

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA-2010-0997; Notice No. 10-14]

RIN 2120-AJ38

Safety Management System for Certificated Airports; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Second extension of comment period and notice of procedures for submission of clarifying questions.

SUMMARY: The FAA published a proposed rule on October 7, 2010, to require each certificate holder to establish a safety management system (SMS) for its entire airfield environment (including movement and non-movement areas) to improve safety at airports hosting air carrier operations. The American Association of Airport Executives and Airports Council International – North America have requested that the FAA provide additional information supporting the proposed rule and extend the comment period to allow adequate time for the public to analyze and comment on that information and the NPRM. This action extends the comment period until July 5, 2011, and establishes a procedure for handling clarifying questions to the proposed rule.

DATES: The comment period for the NPRM published on October 7, 2010, closing on March 7, 2011 is extended until July 5, 2011. You must submit your clarifying questions in writing using the procedures outlined in this notice by April 6, 2011. The FAA

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anticipates responding to these submissions and providing a summary report of the pilot studies by May 21, 2011.

ADDRESSES: See the “Procedures for Filing Clarifying Questions” section of this notice.

FOR FURTHER INFORMATION CONTACT: See the “Procedures for Filing Clarifying Questions” section of this notice.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2010, the FAA published Notice No. 10-14, entitled “Safety Management System for Certificated Airports” (75 FR 62008). Comments to that document were to be received on or before January 5, 2011. On December 10, 2010, in response to several requests for extension of the comment period, the FAA granted an additional 60 days for commenters to analyze the NPRM and provide meaningful comment (75 FR 76928).

By comments posted to the docket on February 17, 2011, Airport Council International – North America (ACI-NA) and the American Association of Airport Executives (AAAE) requested the FAA extend the comment period for a second time. ACI-NA and AAAE also requested the FAA provide additional information to allow for meaningful comment on the proposed rule. Specifically, ACI-NA made the following requests:

- (1) Additional information is needed regarding the FAA’s proposed SMS implementation strategy, most notably what will be expected in the required SMS Implementation Plans.

- (2) Data, findings, and conclusion – both positive and negative – from the three SMS pilot studies need to be made available in the docket so these findings and conclusions can inform the industry’s review of the costs, benefits, and potential issues arising from the implementation of the proposed rule.
- (3) The proposed rule needs to be reviewed in conjunction with key guidance documents, especially the revised version of FAA Advisory Circular 150/5200-37. These documents, which are mentioned explicitly in the FAA’s discussion of the proposed rule will describe the standard means of compliance with the proposed rule and are needed to understand the scope and scale of airport SMS requirements.
- (4) Additional time will be needed for technical analysis by commenters, including analyses of the costs and benefits of phased SMS implementation, an implementation approach on which the FAA has specifically requested comments.

AAAE made the following requests:

- (1) We request that the FAA make results and recommendations from all three phases of the pilot studies available before closing the comment period.
- (2) The FAA is under a statutory deadline to implement the part 121 SMS rule and has proposed a short time schedule for issuing its part 139 training requirements. We request that the comment period remain open until the other regulatory documents have been issued in their final form.
- (3) The agency also has committed to issuing an advisory circular on implementation of SMS requirements. We request that the agency leave the

comment period open on the proposed SMS rule until at least a draft of the advisory circular is issued. That way, respondents can comment on both documents simultaneously.

AAAE suggests the comment period remain open until at least September 30, 2011.

FAA Response to the Requests

The FAA has carefully considered the requests for extension of the comment period. The FAA believes that the narrative and analysis in the NPRM and Initial Regulatory Evaluation, which was made available in the docket concurrently with NPRM publication, contain sufficient detail and supporting data to permit meaningful comment by the public. The FAA also notes that it has received thoughtful comments from several airports, indicating that sufficient information currently exists in the docket to permit meaningful comment. However, the FAA acknowledges there is a belief among some members of the public that additional information may result in better comments. From the request submitted, it appears the bulk of this concern involves the FAA's implementation strategy for SMS and the results of the pilot study.

To address this concern about insufficient information, the FAA has determined to pursue a combination of strategies. First, the FAA will accept and respond to specific clarifying questions submitted by the public. This strategy will allow the public to identify specific areas of the NPRM or Initial Regulatory Evaluation that are unclear or for which more information may be desired. The intent is that the public would be able to obtain specific information from the FAA, provided that information exists. The specific procedure is discussed in the "Procedures for Filing Clarifying Questions" section of this notice and permits a 30-day period for the public to submit questions, a 45-day period for

the FAA to respond to the questions, and a 45-day period for the public to review the information and submit comments to the proposed rule. Secondly, the FAA will prepare a summary report that will provide additional information on the implementation plan required under the proposal, a summary of findings and conclusions from the first two pilot studies, and a summary of findings and conclusions from the safety management systems proof of concept. The FAA anticipates making this report available in the docket by May 21, 2011. Additionally, the FAA is seeking permission from pilot study participants to place documents developed during those studies in the docket. Because those documents are the property of the pilot study participants and may contain confidential or proprietary information, the FAA will make available documents to the extent permitted and as soon as possible. The FAA believes these strategies respond to ACI's request (1), (2), and (4) and AAAE's request (1).

