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Safety Management System for Certificated Airports; Proposed Rules

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 139**

[Docket No.: FAA-2010-0997; Notice No. 16-04]

RIN 2120-AJ38

**Safety Management System for Certificated Airports**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** On October 7, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to require certificate holders to establish a safety management system (SMS) for the entire airfield environment, including movement and non-movement areas, to improve safety at airports hosting air carrier operations. After reviewing the comments received and conducting further internal analysis, the FAA is amending that proposal. The FAA now proposes to require an SMS only for a certificated airport classified as a small, medium, or large hub airport in the National Plan of Integrated Airport Systems; serving international air traffic; or having more than 100,000 total annual operations. The FAA is also proposing changes that would extend the implementation period from 18 to 24 months; require submission of an implementation plan within 12 months instead of 6 months of the effective date of the final rule; modify the training requirements; ensure consistency among various FAA SMS initiatives, and reduce the implementation burden.

**DATES:** Send your comments on or before September 12, 2016.

**ADDRESSES:** 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, 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Bring 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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* In accordance with 5 U.S.C. 553(c), the Department of Transportation (DOT) solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket. Or, go to the Docket Management Facility 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.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule, contact Keri Lyons, Office of Airports Safety and Standards, Airport Safety and Operations Division, AAS-300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8972; email [keri.lyons@faa.gov](mailto:keri.lyons@faa.gov).

**SUPPLEMENTARY INFORMATION:** Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. This discussion includes related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA is proposing this rulemaking under the authority described in Subtitle VII, part A, subpart III, section 44706, "Airport operating certificates." Under that section, Congress charges the FAA with issuing airport operating certificates (AOC) that contain terms that the Administrator finds necessary

to ensure safety in air transportation. This proposed rule is within the scope of that authority because it requires certain certificated airports to develop and maintain an SMS. The development and implementation of an SMS ensures safety in air transportation by assisting these airports in proactively identifying and mitigating safety hazards.

**I. Executive Summary***A. Purpose of This SNPRM*

The increasing demands on the U.S. air transportation system, including additional air traffic and surface operations and airport construction, have the potential to heighten risk to operating aircraft. Historically, the approach to aviation safety was based on the reactive analysis of past accidents and the introduction of corrective actions to prevent the recurrence of those events. An SMS, however, helps airport operators to proactively identify potential hazards in the operating environment, analyze the risks of those hazards, and mitigate those risks to prevent an accident or incident. In its most general form, SMS is a set of decision making tools that an airport operator would use to plan, organize, direct, and control its everyday activities in a manner that enhances safety.

On October 7, 2010, the FAA published an NPRM entitled "Safety Management System for Certificated Airports" (75 FR 62008). In the NPRM, the FAA proposed to require all 14 Code of Federal Regulations (CFR) part 139 certificate holders to establish an SMS to improve the safety of their aviation-related activities.

The FAA received 65 comments in response to the NPRM from a variety of commenters. Because of the complexity of the issues and concerns raised by the commenters, the FAA began to reevaluate whether deployment of SMS at all certificated airports was the most effective approach. As part of this process, the FAA looked at applicability for various categories of certificate holders to determine which option would maximize safety benefits in the least burdensome manner. While the FAA is proposing a preferred alternative in this SNPRM, the FAA requests comments on the other applicability alternatives discussed in this SNPRM.

The preferred alternative harmonizes with the intent of ICAO SMS standards by including all certificated airports accepting international operations. The FAA supports conformity of U.S. aviation safety regulations with ICAO standards and recommended practices and believes the SNPRM meets the

intent of the ICAO standard in a way that complements existing airport safety regulations in part 139.

The FAA continues to believe that an SMS can address potential safety gaps through improved management practices.<sup>1</sup> SMS's proactive emphasis on hazard identification and mitigation, and on communication of safety issues, would provide certificate holders with robust tools to improve safety. While the comments generated some changes to the proposal in this document, most of the proposed core elements of the SMS program remain in this SNPRM.

*B. Summary of the Major Provisions of the SNPRM*

The major change in this SNPRM is to the proposed applicability. Rather than requiring an SMS at all certificated airports, the FAA now proposes to require an SMS be developed, implemented, maintained, and adhered to at any certificated airport:

- Classified as a small, medium, or large hub<sup>2</sup> airport in the National Plan of Integrated Airport Systems (NPIAS);<sup>3</sup>
- Identified by the U.S. Customs and Border Protection (CBP) as a port of entry (under 19 CFR 101.3), designated

international airport (under 19 CFR 122.13), landing rights airport (under 19 CFR 122.14), or user fee airport (19 CFR 122.14) (collectively referred to throughout this proposal as "international airports"); or

- Identified as having more than 100,000 total annual operations (according to best available data).

Additionally, the FAA proposes extending the implementation period from 18 to 24 months, requiring submission of an implementation plan within 12 months instead of 6 months of the effective date of the final rule, and changes to the training requirements. Other changes have also been made to ensure consistency among various FAA SMS initiatives and to reduce the implementation burden.

Throughout the document, the FAA requests specific comment on the following issues:

- What other methods may be available to accurately account for and determine applicability based on annual operations or whether the FAA should use a different baseline for determining applicability;
- What other methods may be available to identify international airports;

- What types of data or other information certificated airports could provide under a national reporting database;

- Whether the estimates of the average pool of employees needing comprehensive SMS training is an accurate average across all airports affected by the proposal;

- What types of job roles would require comprehensive SMS training; and

- Whether the implementation of the proposed accountable executive definition is feasible.

*C. Summary of the Costs and Benefits*

This proposed rule would require certain certificate holders under part 139 to establish an SMS. SMS is a set of tools designed to help airports effectively integrate formal risk control procedures into normal operational practices to improve operational safety. Benefits are estimated at \$370.8 million (\$225.9 million present value) and total costs are estimated at \$238.9 million (\$157.5 million present value), with benefits exceeding costs. The following table shows benefits and costs of the alternatives over 10 years.

Base case	All (\$)	Class I (\$)	International (\$)	L, M, S and >100K ops (\$)	Preferred alternative: L, M, S, >100K ops, and international (\$)
Benefits .....	\$382,987,281	\$368,096,671	\$360,907,166	\$356,128,301	\$370,788,457
Costs .....	471,104,787	341,021,606	215,010,997	163,760,850	238,865,692
Net Benefits .....	- 88,117,506	27,075,065	145,896,169	192,367,451	131,922,764
PV Benefits (7%) .....	233,282,770	224,210,033	219,830,291	216,919,352	225,850,869
PV Costs (7%) .....	307,842,595	223,584,687	141,796,001	108,819,973	157,496,312
PV Net Benefits (7%) .....	- 74,559,825	625,346	78,034,290	108,099,379	68,354,557
PV Benefits (3%) .....	307,499,272	295,542,114	289,769,378	285,932,407	297,704,052
PV Costs (3%) .....	389,440,320	282,304,199	178,432,284	136,340,226	198,211,977
PV Net Benefits (3%) .....	- 74,559,825	625,346	78,034,290	108,099,379	68,354,557

Mitigation Costs: Not quantified, estimates not included. Given the range of mitigation actions possible, it is difficult to quantify potential benefits.

The estimated costs of this rule do not include the costs of mitigations that operators could incur as a result of conducting the risk analysis proposed in this rule. Given the range of mitigation actions possible, it is difficult to provide a quantitative estimate of both the costs

and benefits of such mitigations. We anticipate that operators will only implement mitigations where benefits of doing so exceed the costs of mitigations. In order for the estimated benefits to exceed the costs of the rule, the mitigation costs must be below \$68.4

million over 10 years (discounted at 7%). The FAA requests comment on this assumption, as well as data regarding costs and benefits associated with any mitigations implemented through voluntary SMS programs.

<sup>1</sup> Additional information regarding the purpose of the proposed SMS requirement can be found in the "Background" section of the NPRM (75 FR 62008).

<sup>2</sup> The FAA's use of the term hub airport is different than that of airlines, which use the term to denote an airport with significant connecting traffic by one or more carriers. As defined in 49 U.S.C. 47102, large hubs are those airports that account for 1 percent or more of total U.S.

passenger boardings (U.S. passenger enplanements); medium hubs are airports that account for between 0.25 percent and 1 percent of total U.S. passenger boardings; and small hubs are airports that enplane 0.05 percent to 0.25 percent of total U.S. passenger boardings.

<sup>3</sup> The Secretary of Transportation is required to maintain a plan for developing public-use airports that are important to the national transportation

system. The NPIAS identifies the types of projects and estimated costs eligible for federal financial assistance necessary to provide a safe, efficient, and integrated system of airports. The FAA Office of Airports maintains the NPIAS and publishes a Report to Congress every other year. Current and past reports are available at [http://www.faa.gov/airports/planning\\_capacity/npias/](http://www.faa.gov/airports/planning_capacity/npias/).

## II. Background

### A. NPRM

In the NPRM, the FAA proposed to require all part 139 certificate holders to develop and implement an SMS to improve the safety of their aviation-related activities. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.

The original comment period was to close on January 5, 2011, but, in response to several commenters' requests, the FAA extended the comment period to July 5, 2011. Additionally, the FAA permitted commenters to submit clarifying questions to the docket during the comment period. The FAA answered these questions before the comment period closed in a document that was placed in the docket (the "Responses to Clarifying Questions").<sup>4</sup> The FAA also published a technical report detailing results of the Office of Airports' SMS pilot studies that was also placed in the docket.<sup>5</sup>

In the NPRM, the FAA proposed a new subpart E that would have: (i) Required all holders of an airport operating certificate (AOC) to have an approved airport SMS; (ii) prescribed the components of an SMS; and (iii) prescribed implementation requirements for an airport SMS. Certificate holders would have implemented SMS throughout the airport environment, including the movement and non-movement areas (e.g., runways, taxiways, run-up areas, ramps, apron areas, and on-airport fuel farms).

Under the proposal, the FAA envisioned an SMS as an adaptable and scalable system. For example, the proposal permitted certificate holders to maintain a separate SMS manual in addition to the Airport Certification Manual (ACM), or maintain SMS documentation directly in the ACM. Options such as these would have permitted certificate holders that operate multiple airports maximum

flexibility in the development of their SMS. Similarly, the proposal included a requirement for certificate holders to establish a system for identifying safety hazards and a systematic process to analyze hazards and their associated risks. By not prescribing any one means for identifying hazards or analyzing risk, the proposal permitted certificate holders flexibility in developing scalable and adaptable processes under their SMS.

### B. Summary of Comments on NPRM

The FAA received 65 comments in response to the NPRM from a variety of commenters including air carriers, airport operators/certificate holders, representatives of airline employees, trade associations, an airport user group, attorneys general, consultants, universities and private citizens. Commenters included:

- *Air carriers:* Delta Airlines,
- *Airport operators/certificate holders:* Alaska Department of Transportation and Public Facilities, Austin-Bergstrom International Airport (TX), Bangor International Airport (ME), City of Albuquerque (NM), City of Merced (CA), City of Phoenix (AZ), City of Prescott (AZ), Clark County Department of Aviation (NV), Coastal Carolina Regional Airport (NC), Columbus Regional Airport Authority (OH), Contra Costa County (CA), Dallas/Fort Worth International Airport (TX), Denver International Airport (CO), Floyd Bennett Memorial Airport (NY), Glynn County Airport Commission (GA), Hartsfield-Jackson Atlanta International Airport (GA), Houston Airport System (TX), Huntingburg Airport (IN), Indianapolis Airport Authority (IN), Jacksonville International Airport (FL), Lee County Port Authority (FL), Louisville Regional Airport Authority (KY), Manchester-Boston Regional Airport (MA), March Inland Port Authority (CA), Maryland Aviation Administration (MD), Miami-Dade Aviation Department (FL), Modesto City-County Airport (CA), Myrtle Beach International Airport (SC), Norm Y. Mineta San Jose International Airport (CA), Pitkin County (CO), Pittsburgh International Airport (PA), Port Authority of New York and New Jersey (NY/NJ), Port of Portland (OR), Rapid City Regional Airport (SD), Rochester Airport Company (MN), San Antonio Airport System (TX), Santa Barbara Airport (CA), Tri-Cities Regional Airport (TN), Tucson Airport Authority (AZ), Tulsa Airport Authority (OK), Wayne County Airport Authority (MI),

- *Representatives of airline employees:* Airline Pilots Association (ALPA),

- *Trade associations:* Airlines for America (A4A), Aircraft Owners and Pilots Association (AOPA), Airports Council International-North America (ACI-NA), American Association of Airport Executives (AAAE), American Association for Justice (AAJ), Colorado Airport Operators Association (CAOA), Experimental Aircraft Association (EAA), National Air Transportation Association (NATA),

- *Airport users groups:* Prescott Airport Users Association,

- *Attorneys General:* Attorney General for the District of Columbia, Attorney General for the State of Oklahoma,

- *Consultants and universities:* Landry Consultants and Dave Fleet Consulting, Purdue University, the University of Southern California Aviation Safety and Security Program (U.S.C.), and

- Eight individuals and 9 anonymous submissions.

One individual submitted a comment that was out-of-scope, and portions of Clark County, Dallas-Fort Worth International, and AOPA's submissions were out-of-scope.

In addition to the above, the FAA received clarifying questions from the following entities during the comment period: AAAE, ACI-NA, Austin-Bergstrom International Airport, Fairbanks International Airport, Fresno Yosemite International Airport, Landry Consultants and Dave Fleet Consulting, Louisville Regional Airport Authority, Maryland Aviation Administration, Port of Seattle, and U.S.C.. The FAA answered these questions in the Responses to Clarifying Questions.<sup>6</sup> Those questions are not addressed in this document.

### C. Need for SNPRM

While reviewing the comments to the NPRM, the FAA began to re-evaluate whether requiring an SMS at all certificated airports was the most effective option. As part of this process, the FAA looked at the applicability for various categories of certificate holders to determine which option would maximize safety benefits in the least burdensome manner. While the FAA is proposing a preferred alternative in this SNPRM, the FAA requests comments on the other applicability alternatives discussed in this SNPRM.

<sup>4</sup> "FAA Responses to Clarifying Questions About Proposed Rulemaking for SMS for Certificated Airports" is available at <http://www.regulations.gov/#!documentDetail;D=FAA-2010-0997-0073>.

<sup>5</sup> *Safety Management System Pilot Studies (Technical Report)* is available at <http://www.regulations.gov/#!documentDetail;D=FAA-2010-0997-0074>.

<sup>6</sup> FAA Responses to Clarifying Questions (May 24, 2011), available at <http://www.regulations.gov/#!documentDetail;D=FAA-2010-0997-0073>.

### III. Discussion of Proposals in the SNPRM

#### A. Differences Between the SNPRM and the NPRM

##### 1. Applicability

In the NPRM, the FAA proposed that all 544<sup>7</sup> certificated airports be covered by the SMS requirements.

Based on comments and other information gathered, it became evident that application of SMS across all certificated airports was not practical. In response, the FAA revised its assumptions used to calculate overall costs associated with this SNPRM's proposal. The FAA also reviewed additional accident and incident databases to obtain more accurate assumptions of benefits derived from an SMS. These additional databases included the FAA Accident and Incident Database (AIDS), NASA's Aviation Safety Reporting System (ASRS), the FAA's Wildlife Strike Database, and the FAA's Runway Incursion Database.

Using these revised cost and benefit estimates, the FAA considered a range of alternatives to determine how to apply an SMS requirement that would reduce risk at the largest group of airports while still producing net benefits. The FAA focused on airports with the highest passenger enplanements and largest total operations so that safety benefits would flow to the overwhelming majority of aircraft operations in the United States. The FAA also focused on incorporating airports with international passenger operations to ensure conformity with international standards and recommended practices. To that end, the FAA developed the following alternatives for additional analysis:

- All part 139 airports (as originally proposed) (544 airports covering 99.8% of U.S. passenger enplanements);
- Airport operators holding a Class I AOC (388 airports covering 99.7% of U.S. passenger enplanements);
- Certificated international airports (240 airports covering 96.1% of U.S. passenger enplanements);
- Large, medium, and small hub airports (as identified in the NPIAS) and certificated airports with more than 100,000 total annual operations (177 airports covering 97.5% of U.S. passenger enplanements); and
- Large, medium, and small hub airports, certificated airports with more than 100,000 total annual operations, and certificated international airports

(268 airports covering 98% of U.S. passenger enplanements).

Because the FAA chose to analyze various alternatives based on classifications outside the scope of part 139 (e.g., hubs or international status instead of AOC class), it relied on the best available information to develop the list of affected airports under each alternative. To identify those airports classified as large, medium, or small hubs, the FAA relied on the 2011–2015 NPIAS, current at the time of this analysis. Similarly, the FAA relied on annual operations data reported through FAA Form 5010–1, Airport Master Record (downloaded August 1, 2012). The FAA relied on data obtained from Title 19 of the CFR (*see* §§ 101.3, 122.13, 122.14, 122.15) and the CBP to identify certificated airports authorized to accept international traffic.

After reviewing each of the alternatives and the associated costs and benefits of each, the FAA's preferred proposal would require an SMS be developed, implemented, maintained, and adhered to only at a certificated airport:

- Classified as a small, medium, or large hub airport in the NPIAS; or
- Identified as an international airport; or
- Identified as having more than 100,000 total annual operations.

This preferred alternative covers 268 airports across Classes I, II, III, and IV, thus eliminating the NPRM's SMS requirements for 276 airports that have few passenger enplanements and less complex operations. The airports that comprise this alternative account for over 98% of all passenger enplanements in the U.S.

While simply applying the proposed SMS requirements to large, medium, and small hub-certificated airports would account for most of this traffic, many critical airports would not be included because they do not meet those enplanement thresholds. Simply accounting for airports with higher passenger enplanements fails to acknowledge the many other complex, certificated airports that have significant levels of aircraft operations.<sup>8</sup> Therefore, to ensure that these busy airports are covered by the proposal, the preferred alternative includes airports with more than 100,000 total annual operations based on their operations data submitted through FAA Form 5010–1, Airport Master Record available on August 1, 2012. The FAA acknowledges that data submitted through FAA Form 5010–1 may be estimates for airports

that do not have an air traffic control tower. While more definitive data may be available through the FAA's air traffic control tower counts, this information may not be readily available, may not be accessible to the public, and does not account for certificated airports that do not have an air traffic control tower. The FAA requests comments on what other methods may be available to accurately account for and determine the proposed rule's applicability based on annual operations, or whether the FAA should use a different baseline for determining applicability.

