

April 10, 2023

Federal Aviation Administration
c/o U.S. Department of Transportation
Docket Operations
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: DOCKET NO: FAA-2021-0419 — NOTICE OF PROPOSED RULEMAKING: SAFETY
MANAGEMENT SYSTEMS SMS NPRM**

Submitted electronically via regulations.gov

The National Air Transportation Association (NATA) represents nearly 3,700 aviation business locations across a broad cross section of the industry, including on-demand charter air carriers and fractional ownership companies, FBOs, flight training providers, maintenance facilities, airport sponsors at general aviation airports and others. The Association serves to elevate the safety and professionalism of its members by convening industry thought-provoking leadership on its policy committees, examining contemporary issues and pursuing solutions that prioritize safety and economic viability.

NATA appreciates the opportunity to submit comments to the Federal Aviation Administration (FAA) on this Notice of Proposed Rulemaking (NPRM).

NATA strongly supports Safety Management Systems (SMS). We have a long history of bringing the SMS concept to the industry and encouraging membership adoption across all lines of aviation business (i.e., on-demand carriers, repair stations, FBOs).

The adoption of SMS by carriers operating under part 135 is already well under way and the ability to have their programs formally recognized by the agency is desirable. Importantly, many carriers operating internationally already have a SMS at some level – those providing air transportation services within the European Aviation Safety Agency

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(EASA) territories must have an SMS due to EASA's Third Country Operator (TCO) requirements.

However, there are several areas of concern within the NPRM. We believe that safety is best served by a measured approach that will permit carriers to fully realize the operational benefits of SMS rather than have the program viewed as another regulatory hurdle to overcome.

NATA and its members stand ready to help the FAA in its mission to deploy SMS within the air charter community and ask the agency to adopt our recommendations to accomplish our shared goals.

Our efforts to engage the community for feedback included meeting with our Air Charter Committee and hosting webinars with our membership to review the NPRM and collect additional operator input. In addition to this submission, NATA has encouraged our members to provide their own comments to the agency.

While it is true that providing a regulatory mechanism to recognize a carrier's SMS will benefit many operators with existing programs, the difficulties for others cannot be overlooked.

SMALL BUSINESS CONCERNS

Given the exceptionally diverse operations which exist under part 135, a measured, balanced approach is best. There are large part 135 operators with sophisticated international operations as well as single pilot, single aircraft operators who conduct limited-range operations. However, there is a single aspect shared by nearly all part 135 on-demand carriers – they are small businesses. SMS solutions for small businesses must not be cost-prohibitive or so burdensome that business closure becomes imminent.

To address the industry's concerns, and noted in these comments, NATA suggests the best course of action is for the SMS final rule to provide a staggered compliance schedule of at least five years for small carriers, as further explained below.

According to data obtained from FAA sources more than half of all part 135 operators are issued Single Pilot, Single Pilot in Command (PIC), or Basic certificates. Over half of

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all part 135 operators have just one or two aircraft. FAA data also reveals that over 40% of 135 operators are authorized for VFR-only flights.

In 2012, the average part 135 on-demand operator had 19 aviation employees. FAA data also shows that only 7 part 135 on-demand operators average over 1,000 employees. The SBA standard for classification as a small business is 1,500 employees. Even now, this data remains an accurate representation of the industry.

As part of the preamble, and if necessary, within the regulation, NATA believes it is appropriate to specify any stages, or level progressions, expected of carriers. The ICAO SMS standard, AC 120-92B and the FAA's SMS Implementation Guide¹, all refer to SMS Implementation Levels² which range up to Level 4. However, the Draft AC 120-92D has removed these references and has used the word "components of safety management" (paragraph 3.1 Overview). NATA asks the FAA to provide clarity of expectations from operators in SMS implementation.

As described in Draft AC 120-92D, paragraph 3.3.2.4, Implementation Strategies, the FAA acknowledges that not all aviation organizations are required to maintain manuals or personnel in management positions. This approach is direct recognition that safety is not enhanced for Single Pilot or Single PIC operators by the manual and management position requirements. NATA concurs that, for aviation organizations not required to maintain manuals, the processes and procedures described in § 5.95, could be integrated into a Compliance Statement.

The FAA should clearly explain that for small operators without manuals, the combined safety policy statement/compliance statement is what the FAA minimally intends as an acceptable means of compliance. NATA recommends that the FAA outline this exception in the rule itself, along with the accompanying advisory materials.

