SMS implementation in areas where third parties have partial control pursuant to contractual agreements with the airport sponsor. If FAA pursues SMS implementation in the non-movement area, which AAAE believes should be voluntary, the third phase should consist of SMS implementation in non-movement areas where a third party has complete control, except for non-movement areas under exclusive control of one or more air carriers subject to Part 121 SMS requirements or areas under military control.*
4. *The final rule should explicitly acknowledge that the complexity of implementation is a function of the degree of sponsor control and should allow the maximum flexibility within areas in which the sponsor's control is the least. In particular, the rule should note that airport sponsors are not expected to police areas under the exclusive control of Part 121 carriers or the military.*

E. Recommended revisions to proposed rule

1. In the preamble to the final rule, FAA should state, "FAA authorizes the Accountable Executive to delegate SMS oversight and supervisory responsibility to a designated senior official within a tenant's organization for SMS oversight within non-movement areas that are within the tenant's exclusive control."
2. In the preamble to the final rule, FAA should state, "FAA expects that the implementation plan will provide that SMS will first be implemented in

non-movement areas where the airport sponsor has complete control.” If the FAA pursues SMS implementation in the non-movement area, which AAAE believes should be voluntary, in the preamble to the final rule FAA should further state, “The second phase should consist of SMS implementation in areas where third parties have partial control pursuant to contractual agreements with the airport sponsor. The third phase should consist of SMS implementation in non-movement areas where a third party has complete control.”

3. Airport sponsors’ implementation plans should provide for implementation on the following schedule:

	Begin implementation	Complete implementation
Large hub airports	0 months after Manual is accepted	60 months after Manual is accepted (or according to individual sponsor’s implementation plan, whichever is earlier)
Medium hub airports	12 months after Manual is accepted	60 months after implementation begins (or according to individual sponsor’s implementation plan, whichever is earlier)
Small hub airports	12 months after Manual is accepted	60 months after implementation begins (or according to individual sponsor’s implementation plan, whichever is earlier)
Non-hub international airports	24 months after Manual is accepted	60 months after implementation begins (or according to individual sponsor’s implementation plan, whichever is earlier)
Non hub, non-international airports with over 100,000 operations	30 months after Manual is accepted	60 months after implementation begins (or according to individual sponsor’s implementation plan, whichever is earlier)

4. In the preamble to the final rule, FAA should state, “The phase-in of implementation should not be one-size-fits-all but tailored to each airport’s unique needs.”
5. In the preamble to the final rule, FAA should state, “FAA inspectors will not complete any SMS inspections until trained to complete performance-based inspections. FAA will cross train all Part 121 and Part 139 inspectors in the respective SMS requirements.”

IX. NON-MOVEMENT AREAS

A. SMS implementation in the non-movement areas [FAA request for comments]

FAA states that the pilot studies found, based on reports from numerous participating airports, that it was difficult to apply SMS concepts to only the movement area because aircraft and airside personnel routinely fly between the movement and non-movement areas.⁹

Comments

1. *The proposal to apply airport SMS in non-movement areas is controversial among AAAE members. We believe that it is important for the agency to understand why this particular component of the SNPRM has generated such controversy. Most importantly, some AAAE members do not believe that the FAA has adequately examined the complexities and impediments to proprietors exerting greater control over activities within these areas. The simple fact is that, unlike the movement area, non-movement areas take on vastly different characteristics depending upon the airport. Because the degree of legal control, authority to direct activities, and practical access varies considerably among airports, a uniform rule that applies the same SMS principles to all non-movement areas ignores these complexities.*
2. *To resolve the complexities with respect to non-movement areas the FAA should consider the option of a voluntary approach to implementation of SMS in the non-movement area. A voluntary approach is appropriate since it is clear that some airports are prepared to implement in the non-movement areas while other airports will encounter substantial procedural and practical hurdles. Under this approach, non-movement areas could be added to the SMS requirements at a later date based upon real world experience at those airports that have chosen to implement SMS in their non-movement areas.*
3. *Consistent with that view, several AAAE members, including the Port Authority of New York and New Jersey and other large and small airports, believe that the final rule should prescribe a far more flexible role for airport sponsors in the non-movement area. Their view is that the sponsor should be flexible and limited, at most, to a coordinator role and that the FAA's long-term vision for SMS should pursue a model in which every business and tenant with airfield access has its own SMS program appropriate to its organization. That principle would dictate that each enterprise would be responsible for those activities within their business; airport sponsors would be responsible for SMS in the area and for the activities set forth in their Airport Operating Certificate. Consistent with this approach, the Port Authority and the other airports that take this view recommend that the FAA pursue broad, flexible language that will allow for*

