

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

SUBMITTED BY

AMERICAN ASSOCIATION  OF AIRPORT EXECUTIVES

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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?