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DEPT. OF TRANSPORTATION
DOCKETS

October 13, 2009

By Courier

Department of Transportation
Federal Aviation Administration
Docket no. FAA-2009-0671: Notice 09-06
Safety Management System (SMS)

Docket Operations
Department of Transportation
Room W12-140
West Building (Ground Floor)
1200 New Jersey Avenue, SE
Washington, D.C., U.S.A. (20590)

The Union of Canadian Transportation Employees (UCTE) is the national union for Canada's non-pilot aviation inspectors. We are writing to offer some input to you as you consider SMS implementation.

Transport Canada (TC) began SMS implementation of SMS in 2005. We believe there is much the U.S. can learn from the Canadian experience.

Canada has gone too far too fast in implementing Aviation SMS. There is an increasing view among key stakeholders that significant errors have been made, particularly in the way in which oversight has been completely overhauled in favour of SMS program verification. Additionally, the lack of significant whistleblower protections, for both airline employees and the inspectorate too, has created a high degree of mistrust and suspicion in the system. Last but not least, TC has used SMS as a means to reduce its financial commitment to safe skies.

We are pleased to attach a recent UCTE Discussion Paper which compares Transport Canada SMS with other jurisdictions, including ICAO. It also recommends changes to the way in which the system is working today.

UCTE is currently in dialogue with Transport Canada on some of the issues and recommendations in this paper. We are confident that the Canadian system will be improved considerably due to this communication.

In closing, we are very pleased to see that the FAA is making a commitment to whistleblower protections and a third party accountability structure. You will note that UCTE has recommended a similar structure for Canada.

UCTE would be pleased to offer more assistance at any time. Please do not hesitate to contact Mr. Michael Wing of my staff at 613-238-4003.

Yours sincerely,



Christine Collins
National President

Attachment :

*Implementation of the Transport Canada Aviation Safety Management System
(TCASMS).
What's Not Right and Why Change is Necessary*

c.c.

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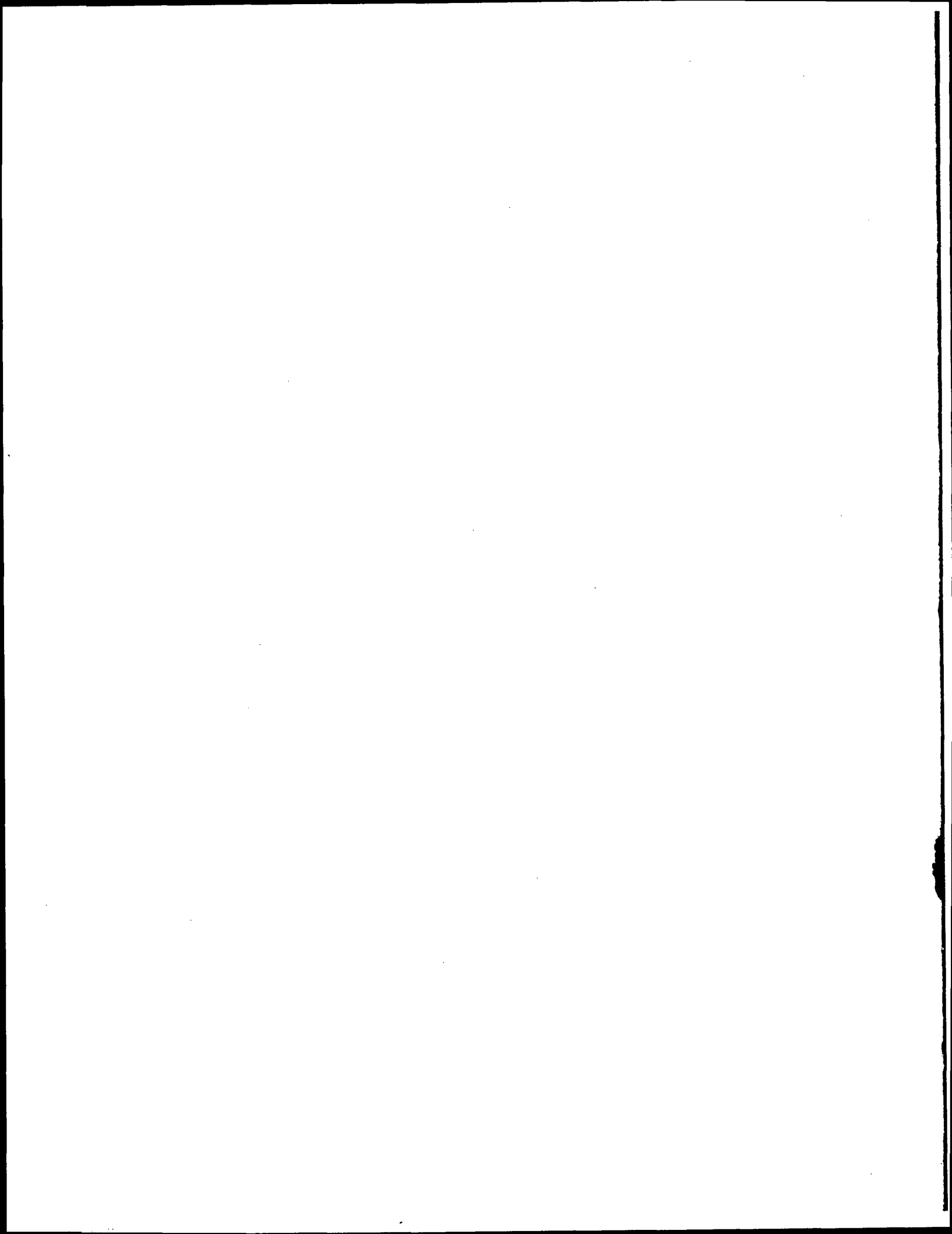
Union of Canadian Transportation Employees