The concept of confidential reporting of hazards is critical but becomes unachievable as business size decreases. Anonymous employee reporting is simply not possible at many small businesses. FAA needs to ensure that guidance and training recognize this issue,

¹SAFETY MANAGEMENT SYSTEM (SMS) IMPLEMENTATION GUIDE For: Safety Management System (SMS) Pilot Project Participants and Voluntary Implementation of Service provider SMS Programs [Safety Management System \(SMS\) Implementation Concept Revision 3 \(faa.gov\)](https://www.faa.gov/safety/sms/implementation-concept-revision-3)

² ICAO and the SMS Implementation guide refer to "Levels" whereas AC 120-92B refers to "Phases" but both are generally equivalent.

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as well as provide education to operators on best practices when business size limits the confidential reporting of hazards.

Recordkeeping and documentation requirements within the general part 135 community are also problematic. The FAA should allow operators to use third-party electronic systems that facilitate their participation in SMS. Furthermore, FAA should ensure that all businesses are able to use electronic systems for their SMS records without requiring them to obtain FAA approval (via Operations Specifications) for an electronic recordkeeping system. NATA also asks the FAA to allow provisions for communications retention procedures that might be appropriate in small organizations where communications are largely oral discussions.

Scalability for the smallest-sized businesses is paramount to achieving the goal of decreased risk and improved safety. However, the FAA has not articulated precisely *how* the small operator will implement SMS.

When the small owner-operator, who may have no other employees, looks at the part 5 regulations and draft AC, certain elements appear incongruous. One example is the Code of Ethics. To whom is such a document directed at in a single-pilot owner-operated carrier? A requirement for this type of business to create and possess a Code of Ethics is unnecessary. Instead, strong tools to help such an operator implement risk management principles are much more relevant.

TIERED ADOPTION STRATEGY

The FAA already categorizes part 135 operators based upon their size and complexity and this provides a well-known basis for SMS adoption. The current recognized certificate types within part 135 are Single Pilot (SP), Single Pilot in Command (SPIC), Basic, and Standard.

NATA proposes that the FAA target initial implementation of SMS requirements at the larger operators while delaying mandatory adoption by small operators. This approach will allow for rapid program submission for those already implementing SMS, permit the FAA to focus its limited resources on the mid-size operators who have not yet begun SMS adoption, and allow time for the FAA to better understand the unique challenges faced by small businesses. As that portion of the industry matures their programs, they will provide insight on how to best provide scalability for the smallest operators. This process should ultimately guide whether a regulatory mandate is

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appropriate for this class of operator and whether a modified SMS approach would better serve this community.

NATA recommends that FAA take a staged approach to mandatory SMS adoption. First tier adopters would be those most likely to already have a program or who have the expertise to craft and implement a program in a shorter timeframe and who would most clearly benefit from deploying SMS (given their fleet sizes, passengers carried, employee numbers, scope of operations). Many of these operators will need minimal support or guidance from the FAA and their local FAA officials. In many cases, operators who have already implemented SMS could (and should) be viewed by the FAA as a learning resource for inspectors who have not had much previous experience with SMS at small carriers.

The tiered approach will also provide opportunities for FAA to ensure its training, guidance, procedures, and systems are adequate to properly support SMS implementation at the remaining carriers.

Unfortunately, there have been no pilot programs or specialized analysis conducted to better support the concept of SMS at the smaller operators. The existing SMS voluntary program has largely targeted more sophisticated operators and, at least initially, had limited part 135 community participation. The best way to achieve scalability and generate sufficient data to support rulemaking would be for the FAA to pilot SMS programs with such operators (during the initial implementation phase for larger operators). This action would help determine the measures that are most impactful for their decision-making processes, identify and address deficiencies, and enhance the overall safety of operations without needlessly complicated documents and manuals that might only increase costs and not offer the operator truly meaningful insights.

In NATA's view, this initial cadre of carriers is best identified as those with a Standard part 135 authorization, with at least three aircraft authorized for commercial operations, who also hold approval for international operations.

Importantly, there are carriers that fall outside of this range who have acted or will act to implement SMS. Therefore, the FAA should also permit any carrier to submit their SMS to the FAA for acceptance regardless of the compliance tier to which they are assigned.

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The second stage of adoption should include the remaining Standard part 135 operators and those in the Basic part 135 certificate category who do not hold deviations from manuals and/or management positions.

The remaining Basic carriers along with the SP and SPIC operators should be the last tier of implementation. NATA believes it is best to provide this class of carriers with a compliance date of at least 5 years from the final rule. This will provide FAA and industry with ample time to learn more about the practical implementation of SMS at small carriers, for the creation and deployment of tailored educational materials, and for the development of new technologies to support SMS. Novel solutions, such as guided process development or interactive online programs, allowing similar operators to collaboratively share safety information or strategies for risk mitigation may ultimately prove more valuable for these operators than the traditional view of what a SMS looks like in the larger carrier format.

