

**COMMENTS
OF THE COLORADO AIRPORT OPERATORS ASSOCIATION
ON THE NOTICE OF PROPOSED RULEMAKING,
SAFETY MANAGEMENT SYSTEMS FOR CERTIFICATED AIRPORTS
DOCKET FAA-2010-0997**

INTRODUCTION

The Colorado Airport Operators Association (“CAOA”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) that would require all airports certificated under 14 C.F.R. Part 139 to develop and implement a Safety Management System (“SMS”). We ask that these comments be maintained in the docket of this rulemaking (Docket No. FAA-2010-0997), that the FAA carefully consider the comments and suggestions presented herein, and that the FAA respond to these comments in the Preamble to any final rule.

BACKGROUND

CAOA is a voluntary association serving the interests of the public-use airports in the state of Colorado. CAOA also includes corporate members representing the diverse business interests that both support and depend upon Colorado’s airports.

There are seventy-six public-use airports in Colorado, categorized as follows:

- ➔ Fourteen (14) commercial service airports and sixty-two (62) general aviation airports
- ➔ Sixteen (16) airports certificated pursuant to FAR Part 139
- ➔ Twelve (12) Class I airports, two Class II airports, one Class III airport, and one Class IV airport

Colorado airports generate over \$32 billion of economic activity annually and support more than 318,000 Colorado jobs.¹ Denver International Airport and its tenants employ over 32,000 people at the airport, of whom 1,000 are direct employees of the airport.² Statewide, commercial service airports employ over 44,000 people in on-airport aviation-related jobs.³

Colorado’s certificated airports reflect the diversity in the size and complexity of certificated airports throughout the United States. Colorado is home to small county airports with limited traffic, on one end of the spectrum, and Denver International Airport, the fifth busiest airport in the country, on the other end. Like most public use airports in the U.S., Colorado airports are owned and operated primarily by multi-purpose governments (counties and cities) and by special-purpose airport authorities.

¹ Colorado Department of Transportation, Aeronautics Division, *The Economic Impact of Airports in Colorado*, at A-10 (May 2008).

² *Id.* at p.19.

³ *Id.* at p. 11.

The sixteen certificated airports in Colorado, and their certificate class, are as follows:

- Colorado Plains Regional (Class IV)
- Alamosa-San Luis Valley Airport (Class II)
- Aspen-Pitkin County Airport (Class I)
- Colorado Springs Municipal Airport (Class I)
- Cortez-Montezuma County Airport (Class III)
- Denver International Airport (Class I)
- Durango-La Plata County Airport (Class I)
- Eagle County Regional Airport (Class I)
- Grand Junction Regional Airport (Class I)
- Gunnison-Crested Butte Regional Airport (Class I)
- Hayden-Yampa Valley Regional Airport (Class I)
- Loveland-Ft. Collins Municipal Airport (Class I)
- Montrose Regional Airport (Class I)
- Pueblo Memorial Airport (Class I)
- Rocky Mountain Metropolitan Airport (Class II)
- Telluride Regional Airport (Class I)

While all of these airports have the minimum level of service to require an Airport Operating Certificate pursuant to 49 U.S.C. Section 44706, these airports vary in their traffic, budgets, staff and infrastructure. Some of the more notable differences are as follows:

- Three of these airports (Alamosa, Pueblo and Cortez) are designated non-primary airports in the NPIAS and currently are served by air carriers receiving a subsidy under the Essential Air Service Program.
- Several Colorado airports have very limited commercial service, including, for example, the Loveland-Ft. Collins and Telluride Regional Airports, both of which offer only a few daily flights to limited destinations.
- Two of the airports (Colorado Plains Regional and Rocky Mountain Metro) have no scheduled, commercial passenger service.
- The commercial traffic at many airports is heavily dependent on tourism and, because of the number of ski resorts in Colorado, fluctuates seasonally. This especially applies to the Aspen-Pitkin County, Eagle County Regional, Hayden-Yampa Valley Regional, Gunnison-Crested Butte Regional, Montrose Regional and Telluride Regional Airports.
- Even at the busiest commercial service airports in Colorado, the level of traffic varies widely. DIA now serves more than 50 million passengers annually. The second busiest commercial service airport in the state (Colorado Springs Municipal Airport), serves around 2 million passengers annually.
- The smaller certificated airports in Colorado have budgets of only a few hundred thousand dollars, whereas DIA's annual budget is around \$380 million.

