



THE VIEW FROM WASHINGTON

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Keep an Eye on Safety Management Systems Proposed Rule

How many times have you heard about someone getting his or her certificate revoked because of a false or misleading record? From the time we tighten the first bolt on an aircraft, the regulations teach us to never ever lie. Those particular regulations are crystal clear.

14 CFR 43.12(a)(1) states, "No person may make or cause to be made any fraudulent or intentionally false entry in any record or report that is required to be made, kept or used to show compliance with any requirement under this part." In addition, Part 3 has a prohibition against intentionally misleading statements when conveying information related to an advertisement or sales transactions.

But these rules do not seem to apply to the Federal Aviation Administration. In a presidential speech before Congress on the health-care reform issue, Rep. Joe Wilson from South Carolina blurted out, "You lie!" When asked if President Obama had lied to Congress, Wilson later responded, "I believe he was misstating the facts." I believe the FAA is engaged in a strategic effort to "intentionally mislead" the public by misstating some facts.

In the Nov. 5, 2010, Federal Register notice, the FAA issued a notice of proposed rulemaking (Docket No. FAA-2009-0671) in which the FAA proposes a safety management system for Part 121 certificate

holders. At first glance, this proposal seems as though it shouldn't affect the avionics industry or AEA member companies; however, it is not something to ignore. For the past year, the AEA has been participating on an FAA Aviation Rulemaking Committee addressing SMS for all certificate holders.

What does the proposed rule require? Simply, the proposal in Section 119.8, "Safety Management Systems," requires a certificate holder authorized to conduct operations under Part 121 of this chapter must have an SMS that meets the requirements of Part 5 of this chapter and is acceptable to the Administrator.

Let's take a look at this simple requirement. What exactly is a "safety management system that meets the requirements of Part 5?" And what is a "safety management system that is acceptable to the Administrator?"

First, the proposal introduces a new Part 5 titled, "Safety Management Systems." While currently only applicable to certificate holders under Part 119 authorized to conduct operations in accordance with the requirements of Part 121, this new section has been drafted so it is applicable to any certificate holder required to have an SMS. Once this Part 5 is established and implemented by the airlines, it will become the standard to which every follow-on requirement will be forced to meet.

Therefore, when SMS for Part 135 charter operations, Part 145 repair stations, Part 147 schools and Part 91 Subpart K fractional ownership is introduced in the next couple of years, the SMS standard (Part 5) already is in place and unlikely to be amended.

What is a "safety management system that is acceptable to the Administrator?" Where would we find an "acceptable means of compliance?" An advisory circular, of course.

The FAA also is proposing to codify existing FAA SMS guidance material. In listing the guidance material the FAA stated in June 2006, FAA Flight Standards published Advisory Circular 120-92, "An Introduction to Safety Management Systems for Air Operators." The FAA further states AC 120-92 was revised in August 2010 to become AC 120-92A.

The FAA failed to mention this AC it wishes to codify now is titled: "Safety Management Systems for Aviation Service Providers," not "Safety Management Systems for Air Operators," as previously titled, and that it now is applicable to "both certificated and non-certificated aviation service providers (and organizations) that desire to develop and implement an SMS." Do you think the agency is positioning itself for expansion of this SMS requirement?

The FAA states in the preamble, although this proposal extends only to Part 121 opera-

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tors, it has developed these general requirements with the intent they could be applied to other FAA-regulated entities, such as Part 135 operators, Part 145 repair stations, and Part 21 aircraft design and manufacturing organizations and approval holders in the future. It is important for every certificate holder to evaluate the proposed Part 5 and AC 120-92A, and comment regarding the applicability of this rule and guidance to the specific certificate holder.

In justifying the “Authority for this Rulemaking,” the FAA cites its standard authority to issue rules on aviation safety, which is found in Title 49 of the United States Code. Then, it continues to cite sources that, I believe, are intended to mislead the public. The NPRM cites the Airline Safety and Federal Aviation Administration Extension Act of 2010, which requires the FAA to conduct rulemaking to “require all Part 121 air carriers to implement a safety management system.” What the FAA fails to discuss is its activities to counsel and advise Congress on means to prevent future accidents.

Did Congress come up with the concept of SMS all on its own? And did Congress define SMS in the law as the FAA has defined it in AC 120-92, “Introduction to Safety Management Systems for Air Operators,” and any subsequent revisions without consulting the agency first?

In the executive summary of its proposal, the FAA cites the International Civil Aviation Organization. In March 2006, ICAO amended Annex 6, which addresses operation of airplanes in international commer-

cial air transport and established a standard for member states to mandate each international commercial air transport operator establish an SMS.

Under the section titled “D. International Harmonization,” the FAA stated, “(ICAO) member states agreed to establish an SMS requirement for air carriers.” The agency further cited ICAO as “member states agreed to initiate compliance with amendments to Annex 6, Part I by Jan. 1, 2009.”

What the FAA fails to discuss in its public explanation of this proposal and the need to comply with ICAO mandates, is the FAA’s expert on SMS in an internationally recognized authority on the topic and actively involved in ICAO, and the FAA took an active role in proposing this concept to ICAO and developing the ICAO standards, then voted for the mandate. Citing “International Harmonization” with ICAO as supporting justification for this rulemaking after the agency took an active role in developing this program is disingenuous.

In explaining why SMS is necessary, the FAA cited a 2003 Air Midwest accident that was the result of improperly rigged elevator controls. In its description of the accident, the FAA focused on the fact that the maintenance was outsourced to a Part 65 maintenance organization rather than a Part 145 repair station.

In its description of the hazards an SMS would have identified, the FAA specifically focused on the issue that the maintenance facility was not a certificated repair station and, therefore, lacked the controls associated with regulatory certification. The

FAA is implying that having maintenance performed at a Part 65 maintenance facility is inherently less safe than having the same maintenance performed at a Part 145 certificated repair station.

Nowhere in this discussion, however, does the FAA cite the performance standards contained in Part 43, which are exactly the same whether you are a Part 65 mechanic or a Part 145 repair station. Nor does the FAA ever discuss that Part 121 regulations already mandate maintenance oversight by the air carrier.

In its far-reaching attempt to justify this proposal, the FAA goes to great extent to provide the public with half-truths that only can be interpreted to mislead the public.

The disappointing thing is, there are some solid safety enhancements to be gained through the concepts introduced in SMS, such as the idea that the agency actually will do something institutionally with all of the data it collects; the industry will have an increased awareness of “incident management” rather than post-accident management; and there will be an increased opportunity for employee involvement in communicating observed risks.

You can read the FAA’s SMS proposal on the AEA website, www.aea.net. I encourage you to take the time to read and understand the proposal and submit your comments to the FAA. I understand the majority of *Avionics News* readers are repair stations; however, the FAA has made it clear that Part 5 and AC 120-92A are the foundation for a future repair station SMS proposal. □