March 7, 2011 via http://www.regulations.gov

Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Ave. SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001


Dear Sir or Madam:

The Association of Flight Attendants – Communications Workers of America, AFL-CIO (AFA), which represents nearly 50,000 flight attendants at 20 different airlines throughout the United States, is writing to submit comments in response to the Federal Aviation Administration’s (FAA) Notice of Proposed Rulemaking (NPRM) that would require each certificate holders operating under 14 CFR part 121 to develop and implement a safety management system (SMS).

The proposed rule would require 14 CFR part 121 operators to submit SMS implementation plans to the FAA for approval no later than 6 months after the effective date of the rule and the operator must have a fully operational SMS within 3 years. AFA believes these are reasonable timelines that should be achievable by part 121 operators.

Generally, the proposed rule is fairly clear in the expectations related to implementing the new program. The notice spells out the four essential components of an SMS; safety policy, safety risk management, safety assurance and safety promotion.

While we believe that the draft regulation attempts to convey a complex process, a great deal of information also must be included in supporting guidance documentation to ensure that there is an even clearer understanding of all the SMS requirements necessary to achieve real improvements to aviation safety.

AFA would like to take this opportunity to comment on specifics issues relevant to the proposed regulation where improvements in the proposed regulation are necessary.

AFA is disappointed in the proposed rule as it appears the only role of the line employee is that they are little more than a reporting mechanism for the safety system. And that they will have information communicated to them regarding the program. This is insufficient and inadvisable. Line employees, or their authorized bargaining representatives, must also have input to the development, decision-making and implementation of the safety program. All employees must be included in the decision making process besides just those listed in proposed §5.25.

1 75 FR 68224, November 5, 2010; Docket No. FAA-2009-0671
The Aviation Safety Action Program (ASAP) is a good example of a “collaborative, reporting, analysis, and problem solving effort among the FAA, operators, and employee unions.” [AC 120-92, page 20] The philosophies of this “three-legged stool” in ASAP should be integrated into all aspects and implementations of SMS to support and enhance safety assurance and safety promotion. Voluntary reporting programs like ASAP, Flight Operations Quality Assurance (FOQA), and Line Operations Safety Audits (LOSA) allow this collaborative effort. The NPRM discusses the challenges of mandating these voluntary reporting systems and continues that the use of these programs will not be required. These programs also provide a non-punitive approach to collecting data that encourages employees to report.

The NPRM in proposed §5.21(a)(4) states there must be an employee reporting system and that the reporting system must be confidential as per §5.71(a)(7). Yet the only other comment in the proposed regulation is that there needs to be a policy, developed by the operator, that defines unacceptable behavior and conditions for disciplinary action. It appears that the FAA is promoting “discipline” in their SMS proposal since there are no comments in the proposed regulation regarding or referencing reporting being non-punitive. Programs like ASAP, while allowed as a component of the proposed NPRM, should be mandatory for SMS in that they will garner the most productive information from the employee because they provide a positive non-punitive protection for the reporting employee.

In addition, AFA is concerned that SMS implementations may lead to industry and regulatory policies that overly restrict the ability of employee groups and the public to access vital safety-related data that are appropriately de-identified to ensure privacy. A lack of transparency with respect to critical safety data and hazard analyses is a challenge today; SMS should not be used as a way to further shield the commercial interests of the aviation industry to the detriment of the public interest.

There are major policy issues that will have a direct impact on Americans who travel by air. The financial “bottom line” of air carriers will be a factor in setting safety levels in the sky. Although the NPRM states that the FAA will still set the safety standards, conduct inspections and maintain oversight, this NPRM will relegate the FAA to a more distant role as a general overseer of SMS. Both of these factors are significant concerns for our organization since the determination of risk is entrusted to the air carriers.

In order to provide a more balanced approach to SMS it is imperative that the employees’ authorized bargaining representative be included as an active participant in the operator’s safety policy, safety risk management, safety assurance and safety promotion processes. Participation by front line employee representatives, in addition to management alone, will foster a more robust safety management system.

Sincerely,

Candace K. Kolander
Coordinator, Air Safety, Health and Security