- The smaller certificated airports may have a staff of less than ten people, whereas DIA's staff is around 1,000 employees.

This background information on Colorado airports is presented in part to demonstrate that Colorado presents an excellent lens through which to consider the potential effects of the proposed SMS rule on certificated airports across the country. Perhaps more importantly, this diversity demonstrates that the safety issues and safety needs at Colorado airports vary widely. While the FAA professes repeatedly in the NPRM and in its subsequent responses to clarifying questions that the proposed SMS requirements are intended to be scalable and flexible, our analysis of the NPRM strongly suggests that the FAA has proposed a set of procedures that are essentially one-size-fits-all.

Perhaps the only common trait of all Colorado airports is the shared commitment to safety and continuous safety improvement. Nowhere herein will we contend that no further safety procedures are needed or appropriate. But, we do believe that a more rational approach to improving safety can and should be developed. CAO is eager to work in partnership with the FAA to improve the culture of safety at all of Colorado's certificated airports, and we trust that these comments will be considered with that goal in mind.

GENERAL AND SPECIFIC COMMENTS

I. FAA should provide leadership, funding, guidance and support to assist certificated airports in determining whether SMS is an appropriate safety tool at individual airports and to assist those airports with adoption and implementation of SMS.

The NPRM provides a cursory overview of why the FAA proposes to require certificated airports to develop and implement an SMS. The NPRM mentions ICAO Annex 14 and prior NTSB recommendations that *air carriers* develop SMSs, and concludes that the agency "has determined that an SMS requirement would improve safety at part 139 certificated airports."⁴ The NPRM does not provide any statistical, or even anecdotal, evidence of a risk-based reason to demand that all certificated airports adopt SMS.⁵ CAO expects far more detailed and specific support before the FAA imposes such an onerous requirement on 562 airports that, by the FAA's calculations, is expected to cost almost \$250 million in the first ten years alone.⁶

If, as presently proposed, SMS is mandatory for all certificated airports, the rule may create a perverse incentive for airports to voluntarily give up their Airport Operating Certificate in order to avoid onerous SMS obligations. Again, several Colorado airports have limited or no commercial service traffic, and it is conceivable that one or more airports will lose commercial service altogether in the coming years. This risk is particularly acute if the Essential Air Service Program (EAS) is eliminated, which would occur under the House version of FAA Reauthorization adopted in April 2011.⁷

⁴ 75 Fed. Reg. 62,008, 62,010 (Oct. 7, 2010).

⁵ The NTSB recommendations referenced in the NPRM do not constitute such evidence. The FAA acknowledges that the recommendations concerned actions that the *air carrier* might take to avoid similar events. There is no suggestion that a functioning SMS at the originating *airport* would have avoided the accidents described.

⁶ 75 Fed. Reg. at 62,019.

⁷ FAA Reauthorization and Reform Act of 2011, H.R. 658, 112th Cong. § 408 (2011).

Another unintended consequence may be that, by linking SMS to certification under Part 139, airport operators would have an incentive to limit the scope of the SMS to only those areas and activities expressly covered by Part 139. While the FAA suggested in the NPRM and responses to clarifying questions that airport operators could, for example, include a passenger terminal in the SMS without risk of subjecting those aspects of the SMS to FAA oversight, many airport operators undoubtedly will limit their SMS to only those areas and activities explicitly required under Part 139.

CAOA recommends that the FAA carefully consider whether, rather than imposing SMS on all certificated airports, it would be more effective and provide superior safety benefits to provide guidance, support and financial assistance for certificated airports electing to implement SMS as a voluntary means of enhancing airport safety. In each case, the determination would be left to the airport operator, based on empirical evidence relevant to the particular airport, whether SMS would be useful and, if so, how to develop and administer a tailored program. With such an approach, all certificated airports would have access to incentives (such as federal financial assistance) needed to develop and implement SMS, while permitting airports with existing safety programs to avoid unneeded and potentially redundant processes and obligations.