⁹ 81 Fed. Reg. 45881.

future changes to the regulatory environment and will accommodate multiple methods for achieving SMS objectives -- a pervasive safety culture across the entire airport with shared responsibility among airport users and operators.

4. *As examples of the need to be flexible in the application of SMS to non-movement areas, airports like Memphis International Airport and Louisville International Airport would face particular challenges in implementing SMS in non-movement areas because they each host non-movement areas that are home to complex industrial facilities (cargo sorting and air cargo hub operations) already independently subject to SMS particular to their industry. These and other AAAE members are concerned that airport management has neither the expertise nor the legal authority to police safety on these tenants' ramps. Not to mention that safety could actually be compromised if airport staff, not expert in the complexities of the ramp operations, were to be charged with oversight of the safety of day-to-day operations.*
5. *Those airports that are comfortable with the underlying concept that the sponsor's SMS obligations should extend to the non-movement area believe that it is important that FAA acknowledge the practical implications of requiring SMS in the non-movement areas. FAA also must acknowledge that, while movement areas may be similar (because of uniform FAA airport design requirements), non-movement areas take on many different characters at different airports. Specifically, FAA has not adequately examined the practical, contractual, and legal impediments to proprietors exerting greater control over activities within non-movement areas. For example, lease agreements with tenants in the non-movement area may not currently allow airport operators to implement SMS inspections and to police operations by a tenant. Air carriers may have their own safety requirements for activity on their exclusive-use or controlled ramp. Industrial operations (e.g., cargo operations) have their own unique safety considerations. In the final rule, FAA should acknowledge the different types of non-movement areas and the particular issues that each type has with regards to applying SMS concepts on them. These different types of non-movement areas include areas where the airport sponsor has complete control, areas where third parties have partial or shared control pursuant to contractual agreements with the airport sponsor, and areas where a third party has complete control.*
6. *FAA needs to provide clear direction on the role of carriers (or other entities independently subject to SMS requirements) in the non-movement area. In particular, airports need clarity on whether safety issues need to be reported simultaneously through two or more SMS systems or whether it is the responsibility of the Accountable Executive in each instance to cross-report safety issues.*