WHY READ THE UCTE
WHY CHOOSE UCTE



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1. Executive Summary

For more than 4 years now, Transport Canada (TC) has been quietly and rapidly implementing a new Aviation Safety Management System. TC is quite advanced in its implementation program, considerably further advanced than other jurisdictions. The Transport Canada Aviation Safety Management System (TCASMS) is different than that recommended by ICAO and now being rolled out by the U.S., Australia, the United Kingdom and other jurisdictions. TCASMS integrates the oversight of operator Safety Management Systems (SMS) with regulatory compliance, audit and enforcement to a far greater extent than that recommended or practiced elsewhere. TCASMS also delegates air operators' safety oversight responsibility and compliance to the industry trade associations for aviation operators - a clear conflict of interest and a practice not currently practiced or recommended anywhere in the world. More and more jurisdictions are questioning the idea of regulatory partnerships with industry, in favour of increasing regulatory independence. Canada is the exception to this trend.

An ever - increasing number of key aviation safety stakeholder groups and individuals (including pilots and the inspectors that regulate aviation safety) have come together to question the TCASMS approach, in the interests of public safety in Canada.

As the national union for Canada's Aviation Technical Inspectors, UCTE recommends significant changes to TCASMS to make implementation more consistent with ICAO recommendations and to bring Canada in line with other developed nation regulatory structure. We recommend:

- It is wrong for TC to view aviation safety as an area to save money and cut jobs. This is a core area of federal responsibility and it is in the public interest to invest in air transportation safety. There are over 130 inspector vacancies in the Aviation Safety and Security Branch. These positions should be filled immediately. An additional 50 new inspector positions should be created. Transport Canada should also change the classification and pay structure to ensure inspectors are paid fairly and that wage inequities are eliminated.
- There must be a clear and unambiguous policy of direct and unscheduled inspections and audits for all Canadian air carriers - whether SMS certified or not. Effective risk management principles would clearly suggest that non-SMS certified carriers should be the subject of regular and random audits and inspections.
- There should be no delegations to associations.
- As recommended in the Aeronautics Act revisions suggested by the Parliamentary Committee on Transport, the Minister of Transport should, in a detailed way, define the "highest level of safety" and the Inspectorate should inspect to the standard generated by this definition.
- Transport Canada should clearly follow the U.S. Federal Aviation Administration Lead in clearly articulating a detailed plan and commitment that defines its service and accountability to the public and not to the airlines. This includes complete whistleblower protections and safety accountability to agencies independent of the FAA.¹

¹ See Appendix 1

2. Purpose of Paper

The purpose of this paper is to assess Transport Canada's Aviation Safety Management System (TCASMS) against the recommendations and guidance on Safety Management Systems (SMS) outlined by the International Civil Aviation Organization (ICAO). ICAO is the international organization for aviation safety, run and paid for by national government aviation safety organizations. The paper also briefly compares Canada's TCASMS with similar developments in the U.S., the U.K. and Australia.

3. Context

The theory and practice that aviation stakeholders (airlines, maintenance organizations, airports and others) should have responsibilities for and a stake in aviation safety is powerful and is in the public interest.

The role of the regulator in implementing this outcome is the issue that is being reviewed in this paper.

We should also consider prevailing trends in regulation, de-regulation and re-regulation. De-regulation was the hallmark of the period from the mid-90s to 2008. The spectacular failure of financial de-regulation has caused a major review of the de-regulation approach in most developed countries. As a result, most nations, including Canada, are re-thinking the respective roles of the regulator and the regulated at this time.

At the present time, in the United States, the FAA is holding public consultations on the possible roll-out of SMS. Additionally, due to a number of aviation accidents, Congressional and Senatorial hearings have been held. Many changes are being proposed. Serious measures to require more regulatory oversight are being proposed. On September 23, 2009, the FAA announced significant changes to the way aviation safety programs will work in the U.S. The accountability structure to the public has been completely reformed. Whistleblower protections are guaranteed and a separate and distinct public accountability structure is being established. (See Appendix 1 for the detailed announcement.)

The Canadian government and the Canadian food industry have had their own regulatory and safety management failures with the Food Listeriosis crisis in 2008. The Independent Commissioners Report ("The Weatherill report"), particularly Section 5 of the report, is a "must-read" for any decision-maker who is responsible for implementing a new safety system which radically changes the Inspectorate Function. The Listeriosis crisis has unfortunate parallels with TCASMS:

- The Canadian Food Inspection Agency (CFIA) introduced its own form of TSASMS as a pilot in 2005. It was then rolled out nationally. Titled "Compliance Verification System (CVS)", it adopts the same principles of delegating safety management to industry and revising the role of inspectors from direct audits to system verification.
- Like TCASMS, CVS has not been rolled out in the same way to other areas of CFIA responsibility. Like rail and marine inspection, fish processing inspection is much more rigorous than meat inspection, with a continuing focus on direct audits.