The preferred alternative also harmonizes with the intent of International Civil Aviation Organization (ICAO) SMS standards by including all certificated airports accepting international operations. In December 1996, the FAA published Advisory Circular (AC) 150/5000–5C, Designated U.S. International Airports, which explained the different categories of U.S. airports designated to serve international air traffic and provided a list of those airports. However, the FAA cancelled that AC in September 2010 when it published AC 150/5000–16, Announcement of Availability of the Guide for Private Flyers—U.S. International Airports. The Guide for Private Flyers, published by the CBP, lists all U.S. international airports, designated airports, landing rights airports, and user fee airports. It also defines the term “international airport” and clarifies the use of the word “international” in an airport name. Since the FAA no longer maintains its own list of international airports, the FAA believes the CBP list serves as the best available source of this information because it is developed based on Title 19 (Customs Duties) of the CFR. The FAA believes this approach corresponds with the intent of ICAO Annex 14 standards. The FAA requests comments on this approach, and what other methods may be available to identify international airports.

The FAA acknowledges that an airport's status in any one of these categories may change over time. For example, a small hub airport may become a nonhub airport during the FAA's annual update of passenger enplanement data if its enplanements fall below 0.05% of the total U.S. passenger enplanements. Similarly, an airport not currently considered a hub might see its enplanements increase making it a small hub. The same case could be made for annual operations and international status.

<sup>7</sup> The number of certificated airports at the time of SNPRM development.

<sup>8</sup> Section V(B), Applicability contains detailed analysis of these alternatives.

In these cases, the FAA would review each airport's status annually,<sup>9</sup> consistent with published enplanement data,<sup>10</sup> to determine which airports are covered by the SMS requirement then in effect. If there is a change to an airport's status that affects its need to comply with those SMS requirements, the FAA would then notify the certificate holder in writing of its changed status. If the change would require the certificate holder to comply with those SMS requirements, the certificate holder would then have two years to comply with the SMS requirements then in effect. Certificate holders whose status changed to be outside the scope of the SMS requirements then in effect would be encouraged to voluntarily maintain and adhere to an SMS. The FAA would maintain a list of those certificate holders meeting the required applicability on its public Web site, updating the list annually.

The FAA requests comment on this approach. Specifically, if a certificate holder meets the threshold to trigger an SMS requirement, should the certificate holder be required to maintain an SMS even if it no longer meets the threshold? Should a certificate holder meet the applicability threshold for two consecutive years prior to triggering an SMS requirement?

## 2. Implementation

Under this proposal, certificate holders would be required to develop and implement an SMS within 2 years of the effective date of the final rule. The NPRM originally proposed SMS implementation within 1 year from the effective date of the final rule. This change responds to commenters' requests for additional time to implement SMS.

The FAA recognizes the complexity of implementing SMS in the airport environment and, therefore, increased the timeframes for implementation. The FAA requests comments whether this proposed implementation timeframe is sufficient. Comments should be supported by specific data demonstrating a different implementation timeframe is necessary.

## 3. Training

The NPRM proposed an SMS training requirement for all employees and

tenants with access to the movement and non-movement areas of the airport. To maximize the potential for proactively identifying hazards, the intent was to ensure that individuals authorized access to the movement and non-movement area received training. The FAA's intent was to create a broad training requirement, allowing certificate holders flexibility in how they trained persons with access to these areas. This flexibility included allowing train-the-trainer programs and training specific to the person's role in the SMS. This would allow certificate holders to provide orientation to the majority of persons accessing the non-movement and movement areas of hazard identification and reporting, rather than training on all of the certificate holder's SMS initiatives.

Commenters appear to have interpreted the proposed training requirement to be cumbersome, time consuming, and excessively costly. In light of these comments and lessons learned from the pilot studies, this proposal offers a two-pronged approach to training: (i) Comprehensive SMS training specific to the individual's role and responsibility in implementation and maintenance of the SMS; and (ii) hazard awareness and reporting awareness orientation for all other individuals with access to the movement and non-movement areas.

The FAA expects certificate holders to provide training appropriate to the person's role in the certificate holder's SMS. For example, those persons responsible for analyzing hazard reports to determine action should be properly trained in Safety Risk Management (SRM) and hazard assessment procedures. Individuals, including staff and/or managers, with responsibility for daily oversight of the SMS would be trained in all requirements of the SMS. The certificate holders could use train-the-trainer formats where necessary.

By clarifying this proposed requirement, the FAA anticipates that, on average, 10 employees or managers would need this training at large airports and 3 employees or managers would require it at small airports.<sup>11</sup> The supplemental initial regulatory evaluation uses these estimates in the cost analysis. The FAA requests comments on whether these estimates are accurate as an average across all airports affected by this proposal. The FAA acknowledges that there may be certificate holders included in the

preferred applicability alternative who have smaller staffs than these numbers take into account. The FAA also requests comments on the job roles that would require this type of specific training.

For the remaining persons with access to the movement and non-movement areas, certificate holders could use a variety of means to provide awareness. For example, a certificate holder could develop a brochure or white paper for inclusion in the employee's indoctrination package, or add a reference to hazard identification and reporting to existing training programs such as security or driver training.

The certificate holder would bear the cost of publishing this awareness material and updating it as necessary. For persons employed by tenants, the certificate holder would be responsible for providing the materials to the tenants for distribution. Tenants, such as air carriers, caterers, fueling agents, and FBOs, all would potentially receive this information if their employees access the movement or non-movement areas. However, the certificate holder could choose to provide this material or briefings during badging or security training.

There should be minimal record-keeping costs associated with this type of training/awareness. The FAA anticipates that certificate holders would retain copies of the materials provided and a distribution log detailing when the materials are provided to employees and tenants.

The FAA does not intend for the proposed requirement to apply to persons escorted by a trained individual. As for an air carrier's crewmember training, those individuals authorized to enter the movement and non-movement areas unescorted would receive training appropriate to their role; in this case, awareness of hazard identification and reporting. The air carrier would then distribute the materials provided by the certificate holder.

While the NPRM did not explicitly propose recurrent training, the FAA envisioned the need for certificate holders to provide individuals with updated information, all in support of a positive safety culture. This proposal includes a requirement for recurrent training every other year. It also would require the update of publications for the hazard awareness orientation requirement on the same schedule.

## 4. Definition of Accountable Executive

Numerous commenters thought the definition of accountable executive proposed in the NPRM was impractical

<sup>9</sup> The Office of Airports regularly tracks the status of certificated airports. As such, this review would result in an insignificant increase in cost based on current FAA oversight activities.

<sup>10</sup> This data is available online at [http://www.faa.gov/airports/planning\\_capacity/passenger\\_allcargo\\_stats/passenger/](http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/). Passenger enplanement data is gathered from the Air Carrier Activity Information System (ACAIS).

<sup>11</sup> As discussed in the Supplementary Initial Regulatory Evaluation, the analysis classifies large, medium, and small hub airports as large airports and all others as small airports.

and needed to be revised. After considering these comments, the FAA agrees that the proposed definition will present compliance and operational challenges in the U.S. airport environment. Therefore, in this SNPRM, the new proposed definition (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. The FAA requests comment on the feasibility of implementing this proposed definition.

#### *B. Proposals Remaining From NPRM*

As proposed in the NPRM, the certificate holder's SMS would be required to contain the following four components: Safety policy, safety risk management, safety assurance, and safety promotion. To satisfy the safety policy component, the certificate holder would establish a policy which, among other things, defines the certificate holder's safety objectives, establishes a safety policy statement, defines the certificate holder's management responsibilities and accountabilities for safety issues, and identifies and communicates the organization's structure for handling safety issues.

The certificate holder would also be required to designate an accountable executive, within the certificate holder's own organization or governance structure, who would act on its behalf in overseeing the implementation and daily operation of the SMS. For most airports, the FAA anticipates the accountable executive would be an airport manager or airport director rather than a lower level manager or supervisor.

Under safety risk management, the certificate holder would develop processes to identify hazards that may impact the airport's operations. The certificate holder would use these processes to systematically analyze those hazards and their risks, as well as proactively mitigate risk unacceptable to the certificate holder. The certificate holder would retain any documentation developed through these processes to assist in trend and root cause analysis.

Through safety assurance, the certificate holder would develop and implement processes to monitor the safety performance of its SMS. Additionally, the certificate holder would establish and maintain a hazard reporting system that provides reporters confidentiality when communicating safety issues to the system. The certificate holder's staff would regularly update the accountable executive on

pertinent safety information such as the certificate holder's compliance with part 139 subpart D requirements, and its performance with regard to its safety objectives, safety critical information, the status of any ongoing mitigations established through safety risk management, and the status of implementing the SMS.

Under safety promotion, the certificate holder would identify managers and staff employees responsible for oversight and implementation of the SMS and would provide training on their SMS responsibilities. These individuals would receive recurrent training every 24 months. For all other individuals with regular access to the movement and non-movement areas of the airfield, the certificate holder would develop and distribute hazard reporting and awareness orientation materials, ensuring those individuals are made aware of hazards and how to report them to the certificate holder's hazard reporting system. The certificate holder would then keep records of training provided and hazard reporting and awareness orientation materials for 24 calendar months.

The certificate holder would also be required to develop processes and procedures to communicate important safety information that ensures all persons authorized access to the movement and non-movement areas are aware of the SMS and their safety roles and responsibilities. Feedback would be provided to individuals using the certificate holder's hazard reporting system. Lessons learned that are relevant to airport employees or stakeholders also would be communicated.

The certificate holder would have the option of either developing and maintaining a separate SMS manual in addition to the Airport Certification Manual (ACM), or incorporating these proposed requirements directly in the ACM. If the certificate holder develops a separate SMS manual, it would cross-reference the SMS requirements in its FAA-approved ACM.

#### **IV. Discussion of Comments Received on NPRM**

##### *A. FAA Rulemaking Authority*

The NPRM proposed implementing SMS throughout the airport environment, including the movement and non-movement areas (e.g., runways, taxiways, run-up areas, ramps, apron areas, and on-airport fuel farms). In the NPRM, the FAA acknowledged the proposal extended the scope of part 139 by including the non-movement area

but concluded that ensuring air transportation safety required that an SMS apply to any place that affects safety during aircraft operations. An association and a certificate holder noted that the application of SMS to the non-movement area is an unprecedented expansion of the FAA's regulatory scope.

The FAA has authority under 49 U.S.C. 44706 to issue AOCs that contain terms to ensure safety in air transportation. The FAA acknowledges that it has historically focused its regulatory practice on the movement area. However, the statutory authority encompasses the entire airport operating environment, which includes the non-movement area. The proposed requirement to develop and implement an SMS ensures safety in air transportation by assisting certificate holders in proactively identifying and mitigating safety hazards. Furthermore, as discussed later, findings from the SMS pilot studies and the large number of safety incidents occurring in the non-movement area support extending SMS to the non-movement area to ensure safety in air transportation.

Accordingly, as stated in the NPRM, this proposal, to the extent it would apply to both the movement and non-movement areas, is within the FAA's statutory authority.

##### *B. Applicability*

The NPRM proposed requiring all certificate holders, including airport operators holding a Class I, II, III, or IV AOC, to develop and implement an SMS for the movement and non-movement areas of the airport. One Class IV certificate holder recommended that the FAA require SMS only at airports holding a Class I AOC, stating this would target the majority of air carrier passengers in the U.S. and allow small airports to avoid costly burdensome regulations. The certificate holder recommended a voluntary program for Class II, III, and IV certificate holders.

The FAA partially agrees with the commenter. The FAA believes all certificate holders would realize benefits from formalized hazard identification, risk analysis, training and communications processes. However, further review of costs and benefits indicate that, for certificate holders with fewer operations, the costs of SMS implementation may be disproportionate to the benefits realized. The FAA continues to evaluate means to reduce costs for smaller airports, but, in the absence of significant regulatory cost reductions, the FAA's preferred proposal is to require SMS

implementation at large, medium, and small hub airports, certificated airports with more than 100,000 total annual operations, and certificated international airports.

Requiring an SMS for only the largest and most complex of operations will enhance safety at airports receiving 98% of all passenger enplanements. The revised proposed rule would apply to 268 airports, thus eliminating the burden on 276 airports that have few passenger enplanements and less complex operations.<sup>12</sup> This proposed requirement advances the FAA's safety goals and at the same time reduces the burden imposed by the NPRM. Although not proposing to require SMS implementation at all certificated airports, the FAA encourages all certificate holders to voluntarily implement SMS based on this proposed rule and accompanying agency guidance.

Besides the alternative proposed in this SNPRM and the proposal in the NPRM, the FAA analyzed a variety of other applicability scenarios including:

- Airport operators holding a Class I AOC;
- Certificated international airports; and,
- Large, medium, and small hub airports and certificated airports with more than 100,000 total annual operations.

#### i. Airport Operators Holding a Class I AOC

Since the last major revision to part 139, the FAA typically has applied technical requirements based on AOC class. Consistent with this past practice, the FAA first analyzed limiting applicability to Class I certificate holders. When reviewed as a whole, the 388 airports identified as holding a Class I AOC (as of October 2012) account for 99.7% of the total U.S. passenger enplanements as of the end of calendar year 2011. All certificated airports account for 99.8% of the total U.S. passenger enplanements, a difference of 0.1%. However, the list fails to account for many busy airports by total annual operations (not passenger enplanements), some of which receive more total annual operations than some Class I airports. Class I certificate holders also appear to include many smaller airports that support only domestic operations. For these reasons, the FAA does not believe that limiting applicability to Class I certificate holders alone is the best way to enhance safety through SMS.

#### ii. Certificated International Airports

The FAA also analyzed certificated international airports. Limiting the scope to these airports meets the intent of the ICAO standard. In the NPRM, the FAA addressed the ICAO standard by proposing all certificate holders implement an SMS. However, many commenters expressed concerns about the expansion of applicability beyond the ICAO standard (*i.e.*, applying the standard to airports serving only domestic traffic). The FAA identified 240 certificated airports with international services (as of August 1, 2012). Relying on data prepared by the CBP, these 240 airports encompass all certificated airports that serve as ports of entry, designated international airports, landing rights airports, and user fee airports.

These international airports account for 96.1% of the total U.S. passenger enplanements (as of the end of calendar year 2011). While these airports account for the vast majority of international operations within the U.S., this scenario fails to capture some of the nation's busiest airports that accept only domestic operations. Based on the limitation of applicable airports under this scenario, the FAA does not believe that limiting applicability to international airports is a viable option to achieve the most safety benefit.

#### iii. Large, Medium, and Small Hub Airports and Certificated Airports With More Than 100,000 Total Annual Operations

The FAA also analyzed airports by their NPIAS category, looking at the airports that receive the vast majority of enplanements, otherwise known as hubs. Including only large, medium, and small hub airports does not capture airports receiving large numbers of total annual operations. Therefore, the FAA included in its analysis of this scenario certificated airports with more than 100,000 total annual operations according to their Airport Master Record, FAA Form 5010-1 (available on August 1, 2012).

This grouping gets much closer to the goal of accounting for the most complex, busiest and highest passenger enplanements throughout the country. Using this grouping for applicability would include 177 certificated airports that account for 97.5% of total U.S. passenger enplanements, and all certificated airports having more than 100,000 total annual operations. The FAA believes this alternative achieves the goal of integrating safety management practices into the most complex, highest operation and

passenger enplanement airports. Also, of those alternatives for which FAA has estimated benefits and costs, this alternative has the highest estimated net benefits. However, this alternative does not harmonize with ICAO standards because 91 international airports would not be required to implement an SMS, which could expose small international airports to the risk that international carriers refuse to operate there. Opting out would also require the FAA to file a difference with international standards.

#### iv. Preferred Alternative

The FAA now proposes to require an SMS be developed, implemented, maintained, and adhered to at any certificated airport:

- Classified as a small, medium, or large hub airport;
- Identified as an international airport; or
- Identified as having more than 100,000 total annual operations.

This preferred alternative ensures that safety management practices will be integrated into the busiest airports and harmonizes with international standards. This alternative applies to 268 airports, encompassing 98% of total U.S. passenger enplanements. In addition, this alternative positively responds to the commenters' requests to limit applicability.

On the other hand, including the additional 91 small international airports that would not be captured by the preceding alternative reduces the estimated net benefits of the rule. This is largely due to the small number of reported accidents at these 91 airports. However, FAA's analysis does not consider the possibility that international airports without SMS risk losing international business due to a lack of compliance with ICAO standards. If this were to occur, airlines and other operators would incur costs to re-route to suboptimal locations. The magnitude of this potential effect is uncertain, as it would depend on the decisions of foreign actors to cease operations to domestic airports without a compliant SMS. FAA welcomes comments on this issue.

#### v. Large, Medium, and Small Hub Airports; Certificated Airports With More Than 100,000 Total Annual Operations; and an Optional Certificate of Compliance Program for Airports With Less Than 100,000 Annual Operations

The FAA is also seeking comment on an alternative featuring an optional certificate of compliance program for airports that aren't required to

<sup>12</sup> These figures are current as of October 2012.



implement an SMS, but is otherwise identical to the alternative discussed in part iii of this section. This option would allow airports with less than 100,000 annual operations to choose to implement a compliant SMS if they believe the benefits to them will outweigh the costs to them.

This alternative mitigates the concern that small international airports would suffer a decline in their international traffic due to a lack of compliance with ICAO's SMS standards, as airports could implement a compliant SMS if they so choose. Providing choice to these airports should also lead to higher net benefits than the preferred alternative, as those airports where the benefits of SMS do not exceed the costs can forego those costs.

As previously stated, this alternative could present business risks to those small airports choosing to not implement a compliant SMS. Civil aviation authorities could prohibit their international air carriers from serving non-compliant airports. Similarly, the FAA could receive unsatisfactory audit findings with additional potential unforeseen consequences for failure to conform to international standards.

#### vi. Inactive Airports

Another Class IV certificate holder and an association requested the FAA not require certificate holders in an "inactive status," or with a Limited AOC, to have an SMS.

Placement in an "inactive" status simply defers the FAA's annual periodic inspections. That way, the agency can focus its efforts on certificate holders with active air carrier service. However, certificate holders in an inactive status must continue to meet all part 139 requirements. As of May 2013, of the fourteen airports in an inactive status, only two would fall under the proposed applicability standards. If a certificated airport was later placed in an "inactive" status, it would still be required to comply with the proposed SMS requirements if it met the applicability requirements of this proposal.

As for the commenters' request about Limited AOCs, the FAA no longer issues Limited AOCs. Therefore, this issue is moot.

#### vii. Adherence to SMS

This SNPRM also proposes changes to § 139.401(a) to specify that the certificate holder must adhere to an airport SMS. While the FAA received no comments regarding this issue, the FAA believes that adding "adhere to" emphasizes the point that an SMS is an ongoing obligation and should not be shelved after implementation. Further,

it adds distinction between the phases of SMS from development to implementation to maintenance to adherence.

#### viii. Scalability

The majority of commenters, including certificate holders and associations, commented both directly and indirectly on the need for scalability and flexibility when developing and implementing an SMS.

To address those comments and harmonize with other FAA rules, the FAA proposes a new § 139.401(c) permitting scalability of an SMS based on the size, nature, and complexity of the operations, activities, hazards and risks associated with the certificate holder's operations.