7. *Some AAAE members recommend that FAA not mandate that airport sponsors have to change all lease agreements within the timelines of the rule. Airport sponsors should be allowed to make language changes in lease agreements as they are renewed rather than having to update every lease within a limited implementation period. If airport sponsors are forced to re-open lease negotiations for all non-movement areas, the cost and potential burden on sponsors could be substantial.*
8. *FAA should explicitly address the jurisdictional issues that will occur in the non-movement areas. For example, internal gate operations near aircraft will generally be regulated by the SMS requirements for Part 121 air carriers. FAA should clarify that these activities also are subject to the SMS requirements for Part 139 airports.*
9. *In order to resolve the most complex interoperability problems, FAA should revise the rule to limit the sponsor's obligations in the non-movement areas in certain circumstances. Airport sponsors should not have any SMS obligations (unless the sponsor voluntarily assumes such obligations) within areas of the airport under the exclusive control of one or more air carriers who are already subject to SMS requirements. This approach would mean that personnel in most areas would be subject to, and be trained in, only one SMS, rather than having to reconcile competing or even contradictory SMS reporting and risk assessment processes. The SMS Manual should be required to set forth the areas of the airport where SMS requirements would not apply.*
10. *Just as airport SMS requirements should not apply to areas under the exclusive control of Part 121 carriers, airports should have the option of excluding from their SMS Manual those areas under exclusive military control. Coordination, interoperability, security and data protection issues between airport sponsors and military agencies would be enormously complex and cumbersome. The SNPRM states that "the proposed rule does not apply to military facilities at joint-use airports, but the certificate holder could invite the military to participate in SMS activities" but is silent as to military-controlled or leased property (non-movement areas) on Part 130 airports that are not joint-use facilities. The final rule needs to clarify the sponsor's obligation as to these government facilities.*
11. *FAA's approach to review the process on how an airport sponsor initiates safety programs such as the Notice of Violation enforcement, safety recognition, and committee forums like Safety Action Group, promotes stakeholder involvement and a team-based approach allowing flexibility to be proactive in ramp safety.*
12. *Specific inclusion of fuel farms as part of the non-movement areas adds an inappropriate burden to airports and considerably expands their operational scope. In many instances, the fuel farm may be inside the AOA*

but segregated into its own area operated and managed by a separate entity. FAA should make the inclusion of fuel farms as part of the non-movement area optional.

13. *Sponsors are concerned that, because of the lack of assurances of data protection and the limited knowledge and access that sponsors' staff have to exclusive lease areas, airlines may be reluctant to report safety concerns through the sponsor's SMS system. The accuracy and completeness of reporting could suffer without incentives for carriers (and their subcontractors) to report through the airport SMS.*
14. *The definition of "hazard" in the proposed rule does not include bag make-up areas; FAA should consider whether that omission is appropriate.*

B. Recommended revisions to proposed rule

1. In the preamble to the final rule, FAA should state, "FAA acknowledges the different types of non-movement areas and the particular issues that each type has with regards to applying SMS concepts to them. Certificate holders are encouraged to implement SMS first in the movement area, then voluntarily in non-movement areas where certificate holders have complete control, followed by areas where third parties have partial or shared control pursuant to contractual agreements, and finally in areas where a third party has complete control."
2. Those AAAE members who are most concerned about the application of SMS to non-movement areas would recommend that section 139.401(b) be revised to shift focus from "aircraft" operations to "airport operations," and read: "The scope of an Airport Safety Management System must encompass ~~aircraft operation~~ in the movement area, ~~aircraft operation~~ in the non-movement area, and other airport operations addressed in ~~this part~~ the certificate holder's Airport Operating Certificate."
3. In the preamble to the final rule, FAA should state, "FAA authorizes the Accountable Executive to delegate SMS oversight and supervisory responsibility to a designated senior official within a tenant's organization for SMS oversight within non-movement areas that are within the tenant's exclusive control."
4. In the preamble to the final rule, FAA should state, "Certificate holders are not required to amend or revise all lease agreements within the implementation timelines provided herein. Certificate holders may choose to make changes in lease agreements as they are renewed and to implement SMS in accordance with existing lease obligations. FAA requires certificate holders to revise lease provisions necessary to implement SMS at the earliest practical time."

5. In the preamble to the final rule, FAA should explicitly address the jurisdictional issues that will occur in the non-movement areas. FAA should clarify its understanding that activities in non-movement areas also are subject to the SMS requirements for Part 121 operators.
6. In the final rule, FAA should explicitly state that airport sponsors can exclude from the SMS Manual any areas (a) under the exclusive control of one or more Part 121 carriers, and (b) under the exclusive control (including leaseholds) by a military agency.
7. The definition of “non-movement area” in section 139.5 should include the following language: “Fuel farms may, but are not necessarily, within the non-movement area, at the option of the certificate holder.”