There were serious flaws in the way senior management allocated and trained resources and in communicating roles and responsibilities to the inspectorate.²

² See "Final Report of the Independent Investigator into the 2008 Listeriosis Outbreak, Section 5.2

In the budget of spring 2009, the federal government quickly acted on these recommendations by approving additional inspection resources, the hiring and training of new food inspectors and a more rigorous oversight regime for food processors. On September 11, 2009, an additional \$75 million was allocated to the Canadian food safety system, including the hiring of 166 additional food safety inspectors and staff.³

At Transport Canada, SMS implementation for rail and marine transportation modes is vastly different than that for aviation. In the budget of 2009, more resources were allocated to rail safety and rail inspection oversight, while a very large percentage of the Transport Canada program review 5% cutbacks were found in the aviation safety budgets. The explanation for aviation safety cut-backs revolve around TCASMS implementation and the clear correlation between this implementation and a decline in spending for aviation safety. Today, there are over 130 Aviation Inspector vacancies in the Civil Aviation Directorate at Transport Canada.⁴

4. Thesis

TCASMS has very different features and approaches than that recommended by ICAO and being implemented by other developed countries. Canada's approach delegates more to industry and places more oversight and enforcement powers in the hands of industry than any other jurisdiction in the world. TCASMS also merges SMS compliance with regulatory oversight to a much greater extent than other jurisdictions where these two functions are separated from a reporting and functional perspective. Like Food Inspection, TCASMS has the potential to create a safety crisis in Canada.

5. Main Features of TCASMS:

TCASMS was introduced well over 4 years ago. It is being rolled out throughout the Canadian aviation system, primarily by type of operator. Some of the main features of TCASMS are:

- TCASMS is being implemented with no real reference points as its development and roll out has significantly preceded that of any other nation.⁵ As other nations catch up to Canada, it is interesting to note what is adopted by others and what is not.
- TCASMS has a very modest legislative frame of reference. The critical delegative portions of TCASMS are being implemented completely under Section 4.3 (1) of the Act which reads:

“The Minister may authorize any person or class of persons to exercise or perform, subject to any restrictions or conditions that the Minister may specify; any of the powers, duties or functions of the Minister under this Part, other than the power to make a regulation, an order, a security measure or any emergency direction.”⁶

3 See CFIA Press Release and Backgrounder, September 11, 2009.

4 Testimony by Deputy Minister Louis Ranger and Director General Merlin Preuss to the Public Accounts Committee, June 5, 2008

5 Chapter 3 - Oversight of Air Transportation Safety-Transport Canada, Auditor General Report May 2008

6 A Bill amending the Aeronautics Act which sought to seek legislative authority for SMS died on the Order Paper in October 2008 and has not been re-introduced.

This discretionary provision was put in place many years ago. It was not foreseen at that time by the drafters and the legislators that this provision would implement a national system for delegation of aviation safety to the private sector.

- In January 2009 Transport Canada cancelled its “Frequency of Inspection Policy” and replaced it with its “Surveillance Policy Framework”. The new policy framework integrates SMS inspection and enforcement oversight into one risk-based system⁷.
- In January 2009 Transport Canada published its “Safety Partnerships Programs Framework” Policy which proposes to delegate licensing and safety oversight to private sector “aviation organizations”.⁸ To date, Transport Canada has delegated these functions to the Canadian Business Aircraft Association (CBAA) and is in the process of developing a similar program with the association representing Commercial Helicopter operators. Other trade associations, including associations for small commercial operators and large commercial airlines are poised to make similar applications and to apply for “designation” status.

6. The “State Responsibility” – The Perspective of the International Civil Aviation Organization (ICAO)

The ICAO Best Practices SMS Framework has been crafted as a methodology for all SMS organizations. It is divided into four modules: Safety Policy and Objectives, Safety Risk Management, Safety Assurance and Safety Promotion.

ICAO’s prescriptions for State Regulators are quite clear⁹:

- “The State is responsible for providing a regulatory safety framework which forms the basis of the safety management requirements.”
- The ICAO State responsibility framework does not envision safety delegations to third party organizations, with the exception of “Air Traffic Management” (ATM). ICAO specifies that where the state is an ATM service provider there must be a “clear distinction between the regulatory functions and the service provision functions.” Additionally, the “regulatory division must maintain effective safety oversight of the ATM service provisions.”¹⁰ The principle of separation of regulatory oversight from service is paramount in the ICAO State Responsibility Framework.
- The “State shall require that individual operators, maintenance organizations, air traffic service providers and certified aerodrome operators implement Safety Management Systems approved by the State; ensure that remedial action is taken to maintain an acceptable level of safety; and provide for continuous monitoring and regular assessment of the safety level achieved.”
- ICAO emphasizes that the state must define and set “target levels of safety” and that the frame of reference for the target levels will be regional air navigation agreements.
- The requirement to establish an “acceptable level of safety” is key to the ICAO recommendations. This applies both to SMS operators and to governments. “Establishing acceptable levels of safety does not replace legal, regulatory or other established requirements, but it must support compliance with them. ... Establishing acceptable levels of safety for their safety programme leaves unaffected the obligations of States, and does not relieve States from compliance with SARPs.”¹¹

