

June 5, 2011

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

**RE: DOCKET NUMBER FAA-2010-0997, NOTICE OF PROPOSED RULEMAKING,
SAFETY MANAGEMENT SYSTEMS FOR CERTIFICATED AIRPORTS**

Submitted electronically via www.regulations.gov

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

With this rulemaking, the Federal Aviation Administration (FAA) proposes changes to Title 14 of the Code of Federal Regulations, Part 139 (Part 139) that would require airports certificated under that part to develop and implement a safety management system (SMS). The proposed changes to Part 139 include required components and functional processes of the required SMS. NATA appreciates the opportunity to provide comments on these proposed changes.

Multiple Rulemaking

Currently, the FAA has two separate and distinct SMS rulemaking projects underway: this rulemaking that proposes to apply an SMS standard to airports certificated under Part 139, and rulemaking that would establish a new 14 CFR Part 5 and apply an SMS standard to 14 CFR Part 121 air carriers. Other certificated entities, such as 14 CFR Parts 135 and 145, will be included in the new Part 5 at some future date. The objectives and purposes of these separate rulemaking projects are nearly identical: to create an International Civil Aviation Organization-compliant SMS regulatory standard and apply that standard to a certificated entity. The only difference in the objectives and purposes of these two separate rulemaking projects is the certificated entities to which they are applied. The FAA acknowledges in both rulemakings that the SMS regulatory standard must be scalable and adaptable enough to account for the many differences in the certificated entities' operations.

NATA agrees with this approach and believes that the very nature of SMS as an operational process supports this approach. Therefore, NATA questions the agency's decision to pursue two distinctly separate regulatory SMS standards. If this approach is carried through to the conclusions envisioned in the rulemakings, all certificated entities will be subject to the Part 5 SMS standard except airports certificated under Part 139, which will be subject to the SMS standard found in 14 CFR Part 139. The interconnected nature of aviation operations does not support this approach, nor does the nature of SMS as an operational process support the idea of multiple standards.

NATA strongly recommends that these separate SMS rulemakings be suspended, combined and reissued as a new single SMS regulatory standard.

Tenant Oversight

Airport sponsors have always retained some level of oversight, regarding safety, to tenant operations; however, this rulemaking seeks to push airport sponsors to assume the primary role for safety, including tenant "employee safety, ground vehicle safety, and passenger safety to the extent they are related to aircraft operations"¹

This rulemaking proposes requiring airport sponsors at airports certificated under Part 139 to develop and implement an SMS that is applicable to "aircraft operations in the movement area, aircraft operations in the non-movement area, and other airport operations addressed in this part." The FAA clearly intends for the SMS requirement to extend to areas leased to businesses such as fixed base operators (FBO), maintenance facilities and flight schools: the SMS requirement "would apply to the entire non-movement area regardless of lease arrangements. There is the potential for an airport to update its airport rules and regulations, revise clauses in lease agreements at their next renewal cycle, and renegotiate lease agreements where appropriate."

NATA strongly disagrees with the FAA's vision for SMS in regards to airport tenants. Under this proposal, the FAA firmly inserts the airport operator into a tenant's business operations. Airport operators would be required to implement safety risk management (SRM) processes in business operations in which the airport operator has little or no experience. While the FAA repeatedly

¹ FAA Responses to Clarifying Questions About Proposed Rulemaking for Safety Management System for Certificated Airports For Docket Number FAA-2010-0997, Page 5, Question 7.

refers to the ability of the airport operator to scale and adapt SMS to its particular situation, SRM processes require certain mandatory components, including:

- Identify safety hazards
- Ensure that mitigations are implemented where appropriate to maintain an acceptable level of safety
- Provide for regular assessment of the safety level achieved
- Aim to make continuous improvement to the airport's overall level of safety
- Establish and maintain a process for formally documenting identified hazards, their associated analyses, and management's acceptance of the associated risks