X. INTEROPERABILITY

- A. Enhancing interoperability [FAA request for comments].¹⁰ FAA needs to clarify the interoperability between the various types of SMS.

Comments

1. *FAA should explain how the revised implementation timeline for airport SMS fits within FAA's overall plan to implement SMS throughout the aviation industry. While SMS has now been implemented within the air traffic and air carrier sector, FAA should indicate whether, and when, it contemplates implementation for other actors on the airfield (e.g., maintenance service providers, flight training, and other FBO functions) and how sponsors should address such contemplated additional SMS requirements.*
2. *The interaction between Part 121 SMS and airport SMS presents complex, practical, and legal problems because of the different types of operators, subject to Part 121 and Part 139. These complexities are exacerbated by the fact that most Part 121 operators are private sector entities not subject to the multitude of laws that apply to operation, data collection, public records, and personnel matters within government agencies.*
3. *FAA needs to address information and data flow between Part 121 operators and airport sponsors and provide guidance on the appropriate way to handle open records act and FOIA obligations if sponsors come into possession of, or have access to, Part 121 SMS information. Because some airport sponsors also act as government regulators of certain functions undertaken by Part 121 operators (e.g., civil rights, employment rights, environmental regulation and criminal law), FAA needs to address how airport sponsors are supposed to treat information made available pursuant to data sharing with Part 121 operators that could have civil, administrative, or even criminal significance. Without explicit FAA direction, airport sponsors may not have the authority to ignore non-safety implications of data that they receive in connection with data sharing of SMS data. If airport sponsors are not allowed to use data for non-SMS purposes (e.g., civil and criminal prosecution of liability), FAA needs to address conflict of laws that could arise between state and local obligations and federal requirements.*
4. *FAA needs to provide clear and specific guidance on cross-reporting obligations between different SMS programs. In particular, data flow between carriers and airports is an especially thorny issue – carriers are going to be enormously reluctant to share information with a government*

¹⁰ 81 Fed. Reg. 45888.

agency without good data protection and privacy protection assurances which airport sponsors may not be able to provide.

5. *FAA must provide a clear and unequivocal hierarchy of authority among the various proposed and forthcoming SMS requirements so that airports are not left speculating who has authority, and which SMS program governs a particular activity. For example, if a safety problem is addressed through appropriate airport SMS channels, will that become mandatory through Part 121 SMS channels and ATO SMS channels? Or will airports have an independent obligation to comply with whatever reporting mechanisms those SMS procedures require?*
6. *FAA should explicitly state if it expects that all activities within the airfield must be reported through the airport SMS, even if such data is also reported and addressed through Part 121 SMS or FAA's internal ATO or ARP SMS. FAA also should clarify whether airport sponsors may, but are not required to, share safety data with airlines or affected tenants and other private-sector actors on the airfield.*
7. *See earlier comment under "Non-Movement Area" with respect to the recommendation that airport SMS be inapplicable in those areas where Part 121 SMS already applies or in those areas subject to exclusive military control. Without these revisions, the interoperability, overlap, duplication, and data protection issues would be overwhelming.*
8. *Just as FAA needs to address interoperability and reporting between Part 121 and Part 139 SMS, FAA needs to address interoperability between ATO and Part 139 SMS. Although there are union and labor issues for FAA to consider, the final rule should explicitly recognize the authority of the Accountable Executive to give safety direction to ATO personnel for activities on the airfield. Reporting between ATO personnel and the Accountable Executive should be addressed so that there is no ambiguity between the air traffic function and airport operations.*
9. *Similar problems could arise between the Accountable Executive and other federal agency employees, especially CPB and TSA employees with access to the movement or non-movement area. These agencies have not adopted the same SMS principles that FAA is adopting industry-wide, and FAA should, therefore, commit to educating these agencies on their employees' and contractors' obligations to accept direction from the Accountable Executive if mandated by the sponsor's SMS. In order to avoid awkward personnel and related labor issues, the final rule should explicitly acknowledge the authority of the Accountable Executive to provide direction to such federal employees, if required by the principles of SMS.*
10. *The FAA usefully provides an example in the SNPRM, (page 45887, paragraph 2), of a hazard report with an airline worker and the interface*

of the airline encouraging both entities to communicate and work on issues with a team-based approach. The preamble to the final rule should provide additional examples of how interoperability would work with other actors on the airfield who would not otherwise be subject to control or direction from the Accountable Executive.

