



# Federal Register

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**Tuesday,  
February 10, 2004**

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**Part II**

## **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Parts 121 and 139  
Certification of Airports; Final Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 121 and 139**

[Docket No. FAA-2000-7479; Amendment Nos. 121-304, 135-94]

RIN 2120-AG96

**Certification of Airports**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the airport certification regulation and establishes certification requirements for airports serving scheduled air carrier operations in aircraft designed for more than 9 passenger seats but less than 31 passenger seats. In addition, this rule amends a section of an air carrier operation regulation to conform with changes to airport certification requirements. This rule is necessary to ensure safety in air transportation at all certificated airports.

**DATES:** Effective June 9, 2004.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbrefa.htm>, or by e-mailing us at [-AWA-SBREFA@faa.gov](mailto:-AWA-SBREFA@faa.gov).

**Background***Regulatory History*

Since 1970, the FAA Administrator has had the statutory authority under title 49, United States Code (U.S.C.) 44706 to issue Airport Operating Certificates (AOCs) to airports serving certain air carriers and to establish minimum safety standards for the operation of those airports. The FAA uses this authority to issue requirements for the certification and operation of certain land airports through part 139 of title 14, Code of Federal Regulations (14 CFR part 139).

This statutory authority was limited to those land airports serving passenger operations of an air carrier that are conducted with an aircraft designed for at least 31-passenger seats. In response to recommendations made by the General Accounting Office (GAO) in 1987 and the National Transportation Safety Board (NTSB) in 1994, the Secretary of Transportation sought authority from Congress to broaden the FAA's authority to certificate airports, and the FAA's authority was broadened when Congress passed the Federal Aviation Reauthorization Act of 1996 (Public Law 104-264), amending 49 U.S.C. 44706. This amendment granted the FAA the authority to certificate airports serving scheduled air carrier operations conducted in aircraft with more than 9 passenger seats but less than 31 passenger seats, except in the State of Alaska. There was no change to the FAA's existing authority to regulate airports serving air carrier operations using aircraft with more than 30 seats.

In April 2000, Congress further mandated, in the Wendell H. Ford

Aviation Investment and Reform Act for the 21st Century (Air-21; Public Law 106-181), that the FAA issue a Notice of Proposed Rulemaking (NPRM) within 60 days and a Final Rule 1 year after the close of the NPRM comment period implementing 49 U.S.C. 44706(a)(2), relating to the issuance of AOCs for small scheduled passenger air carrier operations.

The FAA implemented its new authority on airport certification by publishing an NPRM on June 21, 2000 (65 FR 38636). This NPRM proposed to revise the current airport certification requirements in 14 CFR part 139 and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with more than 9 passenger seats but less than 31 passenger seats. The NPRM also proposed a conforming amendment to 14 CFR part 121. The public comment period was originally scheduled to close on September 9, 2000, but was extended to November 3, 2000, in response to several requests made by airport operators and the State of Maine.

In the NPRM, the FAA proposed to revise certain outdated safety requirements and require certification of airports not currently certificated that serve scheduled air carrier operations conducted in aircraft with more than 9 passenger seats but less than 31 passenger seats. The proposal also clarified existing requirements, incorporated existing industry practices, and responded to an outstanding petition for rulemaking and certain NTSB recommendations.

Further, the FAA proposed to revise the existing airport certification process to incorporate all airports covered by the statute, including those serving scheduled, smaller air carrier aircraft. Under this changed certification process, airports would be reclassified into four new classes, based on the type of air carrier operations served. Class I, II, and IV airports would be those that currently hold AOCs and Class III would be those airports being newly certificated.

Airports serving all types of scheduled operations of air carrier aircraft designed for at least 31 passenger seats (large air carrier aircraft), and any other type of air carrier operations, would be known as Class I airports. These airports currently hold an AOC.

Airports that currently hold a Limited Airport Operating Certificate would be known as either Class II or IV airports. The FAA proposed that Class II airports would be those that serve scheduled operations of small air carrier aircraft (aircraft designed for more than 9

passenger seats but less than 31 passenger seats) and unscheduled operations of large air carrier aircraft. Class IV airports would be those that serve only unscheduled operations of large air carrier aircraft.

As proposed, Class III airports would be those airports that serve only scheduled operations of small air carrier aircraft and, as noted above, would be required for the first time to be certificated under part 139. As specified in the authorizing statute, proposed airport certification requirements would not be applicable to airports located in the State of Alaska that only serve scheduled operations of small air carrier aircraft.

Similar to how the FAA currently certifies airports, the proposal required airport operators choosing to be certificated under part 139 to document their procedures for complying with part 139, as well as with the safety and operational requirements. To accommodate variations in airport layout, operations, air carrier service, and to address other local considerations, the FAA proposed that compliance procedures for the more burdensome requirements be tailored for each airport operator.

#### Industry Participation

Through the Aviation Rulemaking Advisory Committee (ARAC), the FAA sought industry input on regulatory and nonregulatory issues on the certification of airports serving smaller air carrier operations. The FAA asked the ARAC to consider alternatives to minimize the operational burden on smaller airports, including options for aircraft rescue and firefighting (ARFF) services. The FAA also suggested that the ARAC conduct a survey of affected airports to gauge the impact of any proposed requirement.

In 1995, the ARAC appointed the Commuter Airport Certification Working Group to complete these tasks. This working group comprised representatives from industry trade and union associations, including Air Line Pilots Association (ALPA), Aircraft Owners and Pilots Association (AOPA), American Association of Airport Executives (AAAE), National Air Transportation Association (NATA), National Association of State Aviation Officials (NASAO), and Regional Airline Association (RAA). The FAA and Landrum and Brown, an airport planning and engineering consulting firm, also provided technical support.

However, after the passage of the Federal Aviation Reauthorization Act of 1996, the FAA decided to consider exercising its new authority to regulate airports and asked the ARAC to

immediately provide the FAA a report on certifying airports serving small air carrier aircraft that included draft regulatory language.

While the working group agreed on many issues, two members (ALPA and NATA) disagreed with several of the group's recommendations on regulatory requirements, including marking and lighting, ARFF, and the handling of hazardous substances and materials. Subsequently, in February 1997, both the majority and minority views of the working group, and those of individual workgroup members, were presented to the FAA.

As noted in the NPRM, the FAA considered these positions in this rulemaking. However, the decisions in this document are the FAA's.

#### Discussion of Comments

The FAA received 929 comments on the NPRM, of which 858 are similar letters from individuals and organizations addressing concerns about Centennial Airport in Greenwood, CO (see discussion on public charters below). The remaining 72 commenters addressed part 139 and part 121 issues. These commenters included—

- *Air carriers:* Eagle Canyon Airlines d.b.a. Scenic Airlines, Era Aviation, and Champlain Enterprises d.b.a. U.S. Airways Express.

- *Airport operators, including state and local governments:* Augusta State Airport (ME), Boone County Airport (AR), Chautauqua County Airports Commission (NY), Cheyenne Airport (WY), City of Alamogordo (NM), City of Phoenix (AZ), City of Show Low (AZ), City and County of Twin Falls (ID), City of Yankton (SD), Clark County Department of Aviation (NV), Clinton County Airport (NY), County of Hill (MT), Dallas/Fort Worth Int'l Airport (TX), Dane County Regional Airport (WI), Dawson Community Airport (MT), Fort Lauderdale—Hollywood Int'l Airport (FL), Hancock County Bar Harbor Airport (ME), Havre City—County Airport (MT), Garfield County (UT), Grant County Commissioners (NM), Jamestown Airport Authority (ND), Kingman Airport Authority (AZ), Lebanon Municipal Airport (NH), Manchester Airport (NH), Mercer County Airport (WV), Metropolitan Airports Commission (MN), Miles City Airport Commission (MT), Ocala Regional Airport (FL), Port Authority of New York and New Jersey, Rutland Region Transportation Council (VT), Sidney—Richland Airport (MT), Spencer Municipal Airport (IA), State of Alaska, State of Hawaii, State of Iowa, State of Michigan, State of Montana, State of Maine, State of New York, State

of Vermont, State of West Virginia, Williamson County Regional Airport (IL), and Yuma County Airport Authority (AZ).

- *Representatives of employees:* Air Line Pilots Association, The Aircraft Rescue and Fire Fighting Working Group, International Association of Fire Chiefs, Coalition of Airline Pilots Association, International Association of Fire Fighters, and International Brotherhood of Teamsters.

- *Associations:* Aircraft Owners and Pilot Association, Airports Council International-North America, American Association of Airport Executives, National Air Transportation Association, National Association of State Aviation Officials, National Business Aviation Association, National Fire Protection Association, Northeast Chapter of American Association of Airport Executives, Regional Airline Association, and the Wyoming Airport Operators Association.

- The National Transportation Safety Board.
- U.S. Department of Agriculture.
- U.S. Department of Defense.
- Individuals.

Except for issues about public charters, commenters support the new structure of the regulations. However, commenters were evenly divided on their support or opposition to the proposed requirements for airports serving smaller air carrier operations. As anticipated, airport operators express concerns over the increased burden and cost impacts of the proposed rule. They are particularly concerned about the costs to comply with proposed ARFF requirements. Conversely, the firefighter and pilot labor organizations believe the proposal did not go far enough.

Most operators of certificated airports did not comment on the proposal. Of the 656 currently certificated airports (both civilian and military airports), only 18 airport operators sent comments. Most of these airport operators recommended changes to the proposal. Of the 37 proposed Class III airports (airports that are to be newly certificated), 14 airport operators sent comments. Although all of these airport operators recommend changes to the proposal, only one supports certifying proposed Class III airports.

The final rule is adopted, as modified and detailed below. In adopting the final rule, the FAA has tried to strike a balance and has made changes to the final rule in response to the comments. Comments specific to a section are discussed below in the section-by-section analysis, following the discussion of Public Charters and General Comments.

## General Comments

### Public Charters

*Comment:* The FAA received 858 similar letters from individuals and organizations addressing concerns about Centennial Airport in Greenwood (near Denver), CO. These commenters state the NPRM does not consider legislation amending 49 U.S.C. 41104 (Air-21; Public Law 106-181). The legislation, in part, forbids air carriers, including indirect air carriers, from providing regularly scheduled charter air transportation to or from uncertificated airports with aircraft designed for more than 9 passenger seats (49 U.S.C. 41104(b)). The apparent interest of these commenters, though not stated specifically in the form letter, but made clear by other comments, is to ban regularly scheduled charter operations from serving Centennial Airport, which is not now certificated under part 139.

*FAA Response:* The comments received address an issue that is beyond the scope of this rulemaking and a matter not regulated by the FAA. Originally, Congress included an amendment to Public Charter Operations (49 U.S.C. 41104) in the Air-21 legislation. However, Section 41104(b) is directed to the air carriers' economic authority, which is regulated and administered by the Office of the Secretary within the Department of Transportation (DOT). In response to the concerns raised by these commenters and others, Congress passed further legislation, the Airport Security Improvement Act of 2000 (Public Law 106-528, 11/22/2000), in which technical amendments were made to this section. The DOT has determined that no implementing regulations are required as this is a stand-alone statutory requirement that became effective December 22, 2000.

However, to ensure that air carriers—who are governed by 14 CFR 121.590, Use of Certificated Land Airports in the United States—are aware of the statutory requirements of 49 U.S.C. 41104(b), the FAA has added an advisory note explaining those provisions in the flush paragraph following the amendatory language of 14 CFR 121.590 and 14 CFR 139.5. For further questions on public charter operations conducted under 14 CFR part 380, contact DOT, Office of Aviation Analysis, at (202) 366-5903.

### General Comments on Part 139

As noted in the above section, many of the comments received from airport operators express concern regarding the cost to comply with proposed ARFF requirements, particularly at proposed

Class III airports. While specific comments on ARFF requirements are addressed in the section-by-section discussion below, the FAA has made several changes in the final rule that affect ARFF cost concerns and warrant a general discussion on the matter.

To standardize ARFF at certificated airports, the FAA proposed that all certificated airports serving both scheduled and unscheduled operations be required to comply with all ARFF requirements. However, the FAA agrees that requiring all airports to comply with all ARFF requirements may pose a substantial cost for airports that do not currently provide minimum ARFF coverage or do so only to cover an occasional unscheduled air carrier flight. This would include both currently certificated airports and airports that would be newly certificated (Class III airports).

The FAA is directed by the authorizing statute (Title 49, U.S.C. 44706) to issue requirements for the certification and operation of airports. The statute requires the FAA to establish minimum safety standards for certificated airports that provide for the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment. The authorizing statute also allows the FAA to exempt certain airport operators from all or some of ARFF requirements (certificated airports that have less than one-quarter of one percent of the total number of annual passenger boardings) and allows the FAA to adopt regulatory alternatives for commuter airports (Class III airports) that are "least costly, most cost-effective or the least burdensome" but provide comparable safety at all certificated airports.

The FAA has revised part 139 to better exercise its statutory authority to provide appropriate exemptions from some or all prescribed ARFF requirements and allow for alternative means of compliance for certain airports (Class III airports). While the FAA believes that a single set of airport certification standards promote the consistent application of safety measures, the use of statutory exemptions and alternative compliance measures that are monitored closely by the FAA will ensure that ARFF requirements are appropriate for the airport size and type of air carrier operations.

As adopted, this rule requires all certificated airports to provide some level of ARFF service. Where appropriate, the FAA will provide limited exemptions on a case-by-case basis for airports with infrequent or smaller air carrier operations from some

or all prescribed ARFF requirements. In addition, the alternative ARFF compliance measures have been established for Class III airports. This is intended to provide Class III airports relief. The FAA recognizes that it would be too burdensome to require these airports to provide the same level of ARFF services required of airports serving large air carrier operations.

The FAA also received the following general comments on the proposal:

*Comment:* A commenter, a Class I airport operator, states that its facility is already fully compliant with the proposal and would therefore not be affected by the NPRM.

*FAA Response:* As mentioned in the NPRM preamble's "General Discussion of the Proposal" section, many airport operators will need to do little to comply with revised part 139 requirements. However, some airport operators will be required to revise their certification manuals to comply with the adopted changes to existing requirements. Other operators may be required to implement certain safety measures on a more frequent basis if they serve small air carrier operations that do not occur concurrently with large air carrier aircraft operations.

*Comment:* Two commenters support the proposal. One commenter, the National Transportation Safety Board, states that the promulgation of the proposal will "enhance the level of safety at airports served by commuter airlines." The other commenter states that the inclusion of airports serving smaller air carrier operation in part 139 is a "viable means to increase air travel safety."