Fulfillment of these basic requirements would require a significant change in the airport operator / tenant business relationship. The airport sponsor would need to become an integral participant in the business's day-to-day activities, monitoring safety and evaluating risks. Any change in the business's operational model, procedures or policies would need to be evaluated by the airport prior to being instituted. If, in the airport's sole determination, a proposed change, such as staffing levels, is determined to present a risk, the airport could prohibit that change. In the SRM process conducted upon airport-owned and operated areas, such as the movement area, the determination of final risk for any given hazard, mitigation, or implementation of mitigation would be left to the discretion of the certificate holder. Tenant business would not receive the same discretion; rather, they would be required to submit to the airport operator's decisions. Airport operators, since they would most likely pass on the cost of mitigation to the tenant business, would be far more likely to determine that a hazard represented a risk in need of mitigation, and then outline mitigation implementation for the tenant to ensure the airport did not take on additional liability. The purpose of an SMS is to elevate safety concerns to the equivalent of any other process a business must manage. This proposal will require airports to make ongoing executive level business decisions for airport tenant businesses. The businesses that operate our nation's FBOs, maintenance facilities, and flight schools are the experts best placed to ensure, and incentivized to ensure, the safety of their own operations. Replacing that authority with that of the airport operator is likely to reduce safety and create excess burden on the airport tenant.

NATA recommends that this rulemaking be modified to exempt from the airport's SMS oversight areas exclusively leased for use to tenant businesses.

Regulatory Authority of SMS Rule

The FAA has clearly stated that enforcement of this proposed rule will be limited to “an evaluation of whether a certificate holder’s SMS is functioning as it is intended to function rather than as a means to second guess a certificate holder’s decisions.” NATA applauds the FAA for this approach. Without that commitment, a regulatory SMS standard becomes little more than a new rulemaking process that allows the implementation of regulatory requirements that bypasses the protections contained in the Administrative Procedures Act (APA) and numerous Executive Orders. While NATA is pleased to see the FAA’s commitment to a process-related enforcement scheme, we believe that that structure should be formalized in the regulatory changes made to Part 139.

NATA recommends that the text of the regulatory changes be modified to state specifically that a certificate holder is only required to implement risk mitigation if failure to do so would result in a violation of some other provision of Part 139 or other federal regulation. NATA believes that failure to do so could result in situations that violate existing federal law, procedure and policy.

Approval

With this rulemaking, the FAA has required that each Part 139 certificate holder “must develop and maintain an Airport Safety Management System that is **approved** by the Administrator.” The FAA has also stated that its enforcement mechanism will serve to ensure that “a certificate holder’s SMS is functioning as it is intended to function rather than as a means to second guess a certificate holder’s decisions.” In light of the FAA commitment to ensure that this proposed rule remains flexible and scalable, NATA questions the need for an approved document. The FAA’s concern is that a certificate holder has an SMS and that that SMS contains the required components.

NATA believes that the airport SMSs should be an accepted rather than an approved document.

Inspector Guidance and Training

Whether intended for airports or air carriers, one of the industry’s greatest concerns with SMS as a regulatory standard is the ability for the requirement to morph into a process by which new

regulatory requirements are implemented. The FAA has stated that enforcement will be targeted at ensuring a certificate holders program is functioning, not at second guessing the certificate holders decisions. Key to implementing that policy will be the training and guidance provided to Airport Certification Safety Inspectors (ACSI). Without proper training and guidance to ACSI, the FAA's policy on enforcement could quickly change into one of second guessing decisions made by airports.

NATA requests that industry be briefed on and allowed ample opportunity to comment on ACSI training programs and guidance relating to airports SMS.

Closing

NATA supports the FAA's efforts to enhance aircraft and airport safety. While NATA fully supports SMS implementation as a voluntary measure, we do believe that regulatory implementation of SMS presents some serious challenges. NATA submits these comments to assist the FAA in overcoming these challenges and looks forward to working with the agency to advance aviation safety.

A handwritten signature in black ink, appearing to read "Michael France", is positioned above the printed name and title.

Michael France
Director, Regulatory Affairs