B. Recommended revisions to proposed rule

1. In § 139.403, add subsection (d) and clarify how the revised implementation timeline for airport SMS fits within FAA's overall plan to implement SMS throughout the aviation industry.
2. In the preamble to the final rule, FAA should clarify the information and data flow between Part 121 operators and airport sponsors.
3. In the preamble or the Advisory Circular, FAA should provide guidance on the appropriate way to handle the open records act and FOIA obligations if sponsors come into possession of, or have access to, Part 121 SMS information. Because some airport sponsors also act as government regulators of some Part 121-related functions (e.g., civil rights, employment rights, and environmental regulation), FAA should address how airport sponsors are supposed to treat information made available, pursuant to data sharing with Part 121 operators, that could have civil, administrative, or even criminal significance. If FAA intends for safety reporting to be independent of other governmental functions, it must explicitly include language in the final rule that *prohibits* the sponsor from sharing information with other government functions, notwithstanding any contrary local or state requirement or law. The FAA needs to make this preemptive directive explicit in the rule for there to be clarity as to the sponsor-local government's obligations.
4. In the preamble to the final rule, FAA should provide a hierarchy of authority among the various proposed and forthcoming SMS requirements so airport sponsors are not left speculating who has authority and which SMS programs govern a particular activity.
5. The preamble to the final rule should explicitly state that the Accountable Executive has the authority to issue directives, if required by or consistent with the sponsor's SMS, to federal employees and federal contractors (especially, but limited to, non-FAA agencies such as CBP and TSA). FAA should commit to educate other federal agencies on this requirement.

XI. DATA REPORTING

- A. National database for voluntary reporting [FAA request for comments]**FAA is exploring methods to create a national reporting database for voluntary reporting of SMS data. FAA requests comments from industry on the types of data or other information certificated airports could provide under a national reporting database.¹¹

Comments

1. *The creation of a national reporting database for voluntary reporting of SMS data is advisable. FAA should confirm that data submitted to the national reporting database voluntarily will not be subject to FOIA.*
2. *FAA should provide guidelines establishing minimum standards on the types of data that should be sent to FAA. Otherwise, FAA will receive a hodge-podge of information from airport sponsors.*
3. *FAA should ensure that it has technology in place, prior to initiation of any reporting mechanism, to de-identify the data voluntarily provided by airport sponsors to ensure that the information is not identifiable to the airport, the reporter, or the entity making the report.*
4. *What types of data or other information could airport sponsors provide under a national reporting database? In the right environment, secured and de-identified data, such as hazards, safety issues, vehicle accidents, safety performance indicators, injuries, OSHA data, safety risk assessments with hazards and mitigations, safety initiatives, best practices, FOD reports, and alerts, could be provided. Sponsors would appreciate guidance on the types of information that FAA contemplates as part of such a database.*

B. Recommended revisions to proposed rule

1. FAA should state in the preamble to the final rule, “FAA will publish guidelines establishing minimum standards on the types of data that should be sent to FAA.”

¹¹ 81 Fed. Reg. 45884.

XII. HUMAN RELATIONS/PERSONNEL

- A. Impact on management and personnel.** FAA needs to consider the practical implications of the proposed rule and how it will impact airport management and personnel relations.