7 Civil Aviation Directive: Surveillance Policy, Document number SUR-008

8 Civil Aviation Directive: Safety Partnership Programs Framework CAD 107-005

9 ICAO Safety Management System Course, Module No. 6

10 ICAO Presentation to SMS Conference, Mexico City, December 2005, Victor Hernandez, ICAO NA Central America Office

11 ICAO Safety Management Course, Module No. 6. SARPS is ICAO Standards and Recommended Practices.

ICAO is very focused on the “state responsibility” and the “Surveillance Obligations” that fall within this responsibility. Clause 3.8.6 of the ICAO Safety Oversight Manual (Surveillance Obligations chapter) reads as follows:

- “ 3.86 The surveillance function should be accomplished on a continuing basis, performed at specified times or intervals or conducted in conjunction with the renewal of a license, certificate or other approval. ICAO publishes guidance on inspection periodicity in a number of guidance documents. In the case of an operator, a maintenance organization or an approved training organization, regardless of the method used for surveillance, **all significant aspects of the operator’s or organization’s procedures and practices should be evaluated and appropriate inspections conducted at least once in every 12 month period. Scheduled inspections must be augmented by periodic random inspections of all facets of the operation.** ¹²

The ICAO Safety Management Manual is even more explicit as to the behaviour and role of the state as it applies to oversight.

- “10.3.4 At the State level, effective safety oversight can be maintained through a mix of some of the following activities:
 - Conducting no-notice inspections to sample the actual performance of various aspects of the national aviation system;
 - Conducting formal (scheduled) inspections that follow a protocol which is clearly understood by the organization being inspected;
 - Discouraging non-compliant behaviour through enforcement actions (sanctions or fines);
 - Monitoring quality of performance associated with all licensing and certification applications;
 - Tracking the safety performance of the various sectors of the industry;
 - Responding to occasions warranting extra safety vigilance (such as major labour disputes, airline bankruptcies, and rapid expansion or contraction of activity); and
 - Conducting formal safety oversight audits of airlines or service providers such as ATC, approved maintenance organizations, training centres and airport authorities. ¹³

ICAO contemplates that “acceptable levels of safety” will be clearly defined by the State in significant detail. Acceptable levels of safety are to be expressed by Safety Performance Indicators, Safety Performance Targets and Safety Requirements. ICAO gives implementation examples as follows:

“An oversight authority establishes an acceptable level of safety to be achieved by its safety programme that will be expressed by:

- 0.5 fatal accidents per 100,000 hours or airline operators (safety indicator) with a 40% reduction in 5 years (safety target);
- 50 aircraft incidents per 100,000 hours flown (safety indicator) with a 25% reduction in 3 years (safety target);
- 200 major aircraft defect incidents per 100,000 hours flown (safety indicator) with a 25% reduction over the last 3 year average (safety target);
- 1.0 bird strike per 1000 aircraft movements (safety indicator) with a 50% reduction in five years (safety target);
- No more than one runway incursion per 40,000 aircraft movements (safety indicator) with 40% reduction in a 12 month period (safety target); and
- 40 airspace incidents per 100,000 hours flown (safety indicator) with a 30% reduction over the 5 year moving average. ¹⁴

12 ICAO Safety Oversight Manual, Chapter 3, Critical Elements of a Safety Oversight System, page 3-17

13 ICAO Doc. 9859 AN/460, Safety Management Manual, 2006, section 10.34.

14 ICAO Doc. 9859 AN/460, Safety Management Manual, 2006, sections 1.4.8 to 1.4.20

The principles of independent regulatory oversight, direct state oversight, direct inspection and state direction for acceptable levels of safety (to a high level of detail and accountability) are paramount to the ICAO framework.

ICAO does recognize that for SMS to work effectively there should be the ability for the regulated sector and its employees to report safety incidents and violations to management and to the regulator without fear of reprisal. It emphasizes the need to keep these reports confidential, to provide for "no disciplinary actions" and for the regulator and for management to provide rapid feedback to incidents and reports.

ICAO does periodic audits of the State Safety Oversight Systems in member countries. Canada was audited by ICAO in 2000, in 2005 and presumably will be audited again in 2010. ICAO acknowledges that Canada is one of the first to implement SMS and has generally found in 2000 and 2005 that its State Oversight System has been satisfactory. Additionally, Transport Canada has been quick to rectify problems identified by ICAO. However, it is important to note that the last ICAO audit was done in 2005 and a great deal has changed since then in the way in which Transport Canada is implementing Safety Oversight. For example, the 2005 ICAO audit, as it applies to Surveillance Obligations, makes multiple references to the "Frequency of Inspection Policy". This policy is no longer in force. Additionally, the delegation to associations' policy ("Safety Partnerships") was not in force in 2005.

