Safety Management System

ANPRM, 74 Fed. Reg. 36414 (July 23, 2009)
Comments on the Advanced Notice of Proposed Rulemaking
Submitted through the Federal eRulemaking Portal at http://www.regulations.gov

Submitted by the
Aviation Suppliers Association

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Docket Operations, M–30
U.S Department of Transportation
1200 New Jersey Avenue, SE.
West Building Ground Floor, Room W12–140
Washington, DC 20590

Dear Sir or Madam:

Please accept these comments on the ANPRM, which sought public comment on the idea of a Safety Management Systems (SMS) rule.

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Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace.

ASA members purchase aircraft parts from FAA-approved manufacturers, and from other FAA certificate-holders. ASA members regularly obtain maintenance, repair and overhaul on their used parts. ASA members also support air carriers by selling aircraft parts to them. In addition, 25% of ASA's membership hold FAA repair station certificates, and a number of them also hold manufacturing and air carrier certificates. Clearly, ASA's membership intersects and is intertwined with the community that would be affected by a SMS rule.

While the FAA does not regulate aircraft parts distribution directly, ASA members have also historically engaged in voluntary adoption of quality and management systems that mirror the regulatory requirements of their regulated business partners. This is a practical necessity in order to continue to do business with the regulated parties.

ASA represents a community that has concerns about Safety Management Systems because they are affected directly, as regulated parties, and indirectly, as parties supporting the safety mission of regulated parties. An SMS policy has the potential to affect ASA's members and customer base. ASA and ASA's members are committed to safety, and seek to give input to the FAA regarding FAA policies so that the aviation industry and the government can work collaboratively to create the best possible guidance for the industry and the flying public.

Summary of the Comments

ASA applauds the FAA's efforts to continuously support safety. ASA is recommending that SMS be implemented initially through voluntary compliance mechanisms, similar to the very successful AC 00-56 program. This will permit the FAA to better judge what elements of SMS are essential to safety, what elements are beneficial (but not essential) to safety, and what elements may actually be harmful to achieving safety goals.

Comments on the ANPRM

Background

The FAA has requested comments on the Safety Management Systems rulemaking. This request was issued in the form of an ANPRM – Advance Notice of Proposed Rule Making – in the Federal Register.

A Safety Management System (SMS) is the formal process of using System Safety practices in an organization's everyday activities to control risk. It is like a quality assurance system that uses risk-based analysis to looks forward, predict future needs, and permit a company to commit resources today to address the future safety needs. SMS is an approach that can be used throughout the aviation industry to meet System Safety standards set by the International Civil Aviation Organization (ICAO).

ICAO has asked states to implement SMS programs and State Safety Programs (State Safety Programs are risk-based analysis programs for national aviation authorities to use to better manage safety with the often-limited resources available to the NAAs).

The FAA has issued the ANPRM in order to ask for industry's opinions about some of the core elements of SMS. Although a primary focus of this ANPRM is on collecting data about existing SMS programs, the FAA indicated that it would also be important for industry to share information about non-SMS programs that meet the same objectives as SMS programs.

Accreditation – A Model for SMS

Many ASA members have implemented quality assurance systems that meet many of the requirements of an SMS program. This has been accomplished voluntarily by the distribution industry as part of the Voluntary Industry Distributor Accreditation Program (VIDAP).

The Voluntary Industry Distributor Accreditation Program (VIDAP), was published by the FAA in Advisory Circular 00-56 in September 1996. The FAA set basic quality standards that they expected every accredited distributor to meet, and they chose several sets of industry standards (e.g. ASA-100 and ISO 9000) to supplement those quality standards. In order to become accredited, a distributor must meet both the standards established in AC 00-56 and also the additional standards set in the industry standard. This variety of supplemental industry standards permits companies to establish a Distributor Accreditation System that

meets the individual needs of the company while still supporting the safety performance goals published in the FAA and industry standards.

Through voluntary standards, a noticeable change has occurred in the aircraft parts distribution industry. Distributors have become positive forces for safety in the industry – identifying potential safety issues and reporting them to appropriate authorities in order to resolve issues before they become safety problems.

The distributors have also had a positive effect on other sectors of the industry, for example the program has had a positive effect on documentation standards that are used to certify and ensure regulatory compliance, including a positive effect on enhancing traceability from the manufacturer to the end-user, especially for rotable parts that may have had inadequate traceability in the past. This is an important addition to safety despite the fact that the FAA regulations do not require traceability.

For a more detailed account of the positive effects that distributor accreditation has had on safety, see Voluntary Industry Distributor Accreditation Program (AC 00-56), FY 2004 Audit Report, *prepared by* Aircraft Certification Service & Flight Standards Service, FAA-IR-04-03 (September 22, 2004).

It is Important for SMS to Foster a Variety of Systems that all Support a Common Safety Goal

A SMS is a management system. It is meant to accomplish specific goals but it may be generalized as fitting within the category of management systems.

Management systems can help a company meet important goals – like safety goals, regulatory compliance goals, and quality goals. But they are only tools for meeting those goals. A safety management system should not be the FAA's ultimate goal; rather the FAA's goal should be to increase safety. A tool that helps a company increase safety is a means to an end – not an end in itself.

Tools come in many sizes. A safety management system that perfectly meets the safety needs of a very large company may be an inappropriate fit for a medium sized company – and that same system might suffocate or bankrupt a small company. For this reason, the regulations implementing safety management systems should focus on the goals to be achieved, rather than the manner in which those goals are achieved.

Like all tools, a management system can become outdated. A company can outgrow the system, or modern technology and paradigms may outgrow the tool. The system itself can even become an impediment to meeting the original

established goals, especially when there are better tools for meeting those goals. This is another reason that the regulations implementing safety management systems should focus on the goals to be achieved, rather than the manner in which those goals are achieved. The regulations must establish guidelines that permit a wide variety of solutions.