The end goal of the FAA should be to enhance safety awareness and hazard mitigation commensurate with the applicable risk. Requiring a small operator to create a compliance statement or SMS manual as a “box checking” exercise will not improve safety. Providing these carriers with additional time in a final rule will allow this sector and safety entrepreneurs to develop SMS solutions that are effective, appropriate, and economical.

SMALL OPERATOR SOLUTIONS

FAA has the responsibility to impose SMS regulations on small operators only if it can be done in such a way that safety is enhanced, and burdens are minimized. There are instances where the FAA has turned to outside providers for compliance assistance – SMS programs are another area where this practice is justified.

The FAA’s recognition of certain training programs in meeting the regulatory requirements for part 139 airport supervisor fire safety training is one example. NATA believes that novel, collaborative solutions are an ideal pathway for small operators to initiate and benefit from SMS programs. FAA should encourage development of such programs and formally recognize those that satisfy part 135 minimum compliance standards for SMS.

Using a SP or SPIC operator as an example, a simple web-based application could provide them with SMS educational materials, allow for the generation of any necessary

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FAA documents, and be deployed to engage the pilot in activities to improve safety. A system could be developed to allow submission of safety-related data that would then be combined (after de-identification) with data from other operators to produce meaningful analysis. Application hosts could also facilitate online interactions between operators to discuss risk management strategies and best practices.

FAA STAFFING AND TRAINING

NATA is concerned that the FAA itself is not adequately prepared. Lack of consistency of interpretations and guidance from the field is an on-going issue that NATA has partnered with FAA to address for many years. While there has been meaningful action from headquarters to enact consistency measures, problems still occur, and it is likely that gaps will emerge with SMS.

Prior to implementation of a final rule, FAA must also ensure that the inspector workforce has sufficient training to partner with industry on implementation. One way to achieve this is by having combined training/listening sessions between industry and agency.

APPLICABILITY TO FRACTIONAL AIRCRAFT PROGRAMS

The Fractional Ownership Aviation Rulemaking Committee (FOARC), the first ARC constituted by the FAA, was chartered for the purpose of addressing the proper regulatory oversight of fractional aircraft ownership programs. Among the key outcomes sought by industry and endorsed by the FAA in the FOARC was, particularly in the case of significant requirements, that the safety standards applied to fractional programs (part 91, subpart K) would mirror those applied to similar part 135 operators. In this instance, the FAA has not included the fractional programs. NATA believes that their inclusion is consistent with the FAA's express intentions when promulgating the 91K rules.

Furthermore, because many fractional programs also maintain a part 135 certificate they will already have SMS under this rule. The FAA must consider how certain aspects of SMS will apply to these dual operators. For example, the ethics responsibility and accountable executive requirements should not be construed in a way to undermine operational safety but so that the fractional and on-demand carrier operations occur under a unified SMS.

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Because this NPRM does not include fractional programs, they have not received appropriate notice or comment opportunity. Further, a final rule imposing SMS on that segment requires a SNPRM.

PART 135 PILOT REST AND DUTY ARC

NATA questions why the FAA chose to include the Part 135 Pilot Rest and Duty ARC Recommendation Report among the supplemental materials provided to support this rulemaking. As a member of that ARC, NATA is aware that a full consensus was not reached by the ARC members. This SMS rulemaking is an inappropriate vehicle to resolve any ARC recommendations impacting part 135 pilot flight, duty, and rest recommendations. The SMS NPRM does not include a single reference to that ARC or the existing regulations for pilot duty and rest in part 135. Lacking any context for the inclusion of this document, any action to revise recordkeeping requirements or hours of service regulations in this NPRM is contrary to proper procedure as prior notice and solicitation of comment was not provided. NATA asks FAA to clarify its intentions regarding the inclusion of that document.

CONCLUSION

SMS is a valuable safety tool supported by NATA and its members. However, the experiences and structures for implementation are based upon those found at large, complex operators. The FAA is responsible for ensuring that the operators already willing to adopt SMS programs are not hindered by agency acceptance. At the same time, the agency is duty bound to provide the support, adaptations, and guidance necessary for small businesses to benefit from SMS. NATA appreciates consideration of our views and is ready to serve as a partner in securing a successful outcome.

Sincerely,

Alan Stephens
VP of Regulatory Affairs