Alternatively, if FAA is committed to imposing SMS as a mandatory safety tool, its focus should be limited to certificated airports that serve international air carrier traffic on a regular basis. The stated purpose of the proposed rule is to conform to ICAO standards and recommended practices.⁸ The objectives behind ICAO's standards and recommended practices are to "promote safety of flight in *international* air navigation" and to "[i]nsure the safe and orderly growth of *international* civil aviation throughout the world."⁹ Conformance to ICAO standards can be achieved by requiring SMS at the subset of certificated airports with regular international activity. It is neither necessary nor justified to apply this requirement to airports like Cortez-Montezuma County, where commercial service is limited to flights to and from Denver. Annex 14 was never intended to apply to airports like this.

II. FAA's decision to postpone implementation of the proposed internal FAA Airports SMS suggests that FAA lacks adequate resources to implement the Part 139 SMS requirement as well.

On May 31, 2011, FAA issued Change 1 to Order 5200.11, *FAA Airports Safety Management System*. As a result of funding and staffing constraints, FAA has delayed implementation of internal SMS, and will require safety assessments for FAA approvals only at large hub airports, beginning June 1, 2011.¹⁰ Other airports may be added later, as budget and staffing resources permit.

FAA also acknowledged in its Responses to Clarifying Questions that the current budget environment has "raised questions" about the level of staffing and budgetary resources available

⁸ 75 Fed. Reg. at 62,009, 62,018.

⁹ ICAO, Convention on International Civil Aviation, 9th ed. (2006), Art. 44 (emphasis added).

¹⁰ Change 1 to Order 5200.11, FAA Airports (ARP) Safety Management System, effective 5/31/11.

to it to implement the proposed rule.¹¹ In order to play its role in implementing and enforcing SMS for certificated airports, however, FAA must marshal and expend substantial new resources and staff time to (i) review and act on Implementation Plans and SMS Manuals or amendments to Airport Certification Manuals, (ii) inspect airports for compliance with SMS-related obligations, (iii) train FAA staff and inspectors, and (iv) develop and publish relevant guidance material and provide other assistance to airport operators. Given that FAA was forced to scale back implementation of internal SMS, we doubt that FAA will have adequate resources to meet its obligations under the proposed SMS for certificated airports.

III. The proposed rule is not sufficiently flexible to address the variability in certificated airports in Colorado.¹²

FAA states in the NPRM that it “intends for this and any future SMS rules to be fully scalable, based on the size and complexity of the organization implementing SMS” and requests comments on scalability and flexibility.¹³ The FAA provides a few examples of instances in which the airport operator would have more than one option for complying with the proposed rule, including the ability to develop a separate SMS Manual or add a new section to an existing Airport Certification Manual, and the ability to choose from among different approaches for hazard reporting and recordkeeping.

We believe that the requirements outlined in the NPRM belie the FAA’s professed intention to allow scalability in SMS procedures. The examples in the NPRM do nothing to diminish the fact that the so-called “minimum elements of SMS” would be burdensome to satisfy, particularly for small certificated airports.¹⁴ Each airport operator would be responsible for the same physical location (the movement and non-movement areas) and for developing systematic processes for identifying and analyzing hazards, hazard reporting, recordkeeping, monitoring safety performance, training and communication.¹⁵

The proposed requirement that each SMS address aircraft operations in the non-movement area presents a minimum requirement that may prove to be difficult to implement and/or unnecessary at some certificated airports. While the non-movement area includes the same locations at each airport (e.g., ramps, apron and fuel farms), the size, complexity of operations and level of airport operator control over the non-movement area vary from airport to airport. Moreover, the complexity is not necessarily a function of the size of the airport. By proposing to require that each airport address aircraft operations in the non-movement area without regard to airport-specific considerations and potential risk, the FAA is undermining its professed intent to make SMS scalable and flexible.