Comments

1. *Airport sponsors will need to prescribe or revise internal personnel policies in order to ensure SMS is complied with throughout the movement and non-movement area. These changes will be neither simple nor straightforward, especially where personnel are subject to union or collective bargaining agreements.*
2. *FAA needs to be sympathetic to the labor relations issues inherent in allowing the Accountable Executive, who will be outside the chain-of-command and outside the organization, to provide mandatory directives to unionized employees of federal agencies or private sector employers. FAA should provide guidance, in cooperation with the Department of Labor, on how to handle delicate labor issues in this context.*
3. *FAA, CBP, TSA, and other appropriate federal agencies must revise their personnel policies to allow their employees to receive, and adhere to, direction from the Accountable Executive.*
4. *Personnel subject to Part 121 SMS training whose job functions are limited to areas of exclusive control of Part 121 carriers should not be subject to airport SMS.*

B. Recommended revisions to proposed rule

1. In the preamble to the final rule, FAA should state, “FAA recognizes the need for flexibility in renegotiation of labor agreements necessary to implement SMS. If implementation needs to be delayed to negotiate such arrangements, FAA will accept such delays.”
2. In the preamble to the final rule, FAA should commit to working within the agency, and with other agencies, to ensure that no labor issues are created by SMS requirements that mandate that the Accountable Executive be authorized to give direction to federal employees and contractors.

XIII. ACCEPTANCE VS. APPROVAL

A. Clarification regarding whether FAA will accept or approve SMS documentation

Comments

1. *FAA needs clarify what documents are submitted and reviewed only as to form (accepted), and what documents are submitted and cannot be implemented without formal FAA concurrence (approval). It appears from the SNPRM that FAA intends to **approve** the airport sponsor's implementation plan but will only **accept** the SMS Manual. The SNPRM is silent on other, further SMS documentation and what role FAA will play in review of such documentation.*
2. *FAA should clarify how it views the difference between accepting and approving documents because these terms have different meaning in different contexts.*
3. *For documents that are accepted, FAA should clarify whether the sponsor can rely upon the document (1) upon submission, (2) upon formal acceptance as to form, or (3) only after acceptance as to substance. Airport sponsors recommend that SMS obligations for accepted documents attach upon formal submission without further FAA action (see earlier comments on deadlines for FAA action for further explanation of this comment).*
4. *For documents that the FAA intends to approve, rather than merely accept, the final rule must clarify the sponsor's obligations between the time of submission and approval. This is a particularly critical issue because, with nearly 300 airports submitting several documents, it could take considerable time for FAA to complete review of all documentation, and sponsors need clarity as to their obligations during that interim period. Airport sponsors recommend that no SMS obligations will attach until formal FAA approval of those documents that are subject to FAA approval. Airport sponsors also request, as explained above, that FAA implement its own deadlines, after which submitted documentation will be deemed accepted or approved, as appropriate.*

B. Recommended revisions to proposed rule

1. In § 139.403 or in the preamble to the final rule, FAA should explain the difference between “accepting” and “approving” documents. For documents that are accepted, FAA should clarify whether the sponsor can rely upon the document (1) upon submission, (2) upon formal acceptance as to form, or (3) only after acceptance as to substance. Airport sponsors recommend that SMS obligations for accepted documents attach upon formal submission and approval.

2. The preamble to the final rule should provide a detailed schedule of whether the agency will accept or approve documents related to SMS (beyond the implementation plan and SMS Manual).
3. In order to ensure the applicability of 49 USC 44735, the preamble to the final rule should indicate that the FAA will accept documentation voluntarily submitted by sponsors if such a submission will enhance protection under applicable state law. The final rule should provide a protocol for voluntary submissions to maximize the applicability of that statute and eligibility for exemptions from disclosure under state law.
4. FAA should impose a deadline on acceptance or approval after which submissions are deemed accepted or approved, as appropriate.

XIV. SAFETY RISK MANAGEMENT

Request that FAA re-evaluate the requirement to process all hazards through a standard five-step process.

