Operational and Implementation Evaluation of the FAA

Final Rule on SMS for 14 CFR Parts 121 and 135 Operations

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Scope of Detail

On 22 April, the FAA issued a pre-release of their final rule regarding SMS for various certificate holders. This review provides a short background of the rule and also specific considerations of the new rule as they pertain to FedEx Supplemental Air Operations (SAO) contracted organizations, both those operating under 14 CFR part 121 and 14 CFR part 135.

Regulatory Background

In 2015, the FAA promulgated 14 CFR part 5, which required Part 121 operators to develop and implement SMS and also prescribed basic implementation and operational requirements for those systems. Soon thereafter, consideration was given to improving aviation safety by the extension of these SMS requirements in part 5 to additional organizations that play a critical role in the design, manufacturing, and operation of aircraft (i.e. certificate holders operating under part 135, LOA holders operating commercial air tours under 91.147, and certain certificate holders under part 21).

As an SMS provides a structured, repeatable, and systematic approach to proactively identify hazards and mitigate risks, the value of now requiring these organizations to develop and implement an SMS is absolutely valid and appropriate. In 2009 and 2012, the FAA chartered two sequential ARCs to develop and provide guidance on implementing SMS with the preceding organizations. The final ARC report was issued in October of 2014.

In January of 2023, the FAA published an NPRM regarding both an update to the SMS requirements in part 5 and also to extend the requirement to have an SMS for all certificate holders operating under the rules for the previously detailed organizations. By 11 April of 2023, almost 200 comments were received in response to the NPRM, with the comments originating from air carriers, aircraft designers and manufacturers, trade associations, emergency medical transport services, non-profit safety organizations, a university, and private citizens.

The final rule was released as an advance copy on 22 April 2024. The rule was posted to the *Federal Register* on 26 April 2024 with an effective date of 28 May 2024. The new rule will ultimately apply to nearly 1,850 part 135 operators and more than 700 air tour providers.

Restricted Scope of Evaluation

This evaluation examines regulatory content and intent strictly relating to FedEx SAO operations, therefore no considerations regarding certificate holders operating under part 21 and air tour operators are reviewed. Additionally, no financial and/or federally mandated paperwork reduction evaluation metrics are provided.

Definition Changes

The original part 5 had as the definition of *“hazard*” the following: “*Hazard means a condition that could foreseeably cause or contribute to an aircraft accident as defined in 49 CFR 830.2*.” In an effort to align the definition more closely with ICAO Annex 19, the FAA further refined it by adding after “*a condition*” the phrase “*or an object*”. They also replaced the phrase “*that could foreseeably*” with “*with the potential to*,” and inserted “*incident*” before “*aircraft accident*.” The finalized definition “*hazard*” therefore is as follows:

“*Hazard means a condition or an object with the potential to cause or contribute to an incident or aircraft accident, as defined in 49 CFR 830.2*.”

Scalability

An SMS is designed to be scalable to the size and complexity of the aviation organization and to not be unduly burdensome. In the final rule, the FAA decided to retain the express requirement for the SMS to be appropriate to the size, scope, and complexity of the aviation organization in order to provide a better understanding of scalability as a result of the comments received. This content has been moved, along with other general SMS requirements (formally contained within 5.3) to 5.5. Various sections in the final rule amplify considerations relating to scalability, program design and implementation, and use of third-party safety service providers. The FAA also describes the utility of using dedicated software to facilitate an organization’s SMS design and implementation. Specifically, the FAA-supported program of Web-Based Analytical Technology (WBAT) is mentioned in terms of capably being able to meet recordkeeping and documentation requirements. Further reinforcement of the importance of scalability is demonstrated through the FAA’s referencing their acceptance of the use of paper/digital files to accomplish the same administrative tasks as through the use of WBAT.

Part 121 Operations

Initially, the FAA had stipulated that existing part 121 operators would be required to submit the changes to their SMS needed for compliance with this new rule. The FAA elected to delete that proposed notification requirement. However, part 121 operators are still mandated to meet the new requirements proposed in 5.21(a)(7) (Safety Policy Code of Ethics), 5.53(b)(5) (Safety Risk Management Interfaces), 5.57 (Hazard Notification), 5.71(a)(7) (Employee Confidential Reporting System), 5.71(a)(8) (Investigating Hazard Notifications), and 5.97(d) (SMS Records). The FAA will validate compliance with these new requirements using existing oversight methods and tools.