The FAA indicates that an airport operator would have multiple options for hazard reporting (e.g., by using a call-in line, web-based system, or drop box) and for recordkeeping and data

¹¹ FAA Responses to Clarifying Questions About Proposed Rulemaking for Safety Management System for Certificated Airports, Docket No. FAA-2010-0997 (FAA Office of Airports) at p. 35 (response to question 110) (May 2011).

¹² This comment responds to Question #4 on p. 62,020 of the NPRM, 75 Fed. Reg. at 62,020.

¹³ 75 Fed. Reg. at 62,020.

¹⁴ *See id.* at 62,011.

¹⁵ *See id.*

tracking (e.g., by using a spreadsheet or database).¹⁶ While there plainly would be costs avoided if an airport operator were not obligated to acquire and administer complex software or hardware, all certificated airports would face the same obligations to, for example, make reporting confidential, to analyze and mitigate the risks of identified hazards, to monitor safety performance and to keep records of safety reports and responses.

The FAA has underestimated the burdens associated with these requirements. Satisfying these reporting and recordkeeping obligations will consume considerable staff time. The burden will be particularly acute at small certificated airports with limited staff and existing obligations that are known to be extremely demanding at particular times of the year. Further, based on our discussions with CAO airport members, it is likely that small certificated airports may rely as much or more on SMS-specific software and technological solutions, in light of their limited staff time and limited familiarity with SMS. The FAA may be overestimating the degree to which small certificated airports would be able to reduce their costs, and therefore may be underestimating the potential financial impacts.

IV. The most effective way to make SMS scalable and flexible would be to permit airport operators to implement SMS in phases.¹⁷

As another example of supposed flexibility, the FAA points to the fact that airport operators would have different deadlines for submitting their implementation plans and SMS Manuals depending on the certificate class. Yet, the FAA rejected the one measure that would afford the most crucial form of flexibility: the ability to implement SMS in phases. The FAA's purported reason for rejecting phased implementation is that "[b]ased on the results of the pilot study, the FAA has determined that all components of an SMS are interrelated and must be implemented at the same time for an SMS to be effective."¹⁸ This finding and conclusion are contradicted by all available information:

- The FAA's own summary of the results of the pilot program supports phased implementation.¹⁹
- A widely-cited ACRP report, *Safety Management Systems for Airports*, contrasts phased implementation with "fast track" adoption, and suggests that phased implementation is preferable.²⁰ Phased implementation allows time to address issues arising at one stage before advancing to the next, whereas fast track adoption "may not result in a sufficiently fundamental change in safety practices and attitudes." The companion *SMS Guidebook* also recommends a phased approach as being more conducive to breaking down negative reactions and resistance to change being wrought by the new SMS.²¹

¹⁶ *Id* at 62,016.

¹⁷ This comment responds to Question #5 on p. 62,020 of the NPRM, 75 Fed. Reg. at 62,020.

¹⁸ 75 Fed. Reg. at 62,017.

¹⁹ FAA Presentation, "Airport SMS Pilot Project I Findings" at 47 (Oct. 30, 2008) ("Phased implementation seemed universally accepted.").

²⁰ *SMS for Airports, Vol. 1* at 23 (2007).

²¹ *SMS for Airports, Vol. 2* at p. 60 (2009).

- FAA itself is pursuing phased implementation of its internal SMS program. FAA initially proposed a phased approach to internal SMS by adopting deadlines based on the size of the airport.²² Following publication of Change 1, FAA is still pursuing a phased approach, applying Safety Risk Management (SRM) procedures in the “initial phase-in” to large-hub airports only, but now has indefinitely postponed addition of other airports in subsequent phases to “future years as workload and staffing allow.”²³
- ICAO’s *Safety Management Manual* (Doc. 9859) proposes a four-phase approach to SMS: planning SMS implementation, reactive safety management processes, proactive and predictive safety management processes, and operational safety assurance.²⁴
- Airport officials outside the U.S. who have already introduced SMS prefer phased implementation. In a 2009 TRB report titled *SMS Implementation Outside the United States, Interview Summaries*, in which FAA interviewed officials from airports in Canada, Great Britain, Denmark, and Australia, all of the interviewees reported having used a phased-in approach to implementation, and recommended that other airports do the same.²⁵