*FAA Response:* The FAA believes this rule will enhance safety in air transportation.

*Comment:* Five commenters oppose the adoption of certification requirements for airports serving scheduled operations of small air carrier aircraft. They state that such requirements are unnecessary as these airports have a good safety record and their implementation would be prohibitively expensive. One of these commenters states that the current part 139 is enough to ensure safety in air transportation.

*FAA Response:* The FAA disagrees that the proposed changes to part 139 are unnecessary. The FAA has determined that the changes to part 139 are necessary to ensure safety in air transportation at all covered airports. This was not based on the fact that some airports have a poor safety record (no category of airport has a poor safety record); rather the changes are intended to provide, to the extent possible, safety

in air transportation at all airports covered by the statute and part 139.

The FAA believes that airports serving small air carrier operations will not have difficulty complying with most part 139 requirements. While airport operators that choose to be certificated under part 139 will be required to prepare a tailored Airport Certification Manual (ACM) detailing how they will comply with part 139 safety and operational requirements, these airport operators will be allowed flexibility in complying with the requirements, including ARFF requirements. In tailoring an ACM, the FAA will consider with each airport operator variations in airport layout and air carrier operations served.

In addition, the FAA will assist an airport operator in obtaining Federal funds to be used to comply with part 139 requirements. If compliance with part 139 is still too burdensome, particularly where the local community resources are limited, the airport operator may petition the FAA for an exemption, as specified under the authorizing statute. The FAA also has established alternative compliance measures in the final rule for Class III airports (see the section-by-section analysis of § 139.111, Exemptions and § 139.315, Aircraft rescue and firefighting; Index determination).

*Comment:* Two commenters state that Title V, Section 518, of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Air-21; Public Law 106-181), titled "Small Airport Certification," appears to have resulted in this NPRM. However, other provisions of the act appear to undermine the policy on air service to rural areas and the Essential Air Service (EAS) program because rural communities lack sufficient resources to comply with the provisions of the proposed rule.

*FAA Response:* The FAA disagrees. Section 518 directs the FAA to issue an NPRM to implement the section of the authorizing statute (49 U.S.C. 44706(a)(2)) allowing the FAA to certificate certain airports serving small air carrier operations. Section 518 does not specify safety requirements and standards that the FAA must propose for the certification of these airports and does not conflict with those sections of Air-21 that set aside Federal funds for air service to rural communities. In fact, Air-21 requires Airport Improvement Program (AIP) funds to be set aside for costs related to the certification of airports serving small air carrier operations. As of the date of the publication of this final rule, the FAA is required to set aside \$15 million of

AIP funds for such costs each year for 4 fiscal years following the effective date of this rule (see Section 128 of Air 21).

In meeting the requirements of Section 518, the FAA chose to certificate these airport operators in a manner similar to that used for currently certificated airports. However, the FAA recognizes that in some instances the cost to comply with certain certification requirements may be substantial for these smaller airports. The FAA will work with airport operators to establish compliance appropriate for the size of airport and types of operations served to ensure that they are the least costly and burdensome, but still provide safety in air transportation.

*Comment:* Six commenters, including operators of airports that are likely to be Class III airports, state that existing airport revenue and operating income cannot cover the initial and recurring costs associated with part 139. These commenters request the FAA provide a permanent source of funding to help airport operators in complying with the new requirements or exempt these airport operators from the more costly requirements, such as ARFF.

Several of these commenters state that federally mandated safety requirements should be fully funded. In the absence of such funding, these commenters believe airport operators should be granted exemptions if they can demonstrate an unreasonable cost, burden, or that the requirements are impractical. One of these commenters also suggests that AIP funds set aside for small airports be used by small airports to cover costs associated with the proposal.

*FAA Response:* The FAA partly agrees. In some instances, the cost to comply with certain part 139 requirements could be too burdensome for airport operators serving small air carrier operations. In such cases, the FAA will work with the airport operator in developing and tailoring an ACM to achieve safety in air transportation at that airport. Further, the FAA will assist the airport operator in obtaining Federal funds, as appropriate. In addition, the FAA has the statutory authority to grant exemptions from part 139 requirements, including ARFF requirements, that would be too costly, burdensome, or impractical and has established alternative compliance measures for Class III airports (see the section-by-section analysis of § 139.111, Exemptions and § 139.315, Aircraft rescue and firefighting; Index determination).

Most airports that would be newly certificated under this rule (Class III airports) have accepted Federal funds and are required by grant assurances to comply with the FAA standards. As noted in the proposal (65 FR 38664), all airports that are likely to be Class III airports have received Federal funds for capital developments, safety equipment, and in certain circumstances, airport maintenance. Between 1982 and 2002, operators of proposed Class III airports received \$207 million in Federal funds.

With this infusion of Federal funds, most proposed Class III airports already comply with many part 139 requirements. The standards used to comply with grant assurances are the standards used to comply with part 139. For those compliance items not eligible for Federal funding, the FAA will work with the airport operator or consider granting exemptions, as described earlier.

The FAA does not have the authority to provide a permanent source of funding. This authority remains a matter for Congress.

Although legislative changes that may affect AIP and EAS funding have been proposed by Congress as of the date of this publication, Congress has already directed the FAA in Air-21, as discussed above, to set aside \$15 million of AIP funds each year for 4 fiscal years following the effective date of this rule to help airport operators meet the requirements of this rule (49 U.S.C. 47116(e)). Congress also has increased EAS funding, which may be used to offset the costs incurred by small air carriers as the result of this rulemaking. Otherwise, the FAA has limited discretion in distributing Federal funds to airport operators under the authorizing statute. Without legislation, the FAA is unable to provide the permanent funding suggested by the commenters.

*Comment:* A commenter, an operator of an airport likely to be a Class I airport under the rule, states that initial costs to comply with the proposed rule will be eligible for AIP funds. However, the commenter further notes that the long-term costs of compliance, such as maintenance and labor, will be the airport operator's responsibility and may burden the local community. This commenter notes that the certification of proposed Class III airports could be costly, but it will enhance the safety of aviation and airports in the Federal transportation system.

*FAA Response:* The FAA agrees.

*Comment:* Many of the commenters that oppose the proposal state that it will have a negative economic impact on air carrier service at smaller airports.

These commenters believe the implementation of the proposal will result in the loss of air carrier service because the cost to comply is too high to be absorbed by the local community and the airport's tenant air carriers. This is particularly true of air carriers that receive subsidies through the Department of Transportation's EAS program.

Some of these commenters provided economic and operational cost data to support their positions.

*FAA Response:* The FAA recognizes that the regulations may have an adverse economic effect on some airports. As previously stated, the FAA will assist the airport operator in developing ACM's that meet the intent of the rule and consider unique and local airport issues, including economic issues.

Congress authorized the FAA to certificate certain airports. The authorizing statute focuses on safety in air transportation, not economics. However, the authorizing statute does direct the FAA to prepare a report on the economic impact of this final rule on air carrier service. The FAA considered the economic and operational cost data provided by the commenters in preparing the regulatory evaluation and the Report to Congress required by the authorizing statute. Both documents are available in the regulatory docket.

*Comment:* A commenter expresses concerns over the economic impact that the proposal, if adopted, will have on general aviation. In particular, the commenter expresses concern that added airport certification costs will be passed onto general aviation users, most of whom do not want or need the extra services.

The commenter suggests that through "flexibility, creative means, and by facilitating compliance," the FAA should retain a critical role in lessening the adverse economic impact the proposal will impose on certain airports. The commenter believes this can be achieved if the FAA is flexible in carrying out its authority to certificate airports and issues further policy and guidance specifying compliance alternatives to help airport operators comply with part 139 in a cost-effective manner.

This commenter also states that several part 139 compliance issues are a cause of contention for general aviation and that additional rulemakings and policy must be developed before a final rule is published. In particular, the commenter requests compliance guidance for ARFF equipment, wildlife hazard

management, and fueling requirements, as well as guidance on the exemption process, including alternatives specified in the authorizing statute.

*FAA Response:* The FAA disagrees. Although all airport users share the benefits of part 139 compliance, the cost of part 139 compliance is typically passed onto air carriers and their passengers.

While part 139 is for the benefit of certain air carrier operators, the cost to comply with part 139 ultimately results in the maintenance and improvement of the airport that benefits all airport users. General aviation aircraft also use, at most airports, areas used by air carrier aircraft, such as runways, taxiways, and ramps. Such areas are usually better maintained and equipped than similar areas at airports serving only general aviation aircraft. General aviation aircraft operators also benefit from emergency response services, daily safety inspections, and airport condition reporting provided at airports certificated under part 139. The FAA believes general aviation aircraft operators will benefit from the part 139 requirements.

Airport operators that receive Federal funds are prohibited under grant assurances from using revenue generated by the airport for non-airport purposes. In addition, they may not divert such revenue to non-airport accounts, such as the general fund of the local government that owns the airport. However, the use of airport revenues generated from general aviation users to comply with part 139 requirements, such as ARFF response provided by off-airport sources, would not be a violation of the airport's grant assurances.

The FAA agrees that in some instances additional compliance guidance may be useful, particularly for airport operators seeking certification for the first time. However, the FAA believes additional rulemakings are not necessary because there is already a process in place for providing airport operators compliance guidance that includes advisory circulars (ACs) and CertAlerts.

*Comment:* A commenter, a proposed Class I airport operator, supports the proposed rule, with the exception of ARFF requirements. The commenter believes the cost of providing ARFF coverage is considerable and would result in termination of air carrier service should airport operators pass ARFF costs on to tenant air carriers. The commenter recommends that requirements for proposed Class III airports only focus on accident prevention, including more emphasis on aircraft operating and communication

procedures at nontowered airports. The commenter suggests that an additional airport classification be created for nontowered airports that serve scheduled air carrier operations and requires enhanced aircraft operating and communication procedures, including the use of the Common Air Traffic Advisory (CTAF) frequency.

*FAA Response:* The FAA agrees in part. Both the existing and proposed part 139 requirements place a greater emphasis on accident prevention than accident mitigation. As stated in the proposal at 65 FR 38664, most part 139 requirements are intended to reduce the possibility of an accident by providing a safe and standardized operating environment. While requiring airport operators serving small air carrier operations to comply only with accident prevention measures would be the least costly regulatory approach, the FAA believes that some level of accident mitigation, including ARFF, still is necessary to enhance safety in air transportation at all covered airports.

The FAA agrees that the cost of complying with certain part 139 ARFF requirements would be too burdensome for some airport operators serving small air carrier operations. In such instances, the FAA will use its statutory authority to consider exemptions from part 139 requirements, including ARFF requirements, that would be too costly, burdensome, or impractical and has established alternative compliance measures for Class III airports (see the section-by-section analysis of § 139.111, Exemptions and § 139.315, Aircraft rescue and firefighting: Index determination).

The FAA partly disagrees with the recommendation to change part 139 to require additional aircraft operation and communication procedures at nontowered airports. Such air traffic control and flight communication procedures go beyond the scope of part 139 and the proposal. However, the FAA has made changes to part 139 to require personnel at non-towered airports (or during periods when an air traffic control tower is closed) to monitor CTAF when in movement areas and safety areas (see section-by-section analysis of § 139.319, Aircraft rescue and firefighting: Operational requirements).

*Comment:* A commenter notes that the proposal states that AIP funds are available for capital costs associated with the implementation of the proposed rule. The commenter states that such funds are limited, and many operating and maintenance costs are not AIP eligible. The commenter believes that additional operating and

maintenance costs associated with the proposal will be burdensome to smaller airports and will result in these airports being poorly operated.

*FAA Response:* The FAA partly agrees. The commenter is correct in asserting that AIP funds are limited. As discussed in the proposal at 65 FR 38664, most operating and maintenance costs associated with part 139 are not eligible for Federal funds.

AIP funds may be used to purchase safety equipment needed to comply with part 139 requirements only under two situations. First, the equipment is required under regulation, or second, the FAA has determined that this equipment will contribute significantly to the safety or security of persons or property at an airport (see the section-by-section analysis of § 139.109, Duration of certificate).

In some instances, administrative costs associated with preparing and documenting operating procedures required under part 139 may be AIP eligible if such efforts result in a capital improvement project. For example, the cost to develop a wildlife hazard management plan may be eligible if the plan requires the installation of a fence or habitat modification. In addition, some maintenance costs associated with pavement and lighting are AIP-eligible for airports that serve less than 10,000 annual enplanements.

The FAA disagrees that the cost associated with the implementation of this rule will lead to "poorly operated" airports. Instead, the FAA believes that the implementation of the proposal will ensure the consistent application of safety measures. The FAA will work with airport operators to tailor part 139 requirements to individual airports and will exercise its statutory authority to consider exemptions from part 139 requirements, if appropriate. The exemption process is discussed in detail under the section-by-section analysis of § 139.111.

*Comment:* A commenter recommends that the FAA study the benefit of building and staffing an air traffic control tower at proposed Class III airports. The commenter believes this would be a more proactive response to safety concerns than implementing the proposal.

*FAA Response:* The FAA disagrees. Installation of air traffic control towers will not address many accident prevention measures. The potential for aircraft collisions with ground obstructions (such as wildlife, construction, and maintenance equipment) and certain airspace obstructions can be reduced if an airport operator complies with part 139 safety

requirements. Further, compliance will reduce many of the uncertainties and miscommunications that can cause accidents by ensuring airport facilities (i.e., pavement, lighting, markings, and signs) are available, consistent from airport to airport, and properly maintained.

*Comment:* Several commenters recommended that the FAA adopt the ARAC majority report rather than implement the proposal.

*FAA Response:* The FAA agrees in part. As stated in the proposal at 65 FR 38638, the FAA did consider the ARAC majority report, including recommended rule language, as discussed in the proposal's Section-by-Section Analysis that follows. In many instances, the FAA used the majority's recommended rule language and supporting data. However, the FAA did not adopt the entire majority report for several reasons. First, the majority report opposed regulating airports serving scheduled operations of small air carrier aircraft and in many instances, recommended regulatory language that would not ensure safety at all covered airports. Second, the majority report recommended rule language that was intended for a separate rulemaking for small air carrier airports rather than changing existing part 139 requirements. However, this did not take into account airports with mixed air carrier operations. Third, the FAA determined that the majority report based many of its recommendations on incorrect assumptions about existing part 139 requirements and incorrect cost data.