#### C. Implementation Deadlines and Phasing

The NPRM included a two-pronged approach to implementation based on the certificate holder's AOC class. Certificate holders with a Class I AOC would have developed an implementation plan and SMS manual and/or ACM update within 6 months and 18 months of the final rule's effective date. Under the NPRM, all other certificate holders would have 9 months and 24 months, respectively, to develop an implementation plan and SMS manual and/or ACM update. The NPRM did not propose any other implementation approach.

Twenty-six commenters, including five associations, twenty certificate holders, and one consultant offered comments about the FAA's proposed implementation deadlines and the lack of phasing. These commenters generally recommended a phased approach, citing pilot study findings, ICAO's recommended approach, the Airport Cooperative Research Program SMS Guidebook, and the FAA's internal SMS policies. A phased approach usually includes implementing SMS through a series of management steps, such as (1) planning and organization, (2) basic safety management, (3) fully functional SMS, and (4) continuous improvement.

In addition to a phased approach, fourteen commenters, including three associations and eleven certificate holders, believed the deadlines for submitting the implementation plan and implementing SMS were not adequate. Four certificate holders and one association believed the proposed deadlines were aggressive. Two other certificate holders commented that the implementation plan deadline is not adequate based on the complexity and lack of familiarity with SMS concepts. Two certificate holders stated that it

would be difficult, if not impossible, to procure consultant assistance within the proposed timeframes associated with the implementation plan.

Two certificate holders stated that if the FAA includes the non-movement area in the final rule, the implementation deadlines should be extended and phased. Furthermore, an association and several certificate holders believed the FAA should require implementation of SMS in the movement area, or those areas already covered under part 139, before requiring SMS in the non-movement area. Doing so would allow certificate holders time to renegotiate lease agreements where necessary, update airport rules and regulations or minimum standards, and use lessons learned for applying SMS to the non-movement area.

One commenter contended that large airports needed as much time as smaller airports to implement SMS, and that two different implementation schedules based on AOC class was not justified. Similarly, an association did not believe the FAA explained why Class I airports need less time to implement SMS than small certificated airports that may have a less complex system to analyze and less cumbersome requirements to adopt.

Nine certificate holders, one association, and one consultant provided implementation schedules which can be summarized into the following three general recommendations:

(1) Longer deadlines after the effective date of the rule for developing implementation plans (ranging from 9 to 18 months for Class I certificate holders, and 12 to 18 months for all other certificate holders), and SMS manuals and/or ACM updates (ranging from 24 to 60 months for Class I certificate holders and 36 months for all other certificate holders);

(2) Phased implementation over the course of 63 months for all certificated airports; and

(3) Airport-centric implementation, which would allow each certificate holder to propose its own phased approach to implementation within reasonable timeframes.

One certificate holder requested the FAA clarify whether SMS programs implemented before the final rule would be automatically recognized as complying with the final requirements.

To facilitate maximum flexibility and scalability, the FAA does not propose to mandate a one-size-fits-all implementation approach. A certificate holder can phase implementation, either by SMS component or by movement versus non-movement area.

The FAA agrees that additional time is needed to facilitate the effective development and implementation of SMS. This proposal would require submission of the implementation plan within 12 months of the effective date of a final rule and submission of the SMS manual and/or ACM update within 24 months of the effective date of a final rule. The FAA believes that 12 months to develop an implementation plan and 24 months to develop and submit the SMS manual and/or ACM update is an acceptable length of time based on lessons learned from the pilot studies. In developing these documents, certificate holders will benefit from the experience of the pilot study airports. Similarly, the FAA plans to incorporate those experiences into advisory circular guidance, including templates for development of an implementation plan.

The FAA encourages voluntary implementation of SMS prior to the establishment of the requirements in a potential final rule. In creating these programs, the FAA encourages each certificate holder to establish flexible programs and processes that would allow it to make changes if its program differs from the requirements in a final rule. Additionally, the proposed implementation deadlines would apply to each certificate holder regardless of whether it has a pre-existing program or not. Therefore, a certificate holder with a voluntary SMS program would have the same 24 months to come into compliance with any differences between its program and the requirements of a final rule. The certificate holder would provide the FAA with an implementation plan identifying the gaps between its existing program and the final requirements and timelines for implementing processes or changes to close those gaps within the 24 months.

The FAA anticipates that a certificate holder's SMS will continually evolve over time based on lessons learned and best practices. Therefore, the certificate holder may find it necessary to amend its implementation plan or SMS manual over time.

#### *D. Implementation Plan Approval and Inspector Authority*

The NPRM proposed to require a certificate holder to submit an implementation plan describing how it would meet the SMS requirements and a schedule for implementing SMS components and elements. The proposal called for the FAA to accept the certificate holder's implementation plan.

One association requested inclusion of regulatory provisions for FAA review and feedback on the implementation plan, SMS manual, and ACM update. Also, related to implementation plan review, one certificate holder questioned the role of the FAA inspector in verifying completion of the implementation plan and whether the inspector would have authority to amend or alter the implementation plan after its approval.

The intent of an implementation plan is for the certificate holder to identify its plan for implementing SMS within the applicable areas and map its schedule for implementing the SMS requirements. While the FAA originally proposed accepting the implementation plan, the FAA now proposes to approve submitted implementation plans. This approval is consistent with the FAA's part 121 SMS rule and would provide certificate holders with feedback earlier in the development of SMS programs.

While the FAA originally planned to include examples of implementation plan content in advisory circular guidance, the FAA has chosen to enhance the rule text regarding the implementation plan submission, incorporating minimum details the FAA expects when a certificate holder submits an implementation plan. These details correspond to the key requirements of SMS that a certificate holder should be considering early in the implementation process. Developing a plan for these details would allow a certificate holder to adequately plan for requirements that may present time constraints and allow the certificate holder to meet implementation deadlines.

The FAA does not agree that timelines for feedback should be incorporated into regulatory language. Based on the preferred alternative and new proposed approach for approving implementation plans, the FAA would need to review and approve approximately 268 implementation plans. The Regional Airports Division Offices have experience with reviewing and approving large-scale changes to certificate holder documents, including the ACM, from past rulemaking actions. The FAA would handle these approvals in a timely manner in each Regional Airports Division Office.

The FAA would review implementation plans using a "first-in-first-out" approach. However, the FAA recognizes that some certificate holders may choose to wait until the deadline to submit implementation plans for approval. If the majority of implementation plans were submitted near the deadline, the FAA may then

switch to a more risk-based approach for approval, reviewing submissions from certificate holders with the largest number of passenger enplanements or annual operations first. To ensure consistency in these approvals, the FAA intends to provide guidance in its Advisory Circulars and training to Regional Airports Division Offices on the review of the implementation plans.

The FAA would review an implementation plan to verify that the certificate holder identified its timeline for complying with each requirement and defined its methods for compliance. A certificated airport could proceed with development and implementation of its SMS while its implementation plan is under FAA review.

During the periodic inspection, inspectors would verify that the certificate holder continues to comply with the unique deadlines approved by the FAA. As more thoroughly discussed in later sections, an inspector would develop the inspection checklist based on the unique characteristics of the certificate holder's SMS, operations, and past compliance.

The NPRM also proposed that the FAA would approve the certificate holder's SMS manual if it chose to develop a manual separate from the ACM. Similar to the SNPRM's proposal to approve instead of accept the implementation plan, the FAA proposes to accept the SMS manual instead of approve it. Airports that participated in the SMS pilot studies found it necessary to update SMS manuals numerous times as they developed best practices through implementation. Therefore, by the FAA accepting the SMS manual, certificate holders would have greater flexibility adapting to lessons learned without resubmitting the SMS manual for approval. The SNPRM proposes that for a certificate holder choosing to maintain an SMS manual, the certificate holder would be required to submit any changes made to the SMS manual annually, consistent with its inspection schedule. This new proposed requirement would ensure that the FAA's copy of the SMS manual is current and available for the inspector to review before the certificate holder's annual inspection.

The FAA would continue to approve the ACM and its updates. For a certificate holder using an SMS manual, the certificate holder would cross-reference the SMS requirements in its FAA-approved ACM. Any changes to references in the ACM would require submittal to the FAA for approval. However, if the SMS manual changes do not affect the ACM cross-references, there would be no need to resubmit the

ACM pages for FAA-approval. If the certificate holder chooses to document the SMS within the ACM instead of a separate SMS manual, it would not have the flexibility afforded by the SMS manual. Changes would need to be submitted to the FAA for approval. Once the FAA accepts the certificate holder's SMS manual and/or approves ACM updates detailing the certificate holder's SMS, that document would be the primary means of complying with the SMS requirements under the proposed rule, not the implementation plan. The implementation plan serves as a tool to help the certificate holder develop and implement the various components and elements of SMS within the prescribed and/or approved deadlines. Once SMS is completely implemented, the implementation plan becomes obsolete. The FAA would not use the implementation plan as a compliance yardstick.

Certificate holders would have the opportunity to submit amendments to implementation plans, with review and approval being the responsibility of the Regional Airports Division Offices.

#### *E. Non-Movement Area*

The FAA received numerous comments regarding the non-movement area which can be generally categorized as follows: Definition, applicability, and control.

Based on findings from the pilot studies, the FAA proposed extending SMS requirements to the non-movement area of the airport. Since the term non-movement area was not previously defined in part 139, the NPRM included a proposed definition that defined the non-movement area as the area, other than that described as the movement area, used for the loading, unloading, parking, and movement of aircraft on the airside of the airport (including without limitation ramps, apron areas, and on-airport fuel farms).

Five certificate holders questioned the FAA's proposed definition. One certificate holder stated that the proposed definition did not align with existing definitions and could lead to confusion. The certificate holder recommended the FAA align the definition with the current definition for air operations areas. Two certificate holders requested the FAA clarify in the final rule that the non-movement area does not include or apply to landside operations.

Two certificate holders sought clarification on the areas identified in the definition and identified inconsistencies within the NPRM. Two other certificate holders requested the FAA exclude certain areas from the

definition, including military and general aviation leaseholds and fuel farms. One of those certificate holders stated that joint-use airports already have safety systems in place to address safety issues and operational concerns, and lease provisions prohibit a certificate holder from imposing SMS within the military leasehold. Two certificate holders stated that fuel farms should not be included in a final rule because they are typically a contracted service and are already subject to regulation by DOT and local authorities.

The FAA has concluded the proposed definition is consistent with existing guidance on distinguishing airport areas based on whether aircraft are subject to air traffic control. The FAA also determined the air operations area definition identified in 14 CFR 153.3 should not replace the proposed non-movement area definition since this term is associated with security-related issues, rather than operational safety issues.

The FAA previously responded to issues regarding applicability to joint-use and general aviation areas, ramps, and bag-make-up areas in its Responses to Clarifying Questions. As many of these same issues were repeated in comments to the NPRM, a summary of those responses and their applicability to the SNPRM follows:

- 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.
- The proposed rule does not require airport tenants to have a separate SMS; it would be applicable to certificate holders of a part 139 AOC only.
- The definition applies to the entire non-movement area regardless of lease arrangements. The proposed rule includes broad requirements intended to increase flexibility to implement an SMS for a certificate holder's unique operating environment.
- A certificate holder's SMS would apply to any safety issues including employee safety, ground safety, vehicle safety, and passenger safety to the extent that they are related to aircraft operations.
- The definition for non-movement area does not include the interior of hangars.

Regarding general aviation areas of the airport, the proposed rule's requirements would give flexibility to each certificate holder to scale the implementation to its unique operating environment. A certificate holder would need to ensure that individuals authorized to access the movement and non-movement areas are aware of, and

have the opportunity to report hazards to, the certificate holder's hazard reporting system. Many certificate holders may find it necessary to update airport rules and regulations, revise clauses in lease agreements, and renegotiate lease agreements where appropriate to have airport tenants participate in the airport's SMS. Therefore, while not directly applicable to fixed-base operators (FBOs), a certificate holder may need to work with tenants such as FBOs to ensure the tenants' employees authorized to access these areas are aware of the airport's hazard reporting system.

Similarly, if bag make-up areas are located outside the landside facilities in proximity to air carrier operations, the certificate holder would need to assure implementation of relevant portions of this proposed requirement, like awareness of the hazard reporting system, for individuals working in the external bag make-up area.

As for on-airport fuel farms, § 139.321(b)–(g) currently prescribe requirements applicable to fuel farms for things like inspections and training. Therefore, it would be a natural progression to implement relevant portions of SMS within the fuel farm environment.

Over 25 commenters, including certificate holders and industry associations, disagreed with or questioned applying SMS to the non-movement area. The certificate holders stated that applicability to these areas would be costly and require time to revise standard leases, rules, regulations, and minimum standards. Further, complex geometry, lease agreements, and operational agreements make managing the non-movement area airport-centric. Commenters contended the FAA does not have the time or experience to become familiar with each airport's non-movement areas to judge compliance. One industry association believed that inclusion of the non-movement area without regard to airport-specific considerations undermines the goals of scalability and flexibility. Another industry association and certificate holder believed that more study and guidance is needed before the FAA applies SMS to the non-movement area. These commenters further questioned applicability when a tenant or leaseholder is required to implement SMS under other FAA regulations.

The FAA disagrees with the commenters' issues regarding the applicability of SMS requirements to the non-movement area. 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 flow between movement and non-movement areas.

The FAA also identified a large number of safety accidents and incidents occurring in the non-movement area. Analysis of these accidents and incidents indicates that safety in the non-movement area is a significant concern. The proactive approach to hazard identification and analysis of accidents, incidents, or other reported or collected data at each individual airport through an SMS would likely reduce these incidents. The FAA believes there are significant benefits of applying safety management principles to areas not previously regulated under part 139.

While commenters expressed concerns regarding the complexity of operations within the non-movement areas and the FAA's "inexperience" in these areas, the FAA does not propose specific technical requirements in the non-movement area. Instead, the FAA plans to learn from certificate holders as they implement and maintain SMS. Over time, the FAA expects certificate holders and inspectors to share lessons learned or best practices that will then be reported nationally. Similarly, the FAA expects certificate holders to consult with the FAA if they find trends or issues that require a systematic fix.

The FAA is committed to an interoperable approach to SMS and plans to take numerous steps to avoid duplication and enhance cooperation and reporting between the SMS efforts. In addition to providing advisory circular guidance, the FAA has included similar language regarding interoperability and duplication of hazard reporting in the *Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders (Part 121 SMS) final rule* [80 FR 1308 (January 8, 2015)]<sup>13</sup>.

The FAA disagrees with the commenters' request for stronger language regarding landside operations. The statutory authority supporting part 139 limits the agency's purview to issuing certificates and minimum safety standards for airports receiving certain passenger carrying operations. The agency's past and current standards apply minimum safety standards for those areas on an airport where passenger-carrying operations are conducted. Accidents or incidents within the terminal environment have minimal impact on the safety of passenger-carrying operations.

Moreover, local and state safety codes and regulations would typically cover issues found within the landside environment.

Several commenters, including three associations and nine certificate holders, argued that certificate holders lack sufficient authority and control to impose SMS requirements on airport tenants operating in the non-movement area. These commenters further noted difficulty due to the variety of lease agreements, clauses, and terms. One certificate holder contended that most airports, including itself, do not have personnel or expertise to oversee safety in the non-movement area. Another certificate holder recommended the final rule recognize the uniqueness of the non-movement area and provide latitude based on the activities that occur within the non-movement area, the level of control that the certificate holder has over those activities, and the extent to which access is within the tenant's control. Alternatively, one certificate holder requested the FAA apply or impose the proposed SMS requirements on tenants or exclusive leaseholds and allow the certificate holders to delegate the proposed requirements for shared leaseholds.

One association opined that, in the past, certificate holders have retained some oversight over tenant operations in the non-movement area, but that the NPRM pushed certificate holders to assume a primary role for safety. If that is the expectation, the association strongly disagreed with FAA's vision for SMS in the non-movement area.

Finally, a certificate holder with multiple part 139 airports contended that it would need to renegotiate over 1,500 lease agreements, and that even with renegotiations, it still would not possess the authority needed to fully implement SMS in the non-movement area.

The FAA disagrees with the comments that certificate holders lack control in the non-movement area of their airports. The FAA also disagrees with the request to directly apply these proposed airport SMS requirements on airport tenants. Part 139 applies only to certificated airports. While there may be instances where the certificate holders are not the same entity as the airport owner, airport owners who accept federal financial assistance (the vast majority of part 139 airports) must maintain sufficient rights and powers to operate the airport in accordance with grant assurances, which includes both movement and non-movement areas.

#### F. Accountable Executive

The NPRM proposed a requirement for the certificate holder to identify the accountable executive for the airport. Consistent with ICAO's definition of accountable executive, the FAA's proposed definition for accountable executive in the NPRM stated that an accountable executive means a single, identifiable person who, irrespective of other functions, has ultimate responsibility and accountability, on behalf of the certificate holder, for the implementation and maintenance of the certificate holder's SMS. The accountable executive would also have to have full control of the human and financial resources required to implement and maintain the certificate holder's SMS. The accountable executive would also have final authority over operations conducted under the certificate holder's AOC and have final responsibility for all safety issues.

The FAA acknowledged in the NPRM that it may be difficult for publicly-owned and operated airports in the U.S. to identify an accountable executive based on this definition and invited comments.

Twelve commenters, including two associations, nine certificate holders, and one consultant, believed the proposed definition is impractical and needs revision. One association summarized the variety of comments certificate holders had, stating that the definition needs to reflect the realities of U.S. airports where an airport director has managerial responsibilities but does not have final authority over airport operations. The commenter noted that these airports usually have a governing body, such as a Board of Commissioners or City Council, which has ultimate responsibility for operational and financial decisions. Therefore, the highest approving authority may not be one individual, as required by the proposed definition. Further, this association requested any final rule definition reflect that, at the majority of U.S. airports, no single manager has unilateral authority to direct actions by tenants and other non-airport employees.

Other alternative definitions proposed by the commenters included:

- Mirroring the part 121 SMS definition;
- Allowing certificate holders to designate an accountable organization structure instead of one executive;
- Redefining the position to account for airport managers who do not have complete financial control; and
- Allowing for designation of an SMS or Safety Manager because the airport

<sup>13</sup> Correction made to applicability date, see 80 FR 1584 (January 13, 2015).

manager may not have the time or ability to fulfill the obligations of the accountable executive position.

One certificate holder requested any final rule include a provision that the FAA does not intend to hold individuals, including the accountable executive, personally liable for safety infractions or violations of the SMS.

The proposed definition eliminates differences between the part 121 and part 139 definitions. The concept of an accountable executive conforms to industry and international safety standards for SMS. The accountable executive's role is to instill safety as a core organizational value and to ensure that SMS is properly implemented and maintained through the allocation of resources and tasks. By designating an accountable executive, responsibility for the certificate holder's overall safety performance is placed at a high level within the organization. The individual should have the authority to ensure that the SMS is implemented and effective. Traditionally, safety programs were housed within one division of the certificate holder's organization. Under a systems approach, the concepts of SMS need to permeate throughout the certificate holder's organization to ensure that all offices, employees, and tenants with responsibilities in the movement and non-movement areas understand their role in SMS.