Phased implementation would better serve the varied needs and capacities of the sixteen certificated airports in Colorado. While all Colorado airports are committed to continuous safety improvement, each airport would have a different approach and schedule for making the kind of profound changes required to fully implement an SMS. The particular schedule will depend on staff availability, seasonal fluctuations in traffic, current and planned projects, budget, and other airport-specific considerations. In contrast, rushed implementation may force some Colorado airports to focus on the less critical and easier to address safety risks, rather than grappling with the principle that SMS must be fully integrated into a safety culture at an airport to be effective. Again, most observers decry “cosmetic compliance” as antithetical to the true purpose of SMS.

Phased implementation also could provide airports and the FAA more time to design and implement the most complex and controversial parts of SMS, such as whether (and how) to cover non-movement areas and how to alter existing legal relationships between airports and their tenants. Airports of all sizes will require time to amend their Minimum Standards, Rules and Regulations, and leases so as to provide the authority for them to impose SMS requirements on their tenants. Phased implementation would provide a window of time for airports to achieve this while other facets of SMS could move forward.

Finally, the NPRM does not explain 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.²⁶ Again, FAA cites the pilot studies as the source of its conclusion, but the published results of the pilot studies, released by FAA in May 2011, do not support this

²² See FAA Order 5200.11, FAA Airports (ARP) Safety Management System, § 1-4(b) (Aug. 2010).

²³ Change 1 to Order 5200.11.

²⁴ ICAO, *Safety Management Manual* (SMM) at 1-11 (2nd ed., 2009).

²⁵ Transportation Research Board, *SMS Implementation Outside the United States, Interview Summaries* (2009).

²⁶ 75 Fed. Reg. at 62,017.

conclusion.²⁷ Furthermore, the FAA has not explained whether the pilot airports' experiences will likely prove to be typical of other airports' experiences.

Colorado presents a prime example of why grouping all Class I airports together is not reasonable. Twelve Colorado airports are Class I, but range in size from non-primary airports with less than 10,000 annual enplanements to DIA, with 25 million annual enplanements.

Rather than providing a specific recommendation regarding phased implementation, CAO recommends that FAA consider more carefully the existing guidance on varied approaches for phased implementation, particularly including information in the ICAO *Safety Management Manual* and the ACRP *SMS Guidebook*.

If the FAA declines to adopt phased implementation, the FAA should prescribe deadlines in a final rule that will give certificated airports a reasonable amount of time for implementation. The deadlines presented in the NPRM are simply too short and would prove to be unworkable.

V. The FAA's benefit-cost analysis does not present a realistic assessment of the benefits and costs of adopting SMS at Colorado's certificated airports.

In the NPRM, the FAA reports that the anticipated costs of SMS at all 562 certificated airports over ten years would be \$248 million, and that the anticipated benefits would range from \$170 million to \$256 million.²⁸ The FAA concludes, "Accounting for the funded survey sample bias, scalability of SMS and qualitative benefits, the FAA expects that overall the proposed rule would have benefits greater than costs."²⁹

The benefit-cost analysis in the NPRM was based on a report released in December 2009 that was itself based on the results of a survey given to participants in the first phase of the FAA's SMS pilot program.³⁰ While the FAA considered the survey results, the agency also conducted an independent evaluation of costs and benefits.

Taking Colorado airports individually and together, we see the following weaknesses in the FAA's estimate of potential benefits and costs:

- The FAA relied upon a limited survey and small data set in the *Initial Regulatory Evaluation*. More and better information undoubtedly was available prior to the FAA's release of the NPRM almost a year later and is available today as a result of the three phases of the pilot program. The FAA updated the quantified benefits in some undisclosed way, but apparently made no effort to update or validate the costs calculated in the *Initial Regulatory Evaluation*.

²⁷ FAA-, Airport Safety Management Systems (SMS) Pilot Studies (May 2011).

²⁸ 75 Fed. Reg. at 62,019.