*Comment:* A commenter recommends an alternative approach to regulating airports serving small air carriers if the FAA chooses not to adopt the ARAC majority position. This alternative would only require these airport operators to coordinate an emergency response plan with local government agencies and to acquire emergency response equipment with AIP funds. Emergency equipment purchased with AIP funds would be based with the appropriate emergency response personnel.

*FAA Response:* The FAA partly disagrees. The FAA believes that both risk reduction measures and accident mitigation measures, including an emergency response plan, are necessary to ensure safety in air transportation at airports covered by the statute.

The actual location and use of emergency equipment purchased with AIP funds and airport revenue is restricted by law. The FAA provides Federal funding for emergency equipment for airport use only. Title 49,

U.S.C. 47133, and the FAA Policy and Procedures Concerning the Use of Airport Revenue (64 FR 7696) restrict the use of airport revenue to airport purposes. Consequently, equipment acquired with airport revenue must be used primarily for airport purposes.

### Section-by-Section Analysis

#### *Section 121.590 Use of Certificated Land Airports in the United States*

*Proposal:* The existing language of § 121.590 was modified to conform to the proposed changes made to part 139. The existing requirements for air carriers operating aircraft designed for at least 31 passenger seats were not changed.

Added to this section was the proposed requirement for air carriers who conduct scheduled passenger-carrying operations with airplanes designed for more than 9 passenger seats but less than 31 passenger seats to operate at part 139 airports in the United States, except in the state of Alaska. Also added to this section was the proposed requirement restricting air carrier passenger-carrying operations to those airports with the appropriate part 139 airport classification (Classes I–IV).

In addition, the FAA proposed to require that air carriers and commercial operators who conduct passenger-carrying operations with airplanes designed for at least 31 passenger seats or who conduct scheduled passenger-carrying operations with airplanes designed for more than 9 passenger seats but less than 31 passenger seats to conduct those operations at airports operated by the U.S. Government only if those airports meet the equivalent requirements of part 139.

Finally, provisions excepting certain air carriers from operating into part 139 certificated airports were added to conform to proposed changes to part 139.

*Comment:* A commenter questions why the proposal appears to require supplemental operations in Alaska, using airplanes with more than 9 passenger seats but less than 31 passenger seats to follow the same requirements for operating into a part 139 certificated airport that apply to domestic or flag operations using the same type airplanes.

The commenter notes that 14 CFR 119.3 requires that operators who conduct on-demand operations under part 135, and who also use the same type airplanes in their domestic or flag operations under part 121, must instead operate these airplanes under the supplemental operations rules of part 121.

If the FAA intended supplemental operations in Alaska, using airplanes with more than 9 and less than 31 passenger seats, to be conducted at airports certificated under part 139, it would unduly burden air carriers and airport operators, as well as the flying public. The commenter, therefore, recommends that paragraph (c) of the proposed section be changed to include supplemental operations.

*FAA Response:* The FAA agrees. The unintended consequence of the proposal has been corrected in this final rule. The final rule makes it clear in the reorganization of the requirements of the section and the definitions in new paragraph (f) that supplemental operations conducted with airplanes designed for fewer than 31 passenger seats (as determined by the type certificate issued by a competent civil aviation authority) are not required to be operated at a part 139 airport in the United States.

*Comment:* A commenter recommends adding a provision to this section that would prohibit the operation of all-cargo aircraft at or over 60,000 pounds maximum weight at airports that do not have adequate ARFF capability in place at the time of operations.

*FAA Response:* The FAA finds that the commenter's recommended revision to this section cannot be adopted because it is outside the scope of the proposal.

*Section as Adopted:* This section is adopted with changes. The FAA is revising proposed § 121.590 based on comments received on § 121.590 and comments received on proposed § 139.101, General requirements, on the compliance times needed for the development, submittal, and approval of ACM's, including revisions thereto, as well as a revision of the statutory provisions of 49 U.S.C. 44706 and 41104(b), by—

(1) Changing the title to add "in the United States";

(2) Reorganizing the provisions in paragraphs (a), (b), and (c) and restating those provisions in new paragraphs (b) through (e);

(3) Revising paragraph (a) to—

(i) Add the exemption provisions of 49 U.S.C. 44706(c) that allow the FAA to exempt certain airport operators from part 139 ARFF requirements,

(ii) Clarify that no air carrier, and no pilot used by an air carrier, may operate at a part 139 airport unless that airport is classified under part 139 to serve the type of airplane to be operated and the type of operation to be conducted, and

(iii) Add compliance dates after which operations at part 139 airports will be prohibited if those airport

operators have not obtained a new or revised AOC. For Class I airports, the date is 12 months after the effective date of the rule. For Class II, III, and IV airports, the date is 18 months after the effective date of the rule;

(4) Adding new paragraph (f) to define terms used in this section;

(5) Clarifying that air carriers who conduct certain operations are not required to conduct those operations at part 139 airports through the use of the terms "all cargo operation," "domestic operation," "flag operation," and "supplemental operation" defined in § 119.3, Certification: Air carriers and commercial operators, of this subchapter; and through the use of the terms "domestic type operation," "flag type operation," and "supplemental type operation" defined in new paragraph (f) of this section; and

(6) Adding an advisory note describing the new economic statutory provisions pertaining to the use of part 139 airports for regularly scheduled charter air transportation flights, in the flush paragraph following new paragraph (h).

## Subpart A—General

### Section 139.1 Applicability

*Proposal:* The language of this section, which prescribes rules for the certification and operation of airports serving certain air carrier operations, was expanded, clarified, and reorganized into proposed new paragraphs (a) and (b).

Proposed paragraph (a) incorporated a new group of airports that would require an AOC before serving certain air carrier operations. Further, the FAA proposed to move language currently found in § 139.101(a)—which specifies that part 139 is applicable to land airports in the United States, the District of Columbia, or any U.S. territory or possession—to proposed paragraph § 139.1(a).

Proposed paragraph (b) listed the types of airports that would be exempt from part 139, including U.S. Government-operated airports, certain Alaskan airports, and heliports.

*Comment:* Several commenters are unclear as to why Alaskan airports serving scheduled operations of small air carrier aircraft have a statutory exemption from part 139. Still others ask for the same exclusion for such airports in their States, noting that their States have financial and operational hardships similar to those of the State of Alaska. These commenters request that their States be added to proposed paragraph (b), which specifies airports in the State of Alaska do not need an

AOC if they serve air carrier operations that use aircraft designed for more than 9 passenger seats but less than 31 passenger seats.

*FAA Response:* The FAA disagrees. Congress created the statutory exemption for Alaskan airports (49 U.S.C. 44706(a)(2)). In addition, to ensure the consistent application of safety and operational standards at airports serving air carrier operations, the FAA has decided to issue AOCs to all other airports, as permitted under the authorizing statute.

An airport operator can petition for relief from part 139 requirements by requesting an exemption under § 139.111. The FAA will consider granting this relief if the airport operator can substantiate that compliance with part 139 would cause financial and operational hardships. The airport operator may also decide to decline certain air carrier operations rather than comply with part 139.

*Comment:* A commenter requests that the language in proposed paragraph (b) excluding certain airports in the State of Alaska be repeated in paragraph (a). Otherwise, the commenter states, Alaskan airports serving a mixture of air carrier operations would also be required to comply with part 139 standards during times when they only serve small air carrier operations.

*FAA Response:* The FAA concurs and has revised proposed paragraph (b) (new paragraph (c)) to clarify that part 139 is not applicable to Alaskan airports during periods of time when no large air carrier operations are being served.

*Comment:* A number of commenters recommend that part 139 be extended to cover air cargo operations. They state that air cargo aircraft might carry hazardous freight that would justify ARFF capabilities. One commenter even suggests that this section be amended to specify that ARFF requirements be applicable to land airports that serve any cargo operation by aircraft with a maximum weight of 60,000 pounds or more.

*FAA Response:* The FAA disagrees. In 49 U.S.C. 44706(a), Congress limits the FAA's authority to grant AOCs to those airports serving certain passenger air carrier operations. Congress would have to amend this authority before the FAA could issue AOCs based on air cargo operations.

Although the FAA does not issue AOCs to cover air cargo operations, such operations already benefit from part 139 safety measures. At approximately 343 certificated airports, required part 139 safety measures are typically applied continuously as air carrier schedules vary so much that it is more convenient



and economical to comply with part 139 requirements at all times.

*Comment:* In response to the FAA's request for information on the certification of heliports, a commenter recommends using the National Fire Protection Association (NFPA) standards for heliports (NFPA 418, Standards for Heliports) in conjunction with AC 150/5390-2, Heliport Design. Another commenter suggests the FAA consult with other government offices to determine if passengers using heliports deserve the same safety standards as passengers flying into an airport certificated under part 139.

*FAA Response:* While in general agreement with these comments, the FAA has determined it is not in the public interest to certificate heliports at this time. Heliports typically are used by general aviation operators and serve very few air carrier operations (currently only one heliport is voluntarily certificated under part 139 although it does not serve air carrier operations conducted in helicopters with more than 30 seats). Further, there are very few helicopters that can seat more than nine passengers, and even fewer still are used for scheduled passenger operations. Since Congress has not given the FAA the authority to certificate facilities serving general aviation operations and the vast majority of operations served by heliports are by general aviation operators, certificating the few heliports that serve air carrier operations would not significantly enhance safety.

However, the FAA will continue to monitor the situation and encourage heliport operators to follow AC 150/5390-2 and NFPA 418 since the provisions of part 139 are designed for airports serving fixed-wing aircraft and often do not transfer to heliports. In addition, those heliport operators that have accepted Federal funds may be obligated to comply with AC 150/5390-2 under their grant assurances.

*Comment:* Three commenters express opposition to the FAA's finding that airports operated by the U.S. Government, including the Department of Defense (DOD), are not subject to part 139. These commenters believe that DOD standards for their airports differ significantly from part 139 and that such facilities are not maintained in a manner adequate for air carriers. At a minimum, these commenters recommend that the revised regulation should include definitions of "joint-use airport" and "shared-use airport" and clarify that the civilian operations of such airports would come under the purview of part 139.

*FAA Response:* The FAA partly disagrees. Congress did not give the FAA the statutory authority to regulate airports operated by U.S. Government agencies. However, a new paragraph (b) has been added to this section to clarify that part 139 requirements apply to the civilian portions of a shared-use or joint-use airport that elects to obtain a part 139 certificate. Consequently, proposed paragraph (b) has been redesignated as new paragraph (c). Further, the terms "joint-use airport" and "shared-use airport" have been defined (see discussion comments for § 139.5, Definitions, below).

*Comment:* A commenter disagrees with the use of the phrase "aircraft designed for seating capacity" in place of the phrase "aircraft seating capacity." This commenter argues that there are circumstances where aircraft may have been designed with a seating capacity greater than the operator is using without being required to amend the aircraft type certificate. The commenter also notes that the proposal is inconsistent with existing air carrier regulations (parts 119, 121, and 135) because these regulations typically base operational and equipment requirements on aircraft seating capacity.

*FAA Response:* The FAA disagrees with this comment. The statutory authority for 14 CFR parts 119, 121, and 135 differs from the authorizing statute for airport certification. The authorizing statute for airport certification specifies "design" rather than "seating capacity." However, the change to "design" from "seating capacity" was not done consistently throughout the proposal. This has been corrected.

*Comment:* Another commenter notes that references to the number of passenger seats specified in the authorizing statute differ from the proposal's preamble and the rule language. Specifically, the discussion of Class III airports refers to airports serving aircraft with 10 to 30 seats rather than "more than 9 passenger seats but less than 31 passenger seats" as specified in the statute.

*FAA Response:* While both descriptions of the number of required passenger seats are correct and have the same meaning, further references to aircraft seats will use the statutory language.

*Comment:* A commenter requests that the San Francisco International Airport be required to implement a nighttime curfew of aircraft operations between 10 p.m. and 7 a.m. The commenter lives under a flight path used by aircraft operators using this airport.

*FAA Response:* The FAA does not concur with this request. The mitigation of aircraft noise is beyond the scope of this rulemaking and the FAA's authority to certificate airports. Establishing a nighttime noise curfew is a complex process that is initiated by the airport operator under 14 CFR part 161, Notice and Approval of Airport Noise and Access Restrictions.

*Section adopted:* This section is adopted with changes. An editorial change was made to paragraphs (a) and (b) so that the language of these paragraphs better conforms to the statutory language.

For the reasons discussed above, a new paragraph was added and changes were made to proposed paragraph (b). A new paragraph (b) was added to clarify the applicability of part 139 at airports where civilian and military aircraft operations commingle. Consequently, proposed paragraph (b) was redesignated as new paragraph (c), and a new element was added to clarify that part 139 is not applicable to Alaskan airports during periods of time when no large air carrier operations are being served. With the addition of new paragraph (c)(4), proposed paragraph (b)(4) regarding heliports is now redesignated paragraph (c)(5).

### *Section 139.3 Delegation of Authority*

*Proposal:* This proposed new section sets forth the FAA's delegation authority for FAA employees to act on behalf of the FAA Administrator in the oversight of the certification of airports. As proposed, the Administrator's delegation authority would not change, and the FAA's Associate Administrator for Airports would be authorized to act for the Administrator. Existing § 139.3, Definitions, was moved to proposed § 139.5, Definitions.

*Comment:* Nine commenters oppose the provision of this section that sets forth the duties that the Administrator delegates to the FAA regional offices, specifically the authority to amend an ACM. These commenters interpret this provision to mean that the FAA has the exclusive authority to amend an ACM and recommend that proposed § 139.3(b)(3) be revised to read, "Approve ACM's and any amendments thereto required under this part."

*FAA Response:* While the FAA does have the exclusive authority to approve amendments to an ACM, this new section was not intended to preempt procedures under proposed § 139.205, Amendment of airport certification manual, that permit either the certificate holder or the FAA to propose an amendment to an ACM. To avoid confusion, and possible conflicts with

exemption procedures of § 139.111, proposed paragraph (b) has been deleted. However, this change does not affect the FAA Administrator's delegation to FAA employees in the oversight of the certification of airports.

*Section as Adopted:* This section is adopted with changes for the reason discussed above. Paragraph (b) has been deleted and paragraph (a) combined with the section's first sentence to form a single paragraph.

In addition, the reference to 49 U.S.C. 44706 has been deleted from this section. Only the authority to deny and issue an AOC is found in 49 U.S.C. 44706. The Administrator's authority to revoke an AOC is found in 49 U.S.C. 44709. Rather than cite several sections of the authorizing statute, which may change as the statute is periodically revised, this section has been revised to refer generally to the Administrator's authority.