Comments

1. *Airport sponsors should have the flexibility to decide which hazards require the five-step process, and which hazards simply need a more cursory review and mitigation. FAA should clarify that airport sponsors have the flexibility to decide what measures are appropriate.*
2. *FAA should clarify the requirement to establish a system for identifying operational safety issues.*
3. *FAA should clarify whether it considers a confidential hazard reporting system to be the same as an operational safety issues system. If so, FAA should use the same terminology in all sections of 139. If not, FAA should clarify whether an airport can use the confidential hazard reporting system as the operational safety issues system, or will FAA require two separate systems.*
4. *An airport is a dynamic environment; circumstances beyond the airport's control may prohibit the airport from meeting the stated Safety Objectives.*
5. *FAA is inconsistent in its use of "consecutive calendar months," "consecutive months," and "calendar months" in § 139.402 and §139.403. FAA should revise § 139.402 and §139.403 so the language is consistent throughout the proposed rule.*
6. *For large hub and international airports that already have a voluntary comprehensive safety and risk management program (i.e., hazard risk assessment, etc.), FAA should explain how it intends these existing programs to be integrated into the overall SMS certification process. In particular, some airports' safety programs already would comply with ICAO standards, and FAA should allow these programs to continue, notwithstanding the proposed rule.*
7. *FAA should accept or provide credit to those airports that already have existing processes and protocols similar to those that have been outlined for the safety hazard assessment protocols.*

B. Recommended revisions to proposed rule

1. In the preamble to the final rule, FAA should state, "Certificate holders have the flexibility to decide what hazard mitigation measures are appropriate."

2. The final rule in § 139.402 and §139.403 should consistently use the term “consecutive calendar months,” “consecutive months,” or “calendar months” for clarity.

XV. QUESTIONS CONCERNING IMPLEMENTATION AND ADMINISTRATION OF PROPOSED RULE

Comments

1. *It appears that implementation of SMS at the agency level will require substantial additional resources for (a) training of agency personnel in each ADO and regional office; (b) review of nearly 300 SMS implementation plans; (c) review of nearly 300 SMS Manuals; and (d) continuing oversight, supervision and inspection at all of these airports. AAAE requests that the FAA commit that it will find funding for the substantial additional staffing needed to implement SMS. Most importantly, we request a firm commitment that the agency will not seek or use AIP funds for agency implementation costs. We would appreciate an assessment of the agency personnel and other costs that the FAA will incur in the initial implementation years and in the continuing oversight so we can have the confidence that implementation will have no effect on other critical AIP funding.*
2. *Who is reviewing the implementation plan, the SMS Manual, and the related documentation? Please indicate whether review will be by the person normally responsible for certification inspections in the ADO or someone else. For consistency and knowledge of the specific airport environment, it would appear preferable for the certification inspector to be responsible, but if the FAA plans to have another individual review the documentation, the FAA should provide that information now so airport sponsors can proactively educate such persons on unique airport issues relevant to SMS.*
3. *Will FAA establish a working group with representatives of the industry to address issues and concerns that may surface following the effective date of the final rule?*
4. *How will FAA provide interpretative guidance after issuance of the final rule? An Advisory Circular seems to be an awkward approach since it often takes months to issue A/C revisions. FAA may want to consider publishing "SMS Guidance Letters" similar to the PGLs issued for interpretation of AIP requirements.*
5. *Will the FAA maintain the current dedicated airport SMS website? Will it post all clarifying guidance at that single location, regardless of whether the guidance is issued in headquarters or by the regions/district offices? In order to promote nationwide uniformity, it would be useful for the FAA to commit to a single source of all definitive guidance, interpretations, and precedents. The same website could be used to publish best practices from early-adopters.*
6. *We believe that many of the practical implementation issues could be resolved if FAA were to convene a series of meetings with airport sponsors*

and industry groups to work out practicalities of implementation. Will the FAA consider such an approach to ensure that the agency understands practical issues from the sponsors' perspective?