²⁹ *Id.*

³⁰ FAA, Initial Regulatory Evaluation, Safety Management System for Certificated Airports (Dec. 22, 2009).

- The FAA asserted that “costs vary based on the size of the airport.”³¹ However, the FAA likely overstated the costs that could be avoided by small certificated airports implementing SMS.
 - The FAA concluded that the need for additional staffing would be less at smaller airports than larger airports. This is not likely to be the case at Colorado’s smaller certificated airports, many of which already operate with a small staff. Airport employees commonly are responsible for collateral duties, but it is unrealistic to assume that existing personnel would be able to absorb this new function. Neither the number of airport operations nor certificate class provides a reasonable basis for presuming the need for additional staff. The FAA should have relied upon the survey data, rather than adjusting the numbers based upon its own perception of staffing needs.
 - The FAA stated that small airports have the ability to “choose low cost options” for complying with SMS, and also notes that “many smaller airports *expect little to no added cost*, given the size of their operations.”³² As noted in the preceding section, this expectation is unrealistic considering the demands of SMS under the proposed rule. For example, FAA states that based on the pilot studies, many airports should be able to manage the data associated with SMS using “existing off-the-shelf, end-use spreadsheet or database software.”³³ But it provides no support for that statement, and does not acknowledge that given their limited staff resources, smaller certificated airports may require additional software or technology to enable them to administer their SMS. Airports in rural areas of Colorado also may face increased expenses associated with consulting services.
- Although the FAA has made a determination that development of an SMS Manual is eligible for Airport Improvement Program (AIP) funding, many other costs associated with the proposed rule are not.³⁴
- Even if we take FAA’s estimate of costs and benefits at face value, the estimated cost – \$248 million – is near the top of the predicted range of the benefits (\$170 million to \$256 million). Approximately 90% of the range of predicted benefits is less than the predicted cost. Even by FAA’s calculation, therefore, there is a 9 out of 10 chance that the costs of this regulatory action will exceed the benefits.
- We believe the costs of the proposed rule are likely to exceed the benefits, further undermining FAA’s justification for the proposed rule.

³¹ 75 Fed. Reg. at 62,019.

³² 75 Fed. Reg. at 62,019 (emphasis added).

³³ Response to Clarifying Questions at p. 35 (response to question 110).

³⁴ *Id.*

VI. The NPRM is ambiguous as to the intended training requirements; however, it appears that the FAA's assessment of the burden of training is significantly understated.³⁵

Proposed Section 139.402(d)(1) would require each airport operator to “[p]rovide formal safety training to each employee and tenant with access to airport areas regulated under this part that is appropriate to the individual’s role.”³⁶

The terms “employee” and “tenant” are not defined, are inconsistent with the term “personnel” used elsewhere in Part 139, and are inconsistent with a subsequently proposed amendment to Part 139, which uses the term “person” instead.³⁷ It is unclear precisely which types of individuals would be subject to this training requirement. Without this information, it is impossible for Colorado airports to consider and meaningfully comment on the proposal.

In its Responses to Clarifying Questions, FAA declined to provide a definition of “employee” and “tenant.”³⁸ FAA merely quoted from the Preamble that “the SMS training requirement would apply to airport employees,” but does not explain whether the phrase “airport employees” refers to employees of the airport operator only, or to employees of any entity operating on the airport.³⁹ Indeed, the FAA further muddled the issue by asserting that the training requirement would apply only to “airport employees,” while also explaining that a certificate holder must “work closely with its tenants ... to ensure that employees with access to the movement and non-movement areas of the airport have proper training,” and that the airport must work with its tenants to “ensure training of those employees with access to the movement and non-movement areas.”⁴⁰ FAA declined to respond further to the clarifying question, instead inviting submission of a comment on the subject.

To that end, we recommend that “airport employees” be defined so as to include only employees of the airport operator.