#### Section 139.5 Definitions

*Proposal:* This redesignated section establishes terms, and their definitions, used in part 139. Revisions proposed to this section reflect proposed changes made throughout the rule. As such, several existing definitions were modified or deleted and new definitions were proposed.

*Comment:* Five commenters note that the definition of "small air carrier aircraft" poses a dilemma. These commenters state that the degree of compliance with part 139 is based on the number of passenger seats—except for ARFF requirements, which are based on the length of aircraft. Since there are many air carrier aircraft that are less than 90 feet in length (ARFF Index A) with greater than 30 passenger seats, the commenters reason that the use of aircraft seats versus aircraft length would restrict a Class III airport from serving aircraft that require an ARFF Index greater than Index A. They believe it is unreasonable to deny an airport from serving the scheduled operations of any air carrier in the ARFF Index if the airport operator has adequate ARFF capability.

To reconcile, these commenters recommend that the definition of "small air carrier aircraft" be changed to "aircraft less than 90 feet in length" and the definition of "large air carrier aircraft" be changed to "aircraft 90 feet in length or longer." In addition, they suggest that all references to seating capacity in the regulation be deleted.

*FAA Response:* The FAA disagrees. Seating capacity of an air carrier aircraft serving an airport is the criterion used to determine if an AOC is required. This is specified by statute and will not be

removed from part 139. In addition, seating capacity of air carrier aircraft is used to classify certificated airports and to determine the specific part 139 requirements for each type of airport classification. This should not be confused with ARFF Index requirements that use the length of an air carrier aircraft to determine the type of ARFF equipment and quantity of extinguishing agents that must be used.

The FAA acknowledges that an airport operator could be serving small air carrier aircraft (more than 9 passenger seats but less than 31 passenger seats) that are longer than 90 feet. In such cases, the airport operator would have to meet the ARFF Index appropriate to the size of aircraft served, regardless of the number of passenger seats. For example, an airport classified as a Class III airport could be required to meet Index B if it serves scheduled air carrier operations conducted in an air carrier aircraft that has 19 seats and is 110 feet in length. Further, part 139 does not limit the airport operator from providing more ARFF coverage than required; e.g., the air carrier aircraft served requires Index A but the airport operator can provide Index C coverage. However, the airport operator must always provide, at a minimum, the ARFF Index specified in the ACM.

*Comment:* Two commenters state that the definition of "air carrier" contained in 14 CFR part 1 is not compatible with part 139. These commenters note that part 1 defines an air carrier as a person who is engaged in air transportation, yet part 139 standards are specific to passenger-carrying operations in aircraft with a certain number of seats. They are concerned that the use of the part 1 definition could require an airport serving any type of passenger, mail, or cargo operations to come under the purview of part 139. One commenter even suggests that the part 1 definition would require an airport serving a Cessna 172 engaged in air transportation to be certificated under part 139.

*FAA Response:* The FAA disagrees. The definition of air carrier in part 1 is used within the context of part 139. Section 139.1 prescribes rules for the certification and operation of airports serving scheduled and unscheduled air carrier operations conducted in aircraft with a certain number of seats. Section 139.5 further defines what is a scheduled operation and an unscheduled operation. Since the regulation is read as a whole, only air carrier operations meeting both the definition of part 1 and the criteria defined in part 139 would require an airport operator to be certificated under part 139. Thus, air transportation

conducted in the aircraft referenced by one commenter, a Cessna 172, would not require an airport operator to have an AOC as it neither meets the part 139 criteria for seating capacity nor covered air carrier operations.

*Comment:* A commenter notes that the definition of "movement area" does not reference air traffic control (ATC). This individual states that in the Pilot/Controller Glossary of the FAA's Aeronautical Information Manual (AIM), the definition of movement area states, "At those airports with a tower, specific approval for entry onto the movement area must be obtained from ATC." The commenter recommends that this language be added to the definition of movement area to be consistent with the definition contained in the AIM, as well as the description of the non-movement area boundary markings in AC 150/5340-1, Standards for Airport Markings.

*FAA Response:* The FAA disagrees. The part 139 definition of "movement area" is intended to describe only the physical boundaries in which certain part 139 requirements are applicable. Part 139 does not address air traffic control procedures. Not all part 139 airports have air traffic control towers, and at those part 139 airports with towers, there already exists processes for communicating air traffic control procedures to pilots and other airport users, such as contained in the AIM.

*Comment:* Several commenters request that the terms "joint-use airport" and "shared-use airport" be defined because of applicability requirements at airports where civilian and military aircraft operations commingle. (See discussion comments for § 139.1, Applicability.)

*FAA Response:* The FAA agrees. This section is revised to include the definitions of joint-use airport and shared-use airport. "Joint-use airports" are defined as airports owned by the United States, which lease a portion of these facilities to the local government for civilian air carrier operations. "Shared-use airports" are defined as co-located U.S. and local government airports at which portions of the movement areas, such as runways, taxiways, and ramps, are shared. These definitions were discussed in the proposal's preamble on 65 FR 38642.

*Section as Adopted:* This section is adopted with changes. For the reasons discussed above, the terms "joint-use airport" and "shared-use airport" have been added.

Several definitions have been modified for clarity. As there are many places in the regulation where the term "air carrier aircraft" is used without

reference to the number of passenger seats, the terms "small air carrier aircraft" and "large air carrier aircraft" are now defined under the single term "air carrier aircraft." In addition, the definition of "safety area" has been modified to clarify that the safety area may also be used by aircraft landing short of a runway and to correspond to the definition of runway and taxiway safety areas contained in AC 150/5300-13, Airport Design. Also, the definition of "Index" has been reordered for clarity, and the definition of "heliport" has been moved as it was not listed in the correct alphabetical order.

Further, modifications have been made to the definitions of "scheduled operation" and "unscheduled operation." The term "commercial operator" has been deleted from both definitions as adopted changes to § 121.590 regarding air carrier operations into airports operated by the U.S. Government make this phrase unnecessary. Also, the definition of "unscheduled operation" has been reordered for clarity and the term "feral" has been added to the definition of "wildlife" to make clear that the FAA considers animals that have escaped from domestication and become wild a potential hazard to aircraft.

In addition, an advisory note has been added to the end of the section to alert airport operators that air carriers conducting certain public charter operations have additional statutory requirements to operate to and from an airport certificated under part 139, as specified under 49 U.S.C. 41104(b). For further questions regarding public charter operations, contact DOT, Office of Aviation Analysis, at (202) 366-5903.

#### *Section 139.7 Methods and Procedures for Compliance*

*Proposal:* This relocated and retitled section specifies that a certificate holder must comply with the requirements of part 139 in a manner acceptable to the Administrator. Revisions to this section clarify that the Administrator considers the methods and procedures contained in FAA ACs to be an acceptable manner in which to comply with the requirements of part 139, but not the only way to comply.

*Comment:* One commenter asks if the change to this section meant that no other standards and procedures other than those contained in ACs would be acceptable to the Administrator. To clarify, the commenter suggests that the previous statement "or other standards and procedures approved by the Administrator" be reinserted.

*FAA Response:* The FAA disagrees. The deletion of the statement "or other

standards and procedures approved by the Administrator" was done to simplify this section, and its absence should not be interpreted to mean that only methods and procedures contained in ACs are acceptable. As stated on 65 FR 38643 of the NPRM, certificate holders may comply with part 139 requirements by means other than those specified in the ACs. However, any alternative must be authorized by the FAA and must provide an equivalent level of safety.

*Comment:* An airport operator also requests that the FAA reinsert references to specific ACs throughout the regulation. This commenter believes that it is generally accepted that when referencing a document within a regulation, the referenced document becomes part of the regulation by virtue of its reference therein.

*FAA Response:* This assumption is not correct. References to ACs in part 139 are intended only to alert the certificate holder of the availability of a preapproved method for complying with the regulation. Their use is not mandatory, but the Administrator must approve any alternative means of compliance. Further, listing specific AC numbers throughout the regulation has proven impractical. ACs are revised periodically, and referring to them generically ensures the regulation remains current.

Most ACs used to comply with part 139 are available, free of charge, on the FAA Web site at <http://www.faa.gov/arp/>. Proposed changes to these ACs also are posted on this Web site, and comments on such proposals are encouraged.

*Section as Adopted:* This section is adopted as proposed.

#### **Subpart B—Certification**

##### *Section 139.101 General Requirements*

*Proposal:* This section required each airport operator to adopt, and comply with, an ACM. The section title was shortened, current paragraphs (a) and (b) were combined into a new paragraph (a), and new paragraphs (b) and (c) were proposed. Compliance dates for submitting an ACM were established, language no longer applicable was deleted, and revisions were made to correspond to the new certification process.

*Comment:* A commenter recommends that the language of § 139.101(c) be changed from "approved and implemented" to "submitted to the FAA for approval."

*FAA Response:* The FAA agrees. Approval and implementation dates will vary depending on when the airport operator submits an ACM for approval

and when the FAA approves the document. As such, proposed paragraph (c) is revised to require only the submittal of an ACM for FAA approval.

*Comment:* Seven commenters request additional time to submit an ACM. In particular, these commenters express concern that Class III airports would need more time than proposed since these airports would be developing a manual for the first time, rather than amending an existing document. They request that Class III airports be allowed 18 months to develop and submit their ACM's. Additionally, one commenter requests that the FAA allow Class I airports 6 months (180 days), and another suggests 24 months (2 years) for all airport classes.

*FAA Response:* The FAA agrees that additional compliance time may be needed for all airport classes and has modified paragraph (c). Class I airports will be allowed an additional 3 months, for a total of 6 months, to submit their revised ACM's. Class II and III airports will be allowed an additional 4 months, for a total of 12 months. Class IV airports also will be allowed an additional 6 months, for a total of 12 months.

In addition to this extended time period for compliance, all airport classes will have an additional 120 days to comply with the rule as implementation dates are based on the rule's effective date. As specified by the authorizing statute, this rule becomes effective 120 days after its submission to Congress. The FAA intends to submit the rule to Congress on the same day it is published in the **Federal Register**.

*Comment:* Three commenters are concerned that their limited airport staff would not have time to develop an ACM and a consultant would have to be hired. One of these commenters estimates that it would cost \$10,000 to have a manual professionally developed.

*FAA Response:* The FAA is not requiring an airport operator to use a consultant to develop an ACM. The airport operator has the discretion to develop its ACM in any manner it deems best. If an airport operator decides to develop its own manual, FAA resources are available to simplify this process. This includes the FAA airport certification and safety inspectors who are available via telephone or e-mail and guidance materials pertaining to ACM's, particularly AC 120/139.201-1, Airport Certification Manual (ACM) and Airport Certification Specifications (ACS), which will be updated and reissued to correspond to the issuance of this rule.

*Section as Adopted:* This section is adopted with changes for the reasons discussed above. The language in proposed paragraph (c) is changed from "approved and implemented" to "submitted to the FAA for approval." In addition, the time that certificate holders have to submit their manuals is extended. Class I airports have 6 months from the effective date to submit their manuals. All other airport classes have 12 months.

Several modifications also have been made to paragraph (c). The term "airports" has been replaced with "persons" to clarify that a person, not an airport, is the holder of an AOC. Additionally, references to other sections have been deleted. These references implied that there are alternative compliance dates for certain sections of an ACM. This is incorrect.

#### *Section 139.103 Application for Certificate*

*Proposal:* This section revised requirements to apply for an AOC. In addition, application requirements found elsewhere in the regulation were added, and terms that were no longer applicable were deleted.

*Comment:* Several commenters request clarification on whether they can continue to serve air carrier operations during the time between the issuance of this rule and the FAA approval of their ACM.

*FAA Response:* During this transition period, an airport operator that currently holds an AOC will be permitted to serve air carrier operations, as specified in its existing ACM or airport certification specifications. Similarly, an airport operator that will be a certificate holder for the first time and already is serving air carrier operations on the date this rule becomes effective can continue to serve such operations until the FAA approves its ACM.

*Section as Adopted:* This section is adopted as proposed.

#### *Section 139.105 Inspection Authority*

*Proposal:* This section incorporated existing inspection authority provisions found in existing § 139.105, Inspection authority, and § 139.301, Inspection authority. Specifically, it stated that the Administrator may make inspections and tests to determine compliance with airport certification regulations. Revisions also were made to update language referencing statutory authority and to delete terms that were no longer applicable.

*Comments:* No comments were received on this section.

*Section as Adopted:* This section is adopted as proposed.

#### *Section 139.107 Issuance of Certificate*

*Proposal:* This section revised standards that must be met before the FAA could issue a certificate, including requirements for an ACM. A new provision was added that requires applicants to provide written documentation that air carrier service would begin on a specific date. In addition, terms that were no longer applicable were deleted, and the standard "public interest" was revised to read "safety in air transportation" to reflect revisions to the authorizing statute.

*Comments:* No comments were received on this section.

*Section as Adopted:* This section is adopted with an editorial clarification. The term "certificate holder" in paragraph (a) has been changed to "applicant" to clarify that this section applies to an applicant for a certificate, not a current certificate holder.

#### *Section 139.109 Duration of Certificate*

*Proposal:* This section revised existing language into new paragraph (a) and proposed a new paragraph (b) that modify existing standards for the suspension or revocation of an AOC by stipulating that the Administrator may revoke an AOC if air carrier operations have not occurred for 24 consecutive months. This section also included language notifying the certificate holder that it can appeal an order revoking its certificate.

*Comment:* Four commenters oppose the language stipulating that the Administrator may revoke an AOC. These commenters are particularly concerned with the new provision that specifies that the duration of a certificate is tied to air carrier service. They question why an airport operator should lose its operating certificate when not serving air carrier operations if it continues to meet the requirements of part 139. These commenters note that an AOC helps market an airport to air carriers and protects the airport against budget cutbacks imposed by the local governing body. One of these commenters suggests that an "inactive" category be established to allow an airport to go without air carrier service for five years before its certificate is revoked.

*FAA Response:* While the FAA understands that an AOC helps market an airport to air carriers and protects the airport against budget cutbacks imposed by the local governing body, the FAA issues AOCs under part 139 to ensure safety in air transportation, not to

encourage air carrier service or for budgetary reasons. However, in response to comments, the FAA has reconsidered its approach to inspecting an airport certificate holder at an airport that is no longer currently serving air carrier operations.

Accordingly, the FAA has deleted proposed paragraph (b) and will work with airports not serving air carrier service on a case-by-case basis to determine the need for inspections. The FAA also will consider developing an "inactive" category for such airports in its inspection policies, but will not change the rule at this time.