However, the FAA appreciates the diversity of certificate holder organizations and agrees that the ICAO definition of accountable executive could present compliance and operational challenges for many publicly-owned and operated airports within the U.S. Therefore, the FAA proposes the revised definition in § 139.5 of this proposed rule.

In practice, the FAA anticipates that most certificate holders would designate an airport manager or airport director as the accountable executive. Accountability cannot be delegated; therefore, a lower-level manager or supervisor could not serve as the accountable executive.

The FAA does not intend to require the designation of additional positions to implement the daily operation of the SMS. Such designations should be left to the discretion of the certificate holder based on its unique operating environment and management structure. A certificate holder would have this flexibility in establishing its safety organizational structure as identified in proposed § 139.402(a). The safety organizational structure would identify the positions and offices within the certificate holder's organization that have responsibility for or play a role in

the safety of airport operations. This includes the "chain of command" and the means by which airport employees report safety concerns, hazards, and other safety-related information.

#### G. Data Protection

The NPRM included numerous proposed requirements for certificate holders to develop and maintain documentation for hazard reporting, identification, and assessment. While the FAA did not propose a requirement for certificate holders to provide those documents to the agency, the certificate holder would maintain the documents for historical and trend analysis as part of its continuous improvement efforts.

Seventeen commenters, including certificate holders and associations, addressed issues of data protection posed by the proposed rule. Only one association, which represents trial attorneys, agreed with FAA's approach to hazard reporting. This association cautioned the FAA from making any changes, claiming that restrictions on the disclosure of safety data flies in the face of safety and only serves to protect and immunize business entities from responsibility in the event of negligence or wrong doing.

All other commenters believed that, without explicit data protections, persons not employed by the certificate holder would be reluctant to voluntarily share information or report hazards for fear of litigation or public perception if the data is released through state or local sunshine laws. Many commenters believed that, without protecting SMS-related data, certificate holders would not be able to establish effective confidential reporting systems. Commenters made numerous recommendations including:

- Make SMS data confidential.
- Protect data in a similar manner that air carriers are able to protect safety data, such as a data collected under the Flight Operational Quality Assurance Program (FOQA) or the Aviation Safety Action Program (ASAP).
- Protect SMS data using Security Sensitive Information (SSI) provisions.
- Allow redaction of data.
- Establish a national database to accept voluntary safety information from certificate holders and other stakeholders using protections under 49 U.S.C. § 40123 and 14 CFR part 193.
- Make SMS data exempt from disclosure under the Freedom of Information Act (FOIA) pursuant to 49 U.S.C. § 40123 and part 193.

One certificate holder disagreed with the FAA's claim that certificate holders are in the best position to work with state and local legislators to provide

additional protection from data disclosure. That certificate holder believed it is an unreasonable burden on airports to seek legislative exceptions to public records laws and will result in a patchwork of legal protection throughout the U.S.

Another certificate holder sought clarification on how the FAA will evaluate the certificate holder's program if there is no requirement to submit data to the FAA and, if the FAA does take or copy the certificate holder's documents, how they will be protected from FOIA.

Section 44735 of title 49 of the United States Code specifically contemplates the protection of SMS data that is voluntarily submitted, such as reports, data, or other information produced or collected for purposes of developing and implementing an SMS, from FOIA disclosure by the FAA. It is important to note, however, such protection could not be afforded to SMS information that is required to be submitted to the FAA, or is kept to satisfy compliance with other regulatory requirements. For these reasons, the FAA is not proposing data reporting requirements for safety-related data created under an SMS (such as hazard reports, safety risk management documentation, or safety assurance documentation). As such, consistent with the authority in section 44735, there should be no implications under FOIA for that safety-related data. The FAA, through its inspectors, could review a certificate holder's documentation to ensure compliance with part 139, but the FAA generally would not take possession of those documents unless the inspector was investigating an issue of non-compliance.

To further clarify the extent of protection that may be afforded under section 44735, the FAA notes that any record or other documentation that is required to show compliance with other regulatory requirements would not be protected. Any information protected under the statute is only protected from release by the FAA. If the information is submitted or released by the certificate holder to another government entity, the protections of the statute are not binding on these other entities. Nor are these documents necessarily protected from discovery in civil litigation, although the certificate holder would be free to ask the court for whatever protections would be appropriate under the rules of the relevant jurisdiction.

The FAA acknowledges that most certificate holders are owned by a state, a subdivision of the state, or a local governmental body. These certificate

holders are best situated to understand and comply with their applicable State laws. The FAA is uncertain whether any FOIA exceptions would preclude disclosure requirements under applicable state law. Any redaction of SMS data potentially required to be disclosed would be subject to applicable state law requirements and not established by the FAA.

The FAA also notes that data protection under SSI provisions is inapplicable and may be impermissible because those procedures are for information obtained or developed in the conduct of security activities as described in 49 CFR part 1520.

The FAA cannot speculate on how a third party would report to or share information with a certificate holder's SMS. This proposed rule does not require third parties to turn over SMS data to a certificate holder. However, the proposal would require a certificate holder to establish a confidential hazard reporting system and encourage hazard reporting by all persons accessing the movement and non-movement area. The FAA believes an SMS program could be structured in such a manner to realize safety benefits while limiting the public release of confidential third-party information. Use of third-party servers and de-identification of reporter information prior to receipt by the certificate holder could be solutions that would limit release, subject to applicable state law.

The FAA believes that individual certificate holders are best situated to review and resolve hazard reports related to their unique operating environment. As discussed in the FAA's Responses to Clarifying Questions, the FAA would use existing regulatory oversight processes to ensure that systemic or national compliance issues are reported when appropriate. FAA Order 5280.5C, *Airport Certification Program Handbook*, requires coordination with and oversight by the Airport Safety and Operations Division for airport certification inspection activities. In accordance with that order, inspection findings are recorded in national databases by inspectors and reviewed by the Airport Safety and Operations Division. Furthermore, enforcement activities by Regional Airports Division Offices are required to be coordinated with the Airport Safety and Operations Division.

The FAA is exploring methods to create a national reporting database for voluntary reporting of SMS data. The agency requests comments from industry on the types of data or other information certificated airports could provide under a national reporting

database. This data could be used for system-wide analysis, the development or amendment of standards, and risk-based approach to targeted inspections.

#### H. Liability

An SMS is a formalized approach to managing safety and includes the establishment of many proactive processes and analyses, and the creation of documentation that can be used for decision-making and trend analysis. The NPRM did not expressly discuss potential liability under this new proactive approach.

Fourteen commenters, including ten certificate holders, two associations and one anonymous commenter, raised issues related to liability, noting that SMS-related processes and documentation will expose certificate holders to additional liability. Eight of those commenters went further to claim that there would be increased liability for airport management, especially for the accountable executive, under the proposed requirements. For example, one certificate holder contended compliance with the proposed SMS requirements could alter the airport's liability under the standard of care laws, which vary from state to state. That certificate holder also feared that decisions, safety risk matrices, and other processes and documentation could become evidence in litigation or the subject of litigation.

Other commenters, including three certificate holders and an association, questioned how a certificate holder's SRM processes could be used against the airport if there is an incident on the airport and it is found that the certificate holder did not act consistent with its own safety risk assessment under its SMS. Furthermore, one association believed there would be increased liability for the certificate holder and the accountable executive if the standards are not high enough or if the standards are not met.

Another association stated that acceptable level of "risk" as is established for SRM safety risk assessments, runs counter to U.S. tort principles and practice. The association further stated that, by identifying a hazard, an airport operator then has a duty to address that hazard promptly through mitigation measures. Furthermore, the commenter noted that although some airports that are owned by a state or municipal entity may be fully or partially protected from negligence claims through sovereign immunity, many, if not most, airports are subject to suit for negligence under applicable state law. Thus, once an airport is aware of a hazard, it is at risk

for a negligence claim if injury or damage occurs as a result of that hazard.

Several commenters, including three certificate holders, an air carrier, and an association asserted that certificate holders lack sufficient control in the non-movement area, and that an SMS could result in a certificate holder being held legally responsible for personal injury or property damage resulting from hazards identified through the airport's SMS in areas not under its control. One association argued that airport leases or license agreements transfer a certain degree of control from the airport/landlord to the tenant/licensee. While an airport may retain a certain degree of control, the tenant typically has a certain degree of autonomy to run its operations within the leased area as it sees fit, subject to legal requirements. There may be times where a certificate holder identifies hazards in the leased area that are not a violation of any enforceable obligation of the tenant. In these cases, the airport will have limited recourse.

Commenters made a number of recommendations including:

- Commit to join industry groups in seeking modifications to federal law;
- Prohibit, by regulation, the testimony of FAA employees in litigation against certificate holders where standards of care is an issue; and
- Provide explicit protection of the certificate holder.

The FAA cannot speculate on potential litigation resulting from a potential accident at some point in the future, which would be fact-specific and subject to applicable law that varies throughout the U.S. However, the FAA does not intend for this proposed rule to create or modify state tort liability law or create a private right of action under federal or state law. The FAA does not agree with the assertion that SMS increases liability for an airport operator or its accountable executive. The availability of additional data and analysis for decision-making should support a certificate holder in potential litigation. Failure to take action on identified safety hazards, regardless of formal analysis under SMS, generally may increase litigation risk. Nevertheless, the FAA intends for SMS to assist certificate holders in uncovering and mitigating unsafe conditions or actions, thus decreasing a certificate holder's litigation risk. A certificate holder could effectively use SMS to reduce liability by promptly investigating identified hazards and risks, conducting a thorough analysis of hazards, and keeping accurate records.

Furthermore, the new proposed definition for accountable executive

would clarify that the accountable executive would not be personally liable to the FAA, through either certificate action or civil penalty. Additionally, the FAA does not intend for the accountable executive to have personal liability to any third party; however, issues concerning such liability are controlled by state law, not the SMS regulations.

Finally, the FAA notes that the extent to which SMS data may be discoverable in litigation is subject to the state or federal law governing the litigation. The FAA believes the certificate holder is in the best position to understand and comply with its state's laws.

### *I. Training*

In the NPRM, the FAA proposed requiring certificate holders to provide formal training to all employees and tenants with access to the movement and non-movement areas appropriately tailored to the individual's role in the airport's SMS. The FAA invited comment concerning the practical and economic implications of the proposal, or applying the requirement to all individuals with access to those areas.

Ten commenters, including four certificate holders, three associations, one air carrier, one individual and one consultant, identified inconsistencies and various interpretations of the proposal. These commenters noted that terms like employee, tenant, and personnel were used ambiguously throughout the proposal. Three commenters requested the FAA coordinate the terms and definitions in the two rulemaking proposals for part 139.<sup>14</sup> An association and certificate holder requested that the FAA define these terms.

Two certificate holders offered the following alternate interpretations of the proposal:

- (1) The certificate holder is required to train only its employees;
- (2) The certificate holder is required to train those personnel who are employed at the airport (regardless of the identity of the employer); or
- (3) The certificate holder is required to train all individuals with access to the movement and non-movement areas of the airfield.

One certificate holder questioned whether the requirement applies to all individuals with access to the movement and non-movement areas or only those that have authority to drive in those areas. The certificate holder requested the FAA reconsider the

timing of the training requirement, citing a 2-year cycle instead of annual training as being more consistent with airport security badging processes.

Another certificate holder questioned who is responsible for training under the proposed rule and whether the certificate holder is responsible for training all airport tenants.

An association recommended the FAA allow a certificate holder to assess who needs training on its airport, and whether training should be extended to all individuals accessing the movement and non-movement areas. The association believed this would allow certificate holders maximum scalability by tailoring their training program and costs to reflect their unique operating environment.

Another association requested the FAA provide more detail on what topics should be included in the training program, and how a certificate holder would best implement the requirement. Certificate holders and one association expressed concerns about the lack of expertise of staff to implement such a training program, the magnitude of a program that reached all individuals with access to these areas (not just airport employees), and the workload associated with developing and providing training. To decrease workload, one certificate holder requested the FAA develop a basic SMS training course for certificate holders which could be augmented by an airport-specific course.

Commenters also offered a number of recommendations for scope changes including:

- Training personnel with regular, recurring access to the airport only;
- Training employees with responsibilities outlined in the ACM only;
- Training certificate holder employees only; or
- Allowing train-the-trainer programs.

Associations representing air carriers and pilots expressed concern about the FAA's proposed training requirements in the non-movement area, questioning how flightcrew members of airline tenants would be able to comply based on dynamic scheduling. One association recommended flight crew training remain an airline responsibility. Another association rejected the notion of training individuals with access to the non-movement area, claiming that existing training requirements are sufficient.

One association recommended the FAA clarify timelines for training, suggesting that certificate holders begin training their managers and employees

within 12 months of the FAA's approval of the SMS manual.

A consultant observed that training implies an increased level of liability, and that the FAA should instead require orientation. This orientation should focus on general safety training such as ramp markings, airport rules and regulations, hazard reporting, and accident and incident response and reporting.

Finally, a certificate holder requested the FAA not mandate recurrent training.

The NPRM proposed an SMS training requirement for all employees and tenants with access to the movement and non-movement areas of the airport. To maximize the potential for proactively identifying hazards, the intent was to ensure that individuals authorized access to the movement and non-movement area received training. This would create a broad training requirement, allowing certificate holders flexibility in how they trained persons with access to these areas. This flexibility included allowing train-the-trainer programs and training specific to the person's role in the SMS. This flexibility would allow certificate holders to provide orientation to the majority of persons accessing the non-movement and movement areas of hazard identification and reporting, rather than training on all of their SMS initiatives.

Commenters appear to have interpreted the proposed training requirement to be cumbersome, time consuming, and excessively costly. In light of comments and lessons learned from the pilot studies, the proposal in this SNPRM offers a two-pronged approach to training: (i) Comprehensive SMS training specific to the individual's role and responsibility in implementation and maintenance of the SMS and hazard awareness; and (ii) reporting awareness orientation for all other individuals with access to the movement and non-movement areas.

The FAA expects each certificate holder to provide training appropriately tailored to the person's role in the certificate holder's SMS. Persons with responsibilities for implementation or oversight of the certificate holder's SMS would be required to receive training specific to their roles and responsibilities. For example, those persons responsible for analyzing hazard reports to determine action should be properly trained in SRM and hazard assessment procedures. Individuals, including staff and/or managers, with responsibility for daily oversight of the SMS would be trained in all requirements of the SMS. Again,

<sup>14</sup> During the NPRM comment period, the FAA published the "Safety Enhancements, Certification of Airports" NPRM proposing updates to part 139. After reviewing comments, the FAA issued a final rule (78 FR 3311, January 16, 2013).

the certificate holder could use train-the-trainer formats where necessary.

By clarifying this proposed requirement, the FAA anticipates the average pool of employees needing this training to be between 3 and 10 employees or managers per airport. The supplemental initial regulatory evaluation uses these estimates in the cost analysis. The FAA requests comments on whether these estimates are accurate as an average across all airports affected by this proposal. The FAA acknowledges that there may be certificate holders included in the preferred applicability alternative who have smaller staffs than these numbers take into account. In those environments, additional staff may not be necessary but rather, existing staff could assume these duties and responsibilities within their existing job roles. Thus, the FAA also requests comments on the job roles that would require this type of specific training.

For the remaining persons who have access to the movement and non-movement areas, a certificate holder could use a variety of means to provide hazard awareness and reporting orientation. For example, a certificate holder could develop a brochure or white paper for inclusion in the employee's indoctrination package, or add a reference to hazard identification and reporting to existing training programs, such as security or driver training.

The certificate holder would bear the cost of publishing this awareness material and keeping it updated. For persons employed by tenants, the certificate holder would be responsible for providing the materials to the tenants for distribution. Tenants, such as air carriers, caterers, fueling agents, and FBOs, all would potentially receive this information if their employees access the movement or non-movement areas. However, the certificate holder could choose to provide this material or briefings during badging or security training.

There should be minimal record keeping costs associated with this type of training/awareness orientation. The certificate holder would maintain training records for only those individuals receiving comprehensive SMS training. For hazard awareness and reporting orientation, the FAA anticipates the certificate holder would retain copies of materials provided and a distribution log detailing when the materials are provided to tenants. The certificate holder would not be required to maintain individual training records for hazard awareness and reporting orientation.

The FAA does not intend for the proposed requirement to apply to persons escorted by a trained individual. As for an air carrier's crewmember training, those individuals authorized to enter the movement and non-movement areas unescorted would receive training appropriate to their role; in this case, awareness of hazard identification and reporting procedures. The air carrier would then distribute the materials provided by the certificate holder.

While the NPRM did not explicitly propose recurrent training, the FAA envisions the need for a certificate holder to provide individuals with updated information, all in support of a positive safety culture. This proposal includes a requirement for recurrent training every other year. It also would require the update of publications for the hazard awareness orientation requirement on the same schedule.

This proposal also includes cross-references between the new proposed training requirement in § 139.402(d) and existing training references in § 139.303(e). It ensures consistent formatting with existing requirements in part 139.

#### J. AIP Eligibility

Sixteen certificate holders, two associations, and one consultant expressed concern that the proposal was not clear on how certificate holders should fund SMS development and implementation and whether federal financial assistance through the Airport Improvement Program (AIP) would be available for SMS-related items. If AIP funding is made available, commenters sought clarification on eligibility in general, and, specifically, regarding the purchase of software for hazard tracking, analysis, and reporting, as well as for SMS manual development.

One certificate holder pointed out that if AIP funds are made available and Congress fails to provide additional funding to the program, airports would be forced to comply using the same funds that are used to make improvements to airport infrastructure.

Four certificate holders requested the FAA delay a final rule until a dedicated funding source for initial and recurring costs related to SMS is found.

The FAA acknowledges that the NPRM was silent about AIP funding for development and implementation of the SMS requirements. The question of AIP eligibility is not relevant to an estimation of the cost of the proposed rule. The question of who pays involves an economic transfer, not a societal cost.

Compliance with part 139 is not dependent on AIP eligibility. However,

the FAA understands the concerns expressed by the commenters. In August 2013, the FAA issued Program Guidance Letter 13-06, *Safety Management Systems (SMS)*, which addressed similar issues in more detail. This guidance was later canceled when its contents were moved to the updated FAA Order 5100.38D, *Airport Improvement Program (AIP) Handbook*.<sup>15</sup> The following provides a general overview of AIP funding of SMS efforts. However, as with any question involving AIP funding, the airport sponsor must work directly with the local FAA Airports District Office (or Regional Airports Division Office in regions that do not have District Offices) in connection with questions about eligibility, justification, and availability of funds for specific efforts. There are rules associated with the types of funds, projects, and airports that can receive AIP funding. With that said, the FAA has committed to making some SMS-related costs eligible for federal financial assistance under AIP.