In the NPRM, the FAA stated that it would develop and make available an AC on SMS prior to issuance of the final rule. The FAA currently is developing that document. The FAA also is conducting a third pilot study on the implementation of SMS, which began after the NPRM was published. The purpose of the pilot study and AC is to facilitate implementation of the proposed rule and to provide additional examples of how an airport could develop and implement its SMS. The AC likely will provide multiple means to comply with the regulation, some of which are outlined in the NPRM preamble, but the AC is not a substitute for the regulation nor does it provide the only means of compliance. Additionally, the FAA does not anticipate the AC will expand the "scope and scale" of SMS from what is discussed in the NPRM and Initial Regulatory Evaluation. The FAA also does not anticipate the third pilot study or AC would result in

significant changes to the proposed rule. Of course, the FAA may change the rule after careful consideration of comments to the proposal.

The FAA does not believe a draft AC is essential to understanding the proposed rule, especially in light of the opportunities for additional information discussed earlier. Consequently, the FAA has determined that holding the comment period open until publication of a draft AC does not add value to the rulemaking process. Nevertheless, the FAA intends, as it routinely does, to publish a draft AC in advance of publication of any final rule. There will be opportunity for the public to comment on that draft AC, for the FAA to carefully consider those comments, and for the FAA to respond those comments either before or simultaneously with publication of a final rule. The FAA believes this answers ACI's request (3) and AAAE's request (3).

The FAA acknowledges there are a variety of rulemaking initiatives currently in process, among them an NPRM for SMS for part 121 operators and an NPRM for part 139 safety enhancements. Although these rulemakings have some relationship to the airport SMS NPRM, they are separate rulemakings involving different issues and separate schedules. The FAA finds no merit, other than to delay FAA rulemaking efforts, to holding open the comment period on this rulemaking initiative until final rules are issued with respect to the other initiatives. The FAA believes this answers AAAE's request (2).

Extension of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ACI-NA and AAAE for a second extension of the comment period to Notice No. 10-14.

The FAA finds no merit to extending the comment period seven or more months, as requested by ACI-NA and AAAE. However, to accomplish the strategies for providing additional information to the public, the FAA has determined that an extension of 120 days is appropriate and sufficient. The FAA has determined the extension is consistent with the public interest, and that good cause exists for this action. Absent exceptional circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Accordingly, the comment period for Notice No. 10-14 is extended until July 5, 2011.

Procedures for Filing Clarifying Questions

The following procedures are not a substitute for filing substantive questions and comments to the NPRM. The procedures for submitting those types of comments are discussed in the NPRM and repeated in the “Additional Information” section of this notice. Commenters should follow those procedures to file substantive comments by July 5, 2011.

To submit a request to the FAA for clarification of the NPRM (Docket Number FAA-2010-0997), you must send your request using the following method by April 6, 2011. The FAA requests any clarifying questions address specific issues raised by the NPRM or Initial Regulatory Evaluation to permit meaningful FAA response.

1. Post your request on the Federal eRulemaking Portal. To access this electronic docket, go to <http://www.regulations.gov>, enter the Docket Number FAA-2010-0997, and follow the directions for sending your request electronically.

2. In addition to sending your request to the electronic docket, send a copy of the request via e-mail to the appropriate subject matter expert:

- Technical clarifications: Keri Spencer, Office of Airports Safety and Standards, Federal Aviation Administration, e-mail keri.spencer@faa.gov
- Legal clarifications: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, e-mail rob.hawks@faa.gov
- Cost/benefit clarifications: Nicole Nance, Office of Aviation Policy and Plans, Federal Aviation Administration, e-mail nicole.nance@faa.gov.

The FAA will respond to all clarifying questions submitted by April 6, 2011. The responses will be provided directly to you and posted in the rulemaking docket. The FAA expects to provide responses by May 21, 2011.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposed rule. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

You may send comments identified by docket number FAA-2010-0997 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at (202) 493-2251.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM,

and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on March 3, 2011.

A handwritten signature in black ink, appearing to read "Michael J. O'Donnell". The signature is written in a cursive style with a large, sweeping initial "M".

Michael J. O'Donnell
Director
Office of Airport Safety and Standards