*Comment:* One commenter is concerned about the impact the revocation of a part 139 AOC would have on an airport operator's Federal funding.

*FAA Response:* Federal funding provided to airport operators through the Airport Improvement Program (AIP) is not dependent on a part 139 AOC. AIP funds are available to all airports that are identified in the FAA's National Plan of Integrated Airport Systems (NPIAS).

The NPIAS identifies U.S. airports that are important to national transportation and, therefore, eligible to receive grants under the AIP. To be included in the NPIAS, an airport must meet certain criteria. Such criteria do not require an airport to be certificated under part 139. Most of the 3,344 airports identified in the NPIAS are not certificated under part 139. A copy of the NPIAS is available on the FAA's Web site at <http://www.faa.gov/arp>.

Certain airports identified in the NPIAS receive an annual apportionment of AIP funds based on the number of passengers enplaned. These funds are known as entitlement funds and distributed to airports based solely on passenger activity levels, not part 139 certification. Funding and certification are unrelated, although the loss of air carrier service may result in an airport operator losing both its AIP funds and AOC.

Additionally, an airport's certification status does not affect its priority in receiving AIP funds. The FAA prioritizes the distribution of AIP funds based on the type of project to be funded, not an airport's certification status.

In some instances, the loss of a part 139 AOC may affect certain AIP funding for safety equipment: AIP funds may be provided for safety equipment purchases needed to comply with part 139 requirements. As of the date of the publication of this final rule, safety equipment is only eligible for AIP funding under two situations. The

equipment is required under regulation or the FAA has determined that this equipment will contribute significantly to the safety or security of persons or property at an airport (49 U.S.C. 47102(3)(B)(ii), as amended).

*Comment:* The FAA received one comment from an airport operator on the cost of surrendering a certificate and then later regaining it versus maintaining a certificate uninterrupted. At some point, this airport operator surrendered its AOC and then, in 1991, applied for another certificate. The cost to do this was \$125,000, excluding administrative expenses. This commenter notes that the concept of an airport simply maintaining its facility to part 139 standards is faulty as the discretion given FAA inspectors allows for varying interpretations as to what is required. Thus, an airport operator may be found not in compliance although it has tried to remain so while not certificated.

*FAA Response:* The FAA agrees that the methods and procedures for complying with certain part 139 requirements may change during the time when an airport's certificate is surrendered and then reinstated. Thus, an airport operator that continued to comply with its certification manual during this timeframe may not meet part 139 requirements when reapplying for an AOC. In such instances, there may be a one-time cost to become certificated again that the airport operator might otherwise have absorbed over a longer period if it had remained certificated.

To avoid such situations, an airport operator should request that the local FAA Airports Regional Office continue to provide it with airport information notices, including changes to the airport certification program. The FAA regional offices maintain a contact list of airport operators (often a combination of part 139 certificate holders and noncertificate holders, recipients of AIP funds, and those serving only general aviation operations), State aviation agencies, and other interested parties. This list is used to distribute information about airport safety and standards, the part 139 airport certification program, and upcoming training events and to request comments on proposed changes to regulations and standards. Many regions also distribute informational newsletters, sponsor training events, and maintain Internet sites that provide airport operators up-to-date information on airport certification issues. As resources permit, the FAA regional offices may conduct occasional safety inspections of noncertificated airports and make

recommendations based on current part 139 standards.

If an airport operator uses these resources to keep informed of changes to the part 139 airport certification program, the cost should be the same to comply voluntarily with part 139 as it would be to maintain an uninterrupted AOC.

In addition, the FAA disagrees with the commenter's assertion that FAA airport certification and safety inspectors are allowed to make varying interpretations of part 139. This is not the FAA policy. An airport operator should contact the local FAA Regional Airports Division Manager if an FAA inspector's interpretation of the regulation seems incorrect or if it seems that the airport operator is being held to a different standard than other certificate holders.

*Section as Adopted:* This section is adopted with changes. For the reasons discussed above, proposed paragraph (b) has been deleted.

#### *Section 139.111 Exemptions*

*Proposal:* This section detailed the procedures for a certificate holder to petition for an exemption from the requirements of part 139, including ARFF requirements. Changes were proposed that would require a petition for relief from ARFF requirements to include additional information, as specified in proposed § 139.321, ARFF: Exemptions. In addition, changes were proposed to update references to 14 CFR part 11.

*Comment:* Four commenters state that the alternative emergency response services specified in proposed § 139.321 are as stringent as the ARFF requirements that a petitioner would be seeking relief from. These commenters request that the FAA provide total relief from an ARFF requirement if an airport operator can show that the requirement is unreasonably costly, burdensome, or impractical, as specified in the authorizing statute.

*FAA Response:* The FAA agrees. Proposed § 139.321 has been deleted in its entirety in the final rule, and all requirements for petitions for relief from all or some ARFF requirements are now contained in § 139.111(b). As discussed in the General Comments section above, a new paragraph (e) has been added to § 139.315 to provide an alternative means of compliance with ARFF requirements for Class III airports.

Based on comments received, several operators of Class II and III airports may be petitioning the FAA for relief from all ARFF requirements due to cost considerations. However, most of these airport operators did not provide the

FAA sufficient supporting cost or operational data to justify their position that compliance with ARFF requirements would be too costly. To ensure petitioners adequately justify that ARFF requirements are unreasonably costly, burdensome, or impractical, paragraph (b) has been modified to detail the type of financial information the FAA would need when considering a request for exemption.

The new paragraph added to § 139.315 provides an alternative means of compliance for Class III airports that would allow the certificate holder to either comply with Index A ARFF requirements or comply with alternate ARFF requirements that provide a comparable level of safety (see discussion comments for § 139.315, Aircraft rescue and firefighting: Index determination). These alternate ARFF requirements must be approved by the FAA and include provisions for prearranged emergency response services and that emergency responders are familiar with air carrier schedules, airport layout, and airfield communications. Such services may be those identified in the airport emergency plan required under § 139.325, Airport emergency plan. There are no timed response, equipment, or personnel requirements as were proposed in the now deleted § 139.321, ARFF: Exemptions.

*Comment:* A commenter states that criteria the FAA uses to determine if an airport operator can petition for relief from ARFF requirements is outdated and ineffective. The commenter believes that allowing airports with "less than one-quarter of 1 percent of the total passengers enplaned at all air carrier airports" to petition the FAA for relief from ARFF requirements is too liberal. The commenter notes that one-quarter of 1 percent of the total U.S. passenger enplanements has grown from 478,372 enplanements in 1972 to 1,588,505 enplanements in 1999.

Instead, the commenter suggests that the FAA base ARFF exemptions on the 1982 amendment of the Airport and Airway Improvement Act's definition of "primary airports." The commenter states that this law defined a primary airport as a commercial service airport that is determined by the Secretary of Transportation to have .01 percent or more of the total number of passengers enplaned annually at all commercial service airports. Under this revised criterion, the commenter argues that only airports with 63,540 enplanements or less could petition for relief from ARFF requirements.

*FAA Response:* The FAA disagrees. The authorizing statute specifies that

the FAA may consider exempting from ARFF requirements an airport that enplanes annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports. Congress would have to amend this authority before the FAA could limit ARFF exemptions to only those airports categorized as primary airports.

In addition, the commenter's revised criterion is based on an incorrect definition. The commenter suggests using the definition of "primary airport" found in the 1982 amendment of the Airport and Airway Improvement Act. In 1994, Congress amended and recodified the Airport and Airway Improvement Act. Under the current statute, a primary airport is defined as a commercial service airport the Secretary of Transportation determines to have more than 10,000 passenger boardings each year (49 U.S.C. 47102 (11)).

*Comment:* Two commenters request guidance on the circumstances under which the FAA would grant an exemption to part 139 requirements. Without this guidance, the commenters believe it would be difficult for airport operators to determine whether serving scheduled air carrier operations could be justified in light of the incremental cost of part 139 certification. One of these commenters recommends that the FAA develop criteria for approving exemptions that would improve safety and also allow small airports with small budgets to focus their resources on accident prevention rather than accident mitigation.

*FAA Response:* The FAA partially agrees. The FAA has the authority to approve an exemption request from any part 139 requirements and will consider any petition for exemption from these requirements that is submitted in the manner outlined in the final rule, as adopted. However, varying airport operations, sizes, and local circumstances make it difficult to generalize what exemptions would be granted and it would be difficult to provide in this final rule.

As stated in the proposal (65 FR 38664), the FAA considered requiring airport operators that serve small air carrier operations to comply only with accident prevention measures, or risk reduction requirements, and not accident mitigation requirements (such as ARFF and emergency planning). While this approach to regulating these airports would promote a minimum level of safety through consistent compliance with risk reduction requirements, experience has shown that not all airport owners and operators would place enough emphasis on

preparing for emergency response without some FAA oversight.

Since accident mitigation costs could have a significant economic effect on airports serving small air carrier aircraft, the FAA has added language to clarify how an airport operator can apply for an exemption from all or some ARFF requirements that would be too costly, burdensome, or impractical. Language also has been added to allow alternative compliance measures for Class III airports (see the section-by-section analysis of § 139.111, Exemptions and § 139.315, Aircraft rescue and firefighting; Index determination).

*Comment:* A commenter states that the FAA should not use its authority to grant exemptions as a means of remedying funding shortages at smaller certificated airports. Instead, the commenter recommends that the FAA develop a new funding mechanism.

*FAA Response:* The FAA disagrees. Instead of alternative funding sources, the FAA can use its exemption authority in instances where compliance with part 139 would be unduly burdensome. The authorizing statute requires the FAA to consider regulatory alternatives for airports serving small air carrier operations that are the "least costly, most cost-effective, or least burdensome" and will provide "comparable safety" at all certificated airports. As noted earlier, the authorizing statute also provides exemption authority from ARFF requirements for certain airports. The FAA will use its general exemption authority under 49 U.S.C. 44701 and its specific authority to grant limited exemptions from ARFF requirements under 49 U.S.C. 44706 to require safety measures at all airports serving small air carrier aircraft consistent with the requirements of 49 U.S.C. 44706.

After publication of the proposal, Congress did direct the FAA to set aside a portion of existing AIP funds to assist airport operators in meeting the terms of this rule (49 U.S.C. 47116(e)). As of the date of the publication of this final rule, the FAA is required to set aside \$15 million of AIP funds per year for 4 fiscal years following the effective date of this rule. Beyond that, the FAA has limited options for developing new funding mechanisms. The FAA executes statutes for the distribution of Federal funds to airport operators, as directed by Congress. Congress would have to appropriate any additional Federal funds.

*Section as Adopted:* This section is adopted with changes. For the reasons discussed above, proposed § 139.321 is deleted in its entirety, and all references to § 139.321 in § 139.111 have been

deleted. All requirements for petitions for relief from ARFF requirements are now contained in § 139.111, and this paragraph has been modified to require the petitioner to provide the FAA additional information.

#### *Section 139.113 Deviations*

*Proposal:* This section permits the certificate holder to deviate from requirements of Subpart D—Operations of the regulation during emergency conditions. A revision was proposed to allow the certificate holder more flexibility during emergencies requiring a deviation from some part 139 requirements, including the flexibility to notify the FAA of deviations by telephone, or other means of electronic communications, rather than requiring an automatic written notification. In addition, the term "Airport Certification Manual" was added to clarify that the certificate holder may, when responding to an emergency, deviate from both its certification manual and any requirements of subpart D.

*Comments:* No comments were received on this section.

*Section as Adopted:* This section is adopted as proposed.

### **Subpart C—Airport Certification Manual**

#### *Section 139.201 General Requirements*

*Proposal:* This section was retitled and specified that each airport operator shall adopt, and comply with, an ACM in accordance with part 139. It further specified that the Administrator may authorize an airport operator to serve air carrier operations not otherwise permitted under the regulation.

This section consolidated existing requirements from §§ 139.201, 139.203, 139.207, 139.209, 139.211, and 139.215 into a single section. Requirements not an airport subject to this part may not be operated without an operating certificate, or in violation of its certificate, were combined, as were the requirements for preparing and maintaining a manual. In addition, language no longer applicable was deleted, revisions were made to correspond to the new certification process, and implementation dates were established.

*Comment:* Four commenters request that the reference to ACs in paragraph (d) be limited to those in the 150 series that pertain to airports.

*FAA Response:* The FAA disagrees. The AC pertaining to the development of an ACM is not in the 150 series. Rather, it is in the 120 series (AC 120/139.201–1, Airport Certification Manual (ACM) and Airport Certification

Specifications (ACS)). Further, referencing specific AC series has proven impractical. ACs are revised periodically, and referring to them generically ensures the regulation remains current.

*Section as Adopted:* This section is adopted with administrative changes. Minor grammatical edits have been made to paragraph (b)(3).

*Section 139.203 Contents of Airport Certification Manual*

*Proposal:* Under the proposal, existing standards of § 139.203 for maintaining an ACM were incorporated into proposed § 139.201, General requirements, as previously discussed. The contents of existing § 139.205, Contents of airport certification manual, and § 139.213, Contents of airport certification specifications, were revised and became the new proposed § 139.203. This section required all certificate holders to have an ACM and to include in their certification manual a description of procedures and equipment used to comply with the requirements of part 139, particularly subpart D. New manual contents were required for each airport class to correspond to the new classifications of certificated airports and changes to subpart D.

Class I airport certificate holders were required to include in their manual all elements that are currently required and several new elements. Airport operators currently holding a Limited Airport Operating Certificate were required to convert their existing airport certification specifications into an AOC and include several new elements. These airports were classified as either Class II or Class IV airports. Class II airport operators were required to include more elements in their manual than were operators of Class IV airports. In addition, airports that would be newly certificated under the proposal (Class III airports) were required for the first time to develop an ACM.

*Comment:* A commenter disagrees that airports serving small air carrier aircraft would be permitted some flexibility in complying with requirements that the commenter believes are more burdensome. This commenter argues that § 139.203 makes no distinction between Class I, II, and III airports as all three airport classifications must have the same certification manual contents. Likewise, the commenter states that nowhere in the proposed regulation are Class III airports allowed to comply with requirements differently than Class I and II airports.

*FAA Response:* The FAA disagrees. While § 139.203 does require Class III airports to comply with the same subpart D sections as Class I and II airports, several of these sections have different requirements for Class III airports. For example, Class III airports would not have to conduct an emergency disaster drill every 3 years (§ 139.325(h)) and would not be required to have internally illuminated signs, except for holding position and Instrument Landing System (ILS) critical area signs (§ 139.311(b)(3)).