In general, the FAA has determined that reasonable costs incurred for development of an initial implementation plan and SMS manual are eligible for AIP planning grant funds. The portions of the SMS manual and implementation plan development that are within the control of the airport sponsor, through enforcement of the airport's published Rules and Regulations, Minimum Standards, or other existing controls, can be funded with AIP. AIP funds can help establish safety protocols that affect users of the airport, but AIP funds cannot be used to help users of the airport manage their own operations. Revising an ACM to include SMS requirements in the ACM would not be eligible for AIP funds.

SRM activities conducted under the certificate holder's SMS are considered a part of the airport's day-to-day activities. Because operational costs are not eligible under AIP, these ongoing activities and their incurred costs are not eligible. Recommendations from SRM activities, including mitigations to decrease risk, are not necessarily eligible because a recommendation may be wholly operational, or may involve work from ineligible entities (such as the FAA Air Traffic Organization or other FAA lines of business that have independent operational budgets).

It is possible that a SRM recommendation may be an allowable cost of an AIP-eligible capital project or may be independently eligible as an AIP capital project. In these cases, the cost would be part of the eligibility priority

<sup>15</sup> Issued September 30, 2014 and available at [http://www.faa.gov/airports/aip/aip\\_handbook/](http://www.faa.gov/airports/aip/aip_handbook/)



and justification requirements of the project type and airport size classification. For example, a certificate holder's SRM process recommends relocating a taxiway to eliminate a runway crossing hazard. In that case, because taxiway projects are already eligible under AIP, the taxiway project recommended through SRM will follow the existing published eligibility requirements for taxiway projects.

Federally-obligated airports are already required under AIP Grant Assurance 19, Operation and Maintenance, to operate at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operation. This includes identifying and mitigating hazards.

Therefore, although the FAA will continue to provide AIP funding for eligible capital improvements, it has always been (and remains) the certificate holder's responsibility to mitigate risks regardless of whether federal funding is available. Eligible and justified improvements are generally physical improvements to the configuration of airfield geometry (e.g., physical layout of runways, taxiways, and appurtenant facilities), as well as associated signage, marking, and lighting. For AIP-eligible projects requiring hazard assessment led by the FAA, some of the associated costs for convening a panel may be included as allowable under an AIP grant.

The FAA's proposed requirements should not involve major expenditures in new systems, including hazard reporting systems. However, some airports that participated in the pilot studies used SMS software for development of the plan and SMS manual and/or for actual implementation of SMS. Therefore, the FAA will allow AIP funds to be used for the one-time (initial) acquisition of airport-owned software applications that are specifically designed to support airport SMS implementation. Other requirements and limitations may apply, which are outlined in the AIP Handbook.

However, experience from the pilot studies has also shown that smaller, less complex airports should be readily able to manage the associated steps, processes, and data using existing off-the-shelf, end-user spreadsheet or database software. Regardless of the airport's size and complexity, costs associated with staffing, training, or safety promotion are also not AIP eligible.

As always, when an airport sponsor requests AIP funding, the FAA is required to review the existing conditions, the available alternatives, and the criteria by which the sponsor has concluded that a particular solution is the preferred course of action. That is why early coordination with the local FAA Airports District Office or Regional Airports Division Office is crucial.

#### *K. Interoperability*

The FAA is engaged in numerous efforts to require and incorporate SMS concepts into industry and its own operations. The practice and results of these efforts appear to be meeting in the airport environment. For example, besides this proposed rule, the FAA recently published a final rule for air carriers operating under part 121, which also requires hazard reporting and proactive hazard assessment. See 80 FR 1306 (January, 8, 2015). Furthermore, the FAA's own internal efforts to incorporate formalized hazard assessment into many of its operations and approvals will impact part 139 certificate holders and part 121 air carriers. Recognizing the interoperability of these efforts would be important for the continued success of SMS, the FAA requested comment on the interaction between the proposed rule and potential future rulemakings.

The majority of commenters raised issues regarding interoperability and how all of the various SMS efforts and requirements will work together, avoiding duplication and conflict. These issues can be grouped into three themes:

1. Reporting of hazards, overlap of responsibility and duplication of efforts: Seven commenters, including five certificate holders, one association, and one air carrier, questioned which hazard reporting system should a person use to report an observed airport hazard when both an air carrier (or multiple carriers) and the certificate holder may have an interest. One commenter noted that air carriers also may be reluctant to share safety information with airports because of data protection issues. Additionally, reporting into two separate reporting systems and separate analyses would be a duplication of effort that is inconsistent with SMS philosophy.

2. Hazard assessments for hazards shared by multiple regulated entities: Twenty commenters, including fifteen certificate holders, three associations, one air carrier, and one anonymous commenter, questioned which entity has responsibility for performing the hazard assessment on shared hazards and by which rules the assessment is performed. One commenter noted there may be divergent interests among the

entities as to how to mitigate a particular hazard. For example, an airport may not want to bear a costly mitigation when another possible mitigation may be more acceptable to it. The airport and air carrier could perform individual assessments, but that result would duplicate efforts and be contrary to cooperation between the entities, both of which are inconsistent with SMS philosophy. Additionally, the airport and the air carrier may have different methodologies for assessing risk (such as different risk matrices). One commenter also raised the issue of which risk matrix would be used and how to resolve disputes over which matrix to use (e.g., different severity and likelihood categories and definitions).

Another commenter further questioned how the FAA's internal SMS efforts within the Air Traffic Organization, Office of Aviation Safety, and Office of Airports will interact with certificate holders. For example, one certificate holder believed that conflicts between the various efforts could be complex and unavoidable and stated that the FAA needs to address resolution including hierarchy and authority in the final rule.

3. Differing definitions and standards: Two commenters, including one certificate holder and one anonymous commenter, expressed concern regarding differing definitions and standards throughout the various SMS efforts. One certificate holder believed the definitions should be consistent across the agency so that everyone speaks the same language. Examples of inconsistent definitions include the terms hazard, risk, risk control, and risk mitigation. One commenter raised concerns that because each entity has the flexibility to set its own severity and likelihood categories and definitions, it will be difficult to understand what these different definitions mean.

With regard to reporting hazards and overlap of responsibility, the FAA has taken efforts to reduce conflict and duplication but acknowledges that some overlap may occur. Regardless of overlap, certificate holders would be expected to comply with the applicable SMS requirements. Certificate holders would address the hazards reported to them and also conduct SMS promotion activities to encourage reporting.

For example, an airline ramp worker identifies a safety issue in his work area on the ramp. The worker reports this issue to both the airport and airline's hazard reporting system. In this scenario, both the airport and the airline have a responsibility for reviewing the reported safety issue. However, their responsibility for analyzing and

possibly mitigating the issue depends on who holds overarching responsibility for the issue and/or its mitigation. If it is something that only the airport can take action to prevent or mitigate, the airline would forward that information to the airport for action. Similarly, if only the airline could take action, the airport would forward the report to the airline.

While the FAA cannot regulate relationships between certificate holders and other entities, the FAA can include best practices and lessons learned to help foster an environment conducive to sharing hazard information across industry groups. Although there may be two separate regulations addressing SMS, the FAA encourages air carriers and airports to communicate with one another when hazards are identified through their respective SMS procedures and processes that may be addressed by the air carrier or airport. For example, if an air carrier's employee identifies a hazard on the movement area of the airport, the air carrier employee would likely report the hazard through the air carrier's SMS employee reporting system. Once reported, the FAA recommends that the air carrier notify the airport of the identified hazard so the airport is aware of the issue and may analyze the risk accordingly. In addition, the air carrier may also opt to analyze the risk of the hazard and determine if it warrants any sort of mitigation through the revision or further development of the air carrier's procedures. This type of communication would serve to ensure that hazards, whether unique to the air carrier, or more systemic to the airport, are being addressed effectively by all parties.

The FAA expects that information sharing will increase over time as entities become more familiar with SMS and its benefits. Furthermore, the FAA is continually evaluating the implementation of SMS and is prepared to address issues as they arise.

With regard to differing definitions and standards, the FAA harmonized definitions in the rules where possible. However, some definitions are different based on the different operating environments. Some definitions may evolve over time based on lessons learned.

This proposal harmonizes with the part 121 SMS rule definition for hazard and risk. These definitions would be added to § 139.5.

The definition for risk mitigation in this SNPRM does not harmonize with the part 121 risk control terminology. ICAO Annex 14 and the FAA Office of Airports' internal SMS policy use the

term mitigate when discussing the fifth step of hazard assessment under SRM. The FAA has concluded the term mitigate is straightforward and aligns with other guidance certificate holders have received related to FAA SMS initiatives. To change terminology here runs the risk of confusion.

Relative to the separate standards for air carriers, the FAA notes that both SMS rules are structured in accordance with the ICAO SMS framework. However, the FAA recognizes that there are inherent differences in the operation of an airport and of an air carrier. Based on a review of these differences, the FAA determined that the rulemakings should proceed as separate projects.

A certificate holder may want to consult with its tenants, including air carriers, as it develops its implementation plan and SMS manual and/or ACM update. While not required to coordinate or incorporate each other's processes, the airport could benefit from the experiences of other entities that have already implemented SMS or other risk-based approaches.

The FAA continues to explore options to enhance interoperability within the airport environment. Technology solutions used by both the air carriers and airports could promote information sharing, enhanced communications, and provide cost savings. The FAA is open to suggestions from commenters on the use of existing systems to enhance interoperability.

#### *L. FAA Oversight*

The NPRM included a lengthy discussion on the FAA's role and oversight of certificate holders under the proposed SMS requirements. Emphasis was placed on the point that SMS is not a substitute for compliance with existing regulations or FAA oversight activities. The FAA provided examples of possible inspector activities to verify compliance with the requirements.

Fourteen commenters, including associations, certificate holders, and one consultant, commented on the FAA's oversight activities related to the proposal. Comments focused on three main areas: compliance and enforcement, inspections, and training.

Three associations and two certificate holders expressed concern about how the FAA would enforce compliance with the new SMS requirements and requested the FAA include measures or tools that a certificate holder or the FAA would use to ensure compliance with SMS requirements. While acknowledging that the FAA stated inspectors would not second guess certificate holder decisions, but would assess compliance with SMS-approved

processes and procedures, one certificate holder requested the FAA include this language in the regulatory text. The other certificate holder expressed concern regarding the potential for "double jeopardy," whereby a violation of an airport's SMS procedures as detailed in the SMS manual or ACM could also result in a violation of existing part 139 requirements. An association wanted the FAA to define which FAA office has responsibility for compliance and oversight and suggested it be a headquarters function to ensure consistent enforcement. A consultant argued that any enforcement action is inconsistent with the SMS philosophy of a non-punitive approach to safety.

An SNPRM is not a place to establish compliance and enforcement policies and procedures, which must be able to be adapted as conditions dictate. Nevertheless, the FAA believes it would be helpful to discuss some general expectations about inspections in an SMS environment.

The FAA does not plan to initially alter its inspection methodology if an SMS rule is adopted. Inspectors would continue to review and conduct annual, surveillance, and special inspections of part 139 certificate holders to determine whether the certificate holder is complying with applicable statutory and regulatory requirements. The FAA agrees that adding SMS-related items to an inspection would add time. However, the FAA believes that SMS is a vital means to enhance safety into the future and is prepared to absorb those resource costs.

In general, seven commenters wanted more clarification on how an inspector's review of SMS documentation or processes would fit into the existing part 139 annual inspection. Three certificate holders questioned how inspectors would inspect for SMS-related items in an already budget- and time-restricted inspection environment and what items will be of interest during the inspection (like hazards and mitigations identified during SRM analyses) or whether the certificate holder is complying with its implementation plan. One association requested the FAA incorporate additional reviews to assist certificate holders instead of waiting until an airport's annual inspection.

Again, the FAA does not plan to immediately change its inspection or oversight process as a result of this revised proposal. Regional Airports Division Offices would maintain responsibility for conducting inspections and the Airport Safety and Operations Division at FAA

Headquarters would maintain national program oversight. An inspector would evaluate whether a certificate holder is implementing SMS in accordance with its approved implementation plan.

The FAA currently inspects using traditional surveillance methods which focus on determining regulatory compliance using direct inspections of a certificate holder's personnel, facilities, and responses. This type of surveillance provides a snapshot of compliance.

As stated earlier, SMS considers safety from a systematic perspective (*e.g.*, assessments and process-oriented inspections rather than standard technical checklist-driven inspections). The FAA envisions that airport inspections would change to a system-based approach to harmonize with the certificate holder's systematic approach under SMS; this would allow an inspector to focus on areas of greater risk.

Unlike traditional checklist-driven inspections, a systems-based approach would verify the certificate holder has processes in place to proactively identify hazards, mitigate risk, and address non-compliance issues. The FAA would evaluate whether the certificate holder has effective SMS policies, processes, and procedures to identify, analyze, and mitigate safety hazards and risks. Corrective actions for certificate holders in the future would not be limited to fixing discrepancies found but also fixing the processes that should have proactively identified the discrepancy before the FAA inspection.

The evolution to a systems-based approach would not happen overnight. The FAA envisions a gradual transition, but one that would not completely replace traditional oversight. The inspector would continue to verify compliance with existing part 139 technical standards, and these items would continue to be included on the inspection checklist. Under SMS, the inspector would also be responsible for inspecting the certificate holder's SMS policies, processes, and procedures.

Typically, the inspector would start by reviewing the certificate holder's Safety Assurance program since this component includes processes to verify the effectiveness of the certificate holder's SMS. Using the required elements of a certificate holder's Safety Assurance program, the inspector would review documents related to the certificate holder's safety performance to verify it is meeting its safety objectives and complying with its SMS manual and/or ACM. Similarly, the inspector could review submissions to the airport's hazard reporting system and verify that the certificate holder has

analyzed the safety risk of hazards reported consistent with the issue reported. This level of assessment of the certificate holder's hazard reporting system and processes could be simply a spot-check.

The purpose of this review would not be to second guess the certificate holder's actions, but rather to ensure the certificate holder is following its own processes as documented in the SMS manual and/or ACM. The FAA could also review any trend analysis conducted by the certificate holder in an effort to determine whether the certificate holder is actively detecting root causes of safety issues. The inspector's review of this documentation is meant not only to find potential violations of standards but also to determine whether the certificate holder is taking appropriate action to evaluate the root cause of that non-compliance.

The inspector would also sample the certificate holder's SRM documentation. While not conducting this review to second-guess the certificate holder's actions, the inspector would evaluate whether the certificate holder is following the processes and procedures identified in its SMS manual and/or ACM and whether the certificate holder has implemented the mitigations identified. If during the review, the inspector found that the certificate holder had used its SRM processes to circumvent existing requirements under part 139, the FAA could look more extensively into the certificate holder's analysis because part 139 applies regardless of SRM processes. Avoiding part 139 requirements is not the purpose of the SRM program.

The inspector would sample training and communication documentation as required by the certificate holder's Safety Promotion program. The inspector would determine if the certificate holder is complying with its SMS manual and/or ACM with regards to its Safety Promotion program.

To verify compliance with the certificate holder's Safety Policy program, the inspector would verify that the certificate holder has a process in place to verify that the SMS manual and/or ACM is maintained and that information is kept up to date. If necessary, the inspector could validate information in these manuals to verify compliance.

If an inspector found discrepancies, the inspector could determine the need to conduct a more in-depth assessment of the certificate holder's processes and procedures for compliance. If the inspection uncovered a noncompliant condition that the certificate holder had

previously identified and is in the process of analyzing that condition, the FAA could have ongoing involvement in the analysis to ensure the non-compliant condition is corrected and mitigations are put in place to prevent a reoccurrence.

Prior to inspection, the inspector could review the airport's inspection history to develop a risk profile specific to the airport. Using templates in FAA Order 5280.5, the inspector would develop an inspection checklist unique to the airport for that year's inspection. The checklist would be based on existing part 139 technical requirements, past compliance history, national programmatic priorities, and any additional factors the inspector believes necessary. In each case, the inspector would tailor parts of the evaluation and checklist to the certificate holder's unique SMS processes and operations. Moreover, the inspector could continue to review the ACM, SMS manual, or other records to verify compliance, as is done today. The FAA does not believe clarification of inspection items or processes is appropriate for rule text.

In addition to developing templates for the inspection checklist, the FAA would also amend FAA Order 5280.5, Airport Certification Program Handbook, to provide guidance to inspectors on documenting their inspection findings. Inspectors would craft a detailed narrative of their inspection findings rather than short responses as are typical in traditional inspections. Inspectors would describe in detail what they did and what they found that constitutes non-compliance rather than listing the discrepancies and conditions. Detailed narratives would afford the FAA more specific data, information, and examples to use for programmatic and system-wide reviews and analyses.

The FAA expects a certificate holder's SMS to be implemented when it would submit its SMS manual and/or ACM update. During the inspection, the inspector would verify that the certificate holder is following its approved implementation plan, updated FAA-approved ACM, and SMS manual (where applicable).

While not including SMS review in the annual inspection until a certificate holder's compliance date, inspectors could still offer guidance and assistance to the certificate holder. In the past, regions have offered workshops to assist certificate holders with understanding, implementing, and reviewing new requirements or standards. The FAA would highly encourage certificate holders to discuss implementation with

their inspector and submit drafts of their implementation plan for review before the final deadline for submission.

One association and five certificate holders commented on the FAA's timeline for training its inspectors on the implementation and oversight of the rule and how FAA plans to continuously train inspectors after implementation. One certificate holder requested the FAA ensure consistency in developing, writing, reviewing, and approving airport SMS documents through training programs. One association asked for the opportunity to be briefed and comment on the inspector training program.

Guidance and training would be provided to all regional inspectors on how to determine if a certificate holder's processes and documentation meets the regulatory requirement for SMS. Furthermore, inspectors could always request additional information or policy guidance from the Airport Safety and Operations Division. If this proposed rule becomes effective, the FAA intends to include SMS in recurrent inspector training and would look for ways to be transparent and include industry input regarding training.

#### *M. Safety Risk Management (SRM)*

The NPRM included a requirement for certificate holders to establish a systematic process for analyzing hazards and their risks using a standard five-step process and standard documentation and record retention requirements. The NPRM clarified the use of the five-step process and provided examples for means of compliance. While the NPRM did not propose to require use of a predictive risk matrix for hazard assessment, it suggested its use through example.

One commenter questioned whether a certificate holder could deviate from the FAA's proposed five-step process.

Ten commenters, including one association, seven certificate holders, one consultant, and one anonymous commenter, raised concerns regarding the predictive risk matrix. However, there was no consensus within these comments regarding the use of predictive risk matrices. Several certificate holders wanted the FAA to require a standard predictive risk matrix, while others believed certificate holders should have the flexibility to establish their own.

Several commenters, including an association and certificate holders, shared the concern that the establishment and use of a predictive risk matrix increases liability. The association wanted the FAA to explicitly state that predictive risk

matrices are unique to each certificate holder and should be treated as confidential.