The FAA's regulatory lead times are very long.[1] We cannot rely on future rulemaking efforts to correct limitations imposed by the initial SMS rule, especially when some companies might have vested competitive reasons to oppose updates in the rules.

There has been a tendency in recent years for FAA resources to be wasted on disputes over manual formatting, and other non-essential elements of quality systems that have no impact on safety or quality. It is natural for such elements to attract the attention of government employees – it is easy to focus on a formatting issue, but harder to focus on technical issues that genuinely affect safety. This sort of waste of government resources should be rejected in any SMS rule.

For these reasons, it is important for the FAA to establish safety management standards that foster a wide variety of potential management systems and tools.

Avoiding Problems in an SMS System

The best way to avoid problems in the initial implementation of a SMS system is to take a four-step approach to implementation:

> (1) Recognize where the FAA has already established the elements of SMS, and forbear from redundancy;

> (2) Specifically identify those elements of an SMS program that are not yet implemented in existing FAA regulations (the 'Additional Elements');

> (3) Establish voluntary compliance mechanisms for those Additional Elements;

> (4) Review the Additional Elements implementation process and use feedback from the process to identify Additional Elements that may need to be treated differently (e.g. dropped from the recommended guidelines if

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[1] For example, the FAA has just published a manufacturing rule on October 16, 2009, that was begun as an ARAC project over 16 years ago. The ARAC project forwarded a complete rule draft to the FAA in February 1999 (this included a full preamble for the NPRM). It took over ten years to get the completed rule from ARAC proposal to final rule.

they are not helpful, and implemented through regulation if they are found to be essential).

This permits the FAA to roll out the system quickly, without the delay of slow regulatory implementation and without the threat of litigation that has slowed implementation of some rules.

Why is Voluntary Compliance Acceptable? And Why is it a Good Idea?

There is no particular safety concern driving immediate implementation of SMS.[2] Rather, SMS is viewed as the next tool for preserving safety within the aviation industry.

SMS has specifically come to the FAA through a recommendation of the International Civil Aviation Organization (ICAO). ICAO has historically been an instrument of harmonization for existing airworthiness standards and concerns. The recommendation for SMS program regulations reflects a new step for the ICAO – recommendation of new programs rather than harmonization of existing ones. This is not meant to diminish the potential value of SMS; but it is meant to cast it in its appropriate context: a new program for which no specific needs analysis has been stated.

A gap analysis of the existing regulations demonstrates that many of the elements of SMS are already implemented in the existing FAA regulations.

Because SMS is a good idea that is not yet needed, a voluntary approach to formal implementation of SMS would permit the FAA and industry to more easily modify the SMS program to drop those elements that are seen as impediments to safety, to impose by regulations those elements that are identified as essential to safety, and to encourage voluntary adoption of those elements that reflect useful paradigms, but that may not be necessary to every safety management system.

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[2] NTSB Recommendation A-07-10 suggested that the FAA "[r]equire that all 14 *Code of Federal Regulations* Part 121 operators establish Safety Management System programs." However, this recommendation was made in the context of a flight that was operated unprofessionally by pilots who failed to maintain minimum airspeed and then failed to follow established checklists to protect the airworthiness of the aircraft – an SMS would not have inherently prevented that accident. An SMS was deemed to be a potential solution because of a past pattern of misbehavior among pilots at the carrier; however the past misbehavior was already violating the regulations. Adding additional punitive regulations would have provided the FAA with redundant enforcement mechanisms but would still not fix the problem, unless the SMS had been so intrusive as to surrender day-to-day management to the FAA.

Can We Accomplish Safety Without an Enforcement Mechanism?

The threat of enforcement action is not necessary in order to achieve positive regulatory results.

The FAA's VIDAP program carries no penalties and few regulatory incentives, but it has been lauded as a positive force in aviation safety. The only penalty associated with this program is the threat of revocation of accreditation, but the marketplace has made this threat a viable mechanism for assuring continued compliance.

A similar example is the accreditation programs of voluntary organizations such as Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC). This program carries no penalties beyond revocation of accreditation. Nonetheless, the 770 companies, universities, hospitals, government agencies and other research institutions in 31 countries that have earned AAALAC accreditation take it very seriously and compliance rates with the AAALAC standards are excellent.

The EPA Energy Star program is another example of a government program that has achieved substantial results with modest incentives and no penalties.

Another government program that has no regulatory force but has been a significant instrument of compliance to standards is the National Institutes of Health (NIH) Recombinant DNA Guidelines, which have no regulatory force but are carefully followed by research universities.
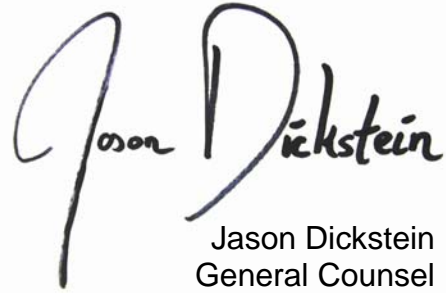
These examples show that voluntary guidelines can have a significant effect on an industry in order to promote change. And the benefit of these voluntary guidelines is that it is significantly easier to design a program that is targeted to meeting the program's goals (aviation safety, in our case) when the system is flexible enough to permit the company to develop new ideas with the support of a government agency without fear that improper implementation will lead to punitive action.

Conclusion

In summary, we recommend that the FAA develop, with industry, a voluntary SMS program. This should be followed by FAA analysis of the success of the SMS program, and implementation of modifications to the program (including regulation of essential elements and elimination of elements that are found to not support safety).

Your consideration of these comments is greatly appreciated.

Respectfully Submitted,

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Aviation Suppliers Association