*Comment:* Two commenters object to the FAA proposing that Class IV airport operators need not include in their manuals procedures for complying with certain subpart D requirements. To encourage standardization, one of these commenters recommends that all certificated holders be required to include in their ACM procedures for complying with all subpart D requirements. The other commenter suggests that Class IV airport operators at least be required to address their manual procedures for complying with proposed § 139.313, Snow and ice control; § 139.323, Traffic and wind direction indicators; § 139.331, Obstructions; § 139.335, Public protection; and § 139.337, Wildlife hazard management.

*FAA Response:* The FAA partly agrees and has revised this section as discussed below. However, commenters may have misunderstood what is required for a Class IV ACM. This may be the result of errors contained in the proposal. The proposal incorrectly identified Class IV ACM requirements and contradicted statements in the preamble. These errors are in the chart on page 38648 that compares current and proposed part 139 requirements and in the chart contained in proposed § 139.203, Contents of airport certification manual, paragraph (b) on page 38674. A correction was issued on August 15, 2001 (66 FR 42807).

As noted in the correction, Class IV airport operators would continue to address in their ACM procedures for complying with several subpart D requirements, including any proposed revisions to such requirements. The existing requirements are for personnel, paved and unpaved surfaces, safety areas, marking, lighting, signs, and airport conditions reporting. Additional manual elements were proposed that include procedures for complying with subpart D requirements for ARFF, the storage and handling of hazardous materials, wind and traffic indicators, and self-inspections. Such changes are adopted as proposed.

The proposal did not require Class IV airport operators to include in their manuals procedures for avoiding power interruption or failure, snow and ice control, control of ground vehicles, marking and lighting obstructions, protection of NAVAIDS, public protection, wildlife hazard management, and marking and lighting construction and unserviceable areas.

However, based on comments received, the FAA reviewed manual content requirements for Class IV airport operators. The FAA agrees with commenters that it is necessary for safety and standardization purposes to require Class IV airport operators to include in their manual procedures for the removal, marking, or lighting of obstructions, as specified in subpart D. To ensure all certificate holders monitor the status of obstructions, and take appropriate action when necessary, proposed § 139.203(b)(26) has been revised to require all part 139 certificate holders remove, mark, or light obstructions within their control.

For example, an object, such as a tree or tower, may penetrate certain airspace and affect aircraft operations. To determine the impact on airspace of such objects, the FAA conducts an aeronautical study and makes recommendations that may require the owner to remove, mark, or light any object deemed an obstruction. If this is not possible, visual and instrument approaches to runways near the obstruction may be changed to help ensure aircraft stay clear of the object. This ongoing process involves both certificated and non-certificated airports, and most airports certificated under part 139 have already removed, marked, or lighted any obstruction to FAA standards.

*Comment:* A commenter questions whether differences between similar elements of the table contained in § 139.203 are intentional. Specifically, this commenter notes that § 139.203(b)(18) differs slightly from § 139.203(b)(19). Both element (18) and (19) address storing and handling hazardous materials but element (19) does not reference a subpart D section as does element (18). This is also the case for elements (20) and (21), which address traffic and wind direction indicators, and elements (23) and (24), which address self-inspections.

*FAA Response:* These differences were not intentional. Rather, language from a previous version of part 139 was inadvertently left in § 139.203(b). As discussed previously, a correction was issued on August 15, 2001 (66 FR 42807).



*Comment:* A commenter, an operator of a Class I airport, agrees with the proposed requirement to include in the ACM a description of personnel training and equipment and a system for maintaining records. However, this commenter notes such additional requirements would have an economic impact. No cost data is provided to support the commenter's position.

*FAA Response:* The FAA agrees that there will be costs associated with new personnel and recordkeeping requirements. While many Class I airports already comply with these requirements and need only to document their existing procedures, other airport operators, particularly those newly certificated under the revised rule, may have additional labor and training costs. Due to variances between airports, such costs will differ from airport to airport, even among airports within the same classification.

Several other airport operators provided the FAA with cost and operational data regarding compliance with new personnel and recordkeeping requirements (see section-by-section analysis of § 139.301, Records, and § 139.303, Personnel). The FAA has evaluated this data and made adjustments to associated cost estimates, as appropriate (Chapter V of the Regulatory Evaluation).

*Comment:* A commenter opposes the requirement that Class III airports include in their ACM's a description of how they will meet ARFF requirements of subpart D. The commenter is concerned that this requirement will make air carrier service cost prohibitive, particularly for airport operators in New York State.

*FAA Response:* The FAA agrees that, in some instances, the cost to comply with ARFF requirements may be too costly for Class III airport operators, even if such costs are passed onto airport users. As discussed in the section-by-section analysis of § 139.111, new procedures have been established for certain airport operators to petition the FAA for relief from ARFF requirements that are unreasonably costly, burdensome, or impractical. In addition, the FAA has established alternative compliance measures for Class III airports (see the section-by-section analysis of § 139.111, Exemptions and § 139.315, Aircraft rescue and firefighting: Index determination).

However, the FAA does not agree that § 139.203 should be changed to exclude Class III airports from complying with ARFF requirements specified in subpart D. To standardize ARFF at certificated airports, all certificated airports serving

both scheduled and unscheduled operations are required to comply with these ARFF requirements, subject to the exemption discussed above.

Accordingly, no changes have been made to proposed § 139.203(b)(16), and all operators of certificated airports are required to include procedures in their ACM's for complying with ARFF requirements appropriate to the air carrier aircraft and operations served.

*Comment:* One commenter notes that the table in § 139.203 indicates that Class IV airports do not have to comply with certain sections of subpart D, contradicting language in these subpart D sections. Specifically, the commenter is concerned that the language "each certificate holder shall" in specified subpart D sections means that every certificate holder must comply even if § 139.203 states otherwise.

*FAA Response:* The FAA disagrees. Section 139.203 is tied to subpart D as it establishes what subpart D requirements a certificate holder is required to address in its ACM. If § 139.203 does not require compliance with a subpart D section, then the certificate holder is not obligated to comply with that section.

*Comment:* A commenter notes that the reference to § 139.319(l) in proposed § 139.203(b)(6) is incorrect. The reference should be to § 139.319(k).

*FAA Response:* The FAA agrees. Section 139.203(b)(6) was changed in the correction issued on August 15, 2001 (66 FR 42807).

*Section as Adopted:* This section is adopted with changes. Section numbers referenced throughout § 139.203 have been changed to reflect the correction issued on August 15, 2001 (66 FR 42807), and the renumbering of some subpart D sections.

For reasons discussed above, § 139.203(b)(23) has been revised to require Class IV airport operators to include procedures in their certification manuals for removal, marking, or lighting of obstructions.

In addition, a minor editorial change was made to paragraph (a), as well as changes to paragraph (b)(13), to clarify that a certificate holder's runway markings and holding position markings must be indicated in the runway and taxiway identification plan. Further, the reference to proposed § 139.321 in paragraph (b)(17) was changed to § 139.111, paragraphs (b)(22) and (28) were updated to reflect the title change to the referenced subpart D sections, and paragraph (b)(26) was changed to clarify that all wildlife hazard management procedures are to be included in the ACM, not just the wildlife hazard management plan.

#### *Section 139.205 Amendment of Airport Certification Manual*

*Proposal:* Under the proposal, the contents of existing § 139.205, Contents of airport certification manual, were moved and consolidated into proposed § 139.203, Contents of airport certification manual. In existing § 139.217, Amendment to airport certification manual or airport certification specifications, procedures and requirements for amending the ACM were redesignated as proposed § 139.205 and retitled. This section revised existing amendment procedures and requirements to reflect changes made to the certification process and deleted language that was no longer applicable. In addition, this section delegated to the Associate Administrator for Airports the authority to act on a petition for the Administrator. The section also established a deadline for the FAA to dispose of an amendment.

*Comment:* A commenter states that the FAA should not have the unilateral authority to amend an ACM. This commenter argues that there are sufficient safeguards within part 139 authorizing the FAA Administrator to revoke or suspend an AOC.

*FAA Response:* The FAA disagrees. The commenter is confusing the process to amend an ACM with the process to revoke an AOC. Revocation of an AOC is the result of an enforcement action due to noncompliance with part 139 requirements. The process to amend an ACM would not be used in this instance.

For various reasons, the FAA or the certificate holder may need to amend the ACM to ensure that the manual accurately reflects how the certificate holder is complying with part 139, to implement new standards, or to address an emergency situation. Such an amendment typically addresses a few sections of the rule, and the certificate holder's overall compliance is unaffected.

Either the FAA or a certificate holder can propose an amendment to the ACM, as specified under proposed § 139.205. However, the FAA has the exclusive authority to approve amendments to an ACM. This is currently the case and would not change with this rulemaking. In fact, this rule makes very few changes to the amendment process, except to clarify that the FAA will respond within a time certain as to the disposition of an amendment it has initiated. The certificate holder still may petition that the Associate Administrator for Airports, under § 139.205(d), reconsider an amendment initiated by the FAA.



The Associate Administrator for Airports stays the effective date of the amendment, pending a decision.

*Section as Adopted:* This section is adopted with an administrative change. Language in paragraph (b) has been changed to clarify that the amendment process requires the certificate holder to file an application for an amendment in writing and submit it to the FAA Regional Airports Division Manager.

#### Subpart D—Operations

##### Section 139.301 Records

*Proposal:* Under the proposal, the contents of existing § 139.301 dealing with inspection authority was moved and consolidated with § 139.105, Inspection authority, and this new section on records was proposed. This new section required all certificate holders to maintain, and make available to FAA inspectors, records to show compliance with part 139. Existing recordkeeping requirements found throughout part 139 were combined with new recordkeeping requirements. This section also required a certificate holder that serves less than 10,000 annual air carrier operations to make and maintain records of each scheduled or unscheduled operation of large air carrier aircraft and scheduled operations of small air carrier aircraft that occurred during the previous 2 years.

*Comment:* Three commenters oppose the new requirement for a certificate holder that serves less than 10,000 annual air carrier operations to make and maintain records of certain air carrier operations. One of these commenters was unclear on the need to keep such records and suggests that air carriers be required to provide this data instead. Another commenter suggests that FAA air traffic control towers collect the data. All agree that it would be difficult for airport operators to comply with this requirement.

*FAA Response:* Due to changes made to proposed § 139.105, Duration of certificate, the FAA has deleted the requirement for certain certificate holders to make and maintain records of air carrier operations. Instead, the FAA will request air carrier operations data on a case-by-case basis from those operators of airports at which the FAA is considering discontinuing inspections or requesting the operator surrender its AOC (see section-by-section analysis of § 139.105, Inspection authority).

*Comment:* One commenter states that the new recordkeeping requirements will create additional costs for airport operators if the training required under proposed § 139.303, Personnel, is more than “on-the-job” training.

*FAA Response:* The FAA agrees but does not envision the training required to be more than “on-the-job” training. This training is discussed in more detail in the following section, § 139.303, Personnel.

*Section as Adopted:* For the reason discussed above, this section is adopted with changes. Proposed paragraph (b) has been replaced with a new paragraph that identifies recordkeeping requirements found throughout part 139 and the length of time these records must be maintained. Consequently, references to other sections in paragraph (c) have been deleted.

##### Section 139.303 Personnel

*Proposal:* This section expanded on the existing requirement for all certificate holders to have available sufficient qualified personnel necessary to comply with the requirements of part 139. Changes were made to clarify the certificate holder’s responsibilities to train and equip personnel performing duties required under the proposed part 139. Requirements also were proposed to ensure a certificate holder provides its personnel the necessary resources to properly perform these duties. Further, new training and recordkeeping requirements were proposed.

*Comment:* A commenter states that it supports the “requirement for initial and recurrent training of personnel, and complementary training records.”

*FAA Response:* The FAA agrees.

*Comment:* Five commenters state that the revised section is unclear as to who should be trained and what the training curriculum should address. They recommend that the section be revised to clearly define what personnel must be trained, what topics the training should cover, and what the training records should include. One of these commenters suggests that the section be revised so that it only applies to personnel responsible for part 139 compliance and not general administrative personnel.

*FAA Response:* The FAA agrees. Proposed paragraphs (c) and (d) have been revised and new paragraphs (e) and (f) added. These revisions clarify who must be trained, how frequently this training must be provided, what subject areas training must cover, and what training records must be kept.

In proposing new training requirements, it was not the FAA’s intent to extend this requirement to administrative personnel. While such personnel may assist in the maintenance of an ACM or records to show compliance, they typically do not access movement areas or perform duties that directly affect the safety of air carrier

operations, such as repairing runway lights or conducting inspections of movement areas. As such, new paragraph (c) is limited to personnel that access movement areas and safety areas to perform duties necessary to comply with the ACM and part 139.

As requested, new paragraph (c) also specifies subject areas that required training must cover. These subject areas include airport familiarization, procedures for accessing and operating in movement areas and safety areas, airfield communications, duties specified in the ACM and part 139, and any additional training required under part 139, such as training required for ARFF and emergency medical personnel.

New paragraph (c) does not specify how training must be conducted. This is intentional to allow the certificate holder some flexibility in complying with training requirements in a manner best suited for local circumstances. Thus, training could consist of on-the-job training, formal classroom lectures, industry training meetings, or some combination thereof.

While this section does not require the certificate holder to test personnel to determine comprehension of the required subject areas, the FAA recommends that the certificate holder establish some sort of testing procedures to determine the effectiveness of training. During inspections, FAA inspectors may test covered personnel to determine if training has been completed and the effectiveness of this training.

Paragraph (c) still requires the certificate holder to ensure covered personnel are trained before the initial performance of part 139 duties. However, this applies only to personnel assigned to part 139 duties after the effective date of this rule. This requirement is not retroactive for personnel that currently perform part 139 duties, and paragraph (d) has been revised to clarify that initial training records need only be maintained for training given after the effective date of the rule.

This paragraph also requires personnel performing part 139 duties to receive recurrent training in the specified curriculum at least once every 12 consecutive calendar months. This requirement is applicable to all covered personnel but is not retroactive. Beginning 1 year after the effective date of this rule, the certificate holder must ensure that all covered personnel receive recurrent training.

Such recurrent training need not be accomplished at one time and could be staggered throughout the year. As long

as the five required subject areas are covered, recurrent training could be as involved as initial training or an informal discussion between a supervisor and employee.