The NPRM proposed minimum requirements for SRM, including establishing a systematic process to analyze hazards and their associated risks through a standard five-step process. Those five steps include (1) describing the system; (2) identifying hazards; (3) analyzing the risk of identified hazards and/or proposed mitigations; (4) assessing the level of risk associated with identified hazards; and, (5) mitigating the risks of identified hazards, when appropriate. As stated in the NPRM, these five steps represent the minimum requirements for this element of SRM. A certificate holder is not precluded from developing additional steps to facilitate its identification, analysis, and mitigation of hazards and risk. However, the certificate holder would need to incorporate at least these five steps at a minimum in its SRM processes.

The NPRM did not include a requirement to use a predictive risk matrix as part of the SRM process. The preamble suggested a risk matrix as an effective method to analyze and prioritize risk based on the likelihood and severity of a hazard's consequence. Although the FAA believes that the use of a predictive risk matrix meets the rule requirements, this proposed rule does not require its use. Each certificate holder would have flexibility and scalability to perform hazard assessments in a manner suitable to its unique operating environment. Furthermore, as stated in FAA's Responses to Clarifying Questions, to properly analyze the risk of identified hazards, a certificate holder would need to define its levels of likelihood, severity, and risk with which it is comfortable. The FAA intends to include examples of risk matrices in guidance materials.

The FAA acknowledges that not requiring the use of a specific risk matrix and standard severity and likelihood definitions may result in various risk matrices being utilized by certificate holders. The FAA believes this issue is outweighed by the benefits associated with maximizing flexibility and scalability to address these issues as each certificate holder chooses.

Regarding documentation and record keeping, a consultant requested the FAA develop a standardized template to document hazard assessment findings. One certificate holder requested the FAA revise its SRM-related records retention policy. That certificate holder contended any final rule should include 24 months instead of 36 months,

claiming that the lesser is consistent with existing record retention requirements under part 139.

Again, the FAA acknowledges that not requiring the use of a standardized template for documenting SRM processes may result in varying SRM documents. The FAA believes this issue is outweighed by the benefits associated with maximizing flexibility and scalability to address this issue as each certificate holder chooses. However, the FAA intends to include a sample template for SRM documentation in guidance materials.

While the FAA recognizes that most existing part 139 record retention requirements are between 12 and 24 months, the FAA believes a longer retention is necessary for trend analysis to gain lessons learned, and for continual improvement under the certificate holder's SMS. The FAA proposed in the NPRM a requirement for the certificate holder to establish a system for identifying safety hazards. After further consideration, the FAA believes the term hazard is confusing and does not adequately address the genesis of the requirement. Each certificate holder and individual operating on the airport could have vastly different definitions of what constitutes a hazard, and such differences could limit what is identified. Under this proposed requirement, the FAA expects the certificate holder to have a system that proactively identifies issues that could lead to unsafe conditions within the movement and non-movement areas of the airport. Therefore, the FAA is proposing in § 139.402(b)(1) to require a certificate holder to establish a system for identifying operational safety issues.

#### *N. Acceptable Level of Safety*

The NPRM proposed that a certificate holder would establish and maintain safety objectives and an acceptable level of safety under the certificate holder's Safety Policy. However, the preamble did little to elaborate on the proposed requirement other than how to establish safety objectives.

Five commenters, including one association, three certificate holders, and one consultant, questioned the proposed requirement to establish an acceptable level of safety. One certificate holder wanted more clarification on how the FAA would ensure consistency throughout the industry (e.g., to peg one airport against another) and questioned whether the different levels of acceptable risk would expose certificate holders to additional liability. Two certificate holders and one association wanted clarification of

(or a definition of) acceptable levels of safety or how they are established, and on liability associated with defining an acceptable level of safety.

The FAA agrees with the commenters. The FAA no longer proposes to require establishment of an acceptable level of safety. The recently published ICAO Annex 19 instead requires member states to establish a State Safety Program for the management of safety in the state, in order to achieve an acceptable level of safety performance in civil aviation. Therefore, this requirement is applicable to the U.S. and the FAA, not to a certificate holder.

#### O. Safety Assurance

One certificate holder requested the FAA require a "Comprehensive Information System," an integrated information technology infrastructure, claiming that it serves as the foundation to support all of the SMS components and that without it, the SMS would be ineffective.

Neither the NPRM nor the SNPRM include a proposal requiring software. The FAA's proposal recognizes that certificate holders are in the best position to determine how they would meet the basic components and elements proposed. A certificate holder is not precluded from developing information management systems to support its SMS. The FAA would allow AIP funds to be used for the one-time (initial) acquisition of airport-owned software applications that are specifically designed to support airport SMS implementation. Other requirements may apply, which are outlined in the AIP Handbook.<sup>16</sup>

While not directly addressed through comments, the FAA proposes amending § 139.402(c)(1) to clarify safety performance monitoring. This change will also better link safety performance monitoring under Safety Assurance back to the safety objectives required under Safety Policy and § 139.402(a)(6). The FAA also proposes amending § 139.402(c)(3) to include compliance with part 139, subpart D requirements, in the regular report of safety information to the accountable executive.

<sup>16</sup> See Section V(J), AIP Eligibility, for further discussion.

#### P. Applicability to Other Airports and Out of Scope Issues

The proposal limited its applicability to holders of a part 139 AOC only. It appears, based on comments received, that some airport operators, owners, and associations confused the proposal with other SMS initiatives underway within the FAA and the FAA's Office of Airports. In addition, the FAA received comments on how it is currently applying SMS concepts to its own operations and approvals.

This proposed rule would not apply to airports that are not certificated under part 139. Further, comments received specific to the FAA's internal SMS efforts, including its publication of FAA Order 5200.11, are out of scope and have been forwarded for consideration under those efforts. As stated earlier, certificated airports may be affected by both this proposed rule and the FAA's internal SMS efforts, including proactive hazard assessment on approval actions before the agency. The FAA is developing these efforts to avoid duplication and enhance communication.

### V. Regulatory Notices and Analyses

#### A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the

aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995; current value is \$155 million). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

#### i. Total Benefits and Costs of This Rule

The FAA considered multiple alternatives for which part 139 certificate holders would be required to implement an airport SMS. The FAA analyzed the following alternatives:

- All part 139 airports;
- Airport operators holding a Class I AOC;
- Certificated international airports;
- Large, Medium, and Small hub airports and certificated airports with more than 100,000 total annual operations; and
- Large, Medium, and Small hub airports, certificated airports with more than 100,000 total annual operations, and certificated international airports.

Although an airport may belong in more than one grouping, the analysis did not double count the benefits and costs for any airport. The goal of analyzing these alternatives is to maximize safety benefits in the least burdensome manner. While the FAA is proposing a preferred alternative, each alternative presents various trade-offs of interest to the public.

The following table shows benefits and costs of the alternatives over 10 years.

COMPARISON OF COSTS AND BENEFITS OVER 10 YEARS  
[2014 Dollars]

Base case	All (\$)	Class I (\$)	International (\$)	L, M, S and >100K ops (\$)	Preferred alternative: L, M, S, >100K ops, and international (\$)
Benefits .....	\$382,987,281	\$368,096,671	\$360,907,166	\$356,128,301	\$370,788,457
Costs .....	471,104,787	341,021,606	215,010,997	163,760,850	238,865,692
Net Benefits .....	- 88,117,506	27,075,065	145,896,169	192,367,451	131,922,764
PV Benefits (7%) .....	233,282,770	224,210,033	219,830,291	216,919,352	225,850,869
PV Costs (7%) .....	307,842,595	223,584,687	141,796,001	108,819,973	157,496,312
PV Net Benefits (7%) .....	- 74,559,825	625,346	78,034,290	108,099,379	68,354,557
PV Benefits (3%) .....	307,499,272	295,542,114	289,769,378	285,932,407	297,704,052
PV Costs (3%) .....	389,440,320	282,304,199	178,432,284	136,340,226	198,211,977
PV Net Benefits (3%) .....	- 74,559,825	625,346	78,034,290	108,099,379	68,354,557

Mitigation Costs: Not quantified, estimates not included.  
Given the range of mitigation actions possible, it is difficult to quantify potential benefits.

The estimated costs of this rule do not include the costs of mitigations that operators could incur as a result of conducting the risk analysis proposed in this rule. Given the range of mitigation actions possible, it is difficult to provide a quantitative estimate of both the costs and benefits of such mitigations. We anticipate that operators will only implement mitigations where benefits of doing so exceed the costs of the mitigations. In order for the estimated benefits to exceed the costs of the rule, the mitigation costs must be below \$68.4 million over 10 years (discounted at 7%). The FAA requests comments on this assumption, as well as data regarding costs and benefits associated with any mitigations implemented through a voluntary SMS program.

ii. Who is Potentially Affected by This Rule?

Part 139 certificated airports

iii. Assumptions

- Discount rates—7% and 3% as required by the Office of Management and Budget.
- Period of analysis—2016 through 2025.
- The rule would take effect in 2016.
- The baseline value of a statistical life (VSL) for 2014 is \$9.4 million.<sup>17</sup>
- VSL in future years were estimated to grow by 1.03 percent per year before discounting to present value.
- The value of a serious injury is \$987,000.<sup>18</sup>

<sup>17</sup> Office of the Secretary of Transportation Memorandum, "Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses—Revised Departmental Guidance 2015," May 2015.

<sup>18</sup> *Id.*

- The value of a minor injury is \$28,200.<sup>19</sup>
- iv. Benefits for the Preferred Alternative

The benefit estimates begin two years after implementation begins. The objective of SMS is to proactively manage safety, to identify potential hazards or risks, and to implement measures that mitigate those risks. The FAA envisions airports being able to use all of the components of SMS to enhance the airport's ability to identify safety issues and spot trends before they result in a near-miss, incident, or accident. Airports have already seen immediate benefits from increased communication and reporting that are all fundamental components of SMS. These efforts are expected to prevent accidents and incidents. These benefits are a result of identifying safety issues, spotting trends, implementing necessary safety mitigations, and communicating findings before they result in a near-miss, incident, or accident. Over the 10-year period of analysis, the potential benefits of the proposed rule for the preferred alternative would be \$370.8 million (\$225.9 million or \$297.7 million in present value terms at 7% and 3%).

v. Costs for the Preferred Alternative

Base case	Preferred alternative: L, M, S, >100K ops, and international
Benefits .....	\$370,788,457
Costs .....	238,865,692
Net Benefits .....	131,922,764

<sup>19</sup> *Id.*

Base case	Preferred alternative: L, M, S, >100K ops, and international
PV Benefits (7%) .....	225,850,869
PV Costs (7%) .....	157,496,312
PV Net Benefits (7%) .....	68,354,557
PV Benefits (3%) .....	297,704,052
PV Costs (3%) .....	198,211,977
PV Net Benefits (3%) ....	68,354,557

Mitigation Costs: Not quantified, estimates not included.

vi. Total Costs

Excluding any mitigation costs, which have not been estimated, the total costs of the SNPRM equal the sum of SMS manual/implementation plan development, staffing, equipment/material, training, update training records, and recording potential hazards over 10 years. The total cost of this rule for the preferred alternative is about \$157.5 million in present value terms.

vii. Alternatives Considered

- All part 139 certificated airports—This alternative is not cost-beneficial.
- Class I airports—This alternative is not cost-beneficial.
- Certificated international airports—This alternative is cost-beneficial but does not capture all certificated airports with complex operations.
- Large, Medium, Small hub airports and certificated airports with total annual operations greater than 100,000—This alternative is cost-beneficial but does not harmonize with ICAO Annex 14.

COMPARISON OF COSTS AND BENEFITS OVER 10 YEARS  
[2014 Dollars]

Base case	All (\$)	Class I (\$)	International (\$)	L, M, S and >100K ops (\$)	Preferred alternative: L, M, S, >100K ops, and international (\$)
Benefits .....	\$382,987,281	\$368,096,671	\$360,907,166	\$356,128,301	\$370,788,457
Costs .....	471,104,787	341,021,606	215,010,997	163,760,850	238,865,692
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PV Net Benefits (7%) .....	- 74,559,825	625,346	78,034,290	108,099,379	68,354,557
PV Benefits (3%) .....	307,499,272	295,542,114	289,769,378	285,932,407	297,704,052
PV Costs (3%) .....	389,440,320	282,304,199	178,432,284	136,340,226	198,211,977
PV Net Benefits (3%) .....	- 74,559,825	625,346	78,034,290	108,099,379	68,354,557

Mitigation Costs: Not quantified, estimates not included.

Given the range of mitigation actions possible, it is difficult to quantify potential benefits.

### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

The FAA identified at least 28 part 139 airports that meet the Small Business Administration definition of a small entity (which includes small governmental jurisdictions such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000) out of the 268 part 139 airports considered in the preferred alternative. The FAA considers this a substantial number of small entities.

Of the 28 small entities, 25 are classified as small airports whereas the remaining 3 are large airports. In the regulatory evaluation, we estimated the costs over 10 years for all part 139 airports (we did not disaggregate costs by small airports and large airports). For

this analysis, the FAA estimated the separate costs over 10 years for small airports and for large airports by taking an average across each of the two groups. Based on these 10-year cost estimates, the FAA projects the annual peak cost for small airports and for large airports at about \$101 thousand; the FAA estimates the annualized costs over ten years at about \$77 thousand and \$81 thousand for small airports and large airports, respectively.<sup>20</sup> Because the relationship between the annual peak cost and the annualized cost for both airport groups suggests a moderately uniform cash flow stream, the FAA used the annualized cost to estimate the economic impact significance on small entities.

The FAA found the individual revenue for 22 airports out of the 28 small entities. The 2011 revenue ranges from about \$97 thousand to \$14.9 million.<sup>21</sup> Using the preceding information, the FAA estimates that their ratio of annualized costs to annual revenues is higher than 2 percent for 12 small airports. Therefore, the FAA performed a regulatory flexibility analysis for these 12 small entities.

Under section 603(b) of the RFA (as amended), each regulatory flexibility analysis is required to address the following points: (1) Reasons the agency considered the proposed rule, (2) the objectives and legal basis for the proposed rule, (3) a description of and an estimate of the number of small entities affected by the proposed rule (4) the reporting, recordkeeping, and other

<sup>20</sup> Annualized using a capital recovery factor of 0.14238, over 10 years, using a 7 percent rate of interest.

<sup>21</sup> Revenue data from Compliance Activity Tracking System (CATS) accessed on June 10, 2013 from <http://cats.airports.faa.gov>.

compliance requirements of the proposed rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the proposed rule.

#### i. Reasons the FAA Considered the Proposed Rule

The FAA remains committed to continuously improving safety in air transportation. The FAA believes that an SMS can address potential safety gaps that are not completely eliminated through existing FAA regulations and technical operating standards. The certificate holder best understands its own operating environment and, therefore, is in the best position to address safety issues through improved management practices.

Both the NTSB and ICAO support SMS as a means to prevent future accidents and improve safety. The NTSB has cited organizational factors contributing to aviation accidents and has recommended SMS for several sectors of the aviation industry, including aircraft operators. The FAA has concluded those same organizational factors and benefits of SMS apply across the aviation industry, including airports. In 2001, ICAO adopted a standard in Annex 14 that all member states establish SMS requirements for airport operators hosting international operations. During the 2007 Universal Safety Audit Program evaluation of the U.S. implementation of ICAO standards and recommended practices, ICAO cited the FAA for failing to conform to the SMS standard and recommended practice in Annex 14. The FAA supports conformity of U.S. aviation safety regulations with ICAO standards and recommended practices.

Moreover, in November 2007, the U.S. Government Accountability Office recommended the FAA develop a strategic plan to reduce accidents involving workers, passengers, and aircraft on airport ramps. The applicability of SMS to the non-movement area, including airport ramps, would help airports proactively identify and mitigate hazards; thereby, reducing the likelihood of future accidents and incidents.

ii. The Objectives and Legal Basis for the Proposed Rule

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs,

describes in more detail the scope of the agency’s authority.

The FAA is proposing this rulemaking under the authority described in Subtitle VII, part A, subpart III, section 44706, “Airport operating certificates.” Under that section, Congress charges the FAA with issuing AOCs that contain terms that the Administrator finds necessary to ensure safety in air transportation. This proposed rule is within the scope of that authority because it requires certain certificated airports to develop and maintain an SMS. The development and implementation of an SMS ensures safety in air transportation by assisting these airports in proactively identifying and mitigating safety hazards.

iii. Description of the Number of Small Entities Affected by the Proposed Rule

The FAA identified at least 28 part 139 airports that meet the SBA definition of a small entity. Their 2011 revenue<sup>22</sup> ranges from about \$97 thousand to \$14.9 million. Using the preceding information, the FAA estimates that their ratio of annualized costs to annual revenues is higher than 2 percent for 12 small airports.

iv. The Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. The following costs apply to the Paperwork Reduction Act.

Costs and Present Value Costs for Small Entities that Apply to the Paperwork Reduction Act (over 10 years)			
		Total Burden hours	Total Cost
1	Manual & Implementation Plan	8,496	\$563,115
2	Manual Revisions	1,152	\$22,360
3	Promotional Material	1,458	\$96,624
4	Record Potential Hazards	1,248	\$24,224
5	Hazard Awareness and Reporting Orientation Materials	192	\$12,726
6	Update Distribution Log	50	\$971
7	Update Training Records	15	\$291
8	Documenting Safety Risk Management	2,496	\$48,447
9	Reporting Safety Information under Safety Assurance	192	\$8,951
	Grand Totals	15,299	\$777,709
	Average per year	1,530	\$77,771

Note: The sum of individual items may not equal totals due to rounding.

v. All Federal Rules That may Duplicate, Overlap, or Conflict With the Proposed Rule

There may be some overlap between the proposed rule and existing Occupational Safety and Health Administration (OSHA) requirements, specifically record keeping and reporting requirements. However, the purpose and focus of this proposal is different. OSHA requirements focus on employee and workplace safety whereas proactive hazard mitigation and analysis under SMS focuses on safety in the

movement and non-movement areas related to aircraft operations. Further, the FAA believes this proposed rule may have secondary benefits of improving employee safety.

vi. Other Considerations

a. Affordability Analysis

For the purpose of this analysis, the degree to which small entities can afford the cost of the rule is predicated on the availability of financial resources. Costs can be paid from existing assets such as

cash, by borrowing, or through the provision of additional equity capital.

Commercial service airports that have accepted federal financial assistance under the AIP are required to report their financial information to the FAA. The FAA defines commercial service as airports with 2,500 or more enplanements in the preceding calendar year (see 49 U.S.C. 47102). Therefore, if a part 139 airport’s enplanements fall below 2,500, its financial data would not be captured in the FAA’s

<sup>22</sup> Accessed on June 10, 2013 at <http://cat.airports.faa.gov>.



Compliance Activity Tracking System (CATS) database.