7.0 Where is TCASMS Different than what ICAO recommends?

Some of the differences are:

- ICAO does not recommend delegation of licensing and safety oversight to Associations;
- TCASMS will exempt licensees from direct inspections when risk profiles allow. ICAO recommends no-notice government inspector inspections regardless of license status or risk profile;
- ICAO recommends a clear separation of inspection from SMS oversight. TCASMS inspectors are responsible for both SMS oversight and inspection. Within the current "team" framework at TC, one inspector may have the lead for both SMS oversight and inspection for the same carrier. In the TCASMS framework, it is very difficult for the Inspector to take independent actions in the public interest.
- ICAO recommends that State regulators define and audit acceptable risk or "target levels of safety" to a very high degree of granularity. Under the TCASMS system, more discretion is afforded to SMS licensees. Under TCASMS, licensees are empowered to take incident-based remedial action and in some cases it is possible to do so without any obligation to report to the regulator.
- The TCASMS approach contemplates and enunciates "safety partnerships" between carriers, their associations and the regulator. ICAO recommends a clear separation between the regulated and the regulator.

8.0 Australia, the UK and the U.S. SMS approaches

All three government civil aviation authorities stress the importance of an independent regulatory function and independent regulatory authorities. They avoid SMS references as a "partnership" between the regulator and the regulated¹⁵. As is the case with the ICAO framework, there is a tendency to clearly separate audit and enforcement from SMS promotion or education.

¹⁵ Transport Canada refers to industry association delegations as "Safety Partnerships".

In Australia for example, the government has created the Australia Civil Aviation Safety Authority (CASA) as an arms length government regulatory authority. The Authority is structured to have a clear demarcation in personnel. The Inspectors are a separate and distinct employment category and division from the "Safety System Specialists" (SMS verification); and the "Field Safety Advisor" (Education and Training role). Regulations enforced by the Inspectors are outcome based, governed by an "Acceptable Means of Compliance" document, written in non-legal language. This approach is consistent with the European model for SMS.¹⁶

Unlike the TCASMS, the SMS regulatory frameworks adopted by these three jurisdictions are careful to reference ICAO accountability.

Consistent with the TCASMS framework, all three organizations have a risk-based approach to surveillance.

The Australia and the UK Civil Aviation Authorities have consistent approaches to SMS implementation. They are:

- Accountability to the ICAO recommendations;
- Independence of the regulator from the regulated;
- A clear definition of "acceptable level of safety and risk";
- No delegation of licensing, inspection, enforcement and audit functions to industry "partners" or aviation organizations paid for and accountable to the aviation industry.

In the U.S. today, SMS is in a stage of significant flux. While SMS processes have been discussed for years, formal consultations are just now being held to determine if and when implementation should take place. When the FAA Congressional funding requests came up 2008 and 2009, there were many Congressional and Senate hearings held. Additionally, Congressional Statutes have been written with the intention of legally clawing back the industry delegations in place and now in practice through the FAA Safety Oversight program. Recent airline accidents have heightened the call for significant changes in the way the FAA is implementing some aspects of safety oversight. The relationship between the regulator and the regulated is being "modernized" at this time. As mentioned previously, the first major announcement of changes to the FAA accountability structure was announced on September 23, 2009. See Appendix 1 for details.

9.0 The Auditor General Report of May 2008

Chapter 3 - Oversight of Air Transportation Safety - Transport Canada

This is the first of two reports planned by the Auditor General (AG) This first report assesses Transport Canada performance up to May 2008 as it implements its version of SMS. The second report, yet to be commenced, will assess Transport Canada industry delegations under the TCASMS Plan.

At the time of May 2008 Auditor General Report, TC was still operating under the Frequency of Inspection Policy and had not made the transition to the 2009 Surveillance Policy Framework. Under the previous Inspection policy, the AG pointed out the regional variations in inspection approaches, while the policy itself did not provide a common risk-based framework for inspections and audits. The Transport Canada response was that they would publish a new national risk-based framework for implementation in fiscal 2008-09. We do not believe TC has published or instructed its inspectorate on this new framework.

16 Bruce Byron, CEO, Australia Civil Aviation Safety Authority, "Emerging risks to Aviation Safety and the role of the regulator."

The Auditor General pointed out the need to establish objectives for the frequency of traditional safety oversight, particularly during SMS transition. The report asks "what combination of traditional oversight and validation activity is acceptable and why and how this may change as SMS is implemented."¹⁷ The AG also raised significant concerns about Transport Canada's ability to recruit and retain qualified inspectors and to quantify the number of inspectors and skills required to meet the regulatory requirements imposed.

The AG report recommends that "Transport Canada establish a standard that defines an acceptable level of activity for oversight of the aviation industry, and it should specify how this will be measured during the transition to SMS and when the transition is complete."¹⁸ Transport Canada agreed with this recommendation and suggested it will be addressed in the 2008 risk-based audit and inspection plan.

UCTE inspectors point out that this Audit and Inspection plan and training in it has yet to take place. The focus of the Inspectorate is assessments and validations of SMS plans and procedures put in place by the individual airlines. There is no clear audit and inspection plan. Additionally and most disturbing is the fact that there is no Oversight plan for non-SMS certificate holders.

The Surveillance Policy published in January 2009 is the new audit and inspection framework and it is the policy that partly addresses the Auditor General concerns and the commitments made to her in the report.

While the Surveillance Policy does quantify frequency of oversight, it does not differentiate between inspections for regulatory compliance and SMS program validation inspection. In other words, there appears to be a merger between validation and inspection in the Surveillance Policy. This would appear to deviate significantly from ICAO recommendations and the SMS frameworks in place in other jurisdictions. It also does not appear to answer the Auditor General's request to define traditional inspection oversight and enforcement and SMS validation separately.