The FAA’s assessment of training costs is almost certainly low. In the *Initial Regulatory Evaluation*, the FAA stated, “This training would be limited to managers and airfield employees since few airports reported anticipating training for non-employee related personnel, such as tenants and fixed based operators (FBOs).”⁴¹ Based on this assumption, the FAA calculated that 47,500 individuals would be trained in SMS.⁴² Considering that the FAA specifically included “tenants” in the proposed rule, the cost estimate must be too low. In Colorado alone, there are 44,000 on-airport employees, a sizable portion of whom have access to the movement and non-movement areas.

³⁵ This comment responds to Question #7 on p. 62,020 of the NPRM, 75 Fed. Reg. at 62,020.

³⁶ 75 Fed. Reg. at 62,023.

³⁷ *See id* at 62,021.

³⁸ Responses to Clarifying Questions at p. 14.

³⁹ *Id.*

⁴⁰ Responses to Clarifying Questions at pp. 26-27 (responses to questions 82 and 84).

⁴¹ Initial Regulatory Evaluation at 16.

⁴² *Id.*

If the FAA's true intent is to require training for *everyone* with access to the movement and non-movement areas, the true cost of training may be exponentially greater than estimated.⁴³ Based on both economic and practical challenges presented, we strongly recommend against extending the training requirement beyond employees of the airport operator.

The training requirement would present challenges for both small and large certificated airports in Colorado. Large certificated airports like Denver International Airport have considerable numbers of individuals with access to the non-movement area. It would be very costly to provide initial and any recurrent training and to maintain training records for so many individuals. Many small certificated airports simply do not have staff to administer a training program covering so many people.

Of particular concern at Colorado airports would be the manner in which training is delivered. Again, these airports may have insufficient staff to administer or present training, and the training function may have to be outsourced. The cost of using third party training providers would be exceptionally high. Even the cost of airport-specific software or on-line training tools would be high.

Finally, on February 1, 2011, the FAA released a separate NPRM proposing to amend the existing training requirements in Part 139.⁴⁴ Instead of the current requirement that airports must train all "personnel" who access the movement area, airports would be required to train all "persons" who have access to *either* the movement area or the non-movement area.⁴⁵ The training requirements in the proposed rule and in the amendment to Part 139 should be coordinated so that they do not impose conflicting requirements.

VII. FAA should examine and disclose the cumulative burdens of requiring certificated airports to adopt SMS in connection with other FAA SMS initiatives.⁴⁶

Without providing detail, the NPRM refers in general terms to other SMS initiatives being pursued by the agency. In fact, the FAA has an extensive array of SMS initiatives in various stages of development. Most relevant for present purposes are the requirement to apply Safety Risk Management to each FAA airport action, and the proposed rule to require that all air carriers certificated under 14 C.F.R. Part 121 adopt SMS.⁴⁷ Beyond those initiatives, the FAA is pursuing SMS within other FAA lines of business and also has several ongoing airport safety initiatives, such as runway safety action planning.⁴⁸

CAOA strongly recommends that the FAA carefully consider the combined and cumulative costs and effects of these initiatives. These new requirements will cost money, not all of which will be AIP eligible. Equally important, the process of learning about and implementing these new requirements will consume considerable airport staff time.

⁴³ 75 Fed. Reg. at 62,016.

⁴⁴ Safety Enhancements Part 139, Certification of Airports, 76 Fed. Reg. 5510, 5517 (Feb. 1, 2011).

⁴⁵ *Id.*

⁴⁶ This comment responds to Question #1 on p. 62,020 of the NPRM, 75 Fed. Reg. at 62,020.

⁴⁷ See Order 5200.1; FAA, Notice of Proposed Rulemaking, Safety Management Systems for Part 121 Certificate Holders, 75 Fed. 68,224 (Nov. 5, 2010).

⁴⁸ See FAA, Order 7050.1A, Runway Safety Program (Sept. 2010).

