Airport Law Alert – Special Alert

06.24.11

SMS Update
Several recent developments have the potential to significantly affect the implementation of safety management systems at U.S. airports.

Internal SMS Order. On May 31, 2011, FAA issued Change No. 1 to Order 5200.11, FAA Airports (ARP) Safety Management System. Under the amended Order, FAA will require safety assessments for FAA approvals only at large hub airports, beginning June 1, 2011. The Order as initially published last year imposed a four-year phase-in schedule that ultimately would have required safety assessments for FAA approvals at all NPIAS airports. FAA has stated that it decided to delay implementation because of funding and staffing constraints. On June 17, 2011, FAA issued draft Implementation Guidance for internal SMS and solicited comments through ACI-NA and AAAE.

Part 139 Airport SMS. On May 24, 2011, the FAA released two documents concerning the rulemaking to require all airports certificated under FAR Part 139 to adopt and implement SMS: (1) a response to questions submitted on the proposed rule, and (2) a summary of the SMS pilot studies. The agency deferred responding to many of the more substantive questions until it publishes a final rule. These documents do not suggest any change in the FAA’s intention to require SMS at all Part 139 certificated airports. The current deadline for comments on the proposed rule is July 5, 2011.

Safety Training. On June 3, 2011, the FAA reopened the comment period on a separate rulemaking to require recurrent training for all persons accessing the movement, safety and non-movement areas at Part 139 certificated airports. The FAA has provided the opportunity specifically to comment on the regulatory evaluation of the proposed rule, prepared in 2010 but only released in response to comments and requests.

SMS for Part 121 Operators. Federal law gives the FAA until July 30, 2012, to adopt a final rule requiring all air carriers certified under FAR Part 121 to adopt and implement SMS. The comment period for this rulemaking closed on March 7, 2011. On March 17, 2011, the FAA withdrew an advance notice of proposed rulemaking to require SMS for a wide array of certificate holders and product/service providers.

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Firm partner Peter Kirsch published an article in the April/May issue of Airport Magazine entitled "Ready, Set, Go: Legal Considerations In Implementing a Safety Management System." The article outlines specific steps airport managers can take to prepare for the eventual roll-out of SMS at their airports.

Minimum Standards Digest
On March 16, 2011, the Transportation Research Board released Legal Research Digest 11: Survey of Minimum Standards: Commercial Aeronautical Activities at Airports, prepared by Kaplan Kirsch & Rockwell and Aviation Management Consulting Group. LRD 11 describes the principal legal requirements for airport minimum standards, presents the results of an extensive survey and interviews on the topic, and provides a compendium of comparative minimum standards for the commercial aeronautical activities that commonly occur at airports.

GA Airport Security
On May 20, 2011, the U.S. Government Accountability Office (GAO) released a report called General Aviation: Security Assessments at Selected Airports. GAO conducted on-site inspections at thirteen airports to consider the extent to which the airport operators had instituted security measures to prevent unauthorized access.
WATCH FOR AIRPORT LAW ALERT NO. 12, COMING IN JULY, IN WHICH WE WILL PROVIDE A COMPLETE SUMMARY OF THE DEVELOPMENTS IN AIRPORT LAW DURING THE FIRST HALF OF 2011.