The vast majority of Canada's air carriers are non-SMS licensed carriers. UCTE Inspectorate members are most concerned about the lack of an audit and inspection plan for non-SMS certificate holders. They believe there is considerable risk being deployed and there has been no risk assessment done to justify the lack of an audit and inspection protocol.

10.0 Transport Canada Audit of the CBAA Program

Access to Information reports of a March 2007 internal Transport Canada audit of the CBAA program have also been deeply critical of the delegation of safety to trade associations. It reports that TCASMS "as implemented through CBAA, "does not provide any planned or structured oversight of private operators".¹⁹

- Below acceptable scores were found in six key regulated areas:
 - Management system documentation.
 - Program design and development.
 - Program delivery.
 - Monitoring and measurement.
 - Reporting systems.
 - Analysis and risk management.

17 Auditor General report, Chapter 3, May 2008, Section 3.32

18 AG report, Section 3.34

19 Internal TC Audit of the CBAA program, March 2007, obtained by CUPE through Access to Information.

- There were also **below** acceptable scores in six surprisingly non-regulated areas:
- Identification of **applicable** regulations.
- Control of records.
- Objectives, goals and **planning**.
- Management review.
- Internal audit.
- Continuous review.

Clearly, Transport Canada was unhappy with the performance of the CBAA program at the time of the audit.²⁰

11.0 Some Stakeholder Perspectives

The Union of Canadian Transportation Employees (UCTE) is the national union representing the Technical Inspectors working for Transport Canada and the Transportation Safety Board. UCTE does not oppose SMS and generally agrees that the system benefits from a greater focus on safety and a more pervasive and internalized view of safety in the culture of the airline industry and its various components. In the past year, UCTE is on public record as requesting a moratorium on SMS implementation in Canada, until such time as there is a clear requirement to provide a separate and accountable audit and inspection role and that there is a clear regulatory standard of "highest level of safety" imposed.

The Canadian Federal Pilots Association (CFPA) represents Inspectors at Transport Canada and the Transportation Safety Board that have Airline Pilot certification. CFPA has publicly criticized the TCASMS "assertion that Safety Management Systems are an additional layer of safety and their insistence that this is not a shift to self-regulation of aviation safety."²¹ Former CFPA Chairman Greg Holbrook further states: "Transport Canada has thrown caution to the wind when it comes to safety. For the past 3 years, Transport Canada has reduced safety oversight in favour of giving responsibility to the industry itself without any knowledge of the risks involved for the traveling public or ways to mitigate them."²²

Airport operators are on the list for SMS delegation through their national trade association. However, recent reports indicate that airports are increasingly viewing TCASMS as a "downloading of responsibility".²³

The Transportation Safety Board is also now publishing Investigation reports of accidents involving SMS operators. One of the first TSB reports was on the Rail Derailment and loss of Life incident near Lillooet, British Columbia on June 29, 2006. The May 28, 2009 TSB report quoted TSB Chair Wendy Tadros: "Safety Management systems are the way to go. However to make them work, there needs to be a firm and consistent commitment from the industry and the regulator".²⁴ More TSB accident investigation reports, including those involving CBAA operators are expected shortly.

20 More details and excerpts from the Audit can be found in Appendix 1.

21 CFPA Chairman Greg Holbrook, Public Statement, May 6, 2009

22 Ibid

23 Confidential record note of Multi-Stakeholder SMS Symposium, June 2009

24 TSB report summary, May 28, 2009

12.0 SMS in Each Directorate

SMS is being implemented very differently in each of the Transport Canada Directorates. The level of delegation to industry and the significantly reduced level of direct inspection oversight is far less in the Aviation Directorate than it is in either Rail, Marine, Transportation of Dangerous Goods, Roads or Security. Aviation is the only Directorate that delegates SMS oversight and licensing to trade associations. While Aviation still retains the rights to directly and randomly inspect, Aviation is the only Directorate that has significantly reduced its direct inspection role and the resources dedicated to this role.²⁵

13.0 Conclusion

The Aviation Safety Directorate of Transport Canada is leading the world in its approach and its implementation of Aviation Safety Management Systems. The question is: is it leading the world in the right direction or the wrong direction? Is it leading aviation safety in Canada down the wrong path and to a place where the travelling public may be at risk?

The conclusions in this report are that the TCASMS goes significantly beyond the framework and recommendations of ICAO. The conclusions reached in this report are that no jurisdiction in the world appears to be copying Canada - in its application of SMS delegations to trade associations and in its roll-back of direct inspections and audits. With the ever-developing ethos of increasing regulatory oversight and re-regulation, in the public interest, one has to question whether TCASMS is completely out of synch and needs to be reined in by Canadian political decision-makers. Perhaps this needs to happen very quickly before serious accidents occur.