One means of assessing affordability is by determining the ability of each small entity to meet its short-term obligations by looking at net income, working capital, and financial strength ratios. However, the FAA was unable to find this type of financial information for the affected entities and used an alternative way of analyzing affordability. The approach used by the FAA was to compare annual revenue (reported in the CATS database) with the annualized compliance costs. The ratio of annualized costs to annual revenues ranges from 0.54% to 79.6%. Thus, the FAA expects that some of these small entities may have difficulty affording this rule.

The costs used by the FAA are averages. Therefore, it is reasonable to expect that an airport could have less annualized costs than those depicted in this analysis. The proposed rule establishes broad requirements, affording maximum scalability and flexibility for airports to comply. Therefore, smaller airports have a variety of ways to comply with the broad requirements proposed under SMS. For example, to establish a confidential hazard reporting system, a smaller airport could simply establish drop-boxes around the airport and a

schedule to check the boxes for submissions. Feedback could be given through memos posted in high traffic areas around the airport or near the drop-boxes.

The FAA intends to provide various templates in advisory circular guidance that smaller airports could use to establish their programs. The FAA anticipates offering a sample ACM update, SMS Manual, and templates for conducting SRM and reporting forms. A smaller airport would be able to easily modify these templates as necessary.

Smaller airports could also request federal financial assistance through AIP for costs incurred for development of the SMS Manual and implementation plan. The FAA also anticipates that certain costs associated with implementation of the SRM and Safety Assurance components may be AIP eligible.

It should be noted that multiple smaller airports in the pilot studies found ways to successfully develop and implement SMS within the constraints of their operations and budget. While these airports received AIP funding to conduct the studies, many established scalable programs that they are able to maintain without federal financial assistance.

Lastly, the proposed implementation plan requirements would allow small

airports maximum flexibility in establishing their airport SMS. The certificate holder can phase implementation, either by SMS component or by movement versus non-movement area. Smaller airports would be able to spread the implementation costs over a longer period of time, thereby lessening the impact of this proposal.

#### b. Alternatives

The FAA considered the economic impacts on airports across multiple alternatives for which part 139 certificate holders would be required to implement an airport SMS:

- All Part 139 airports;
- Airport operators holding a Class I AOC;
- Certificated international airports;
- Large, medium, and small hub airports and certificated airports with more than 100,000 total annual operations; and
- Large, Medium, and Small hub airports, certificated airports with more than 100,000 total annual operations, and certificated international airports.

While the FAA is proposing the last alternative as its preferred alternative, each alternative presents various trade-offs of interest to the small entities (see the following table).

Comparison of Alternatives from the Perspective of Small Entities					
	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Alternative 5
	All part 139 (NPRM)	Class I	International	L, M, S and >100K ops	L, M, S, >100K ops, and International
Total number of small entities affected:	118	61	25	7	28
Is this a substantial number of small entities?	Yes	Yes	Yes	Yes	Yes
Small entities for which this rule will have a significant impact?	12	8	11	1	12

As the table shows alternative 4 is the least burdensome for small entities. However, the FAA did not consider this to be an acceptable alternative because in addition to reducing the impact of the rule on small entities there were other competing goals including:

1. Choosing an alternative that provides high airport coverage; and
2. Harmonizing the alternative with the intent of international SMS standards. Alternative 5 in the table was the best alternative for meeting all such goals.

#### vii. Conclusion

This rule will have a significant economic impact on a substantial number of small entities. The FAA identified 12 small entities for which the rule will have a significant economic impact.

Annualized Cost as a Percentage of Revenue for Small part 139 Airports

Count	Airport Name	Associated City	State	Airport Ident.	Ownership <sup>1</sup>	2011 Population Estimate <sup>2</sup>	NPAAS Classification	2013 Revenue <sup>3</sup>	Total Annualized Costs <sup>4</sup>	Ratio
1	Naples Muni	Naples	Florida	APF	Publicly-owned	19,939	Comm. Serv.	\$10,386,000	\$77,122	0.74%
2	Alpena Co Reg	Alpena	Michigan	APN	Publicly-owned	10,410	Comm. Serv.	\$238,387	\$77,122	32.72%
3	Watertown Int'l	Watertown	New York	ART	Publicly-owned	27,423	GA	\$189,279	\$77,122	45.56%
4	Barnes Muni	Westfield	Massachusetts	BAF	Publicly-owned	43,119	GA	not available	\$77,122	not available
5	Bangor Int'l	Bangor	Maine	BGR	Publicly-owned	33,031	Non Hub	\$18,077,528	\$77,122	0.59%
6	Bert Mooney	Butte	Montana	BTM	Publicly-owned	33,704	Non Hub	\$779,620	\$77,122	9.89%
7	Burlington Int'l	Burlington	Vermont	BTV	Publicly-owned	42,845	Small Hub	\$12,868,596	\$80,556	0.63%
8	Gallatin Fld	Bozeman	Montana	BZN	Publicly-owned	38,025	Non Hub	\$6,895,959	\$77,122	1.21%
9	Chippewa Co Int'l	Sault Ste Marie	Michigan	CIJ	Publicly-owned	14,253	Non Hub	\$1,069,179	\$77,122	7.21%
10	Eagle Co Reg	Eagle	Colorado	EGE	Publicly-owned	6,466	Non Hub	\$4,460,640	\$77,122	1.73%
11	Helena Reg	Helena	Montana	HLN	Publicly-owned	28,592	Non Hub	\$3,398,390	\$77,122	2.27%
12	Stennis Int'l	Bay St Louis	Mississippi	HSA	Publicly-owned	9,428	GA	not available	\$77,122	not available
13	Falls Int'l	International Falls	Minnesota	INI	Publicly-owned	6,376	Non Hub	\$96,869	\$77,122	79.61%
14	Sleuth Fld. Int'l	Williston	North Dakota	ISN	Publicly-owned	16,006	Non Hub	\$377,158	\$77,122	22.87%
15	Juneau Int'l	Juneau	Alaska	JNU	Publicly-owned	32,164	Small Hub	\$4,833,353	\$80,556	1.67%
16	Minot Int'l	Minot	North Dakota	MOT	Publicly-owned	42,485	Non Hub	\$1,819,480	\$77,122	4.02%
17	Monterey Peninsula	Monterey	California	MRY	Publicly-owned	28,246	Non Hub	\$7,183,930	\$77,122	1.07%
18	Massena Int'l-Richards Fld	Massena	New York	MRS	Publicly-owned	10,910	GA	\$135,281	\$77,122	57.01%
19	Grant Co	Moses Lake	Washington	MWH	Publicly-owned	20,858	GA	\$6,481,710	\$77,122	1.19%
20	Ogdensburg Int'l	Ogdensburg	New York	OGS	Publicly-owned	11,104	GA	not available	\$77,122	not available
21	Ernest Love Fld	Prescott	Arizona	PRC	Publicly-owned	39,984	Comm. Serv.	\$1,428,443	\$77,122	5.40%
22	Pease Int'l Tradeport	Portsmouth	New Hampshire	PSM	Publicly-owned	20,848	Non Hub	\$1,914,817	\$77,122	0.63%
23	Palm Springs Reg	Palm Springs	California	PSP	Publicly-owned	45,573	Small Hub	\$14,946,946	\$80,556	0.54%
24	Roswell Intern'l Air Ctr	Roswell	New Mexico	ROW	Publicly-owned	48,546	Non Hub	\$2,328,560	\$77,122	3.31%
25	St. Augustine	St. Augustine	Florida	SGJ	Publicly-owned	13,336	Non Hub	not available	\$77,122	not available
26	Adirondack Reg	Saranac Lake	New York	SLK	Publicly-owned	5,391	Comm. Serv.	\$2,170,641	\$77,122	3.55%
27	Space Center Executive	Titusville	Florida	TLX	Publicly-owned	43,777	GA	not available	\$77,122	not available
28	Vero Beach Muni	Vero Beach	Florida	VRB	Publicly-owned	15,318	GA	not available	\$77,122	not available

Notes: **Total**  
 1) Data retrieved 4/17/13 from <http://www.airnav.com/airports/>.  
 2) Data retrieved 4/17/13 from <http://quickfacts.census.gov/qfd/index.html>.  
 3) Revenue data from Compliance Activity Tracking System (CATS) accessed on June 10, 2013 from <http://cats.airports.faa.gov>.  
 4) Annualized using a capital recovery factor of 0.14228, over 10 years, using a 7 percent rate of interest.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it has legitimate domestic objectives and uses ICAO international standards as its basis and, therefore, is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State,

local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This SNPRM would require certificate holders to implement an SMS to proactively identify, analyze, and mitigate safety issues in the movement and non-movement areas. It is not a significant regulatory action under the Unfunded Mandates Reform Act of 1995. Estimated costs do not exceed \$155 million in any year of the 10-year analysis. Accordingly, the FAA has determined that this action does not have a substantial direct effect on the States. Moreover, this proposal would have low costs of compliance compared with the resources available to airports.

The provisions of this proposal are under existing statutory authority to regulate airports for aviation safety. The proposal would not alter the relationship between certificate holders and the FAA as established by law. Accordingly, there is no change in either the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The FAA mailed a copy of the NPRM to each State government specifically inviting comment on federalism issues. The FAA received responses from two attorneys general, both indicating no comment. The FAA will mail a copy of

the SNPRM to each state government specifically inviting comment on federalism implications.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains additional proposed amendments to the existing information collection requirements previously approved under OMB Control Number 2120-0675. As required by the Paperwork Reduction Act, the FAA has submitted these additional proposed information collection amendments to OMB for its review.

The NPRM contained estimates of the burden associated with the additional collection requirements proposed in that document. The FAA did not receive any comments specifically on these estimates. However, the FAA received comments on other areas in the initial regulatory evaluation that affect these estimates. These comments are discussed in the supplemental regulatory evaluation. In addition, these

estimates have been adjusted in response to comments and due to changes in the proposed SMS requirements from the NPRM to this SNPRM (e.g., applicability of the rule).

*Title:* Safety Management System for Certificated Airports.

*Summary:* The FAA proposes a rule to require certain certificate holders to establish an SMS for the entire airfield environment (including movement and non-movement areas) to improve safety at airports hosting air carrier operations. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods for identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.

The proposal would require a certificate holder to submit an Implementation Plan within 12 months of the issuance of the final rule. The intent of the Implementation Plan is for a certificate holder to identify its plan for implementing SMS within the applicable areas, and map its schedule for implementing requirements.

In addition, a certificate holder would describe its means for complying with the proposed requirements by either developing an SMS Manual and updating its Airport Certification Manual (ACM) with cross-references, or documenting the SMS requirements directly in the ACM.

Finally, a certificate holder would be required to maintain records related to

formalized hazard identification and analysis under Safety Risk Management, training records under Safety Promotion, and other Safety Promotion materials (also referred to as safety communications).

*Use:* While the implementation plan's main purpose is to guide a certificate holder's implementation, the plan also provides the basis for the FAA's oversight during the development and implementation phases. The FAA's review and approval of the implementation plan ensures that a certificate holder is given feedback early and before it may make significant capital improvements as part of its SMS development and implementation.

The ACM update and/or the SMS Manual establishes the foundation for an SMS. Like the implementation plan, the FAA would approve the ACM update. However, the FAA would accept the certificate holder's SMS Manual. Collection and analysis of safety data is an essential part of an SMS. Types of data to be collected, retention procedures, analysis processes, and organizational structures for review and evaluation would all be documented in either the ACM or the SMS Manual, with cross-references in the ACM. These records would be used by a certificate holder in the operation of its SMS and to facilitate continuous improvement through evaluation and monitoring. While the proposal does not require a certificate holder to submit these records to the FAA, it would be required to make these records available upon request.

*Respondents:* Application of these proposed requirements is limited to a certificated airport (i) classified as a Small, Medium, or Large hub airport in the NPIAS; (ii) identified as an international airport, or (iii) identified as having more than 100,000 total annual operations.

*Frequency:* The requirement to develop an implementation plan would be a one-time, initial occurrence. The requirement to create an SMS manual and/or update the ACM would be an initial occurrence. Updates to the SMS manual would occur on an as needed, ongoing basis, with annual submissions to the FAA. Other records would be created on an as needed, ongoing basis.

*Burden Estimate:*

a. Initial Burden—Certificate Holders—Draft Manual and Implementation Plan (§§ 139.401(d) and 139.403(a))

- Number of large airports<sup>23</sup>: 138.
- Number of small airports<sup>24</sup>: 130.
- Estimated time needed to create an SMS document and implementation plan per large airport: 508 hours per year for first two years.
- Estimated time needed to create an SMS document and implementation plan per small airport: 334 hours per year for first two years.
- Wage for SMS manager/coordinator: \$66.28 per hour.

<sup>23</sup> For the purposes of this analysis, the FAA has defined "large airports" as Large, Medium, and Small hub airports.

<sup>24</sup> For the purposes of this analysis, the FAA has defined "small airports" as all certificated airports that are not Large, Medium, or Small hubs.

SMS Document for Large Airports				
Year	Large airports	Hours/airport to create SMS document	Total hours	Total Cost
1	138	508.00	70,104.00	\$4,646,493
2	138	508.00	70,104.00	\$4,646,493
3				
4				
5				
6				
7				
8				
9				
10				
<b>Total</b>			140,208.00	\$9,292,986
Average per year			14,020.80	\$929,299

SMS Document for Small Airports				
Year	Small airports	Hours/airport to create SMS document	Total hours	Total Cost
1	130	354.00	46,020.00	\$3,050,206
2	130	354.00	46,020.00	\$3,050,206
3				
4				
5				
6				
7				
8				
9				
10				
<b>Total</b>			92,040.00	\$6,100,411
Average per year			9,204.00	\$610,041

b. Initial Burden—FAA—Review Manual and Implementation Plan

- Number of large airports: 138.
- Number of small airports: 130.
- Estimated time needed to review an implementation plan per large airports: 16 hours in first year.
  - Estimated time needed to review an implementation plan per small airport: 4 hours in first year.
- Estimated time needed to review an SMS document per airport: 8 hours in second year.
  - Wage for inspector: \$66.76 per hour.

Review of SMS document for Large Airports				
Year	Large airports	Hours/airport to review SMS document	Total hours	Total Cost
1	138	16.00	2,208.00	\$147,406
2	138	8.00	1,104.00	\$73,703
3				
4				
5				
6				
7				
8				
9				
10				
<b>Total</b>			3,312.00	\$221,109
Average per year			331.20	\$22,111

Review of SMS document for Small Airports				
Year	Small airports	Hours/airport to review SMS document	Total hours	Total Cost
1	130	4.00	520.00	\$34,715
2	130	8.00	1,040.00	\$69,430
3				
4				
5				
6				
7				
8				
9				
10				
<b>Total</b>			1,560.00	\$104,146
Average per year			156.00	\$10,415

## c. Annual Burden—Certificate Holders

i. SMS Manual Revisions  
(§ 139.401(d)(2)(i))

- Number of airports: 268.

- Estimated time needed to revise SMS manual per airport: 12 hours per year starting in third year.
- Wage for clerical: \$19.41 per hour.

SMS Manual Revisions				
Year	Airports	Hours for manual revisions	Total hours	Total Cost
1	268			
2	268			
3	268	12.00	3,216.00	\$62,423
4	268	12.00	3,216.00	\$62,423
5	268	12.00	3,216.00	\$62,423
6	268	12.00	3,216.00	\$62,423
7	268	12.00	3,216.00	\$62,423
8	268	12.00	3,216.00	\$62,423
9	268	12.00	3,216.00	\$62,423
10	268	12.00	3,216.00	\$62,423
<b>Total</b>			25,728.00	\$499,380
Average per year			2,572.80	\$49,938

ii. Promotional Material (\$ 139.402(d)(5))

- Number of airports: 268.

- Estimated time needed to create SMS promotional material per airport: 25.76 hours every other year starting in third year.

- Wage for SMS manager/coordinator: \$66.28 per hour.

Promotional Material				
Year	Airports	Hours/airport to create SMS promotional material	Total hours	Total Cost
1	268			
2	268			
3	268	31.83	8,531.68	\$565,480
4	268		0.00	\$0
5	268	31.83	8,531.68	\$565,480
6	268		0.00	\$0
7	268	31.83	8,531.68	\$565,480
8	268		0.00	\$0
9	268	31.83	8,531.68	\$565,480
10	268		0.00	\$0
<b>Total</b>			34,126.74	\$2,261,920
Average per year			3412.673506	\$226,192

iii. Recording Potential Hazards (\$ 139.402(b)(1))

- Number of airports: 268.

- Estimated time needed to record potential hazard per airport: 15 minutes per year starting in third year.

- Estimated potential hazards per airport: 52 per year starting in third year.

- Wage for clerical: \$19.41 per hour.

Recording Potential Hazards				
Year	Airports	Hours/airport to record potential hazards	Total hours	Total Cost
1	268		0.00	\$0
2	268		0.00	\$0
3	268	13.00	3,484.00	\$67,624
4	268	13.00	3,484.00	\$67,624
5	268	13.00	3,484.00	\$67,624
6	268	13.00	3,484.00	\$67,624
7	268	13.00	3,484.00	\$67,624
8	268	13.00	3,484.00	\$67,624
9	268	13.00	3,484.00	\$67,624
10	268	13.00	3,484.00	\$67,624
<b>Total</b>			<b>27,872.00</b>	<b>\$540,996</b>
Average per year			2,787.20	\$54,100

iv. Hazard Awareness and Reporting Orientation Materials (§ 139.402(d)(1))

- Number of airports: 268.

- Estimated time needed to develop hazard awareness orientation per airport: 8 hours in second year.

- Estimated time needed to update orientation per airport: 2 hours every other year starting in fourth year.

- Wage for SMS manager/coordinator: \$66.28 per hour.

Hazard Awareness and Reporting Orientation Materials					
Year	Airports	Hours/airport to develop hazard awareness orientation	Hours/airport to update hazard awareness orientation	Total hours	Total Cost
1	268				
2	268	8.00		2,144.00	\$142,104
3	268				
4	268		2.00	536.00	\$35,526
5	268		0.00	0.00	\$0
6	268		2.00	536.00	\$35,526
7	268		0.00	0.00	\$0
8	268		2.00	536.00	\$35,526
9	268		0.00	0.00	\$0
10	268		2.00	536.00	\$35,526
<b>Total</b>			<b>8.00</b>	<b>4,288.00</b>	<b>\$284,209</b>
Average per year			1.00	429.00	\$28,421

v. Update Distribution Log for Hazard Awareness and Reporting Orientation Materials (§ 139.402(d)(2))

- Number of large airports: 138.
- Number of small airports: 130.

- Average number of tenants per large airport: 50.

- Average number of tenants per small airport: 10.

- Estimated time needed to update distribution log per large airport: 0.25

- hours every other year starting in second year.

- Estimated time needed to update distribution log per small airport: 0.08 hours every other year starting in second year.

- Wage for clerical: \$19.41 per hour.

