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October 21, 2009

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

Re: Docket No. FAA-2009-0671, Safety Management Systems

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization of more than 415,000 pilots. AOPA's mission is to effectively serve the interests and needs of its members as aircraft owners and pilots and establish, maintain, and articulate positions of leadership to promote the economy, safety, utility, and popularity of flight in general aviation aircraft. Representing two thirds of all pilots in the United States, AOPA is the largest civil aviation organization in the world.

On July 23, 2009, the Federal Aviation Administration (FAA) issued an advanced notice of proposed rulemaking (ANPRM) on Safety Management Systems (SMS). Through this ANPRM the FAA is seeking information on how organizations have used SMS to date, availability of appropriate guidance material, associated cost, etc.

Issue Overview

The FAA is considering implementing an SMS for holders of Part 21, 119, 121, 135, 142, 141, and 145 FAA certificates. Part 91 operators are not mentioned in the ANPRM. According to the ANPRM an SMS is a "structured-risk based approach to managing safety." SMS includes four components: safety policy, safety risk management, safety assurance, and safety promotion. SMS are expected to be able to interface with other and the regulator.

The U.S. endorsed a December 2007 International Civil Aviation Organization (ICAO) proposal that would require SMS for aircraft and operators that fall under ICAO Annex 1, 6, 8. This includes international aircraft operators, aircraft manufacturers, and maintenance facilities. The FAA intends to use the information gathered through this ANPRM and recommendations from an Aviation Rulemaking Committee (ARC) to prepare a proposed SMS rule.

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AOPA's Concerns

AOPA is concerned that SMS puts into place a continuous cycle of problem identification and resolution that may have unintended consequences. While at the outset this process may sound prudent, it has the very real potential of undercutting the Administrative Procedure Act, which is the backbone of public input in to the Federal rulemaking process, and the Regulatory Flexibility Act, which requires balance between proposed regulatory requirements and the capabilities and resources of those being regulated.

There is a probable potential that, under an SMS rule, certificate holders would have to spend resources to address a problem that would not meet the standards of rulemaking. This would create de facto rulemaking and would directly undercut the Administrative Procedure Act and Regulatory Flexibility Act.

In addition to undercutting the Administrative Procedure Act and Regulatory Flexibility Act the FAA needs to clearly communicate who owns an SMS. If, for example a Part 135 certificate holder sets up and follows an SMS can an FAA inspector come in and tell the certificate holder that they are not following their SMS well enough? Could the FAA violate a certificate holder for not following their own program to the extent the FAA feels they should? If the answers to these questions are "yes" the concerns over bypassing the two Acts mentioned above are amplified.

International Operations

AOPA does recognize that SMS is already posing a challenge to U.S. certificate holders that operate internationally. While many of these operators have implemented and are adhering to voluntary SMS programs they still face present day challenges. These challenges are a direct result of the U.S. lacking a regulatory SMS program.

The FAA needs to propose an SMS program that allows international operators to comply with ICAO and does not bypass existing U.S. governing the rulemaking process.

Summary

Before the FAA decides to move forward with SMS the FAA needs to define its regulatory role and how SMS will operate within the Administrative Procedure Act and Regulatory Flexibility Act. To the extent that these questions remain unanswered, many of the questions currently posed in the ANPRM are premature (i.e, are current guidance materials sufficient).

Sincerely,



Leisha Bell
Director, Aircraft and Environment