UCTE believes that Transport Canada needs to engage stakeholders on these issues now. UCTE believes that a consensus for change should be something that Transport Canada strives for and achieves. For its part, UCTE is recommending the following changes in TC Aviation Safety today:

- It is wrong for TC to view aviation safety as an area to save money and cut jobs. This is a core area of federal responsibility and it is in the public interest to invest in air transportation safety. There are over 130 inspector vacancies in the Aviation Safety and Security Branch. These positions should be filled immediately. An additional 50 new inspector positions should be created. Transport Canada should also change the classification and pay structure to ensure inspectors are paid fairly and that wage inequities are eliminated.
- There must be a clear and unambiguous policy of direct and unscheduled inspections and audits for all Canadian air carriers - whether SMS certified or not. Effective risk management principles would clearly suggest that non-SMS certified carriers should be the subject of regular and random audits and inspections.
- There should be no delegations to associations.
- As recommended in the Aeronautics Act revisions suggested by the Parliamentary Committee on Transport, the Minister of Transport should, in a detailed way, define the "highest level of safety" and the Inspectorate should inspect to the standard generated by this definition.
- Transport Canada should clearly follow the U.S. Federal Aviation Administration lead in clearly articulating a detailed plan and commitment that defines its service and accountability to the public and not to the airlines. This includes complete whistleblower protections and safety accountability to agencies independent of the FAA.²⁶

²⁵ See Appendix 3 for a summary of the main features of each mode. This information is copied from the Transport Canada website.

²⁶ See Appendix 1

Appendix 1 - FAA Announcement of September 23, 2009

FAA announces new efforts to respond to safety concerns

23-Sep-2009

Federal Aviation Administration (FAA) Administrator Randy Babbitt announced a new focus on improving the agency's response to public safety complaints and whistleblower contributions, as well as renewing efforts to ensure consistent interpretation of agency regulations and policies. He also outlined ongoing actions to ensure that air carriers comply with safety directives while minimizing disruptions to passengers.

In addition, the FAA is improving how it communicates and interacts with employees, the public, air carriers, and manufacturers, based on last year's focused inspections on air carriers' compliance with Airworthiness Directives (ADs). That effort resulted in flight cancellations and prompted questions about the treatment of whistleblowers and the FAA's relationships with airlines.

"These changes make it clear that the FAA's number-one customer is the public," said Administrator Babbitt. "We value the safety information we receive from our employees, the public and industry, and these actions reinforce that. We know we can improve how we all communicate technical safety information so we maintain a safe U.S. fleet and avoid flight cancellations wherever possible."

The changes include the following:

- Creating a new Office of Audit and Evaluation that will handle all public safety complaints and whistleblower contributions. It will serve as the focal point for the U.S. Office of Special Counsel, Government Accountability Office, and the Department of Transportation's Inspector General. It will oversee the FAA Administrator's Hotline, Aviation Safety Hotline, Public Inquiry Hotline, Whistleblower Protection Hotline, and the Safety Issues Reporting System.
- The FAA will no longer refer to airlines as the agency's "customer." Instead, through the Consistency and Standardization Initiative, the FAA is now providing managers and supervisors in safety offices around the nation with guidance to ensure that FAA decisions are consistent with rules and policies and are communicated in a standard, consistent manner.
- The FAA is strengthening the procedures used by air carriers, manufacturers, and the FAA to ensure that air carriers comply with ADs. The goal is to maintain safety while minimizing disruptions to passengers by improving:
 - service information and instructions from aerospace manufacturers
 - air carrier management of planning and prototyping how ADs are implemented
 - FAA coordination with the air carriers through the planning and prototyping process

In addition, the FAA is strengthening its procedures to assist inspectors when they make compliance determinations and use the Alternative Method of Compliance.

The FAA is acting on five short-term recommendations from an AD Compliance Review Team of experts to improve the clarity and interpretation of ADs. The agency has also chartered an Aviation Rulemaking Committee to identify and implement long-term actions that can be completed by the third quarter of 2011.

Appendix 2: The CBAA Audit

- The assessment report presents six serious Findings and seven equally serious Observations.
- These results can be grouped and summarized under the following points:
 - 1 “Operations specifications” issued by the CBAA to allow deviations from its established standards were not always correct (*FDG-03-01, page 153*); although not all operations specifications were reviewed by the TC assessors.
 - 2 Certain operating certificates were issued prior to the completion of a satisfactory audit (*FDG-04-01, pages 154, 149*), even though this was allowed with “TC’s knowledge and concurrence” (see page 141).
 - 3 There are no clear procedures for the triggering of an audit of a POC holder in all circumstances (*FDG-04-02, pages 155, 149*), including “for cause” audits.
 - 4 There is a lack of clear policy for determining POC validity (*FDG-04-02, pages 155, 149*).
 - 5 No procedures could be found for the actual suspension or cancellation of a POC (*FDG-04-03, pages 156, 149*) when the operation was unsafe.
 - 6 Individual POC holders are allowed to use independent contracted third party auditors who are not CBAA employees (see page 150) to audit them periodically to ensure compliance with CBAA standards and rules. But there are “no records of direct CBAA monitoring of auditor activities” (page 150).
 - 7 “Other than periodic certification audits, the CBAA does not provide any planned or structured oversight of private operators” (see page 150). It is not clear whether Transport Canada has stepped in itself to fulfill this essential role.
 - 8 “There is no process for the CBAA to review/accept audit findings and corrective actions” (see page 150), presumably to confirm that they have been implemented and are effective. In any event, these audit reports are received well after they have been conducted and implemented by the individual POC holder (see page 150).
 - 9 There is no assurance that audits of POC holders by these third party auditors are standardized (*FDG-05-01, page 157*).
 - 10 There is no description of how the quality of these third party auditors is to be assured (*FDG-05-01, page 157*).
 - 11 As a result of these deficiencies, the Transport Canada assessors found the following problems, including acceptance of training programs whose quality could not be traced (see page 143); operation of aircraft that were lacking traceability of a maintenance schedule approval (see page 143); and whether POC holders were using appropriate risk matrices to ensure they were SMS compliant (see pages 119, 97, 104).
 - 12 No CBAA procedures for the proactive collection and analysis of relevant safety data and safety indicators (*FDG-07-01, pages 158, 151*), even though this lack of a data collection system had already been identified as a deficiency in 2005 and February 2007.
 - 13 The CBAA’s documented management system “does not address all of the components/elements of generally accepted management systems used by organizations that certificate other organizations, or that develop publicly available standards” (*OBS-01-01, pages 159, 145*).
 - 14 The CBAA has not established and maintained a documented procedure for identifying applicable regulatory requirements that it should meet (*OBS-01-02, pages 160, 145*).