*Comment:* Four commenters oppose the revision of existing personnel requirements, claiming they are unnecessary and overly burdensome. One of these commenters notes that FAA annual inspections ensure that airport operators have sufficient and qualified personnel. Thus there is no need for new recordkeeping and recurrent training requirements. Two other commenters state there is no benefit to conducting or documenting recurrent training for duties that are done frequently, if not daily.

The remaining commenter states that its two employees already know their duties; thus training would be unnecessary and would require the commenter to hire an administrative clerk, at \$26,557 a year, to comply.

*FAA Response:* The FAA disagrees with the commenters that revisions to this section will be burdensome and will require the certificate holder to hire additional personnel. Most certificate holders already comply with this section and need only to document existing training procedures.

As discussed above, the FAA has made several changes to this section to clarify training requirements. In particular, the changes made to paragraph (d) to clarify that training requirements are not retroactive address the commenters' concerns about the cost to train existing employees. Rather, within a year of the effective date of this rule, these employees would need to receive annual recurrent training that covers the five specified subject areas. As noted above, the FAA allows the certificate holder some flexibility in conducting and scheduling this training so that the certificate holder can comply with the requirements of this section in a manner best suited to its operations and budget needs.

The FAA also does not agree that documenting the training would require the certificate holder to hire additional personnel. The training documents required under this section can be as simple or complex as the certificate holder desires. This section only requires training records to contain a description and date of training received for each covered employee.

For instance, a handwritten or typed letter containing this information for each covered employee that the certificate holder certifies is accurate meets the requirements of this section. In complying with similar training records for ARFF personnel, some

certificate holders have developed a generic form to minimize the time it takes to record ARFF and emergency medical training. A copy of this form is made for each covered employee, and then specific information about the individual is filled in as training occurs. Each subject area that must be covered is listed on this form, next to which is a space to fill in the training date and the signature of the training instructor. This form is kept in a training notebook and is provided to the FAA inspector during periodic inspections to show compliance with part 139 training requirements. This low-cost approach to a recordkeeping system is an acceptable means of complying with recordkeeping requirements of this section.

Additionally, the FAA disagrees with the commenter that annual FAA inspections ensure compliance with part 139 without the need for onerous recordkeeping and recurrent training program. This commenter argues that if an airport is found in compliance with part 139, then it is providing sufficient and qualified personnel.

While full compliance with part 139 during a FAA inspection is certainly a good indicator that the certificate holder is complying with personnel requirements, such inspections typically occur once a year. Part 139 personnel requirements ensure that the airport operator provides qualified and sufficient number of personnel to comply with part 139 at all times, not just during FAA inspections. Such requirements also ensure a more consistent approach to training. This is particularly important for personnel that may not perform their duties on a regular basis, such as ARFF and emergency medical personnel.

Even personnel that perform their duties on a daily basis can benefit from recurrent training. Such employees may become complacent in their duties and recurrent training will help ensure that they continue to perform their duties, correctly and safely. Recurrent training also provides the opportunity for employees to discuss any changes to part 139 and any revisions to standards or the ACM.

*Comment:* Two commenters request that this section clearly state what the FAA considers to be "sufficient and qualified personnel."

*FAA Response:* The FAA agrees. Based on comments received, these requirements have been clarified and restated.

This section, as adopted, requires the certificate holder to ensure such personnel are trained in the subject areas specified in paragraph (c) and to document this training as required

under paragraph (d). The FAA will consider a certificate holder to have qualified personnel if the certificate holder has complied with these requirements. As previously stated, to determine if the certificate holder has qualified personnel to comply with its ACM and part 139, FAA inspectors may test covered personnel.

The FAA intentionally did not define the term "sufficient." It would be impractical to define the number of personnel each certificate holder would need to comply with part 139 due to the variations between airport size and layout, type of operations served, and the local governing body. If a certificate holder is found to be in noncompliance with part 139 and its ACM, the FAA will review the number and qualification of employees used to comply with part 139. This review may result in the FAA requiring the certificate holder to provide additional personnel.

*Comment:* Two commenters state that the FAA has underestimated the time a certificate holder will need to set up a recordkeeping system for training records. They note that FAA's recordkeeping estimates for certificate holders to comply with this section—4,848 hours for initial recordkeeping hours and 13,909 hours annual recordkeeping—equates to 8 hours per airport to set up a recordkeeping system. They claim this is not enough time for any size airport, particularly large airports with staff numbering in the hundreds, and recommend the FAA conduct further analysis to develop a more reasonable time estimate. No cost or operational data is provided to support these comments, nor did commenters provide an alternate time estimate.

*FAA Response:* The FAA disagrees. This time estimate was based on the assumption that current certificate holders have an established system for maintaining training records for ground vehicle operations, as required under existing § 139.329 Ground vehicles. Since the training requirements of this section apply to the same individuals that must be trained under existing § 139.329, the FAA estimates that these airport operators would need only 8 hours to update this system to incorporate new training records required under this section.

Some of these airport operators have automated their recordkeeping systems, which create and store required records electronically. These systems may take longer than 8 hours to update, but this section does not require such automation. As noted above, a paper form that is reproduced and completed

for each covered employee is sufficient, and recordkeeping time estimates are based on such a system.

Recordkeeping time estimates for newly certificated airports also were determined to be eight hours. Since a simple paper system is acceptable for complying with the recordkeeping requirements of this section and these airport operators have small staffs, the FAA determined operators of such airports would need no more than a day to establish such a system.

The time needed to update recordkeeping systems may be further reduced by changes made to paragraph (c) that limit training to personnel that enter movement areas. This change may reduce the number of records that need to be maintained.

*Section as Adopted:* This section is adopted with changes. As discussed above, modifications have been made to paragraph (c). This paragraph now stipulates that training required under this section is limited to personnel that enter movement areas to perform duties. Additionally, new language has been added to specify the five subject areas that required training must include and to require recurrent training every 12 months.

Several modifications were made to paragraph (d) to clarify requirements for training records. Now, only records of training given after the effective date of the rule need to be maintained, and such records must be kept for 24 consecutive calendar months.

In addition, two new paragraphs have been added. New paragraph (e) identifies other new and proposed part 139 training requirements. New paragraph (f) clarifies that a certificate holder can use individuals other than its own employees to comply with part 139.

Language from proposed § 139.323(d) that specified the conditions that a certificate holder must meet in order to use an independent organization or designee to conduct fuel fire safety inspections was moved to new § 139.303(f) and revised so it is applicable to all sections. A certificate holder that chooses to use a third party to comply with a part 139 requirement is still required to ensure that the third party's duties and responsibilities are included in the ACM and records are maintained to show that the third party is in compliance with part 139 and the ACM. This would include any training required under part 139. The certificate holder using a third party is still fully responsible for meeting part 139 requirements.

#### *Section 139.305 Paved Areas*

*Proposal:* This section contained existing requirements for maintaining paved areas used by air carrier aircraft. All certificate holders were required to maintain paved areas, including loading aprons, parking areas, taxiways, and runways, in a manner that adequately supports air carrier aircraft operations.

The FAA proposed few changes to these requirements. The terms "full strength" and "shoulder" were deleted from paragraph (a)(1) to eliminate confusion as to which areas to apply the 3-inch abutting surface limitation. Also, language stating specific series numbers within the AC system was changed to a general reference to the AC system.

*Comment:* One commenter recommends the FAA expedite the rulemaking for continuous friction measuring equipment. Specifically, the commenter suggests that the FAA publish a supplemental notice of proposed rulemaking so requirements for friction measurements could be included in this final rule.

*FAA Response:* The FAA disagrees. As noted in the proposal (65 FR 38641), this rulemaking intentionally does not address runway friction measurement (both winter and maintenance) as the ARAC is already considering this matter. Issuing a supplemental rulemaking would unnecessarily delay this rulemaking.

*Section as Adopted:* This section is adopted with one clarification. A sentence has been added to paragraph (a)(3) clarifying that a pavement crack and surface variation must be immediately repaired if it produces loose aggregate or other contaminants.

#### *Section 139.307 Unpaved Areas*

*Proposal:* This section contained existing requirements for maintaining unpaved areas used by air carrier aircraft. All certificate holders were required to maintain unpaved areas, including loading aprons, parking areas, taxiways, and runways, in a manner that adequately supports air carrier aircraft operations.

*Comment:* No comments were received.

*Section as Adopted:* This section is adopted as proposed.

#### *Section 139.309 Safety Areas*

*Proposal:* This section contained existing requirements for the establishment and maintenance of a safety area for each runway and taxiway available for air carrier use. Except for minor changes to paragraphs (a) and (c), these requirements remained the same and were applicable to all part 139 airports.

Paragraph (a) was revised to require that certificate holders ensure runway safety areas are maintained in accordance with the standards of this section, unless otherwise approved in the ACM. Further, paragraph (c) was revised to make a general reference to the availability of the AC system.

*Comment:* A commenter recommends eliminating the clauses in paragraph (a) that "grandfathers" nonstandard safety areas and imposes a deadline for all part 139 certificated airports to have at least a 1,000-foot safety area at the end of each air carrier runway. The commenter also suggests that if land is not available to achieve the 1,000-foot safety area at the end of the runway, the FAA should require part 139 certificate holders to use alternate methods, such as arresting materials or declared distances, to achieve a similar level of safety.

*FAA Response:* The FAA disagrees. As noted in the proposal (65 FR 38650), compliance dates listed in paragraphs (a)(1) and (2) are part of a "grandfather" clause to allow existing safety areas that were adopted when part 139 was amended in 1987 (52 FR 44276, November 18, 1987.) Before 1987, many airport operators invested resources to develop safety areas before standards were established. Further, physical limitations of airports resulted in establishment of some safety areas that did not meet the standard.

In developing the proposal, the FAA did consider removing these grandfathering clauses but determined the most efficient means to ensure all safety areas at part 139 certificated airports meet current standards is to continue to do so through AIP-funded runway/taxiway renovation projects. Airport operators that accept AIP funds for runway or taxiway renovations are obligated under grant assurances to ensure that such renovations meet current standards, including those for runway safety areas. Since 1988, many safety areas at part 139 airports have been brought up to current standards through this process. Due to the advanced age of the remaining runways and taxiways, similar renovation or replacement should occur in the next few years, and associated safety areas also should be brought up to current standards if necessary. Where terrain does not permit a standard safety area, the FAA will require alternative methods of compliance, such as those recommended by the commenter, to be developed on a case-by-case basis.

*Section as Adopted:* The section is adopted as proposed, except for some minor administrative language changes for clarity.

*Section 139.311 Marking, Signs, and Lighting*

*Proposal:* This section contained existing requirements for runway and taxiway markings, signs, and lighting. This section was retitled, and several clarifications were made to correspond to changes made to the certification process (proposed § 139.203, Contents of airport certification manual) and to separate marking, signs, and lighting requirements into three distinct paragraphs.

A change was made to existing marking requirements to clarify standards for taxiway edge markings. In addition, the word "runway" was deleted from the term "runway holding position markings" in this paragraph to permit special aircraft operations that require holding position markings other than those located prior to the runway.

Sign requirements were relocated to a new paragraph (b) and revised to require Class I, II, and IV airports operators to internally illuminate all required signs. Class III airports were required to internally illuminate only holding position and instrument landing system (ILS) critical area signs. In addition, language was added to provide for those instances where an airport has a runway without edge or in-pavement lighting and thereby does not have a power source to internally illuminate signs.

References to 14 CFR part 77 concerning obstructions were deleted, language pertaining to lowest minimums authorized for a runway was modified, and new language was added to require the certificate holder to comply with this section in a manner satisfactory to the FAA. In addition, expired implementation dates were deleted and a new compliance date was proposed for Class III airports.

*Comment:* One commenter expresses support for revised language that may provide relief for airport operators that have runways without a power source and are unable to internally illuminate required signs. This commenter commends the FAA's pledge in the proposal (65 FR 38650) to work with such airport operators to develop alternative signs until funding is available to install a power source. The commenter states this approach is practicable and should accommodate a variety of equally safe solutions, such as retroreflective signs.

*FAA Response:* The FAA agrees.

*Comment:* Two commenters state the requirement to illuminate all mandatory signs will have a financial impact on airport operators, particularly on operators of small airports. One of these commenters suggests that operators of

small airports be allowed to use retroreflective signs. The other commenter, an operator of a large Class I airport, notes that this requirement would have a financial impact but does not provide financial or operational data.

*FAA Response:* The FAA agrees that there will be costs associated with the requirement to internally illuminate all required signs and has addressed these costs in the regulatory evaluation. Nonetheless, several factors will help mitigate such costs, particularly for operators of small airports.

Operators of Class III airports will be required to internally illuminate only mandatory holding position signs, thereby reducing the number of signs these small airport operators must illuminate. Further, these airport operators can apply for Federal funds to purchase and install these signs. While there is no guarantee that Federal funds will be available and airport operators must still provide matching funds, most current part 139 certificate holders installed their current sign systems using Federal funds. The FAA anticipates this will be the same for operators of airports who will be newly certificated under this rule.

Also, as discussed above, the FAA has committed to work with airport operators to develop alternative means of compliance, including the use of retroreflective signs, until funding is available to purchase and install required signs. In addition, Class III airports have an additional 3 years after the effective date of this final rule to comply with sign requirements. As noted in the proposal (65 FR 38651), this additional compliance time will allow time to develop a sign plan, order and take delivery of signs, and install signs.

Operators of small airports that will be classified as either Class I, II, or IV airports should already comply with the requirements of this section. For the past 10 years, the FAA has been funding the installation of internally illuminated sign systems at part 139 airports that comply with the requirements of this section. Any changes that need to be made to these systems as the result of this rule likewise will be eligible for Federal funding.

*Comment:* In response to a request for comments, one commenter states its opposition to the use of retroreflective signs at Class III airports because of concerns that retroreflective signs might not be visible to all air carrier pilots. This commenter, the Air Line Pilots Association (ALPA), raised this issue as a member of the ARAC, and its

objection to retroreflective signs was discussed in the proposal (65 FR 38650).

In particular, ALPA is concerned that retroreflective signs may not be visible to all air carrier pilots because of differences in aircraft configurations and the location of taxi lights. The association states that the basis for this position is "the collective experience" of its 58,000 airline pilot members and requests that the FAA provide any information it has to the contrary. ALPA also recommends the FAA conduct tests of retroreflective signs at the FAA's Technical Center in Atlantic City, NJ.