VIII. The proposed rule has several other defects.

As reflected by the foregoing, CAO's principal observation is that the NPRM and the proposed rule do not account adequately for the great diversity in certificated airports in Colorado. We observe several additional defects in the proposed rule, including the following:

- *Liability* – The proposed rule may expose Colorado airports (and Accountable Executives) to liability under a variety of circumstances. Colorado does not provide blanket immunity for all aspects of airport operations. The NPRM contained no mention of the potential for increased liability exposure at certificated airports, including whether liability concerns may impede development and implementation of SMS and any steps the FAA might take as part of this rulemaking to address liability concerns. The costs of increased liability do not appear to have been analyzed in the FAA's cost-benefit analysis. Ignoring an issue of this magnitude is a huge oversight that should be corrected before issuance of any final rule. FAA did address some of the liability issues in its Responses to Clarifying Questions, but only to minimize their significance, such as by stating that implementing SMS “should decrease insurance claims because an SMS enhances safety.”⁴⁹
- *Enforcement* – The NPRM identifies the FAA's intended approach to its enforcement of the proposed SMS requirement, including that “[t]he FAA intends this review as an evaluation of whether a certificate holder's SMS is functioning as it is intended to function rather than as a means for us to second guess a certificate holder's decisions.”⁵⁰ We see a great potential for unequal enforcement of the proposed SMS requirement by FAA inspectors. Certificated airports should not be asked to simply trust that each FAA inspector will approach their review according to the intent expressed in the Preamble. FAA should either describe directly in the final rule how monitoring will be conducted or issue a separate order or direction to FAA inspectors on enforcement. In the Responses to Clarifying Questions, FAA indicated that it “intends to update its ACSI guidance materials and internal Orders and train all members of the inspector cadre before implementation.”⁵¹ While this is a step in the right direction, it remains too vague. We believe that compliance must be neither punitive nor backward-looking but must emphasize current compliance and corrective action.
- *Integration* – There are many possible unintended consequences of the myriad SMS initiatives. The FAA has not explained how it intends to reconcile or even address the overlap among the ARP, airport and air carrier SMS, if all three entities are required to develop an SMS and engage in similar forms of safety risk management covering the same activity, the same location or the same project. Although the FAA has recognized the problem posed by potentially competing SMS systems, its solution thus far is to develop a committee to “harmonize requirements” and to “ensure discrepancies between

⁴⁹ Responses to Clarifying Questions at 29 (response to question 88); *see also* responses to questions 89 and 90.

⁵⁰ 75 Fed. Reg. at 62,017.

⁵¹ Responses to Clarifying Questions at p. 19, (response to question 59).

agency efforts are addressed.”⁵² The FAA still has not explained how the airport SMS would function in the face of discrepancies between the airport SMS, air carriers’ SMS, and possibly the FAA Airports SMS. Nor has the FAA explained how airport operators and airport users would avoid duplicative reporting and recordkeeping obligations resulting from multiple SMSs.

CONCLUSION

In our assessment, the FAA is not remotely ready to issue a final rule on the subject of SMS. Far more thought and planning are required before the FAA imposes a rule of such dramatic impact and cost. The FAA needs to reexamine its assumptions, meticulously review the comments of airport operators around the country who would be saddled with the burdens associated with the proposed rule, and carefully consider the experiences of the airports participating in the ongoing pilot studies.

We propose that the FAA withdraw the proposal, fundamentally rethink its approach and then decide upon an appropriate course of action. Again, we would strongly encourage the FAA to promote voluntary adoption of SMS or to restrict an SMS requirement to certificated airports with regular international service. A number of steps could be taken to support these efforts, including updating Advisory Circular 150/5200-37, *Introduction to Safety Management Systems for Airport Operators*, and Order 5100.38C, *Airport Improvement Program Handbook* (to address FAA support for SMS through the AIP).

If the FAA remains committed to imposing SMS at all certificated airports, we suggest that the FAA develop a Supplemental Notice of Proposed Rulemaking that would offer an approach to SMS that is truly scalable and flexible to the various sizes and needs of certificated airports. The required changes are dramatic enough that the FAA should not simply proceed to a final rule without giving affected airports the opportunity to provide meaningful comments on a different approach.

As stated at the outset, Colorado airports are firmly committed to continuous safety improvement. But, we believe that safety initiatives must be designed in a manner that will be the most effective at decreasing risk without imposing undue burdens on airport operators and their staff. The proposed rule does not satisfy this objective.

⁵² *Id.* at p. 26-27 (response to questions 82 and 83).