- 15 Lack of detail or procedures for the CBAA's management of operational safety standards that must be followed by individual POC holders (*OBS-03-01, p. 161*).
- 16 No CBAA policy for the retention of records not specifically required by regulations (*OBS-04-01, pages 162, 148*).
- 17 Individual POC holder safety-risk profiles "tend to be superficial and often are not supported by underlying documentation" (*OBS-04-02, page 163*).
- 18 The CBAA does not have an internal audit capability of its own operations (*OBS-08-01, pages 164, 151*).
- 19 The CBAA does not have its own management review capability (*OBS-10-01, pages 165, 152*).

Appendix 3: SMS in each Directorate

Civil Aviation

- A safety policy on which the system is based
- A process for setting goals for the improvement of aviation safety and for measuring the attainment of those goals
- A process for identifying hazards to aviation safety and for evaluating and managing the associated risks
- A process for ensuring that personnel are trained and competent to perform their duties
- A process for the internal reporting and analyzing of hazards, incidents and accidents and for taking corrective actions to prevent their recurrence
- A document containing all safety management system processes and a process for making personnel aware of their responsibilities with respect to them
- A process for conducting periodic reviews or audits of the safety management system and reviews or audits for cause of the safety management system and
- Any additional requirements for the safety management system that are prescribed under these Regulations

Rail Safety

- Safety policy, annual safety targets and associated safety initiatives
- Safety authorities, responsibilities and accountabilities
- Employee and representative involvement
- Compliance with applicable regulations, rules, standards and orders
- Risk management process
- Risk control strategies
- Accident and incident reporting, Investigation and analysis
- Skills, training and supervision
- Safety performance data collection and analysis
- Safety audit and evaluation
- Corrective action and development, approval and monitoring
- Documentation

Marine Safety

- International Safety Management Code (IMO, 1993)
- Safety and environmental protection policy
- Compliance with relevant legislation
- Defined levels of authority
- Reporting accidents and non-conformities
- Emergency response
- Internal audits and management reviews

Road Safety

Motor Vehicle Safety

- Self-certification by manufacturers
- Notice of defect by manufacturers
- Record-keeping by manufacturers
- Compliance audit of records, supplemented by testing of selected sample of vehicles by TC
- Public safety complaint investigation, collision trend analysis and vehicle recalls
- Education and outreach, in particular to smaller companies

Motor Carrier Safety

- Provincial/territorial enforcement
- Risk-based audits, inspections
- Driver logs must be kept
- TC establishes performance criteria via Motor Vehicle Transport Act and National Safety Code
- Provinces/territories enforce performance criteria (TC manages contribution agreement for delegated enforcement)

Road Use / Vehicle and Driver Licensing

- Risk-based targets under Road Safety Vision 2010

TDG

- Emergency response and plans
- Documentation
- Industry accountability
- Performance-based regulations and standards, where appropriate
- Risk management and accident analysis (conducted by TDG)

Security

- Management commitment and leadership, accountable executive
- Security policy
- Employee participation
- External partnerships
- Plan: security objectives, targets, programs, initiatives and plans; organizational structure, roles, responsibilities and authorities, human and financial resources, equipment and infrastructure; Threat-Risk-Vulnerability assessment and management
- Do: Communication; operational control, information/knowledge management
- Check: Legal, regulatory and other requirements compliance; security related failures, incidents and non-conformance investigations, root-cause analysis, review, performance measurement, analysis and corrective and preventative actions
- Act: Management of change and continual improvement

Aircraft Services

- A safety policy on which the system is based
- A process for setting goals for the improvement of aviation safety and for measuring the attainment of those goals
- A process for identifying hazards to aviation safety and for evaluating and managing the associated risks
- A process for ensuring that personnel are trained and competent to perform their duties
- A process for the internal reporting and analyzing of hazards, incidents and accidents and for taking corrective actions to prevent their recurrence
- A document containing all safety management system processes and a process for making personnel aware of their responsibilities with respect to them
- A process for conducting periodic reviews or audits of the safety management system and reviews or audits for cause of the safety management system
- Any additional requirements for the safety management system that are prescribed under these Regulations