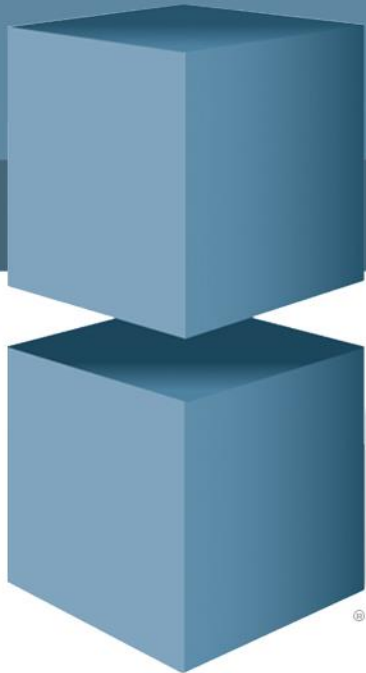




Safety Management Systems: Legal Issues



AAAE/ACI-NA – Implementing
SMS at Your Airport

David Y. Bannard





SMS Legal Issues

SMS Requires Collection, Analysis and Maintenance of Extensive Data Regarding Safety Hazards, Risk Assessment, Potential Mitigation of Risks and Monitoring of Performance





SMS Legal Issues

Airports Implementing SMS Risk Increased Liability for Negligence:

- Risks Identified Through SMS Become Foreseeable
- What is an “Acceptable” Level of Risk?
- Is it Reasonable Not to Mitigate Some Risks?
- Potential for Personal Liability for “Accountable Executive”





SMS Legal Issues

Negligence Standard:

- Duty of care – foreseeability and potential consequences of risk
- Breach of duty of care – failure to mitigate unreasonable risk
- Injury to person owed a duty of care
- Liability to person injured





SMS Legal Issues

SMS Ranks Hazards According to Risk:
Combination of Likelihood and Severity

- Lack of FAA guidance regarding standards for ranking risks
- Impossible to completely eliminate or fully mitigate risks





SMS Legal Issues

No Express Protection for Accountable Executive

- Should be held harmless when acting in official capacity
- Potential for personal liability





SMS Legal Issues

Lack of Coordination of Part 139 SMS With Other FAA Lines of Business

- Terminology and approach to Part 121 NPRM very different from Part 139 rulemaking
- ATO SMS program reportedly having difficulty in implementation
- Reported difficulties in implementing Order 5200.11





SMS Legal Issues

Data Protection

- Because of state and federal FOIA, SMS data is likely to be public
 - Studies show that confidentiality of data and sources leads to more and better reporting
 - Third parties are less likely to provide safety data to airports due to disclosure concerns





SMS Legal Issues

Data Protection

- FAA and Congress Recognize Value of Data Protection
 - 49 USC Section 40123
 - 14 CFR Part 193
 - ASAP and related programs
- Current Law Only Protects Voluntarily Provided Data
- Part 139 NPRM Does Not Address Data Protection





SMS Legal Issues

Compliance – FAA Approval SMS Will Be Required to Maintain Part 139 Certification.

- Standards and scope of SMS requirements unclear
- Revised A/C will not be issued until after close of NPRM comment period
- Hard deadlines for implementation





SMS Legal Issues

New Projects and Actions Will Require Safety Risk Management (SRM) Assessment

- Standards, scope and process unclear (Order 5200.11)
- Regional variation
- Adds time and cost





SMS Legal Issues

Expansion of FAA Regulation to Non-Movement Areas Raises Many Issues

- Highly complex area – many stakeholders
- Subject to a variety of agreements, including leases and permits, that may limit an airport's rights
- Could be a conflict between existing airport agreements and FAA requirements
- Need to allocate responsibilities clearly among various stakeholders
- Note recent NPRM (2/1/11) “Safety Enhancement” that includes a requirement regarding training for all persons accessing non-movement areas





SMS Legal Issues



Questions?

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