Update Distribution Log for Large Airports				
Year	Large Airports	Hours/airport to update distribution log	Total hours	Total Cost
1	138			
2	138	0.25	1,725.00	\$33,482
3	138	0.00	0.00	\$0
4	138	0.25	1,725.00	\$33,482
5	138	0.00	0.00	\$0
6	138	0.25	1,725.00	\$33,482
7	138	0.00	0.00	\$0
8	138	0.25	1,725.00	\$33,482
9	138	0.00	0.00	\$0
10	138	0.25	1,725.00	\$33,482
<b>Total</b>			8,625.00	\$167,411
Average per year			863.00	\$16,741

Update Distribution Log for Small Airports				
Year	Small Airports	Hours/airport to update distribution log	Total hours	Total Cost
1	130			
2	130	0.08	108.33	\$2,103
3	130	0.00	0.00	\$0
4	130	0.08	108.33	\$2,103
5	130	0.00	0.00	\$0
6	130	0.08	108.33	\$2,103
7	130	0.00	0.00	\$0
8	130	0.08	108.33	\$2,103
9	130	0.00	0.00	\$0
10	130	0.08	108.33	\$2,103
<b>Total</b>			541.67	\$10,514
Average per year			54.00	\$1,051

vi. Update SMS Training Records (§ 139.402(d)(4))

- Number of large airports: 138.
- Number of small airports: 130.
- Estimated time needed to update training records per airport: 5 Minutes per record every other year starting in second year.
- Average number of employees per large airport: 10.
- Average number of employees per small airport: 3.
- Wage for clerical: \$19.41 per hour.



Update Training Records for Large Airports				
Year	Large airports	Hours/airport to update training records	Total hours	Total Cost
1	138			
2	138	0.83	115.00	\$2,232
3	138		0.00	\$0
4	138	0.83	115.00	\$2,232
5	138		0.00	\$0
6	138	0.83	115.00	\$2,232
7	138		0.00	\$0
8	138	0.83	115.00	\$2,232
9	138		0.00	\$0
10	138	0.83	115.00	\$2,232
<b>Total</b>			575.00	\$11,161
Average per year			57.5	\$1,116

Update Training Records for Small Airports				
Year	Small airports	Hours/airport to update training records	Total hours	Total Cost
1	130			
2	130	0.25	32.50	\$631
3	130		0.00	\$0
4	130	0.25	32.50	\$631
5	130		0.00	\$0
6	130	0.25	32.50	\$631
7	130		0.00	\$0
8	130	0.25	32.50	\$631
9	130		0.00	\$0
10	130	0.25	32.50	\$631
<b>Total</b>			162.50	\$3,154
Average per year			16.25	\$315

vii. Documenting Safety Risk Management (§ 139.402(b)(3))

- Number of airports: 268.

- Estimated number of hazards documented per airport: 52 per year starting in third year.

- Estimated time needed to document SRM per airport: 0.5 hours per year starting in third year.

- Wage for clerical: \$19.41 per hour.

Documenting Safety Risk Management				
Year	Airports	Hours/airport to document SRM	Total hours	Total Cost
1	268	0.00	0.00	\$0
2	268	0.00	0.00	\$0
3	268	26.00	6,968.00	\$135,249
4	268	26.00	6,968.00	\$135,249
5	268	26.00	6,968.00	\$135,249
6	268	26.00	6,968.00	\$135,249
7	268	26.00	6,968.00	\$135,249
8	268	26.00	6,968.00	\$135,249
9	268	26.00	6,968.00	\$135,249
10	268	26.00	6,968.00	\$135,249
<b>Total</b>			55,744.00	\$1,081,991
Average per year			5,574.40	\$108,199

viii. Reporting Safety Information Under Safety Assurance (§ 139.402(c)(3))

- Number of airports: 268.

- Estimated time needed to report safety information per report per airport: 1 hour per year starting in third year.

- Estimated number of reports per airport: 2 per year starting in third year.
- Wage for operational research analyst: \$46.62 per hour.

Reporting Safety Information under Safety Assurance				
Year	Airports	Hours/airport to report safety information	Total hours	Total Cost
1	268	0.00	0.00	\$0
2	268	0.00	0.00	\$0
3	268	2.00	536.00	\$24,988
4	268	2.00	536.00	\$24,988
5	268	2.00	536.00	\$24,988
6	268	2.00	536.00	\$24,988
7	268	2.00	536.00	\$24,988
8	268	2.00	536.00	\$24,988
9	268	2.00	536.00	\$24,988
10	268	2.00	536.00	\$24,988
<b>Total</b>			4,288.00	\$199,907
Average per year			428.80	\$19,991

d. Annual Burden—FAA

i. Review of SMS Manual Revisions

- Number of airports: 268.

- Estimated time needed to review an SMS manual revision per airport: 1.25 hours per year starting in third year.

- Wage for inspector: \$66.76 per hour.

Review of SMS Manual Revisions				
Year	Airports	Hours for manual revisions	Total hours	Total Cost
1	268			
2	268			
3	268	1.25	335.00	\$22,365
4	268	1.25	335.00	\$22,365
5	268	1.25	335.00	\$22,365
6	268	1.25	335.00	\$22,365
7	268	1.25	335.00	\$22,365
8	268	1.25	335.00	\$22,365
9	268	1.25	335.00	\$22,365
10	268	1.25	335.00	\$22,365
<b>Total</b>			2,680.00	\$178,917
Average per year			268.00	\$17,892

e. Summary of All Burden Hours and Costs—Certificate Holders

	Total Burden hours	Total Cost
1 Manual & Implementation Plan	232,248.00	\$15,393,397
2 Manual Revisions	25,728.00	\$499,380
3 Promotional Material	34,126.74	\$2,261,920
4 Record Potential Hazards	27,872.00	\$540,996
5 Hazard Awareness and Reporting Orientation Materials	4,288.00	\$284,209
6 Update Distribution Log	9,166.67	\$177,925
7 Update Training Records	737.50	\$14,315
8 Documenting Safety Risk Management	55,744.00	\$1,081,991
9 Reporting Safety Information under Safety Assurance	4,288.00	\$199,907
Grand Totals	394,198.90	\$20,454,040
Average per year	39,419.89	\$2,045,404

Note: The sum of individual items may not equal totals due to rounding.

f. Summary of All Burden Hours and Costs—FAA

	Total Burden hours	Total Cost
1 Review of Manual & implementation Plan	4,872.00	\$325,255
2 Review of SMS Manual Revisions	2,680.00	\$178,917
Grand Totals	7,552.00	\$504,172
Average per year	755.20	\$50,417

Note: The sum of individual items may not equal totals due to rounding.

### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and believes its proposal corresponds with the intent of ICAO Annexes 14 and 19 standards.

### G. Environmental Analysis

FAA Order 1050.1E defines the FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d and involves no extraordinary circumstances.

## VI. Executive Order Determinations

### A. Executive Order 13132, Federalism

The FAA has analyzed the proposal under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this proposal are owned, operated, or regulated by a local government body (such as a city or council government), which, in turn, is incorporated by or as part of a state. Some airports are operated directly by a state. The FAA does not believe this proposed rule has a significant adverse effect on Federalism. The FAA will mail a copy of the SNPRM to each state government specifically inviting comment on Federalism implications.

### B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this SNPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

## VII. How To Obtain Additional Information

### A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating

to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. 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, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

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

### Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD-ROM, mark the outside of the disk or CD-ROM and also identify electronically within the disk or CD-ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

### B. Availability of Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/) or

3. Access the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

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

### C. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

### D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations as follows:

### PART 139—CERTIFICATION OF AIRPORTS

- 1. The authority citation for part 139 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701-44702, 44709, 44719.

- 2. Amend § 139.5 by adding in alphabetical order the definitions of the terms “Accountable executive”, “Airport Safety Management System (SMS)”, “Hazard”, “Non-movement area”, “Risk”, “Risk analysis”, “Risk mitigation”, “Safety assurance”, “Safety policy”, “Safety promotion”, and

“Safety risk management” to read as follows:

**§ 139.5 Definitions.**

\* \* \* \* \*

*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 of the certificate holder’s human and financial resources for operations conducted under the Airport’s Operating Certificate. 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.

\* \* \* \* \*

*Airport Safety Management System (SMS)* means an integrated collection of processes and procedures that ensures a formalized and proactive approach to system safety through risk management.

\* \* \* \* \*

*Hazard* means a condition that could foreseeably cause or contribute to an aircraft accident as defined in 49 CFR 830.2.

\* \* \* \* \*

*Non-movement area* means the area, other than that described as the movement area, used for the loading,

unloading, parking, and movement of aircraft on the airside of the airport (including ramps, apron areas, and on-airport fuel farms).

\* \* \* \* \*

*Risk* means the composite of predicted severity and likelihood of the potential effect of a hazard.

*Risk analysis* means the process whereby a hazard is characterized for its likelihood and the severity of its effect or harm. Risk analysis can be either a quantitative or qualitative analysis; however, the inability to quantify or the lack of historical data on a particular hazard does not preclude the need for analysis.

*Risk mitigation* means any action taken to reduce the risk of a hazard’s effect.

\* \* \* \* \*

*Safety assurance* means the process management functions that evaluate the continued effectiveness of implemented risk mitigation strategies; support the identification of new hazards; and function to systematically provide confidence that an organization meets or exceeds its safety objectives through continuous improvement.

*Safety policy* means the statement and documentation adopted by a certificate holder defining its commitment to safety and overall safety vision.

*Safety promotion* means the combination of safety culture, training,

and communication activities that support the implementation and operation of an SMS.

*Safety risk management* means a formal process within an SMS composed of describing the system, identifying the hazards, and analyzing, assessing, and mitigating the risk.

**§ 139.101 [Amended]**

■ 3. Amend § 139.101 by removing paragraph (c).

■ 4. Amend § 139.103 by revising paragraph (b) to read as follows:

**§ 139.103 Application for certificate.**

\* \* \* \* \*

(b) Submit with the application, two copies of an Airport Certification Manual, Safety Management System Implementation Plan (as required by § 139.403(b)), and Safety Management System Manual (where applicable) prepared in accordance with subparts C and E of this part.

■ 5. Amend § 139.203 by redesignating paragraph (b)(29) as (b)(30) and adding a new paragraph (b)(29) to read as follows:

**§ 139.203 Contents of Airport Certification Manual.**

\* \* \* \* \*

(b) \* \* \*

**REQUIRED AIRPORT CERTIFICATION MANUAL ELEMENTS**

Manual elements	Airport certificate class			
	Class I	Class II	Class III	Class IV
* * * * *	*	*	*	*
29. Policies and procedures for the development of, implementation of, maintenance of, and adherence to the Airport’s Safety Management System, as required under subpart E of this part. Section 139.401(a) prescribes which certificate holders are subject to this requirement. ....	X	X	X	X
* * * * *	*	*	*	*

■ 6. Amend § 139.301 by revising paragraph (b)(1) and adding paragraphs (b)(9) and (b)(10) to read as follows:

**§ 139.301 Records.**

\* \* \* \* \*

(b) \* \* \*

(1) *Personnel training*. Twenty-four consecutive calendar months for personnel training records and orientation materials, as required under §§ 139.303, 139.327, and 139.402(d).

\* \* \* \* \*

(9) *Safety risk management documentation*. Thirty-six consecutive calendar months or twelve consecutive

calendar months, as required under § 139.402(b).

(10) *Safety communications*. Twelve consecutive calendar months for safety communications, as required under § 139.402(d).

\* \* \* \* \*

■ 7. Amend § 139.303 by revising paragraphs (e)(5) and (e)(6) and by adding paragraph (e)(7) to read as follows:

**§ 139.303 Personnel.**

\* \* \* \* \*

(e) \* \* \*

(5) § 139.337, Wildlife hazard management;

(6) § 139.339, Airport condition reporting; and

(7) § 139.402, Components of airport safety management system.

\* \* \* \* \*

■ 8. Add subpart E to part 139 to read as follows:

**Subpart E—Airport Safety Management System**

- Sec.
- 139.401 General requirements.
  - 139.402 Components of Airport Safety Management System.
  - 139.403 Airport Safety Management System implementation.

## Subpart E—Airport Safety Management System

### § 139.401 General requirements.

(a) Each certificate holder or applicant for an Airport Operating Certificate meeting at least one of the following criteria must develop, implement, maintain and adhere to an Airport Safety Management System:

- (1) Is classified as a Large, Medium, or Small hub in the National Plan of Integrated Airport Systems;
- (2) Is classified as a port of entry (under 19 CFR 101.3), designated international airport (under 19 CFR 122.13), landing rights airport (under 19 CFR 122.14), or user fee airport (under 19 CFR 122.15); or
- (3) Has more than 100,000 total annual operations.

(b) 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.

(c) The Airport Safety Management System may correspond in size, nature, and complexity to the operations, activities, hazards, and risks associated with the certificate holder's operations.

(d) Each certificate holder required to develop, implement, maintain, and adhere to an Airport Safety Management System under this subpart must describe its compliance with the requirements identified in § 139.402 either:

(1) Within a separate section of the certificate holder's Airport Certification Manual titled Airport Safety Management System; or

(2) Within a separate Airport Safety Management System Manual. If the certificate holder chooses to use a separate Airport Safety Management System Manual, the Airport Certification Manual must incorporate by reference the Airport Safety Management System Manual.

(e) On an annual basis, the certificate holder shall provide the FAA copies of any changes to the Airport Safety Management Manual.

### § 139.402 Components of Airport Safety Management System.

An Airport Safety Management System must include:

(a) *Safety Policy.* A Safety Policy that, at a minimum:

- (1) Identifies the accountable executive.
- (2) Establishes and maintains a safety policy statement signed by the accountable executive.
- (3) Ensures the safety policy statement is available to all employees and tenants.

(4) Identifies and communicates the safety organizational structure.

(5) Describes management responsibility and accountability for safety issues.

(6) Establishes and maintains safety objectives.

(7) Defines methods, processes, and organizational structure necessary to meet safety objectives.

(b) *Safety Risk Management.* Safety Risk Management processes and procedures for identifying hazards and their associated risks within airport operations and for changes to those operations covered by this part that, at a minimum:

(1) Establish a system for identifying operational safety issues.

(2) Establish a systematic process to analyze hazards and their associated risks by:

- (i) Describing the system;
- (ii) Identifying hazards;
- (iii) Analyzing the risk of identified hazards and/or proposed mitigations;
- (iv) Assessing the level of risk associated with identified hazards; and
- (v) Mitigating the risks of identified hazards, when appropriate.

(3) Establish and maintain records that document the certificate holder's Safety Risk Management processes.

(i) The records shall provide a means for airport management's acceptance of assessed risks and mitigations.

(ii) Records associated with the certificate holder's Safety Risk Management processes must be retained for the longer of:

(A) Thirty-six consecutive calendar months after the risk analysis of identified hazards under paragraph (b)(2)(iv) of this section has been completed; or

(B) Twelve consecutive calendar months after mitigations required under paragraph (b)(2)(v) of this section have been implemented.

(c) *Safety Assurance.* Safety Assurance processes and procedures to ensure mitigations developed through the certificate holder's Safety Risk Management processes and procedures are adequate, and the Airport's Safety Management System is functioning effectively. Those processes and procedures must, at a minimum:

(1) Provide a means for monitoring safety performance including a means for ensuring that safety objectives identified under paragraph (a)(6) of this section are being met.

(2) Establish and maintain a hazard reporting system that provides a means for reporter confidentiality.

(3) Report pertinent safety information and data on a regular basis to the accountable executive. Reportable data includes:

(i) Compliance with the requirements under subpart D of this part;

(ii) Performance of safety objectives established under paragraph (a)(6) of this section;

(iii) Safety critical information distributed in accordance with paragraph (d)(5)(ii) of this section;

(iv) Status of ongoing mitigations required under the Airport's Safety Risk Management processes as described under paragraph (b)(2)(v) of this section; and

(v) Status of a certificate holder's schedule for implementing the Airport Safety Management System as described under paragraph (b)(2) of this section.

(d) *Safety Promotion.* Safety Promotion processes and procedures to foster an airport operating environment that encourages safety. Those processes and procedures must, at a minimum:

(1) Provide all persons authorized to access the airport areas regulated under this part with a hazard awareness orientation, which includes hazard identification and hazard reporting. These orientation materials must be readily available and be updated at least every 24 calendar months.

(2) Maintain a record of all hazard awareness orientation materials made available under paragraph (d)(1) of this section including any revisions and means of distribution. Such records must be retained for 24 consecutive months after the materials are made available.

(3) Provide safety training on those requirements of SMS and its implementation to each employee with responsibilities under the certificate holder's SMS that is appropriate to the individual's role. This training must be completed at least every 24 months.

(4) Maintain a record of all training by each individual under paragraph (d)(3) of this section that includes, at a minimum, a description and date of training received. Such records must be retained for 24 consecutive calendar months after completion of training.

(5) Develop and maintain formal means for communicating important safety information that, at a minimum:

(i) Ensures all persons authorized to access the airport areas regulated under this part are aware of the SMS and their safety roles and responsibilities;

(ii) Conveys critical safety information;

(iii) Provides feedback to individuals using the airport's hazard reporting system required under paragraph (c)(2) of this section; and

(iv) Disseminates safety lessons learned to relevant airport employees or other stakeholders.

(6) Maintain records of communications required under this section for 12 consecutive calendar months.

**§ 139.403 Airport Safety Management System implementation.**

(a) Each certificate holder required to develop, implement, maintain, and adhere to an Airport Safety Management System under this subpart must submit an implementation plan to the FAA for approval on or before [DATE 12 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

(b) An implementation plan must provide:

(1) A detailed proposal on how the certificate holder will meet the requirements prescribed in this subpart.

(2) A schedule for implementing SMS components and elements prescribed in § 139.402. The schedule must include timelines for the following requirements:

(i) Developing the safety policy statement as prescribed in § 139.402(a)(2) and when it will be made available to all employees and tenants as prescribed in § 139.402(a)(3);

(ii) Identifying and communicating the safety organizational structure as prescribed in § 139.402(a)(4);

(iii) Establishing a system for identifying operational safety issues as prescribed in § 139.402(b)(1);

(iv) Establishing a hazard reporting system as prescribed in § 139.402(c)(2);

(v) Developing, providing, and maintaining hazard awareness orientation materials as prescribed in § 139.402(d)(1);

(vi) Providing SMS specific training to employees with responsibilities under the certificate holder's SMS as prescribed in § 139.402(d)(3); and

(vii) Developing, implementing, and maintaining formal means for communicating important safety information as prescribed in § 139.402(d)(5).

(3) A description of any existing programs, policies, or procedures that the certificate holder intends to use to meet the requirements of this subpart.

(c) Each certificate holder required to develop, implement, maintain, and adhere to an Airport Safety Management System under this subpart must submit its amended Airport Certification Manual and Airport Safety Management System Manual, if applicable, to the FAA in accordance with its implementation plan but not later than [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f) and 44706, on July 8, 2016.

**Michael J. O'Donnell,**

*Director, Office of Airport Safety and Standards.*

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