Part 121 operators will be required to revise their SMS to assure compliance with the new rule no later than 30 days and 12 months after publication of the rule in the *Federal Register –* 28 May 2025*.*

Part 135 Operations

This rule will require part 135 operators to implement SMS. After initially requiring that these organizations submit a “statement of compliance” with their certificate or LOA application, the FAA concluded that it was not necessary to make this submission a regulatory requirement. However, instead of requiring these applicants to submit a “statement of compliance,” part 135 operators will now be required to submit to a “declaration of compliance.” Submitting this declaration of compliance to the FAA will document and verify that the organization has developed and implemented an SMS meeting the applicable requirements of part 5. The FAA will conduct its assessment of the applicant’s SMS using the same processes and procedures it uses to assess the applicant’s compliance with other FAA requirements. To assist the FAA in evaluation these operator’s SMS, they will additionally be required to make their SMS processes and procedures available in accordance with 5.9(d) and 5.95 to FAA personnel for review.

Both the transmittal of a part 135 organization’s declaration of compliance and successful development and implementation of an SMS that is in full compliance with the rule must be completed no later than 30 days and 36 months after publication of the rule in the *Federal Register* – 28 May 2027*.*

Single-Pilot Operations Exemptions

Upon evaluation of comments regarding the coverage of the rule to single-pilot organizations, the FAA elected to provide precise enumeration as to which components of the rule would not be applicable to these operations. This guidance is specified in 5.9(e). The following briefly details the components of the rule that were determined to be not applicable for these operations:

5.21(a)(4) - Safety Policy, reporting policy requirements

5.21(a)(5) -  Safety Policy, definition of unacceptable behavior

5.21(c) - Safety Policy, documentation and communication requirements

5.23(a)(2) - Safety Accountability and Authority, definition requirement for accountability all members of

                     management regarding SMS processes

5.23(a)(3) - Safety Accountability and Authority, accountability of certain employees relative to safety

                     performance

5.23(b) - Safety Accountability and Authority, certain employees authorized for risk acceptance decisions

5.25(b)(3) - Duties and Responsibilities of the Accountable Executive, communication throughout the

                      organization

5.25(c) -  Designation of Management Personnel

5.27(a) - Coordination of Emergency Response Planning, delegation of authority thereof throughout the

                 organization

5.27(b) - Coordination of Emergency Response Planning, employee responsibility assignments

5.71(a)(7) - Safety Assurance – Safety Performance Monitoring and Measurement, confidential employee

                     reporting system structure and operations

5.93 - Safety Communication, (all)

5.97(d) - SMS Documentation and Recordkeeping – SMS Records, duration of retention of communication

                records required under 5.93

**\*\* NOTE \*\*** There exists a critical concern for FAO Safety and the collective group of feeder operators in view of the FAA’s ambiguity regarding the exact descriptions and qualifications centered around these carve-outs for single pilot operations. The FAA has not yet made yet clear and unambiguous differentiation between single-pilot **organizations** vs. single-pilot **operations**. Regarding evaluation by FAO Safety and impending actions by the group of FAO operators, this is an extremely important concern. The following provides the FAA’s level of focus from the new rule regarding this concern:

*“These exceptions are limited to entities with a single pilot who is the sole individual performing all necessary functions in the conduct and execution related to, or in direct support of, the safe operation of the aircraft. All necessary functions would generally include: operational control, refueling, ground handling of the aircraft, flight planning, weight and balance calculations, performance of preventive maintenance, coordination of maintenance activities, pre-flight and post-flight activities, and financial decisions related to operating the aircraft safely, in addition to operating the aircraft.”*

Obviously, a feeder pilot operating under part 135 regulations, will most certainly be conducting ops as a single pilot, but he will most certainly not be “*the sole individual performing all necessary functions in the conduct and execution related to, or in direct support of, the safe operation of the aircraft.”* Intuitively, a compelling case can be made that the intention of the FAA with these exemptions is that these specific conditions will strictly apply to an organization wherein a sole person conducts all the functions necessary for business continuity, not just conducting the flight ops as a single pilot. If indeed that situation does prove to be the case, FedEx feeder organizations will not fall under these exemptions and the operator will therefore be required to be in compliance with the rule in 100% totality. This specific point, along with certainly many other points as yet undetermined, will absolutely require clarification from the FAA.

Conclusion

This long-awaited rule was just released this week. Already, both trade publications and industry advocacy groups have literally exploded in their level of coverage of the final rule’s release. FAO Safety, along with the entire group of operators, will now need to closely follow subsequent developments and ensure complete compliance with the rule on or before end of May 2027, the clock is ticking…

The final rule, as published in the *Federal Register*, is accessible here: [https://www.federalregister.gov/documents/2024/04/26/2024-08669/safety-management-systems](https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.federalregister.gov%2Fdocuments%2F2024%2F04%2F26%2F2024-08669%2Fsafety-management-systems&data=05%7C02%7C%7Cad7bcca2273d4fba144b08dc6ec0841e%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C638507020347502386%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=tbXGqHKDvuKLnVcUOzksHPCAUSHcp5M9CzWTNK91%2F5Y%3D&reserved=0)

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