*FAA Response:* The FAA disagrees. Other than ALPA's comment, the FAA did not receive any other comment that would support the claim that retroreflective signs are not visible to pilots of certain air carrier aircraft, as requested in the proposal (65 FR 38650). Nor did ALPA provide data collected from its membership that identifies the aircraft type from which pilots have experienced problems seeing retroreflective signs or the airports at which these signs are located.

The FAA has determined that retroreflective signs provide a reasonable means for airport operators to install a sign that can be seen in most low-visibility conditions when an internally illuminated sign is impractical or cost prohibitive. Other than ALPA's claim that retroreflective signs are problematic, the FAA has received no other report of problems with these signs from the industry or from aircraft operators. Accordingly, the FAA will allow Class III airports to use retroreflective signs to identify taxiing routes.

*Comment:* In response to the FAA's request for comments on whether the installation of unlighted retroreflective signs would provide an adequate sign system for Class III airports, a Class III airport operator provided its opinion on retroreflective markers used at its facility to mark the runway edge. This commenter states that such retroreflective markers "do not provide adequate lighting for aircraft on approach to landing." The commenter notes that such markers are only effective for taxiing aircraft and cannot be seen from the air. This commenter concludes that retroreflective markers are dangerous and unsafe during low-visibility weather conditions and that only lighted runways with lighted signs can assure maximum runway usage and improve safety.

*FAA Response:* While the FAA was not seeking comments on the use of retroreflective markers on runway edges, the FAA disagrees with commenter's conclusion that use of

retroreflective markers creates an unsafe condition. During certain visual conditions and aircraft operations, retroreflective markers are an acceptable means to mark the edge of pavements.

Further, the commenter incorrectly assumes that retroreflective markers are intended to be seen from the air. Retroreflective markers are intended only to provide visual guidance to a pilot operating an aircraft on the ground. Lighting that provides visual decent guidance information to pilots during an approach to the runway is the only airport lighting intended to be seen in the air. This lighting, known as approach lighting, is never retroreflective.

The FAA determines the type of runway lighting, including approach lights, to be used based on runway takeoff and landing minimums. Runway takeoff and landing minimums are the horizontal and vertical visual distances the pilot must be able to see during poor meteorological conditions in order to use the runway. The FAA considers many factors in determining takeoff and landing minimums, such as runway length and obstructions near the runway, and these minimums will vary from runway to runway.

While § 139.311 does require the certificate holder to provide and maintain runway lighting, the standard is determined independently of the part 139 airport certification process. This is because the FAA authorizes runway takeoff and landing minimums for all types of runways, including many located at airports that are not certificated under part 139. In some instances, the FAA may authorize minimums that would permit a part 139 certificate holder to use retroreflective markers to denote the runway edge.

The FAA agrees with the commenter that lighted runways and signs improve safety, but it will not require part 139 certificate holders to install runway lighting and markings other than those necessary for the authorized takeoff and landing minimums.

*Comment:* One commenter, ALPA, recommends the FAA expedite the rulemaking for distance remaining signs (signs that are installed every 1,000 feet along the runway to advise pilots how much of the runway remains). Specifically, ALPA suggests that the FAA publish a supplemental notice of proposed rulemaking so requirements for distance remaining signs could be included in this final rule.

*FAA Response:* The FAA disagrees. As noted in the proposal (65 FR 38641), this rulemaking intentionally does not address distance remaining signs. This matter was referred to the ARAC. At its

meeting on June 21, 2001, the ARAC accepted the working group's majority report on distance remaining signs. The majority report recommended that no regulation change was needed to require distance remaining signs as the vast majority of airport operators have already installed such signs on their air carrier runways. In addition, ARAC considered ALPA's minority position that the FAA should publish a notice of proposed rulemaking requiring distance remaining signs. Both the majority and minority opinions are included in the recommendation forwarded to the FAA.

*Comment:* A commenter recommends that the final rule require certificate holders to install precision approach path indicators (PAPI) at the end of each air carrier runway. A PAPI is a system of lights normally installed on the left side of the runway providing visual descent guidance information to pilots during an approach to the runway. The commenter believes this is necessary, as PAPIs are important visual aids that help ensure pilots make stabilized approaches.

*FAA Response:* The FAA disagrees that the final rule should include a requirement for PAPIs. Requiring the installation of PAPIs goes beyond the scope of the proposal and would require a supplemental notice of proposed rulemaking. Further, the use of a PAPI is determined by the type of instrument approach that the FAA has authorized for the runway and may not be appropriate for all runways at part 139 airports.

*Section as Adopted:* This section is adopted with minor changes. A clarification was made to § 139.311(a)(3). The word "taxiway" has been inserted in front of the words "edge markings" to clarify that the edge markings required under paragraph (a)(3) are taxiway edge markings. Runway edge markings are already addressed in paragraph (a)(1). Additionally, paragraph (c)(4) was edited for clarity.

#### *Section 139.313 Snow and Ice Control*

*Proposal:* This section contained existing requirements to develop and implement snow and ice control plans. These requirements applied to those Class I, II, and III airports located in an area where snow and icing conditions regularly occur.

No changes were proposed to the existing requirements that snow and ice plans include procedures for removal and control of snow and ice accumulations, and that notification be provided to air carriers when movement areas are unusable due to snow and ice. Minor changes were made to paragraph

(a). The term "regularly" was deleted and new language added to clarify that the FAA will determine which airports require snow and ice control plans. In addition, the standard for positioning snow off movement areas was modified by deleting the term "full strength." References to airport condition reporting requirements also were updated to correspond to new section numbering, and references to specific ACs were replaced with a generic reference.

*Comment:* A commenter states that by omitting the term "regularly" in paragraph (a) and replacing it with the language "as determined by the Administrator," the requirement for a snow and ice control plan would be subject to interpretation absent any specific guidelines.

*FAA Response:* The FAA disagrees. The term "regularly" is not currently defined and is subject to interpretation. The new language allows greater flexibility for the certificate holder and the FAA. As the plan will be specific to each airport, there should be no ambiguity as to what each airport is requested to do.

*Section as Adopted:* This section is adopted with changes. An editorial change was made to proposed paragraph (b)(5) to update a section designation number and another was made to proposed paragraph (b)(6) to delete the redundant language "procedures for snow and ice control."

#### *Section 139.315 Aircraft Rescue and Firefighting: Index Determination*

*Proposal:* This section contained existing criteria for determining the certificate holder's level of ARFF coverage, or Index. The levels of ARFF coverage are divided into five categories, or Indexes, that are used in other sections to prescribe minimum ARFF services and equipment appropriate to the size of aircraft served. This did not change in the proposal.

While Index criteria remained the same, a change was made to paragraph (c) to clarify which Index is required when the largest aircraft serving a certificated airport has less than the minimum number of daily aircraft departures. In addition, language was added to emphasize that in all circumstances, the minimum ARFF Index will be Index A.

*Comment:* Many of the comments received on this section express concerns that the proposal did not update ARFF standards. Some of these commenters suggest a complete revision of ARFF standards, while others recommend changes for specific

standards, including the criteria used for determining Index.

*FAA Response:* The FAA agrees that some part 139 ARFF standards may need revisions. However, the proposal did not include any major revision of ARFF standards. The FAA has asked ARAC to review this matter. The ARAC has created an ARFF Working Group to review part 139 ARFF standards and to propose new regulatory language, as appropriate. Comments on this proposal that address specific ARFF standards will be forwarded to this ARFF Working Group for consideration. Otherwise, these comments will not be addressed as they are beyond the scope of the NPRM.

*Comment:* A commenter supports the FAA's decision to expand part 139 requirements to small commuter airports, noting that without part 139 certification, there is no incentive for these airports "to meet the minimal lifesaving measures in part 139." The commenter also states that it supports the upcoming ARAC review of part 139 ARFF standards, particularly standards for response times, staffing, and extinguishing agent amounts.

*FAA Response:* The FAA agrees.

*Comment:* A Class I airport operator states that all certificate holders should be required to meet at least Index A requirements, subject to limited exemptions. The commenter states that airport operators should work with local firefighting agencies to determine the most economical and efficient means of complying with ARFF requirements and include the resulting agreement in the airport's emergency plan. The commenter also notes that employees of smaller airports should be cross-trained in ARFF duties to minimize the financial impact.

*FAA Response:* The FAA agrees. All certificated airports serving both scheduled and unscheduled operations are required to comply with at least Index A ARFF requirements, subject to the limited exemption discussed in the analysis of § 139.111. In addition, alternative compliance measures have been established for Class III airports (see the section-by-section analysis of § 139.315, Aircraft rescue and firefighting: Index determination).

*Comment:* Nine commenters oppose the requirement that all certificated airports comply with at least minimum Index A requirements. These commenters, Class II and III airport operators and sponsors, state that complying with the requirements of proposed § 139.315, ARFF: Index determination, § 139.317, ARFF: Equipment and agents, and § 139.319, ARFF: Operational requirements, would

pose a financial burden and detrimentally affect air carrier service at their airports. Some of these commenters provide cost and operational data to support their position. Many state that without Federal funds to cover ARFF costs, they would consider not serving air carrier operations covered by part 139, while others request an exemption from ARFF requirements should the FAA decide to adopt the proposal.

Additionally, commenters state that airport sponsors will not be able to provide funds needed to comply with ARFF requirements, particularly if required to hire additional personnel. A few of these commenters also note that local laws limit the use of local funds for Federal mandates or restrict the collection of taxes. Several commenters also question the accuracy of the FAA's cost estimates.

*FAA Response:* The FAA agrees that in some instances the costs to comply with even minimum ARFF requirements may be prohibitive at certain airports. As discussed earlier, the FAA will consider requests for relief from ARFF requirements under 49 U.S.C. 44706 in such instances where compliance with such requirements would be unreasonably costly, burdensome, or impractical and alternative compliance measures have been established for Class III airports (see the section-by-section analysis of § 139.315, Aircraft rescue and firefighting: Index determination).

The operational and cost data provided by these commenters is addressed in the regulatory evaluation. In reviewing this data, the FAA noticed that several commenters assumed that either they would have to provide certain ARFF services not required or comply with ARFF requirements in a manner that far exceeds what was proposed. These issues are addressed separately under the appropriate section.

The implementation of this rule will require the FAA to either issue new certificates or reissue existing certificates. During this certification process, the FAA will work with airport operators to determine the appropriate level of ARFF. Depending on the commenter's existing emergency services and airport operations, there may be several compliance options available that could be tailored to the airport to significantly reduce costs. For example, existing airport personnel could be cross-trained to perform ARFF duties, and Federal funds may be available to purchase ARFF equipment. In the event that additional ARFF equipment and personnel are needed,

the FAA will assist the airport operator in applying for Federal funds and provide guidance on acquiring ARFF equipment, training events, and the availability of regional resources. This may include a local network of ARFF and other firefighting personnel that provide guidance, training, and other support to smaller airports.

Some commenters also request Federal funds to cover ARFF costs. As discussed previously, safety equipment (including ARFF equipment) that is required under part 139 is eligible for AIP funds. However, as of the date of the publication of this final rule, the AIP authorizing statute does not allow Federal funds to be used for ARFF labor and training costs.

*Comment:* Four commenters express concerns that the proposal did not address ARFF coverage for cargo aircraft operations. One of these commenters also states that ARFF requirements should apply to "wide-body aircraft" operations as well.

*FAA Response:* The FAA partly disagrees. As discussed in section-by-section analysis of § 139.1, 49 U.S.C. 44706(a) limits the FAA's authority to grant AOCs to those airports serving certain passenger air carrier operations. Congress would have to amend this statutory authority before the FAA could issue AOCs based solely on air cargo operations and then, subsequently, require ARFF coverage during such operations.

However, the FAA already has the authority to certificate airports serving aircraft described as "wide-body charters" (unscheduled air carrier operations in aircraft with more than 30 seats). In the proposal, certificate holders serving both scheduled and unscheduled operations were required to provide ARFF coverage appropriate to the size of aircraft served. This requirement has been adopted without change.

*Comment:* Two commenters recommend that smaller airports be allowed to use alternative methods to provide ARFF coverage. One commenter suggests the FAA use the majority ARAC working group recommendation to allow airports with a low frequency of air service to coordinate an emergency plan with reasonable response times with the local fire department. The other commenter recommends the FAA reach an agreement with the U.S. Department of Defense (DOD) to provide ARFF training or expand the number of federally funded regional ARFF training centers. This commenter also recommends that the FAA permit ARFF services to be performed by a tenant air carrier, fixed

base operator (FBO), or a private company. Additionally, both commenters suggest that smaller airports be allowed to house ARFF equipment at a local fire station and train firefighters at that station in ARFF procedures.

*FAA Response:* The FAA agrees in part. As adopted, the final rule allows Class III airports to either comply with Index A ARFF requirements or use alternative means to comply with ARFF requirements that provide a comparable level of safety, as approved by the Administrator. Such alternate means must be included in the FAA-approved ACM and, at a minimum, address four specific operational items, including type of equipment to be provided and airport familiarization training for emergency service providers. Alternative rescue and emergency services may be those used to comply with airport emergency plan requirements under § 139.325, Airport emergency plan.

Commenters' recommendations to use non-airport personnel to perform ARFF duties are already acceptable under existing FAA policy. Part 139 does not require a certificate holder to use only professional firefighters. The certificate holder has the discretion to use whomever it deems appropriate to meet ARFF personnel requirements so long as such individuals are trained in the subject areas specified in § 139.319. These personnel could include personnel from a local fire station, an airport tenant, a private company, or DOD facilities adjoining the airport. This did not change in the proposal.

The proposal did not limit a certificate holder's ability to make arrangements with the local fire station to store equipment and provide all or part of required ARFF coverage. The FAA allows ARFF equipment to be housed at the local fire station as long as the equipment purchased with Federal funds is used in compliance with grant assurances and such an arrangement allows the certificate holder to comply with part 139 vehicle readiness and response time requirements. This also is the case for firefighters based at the local fire station if they are trained and equipped in accordance with § 139.319. Many certificated airports already have made such arrangements with their local fire departments, and the FAA encourages an airport operator that is proposing an alternate means of compliance under § 139.315(e) or petitioning for relief from ARFF requirements under § 139.111 to consider such arrangements in its petition.

The FAA also makes use of DOD staff and resources wherever possible, particularly at joint-use and shared-use airports, and routinely coordinates with DOD on ARFF research projects. Further, the FAA encourages certificate holders to use federally funded regional ARFF training facilities. However, the FAA does not foresee funding the construction of more of these training facilities, as existing facilities are not being used to their full capacity.

*Comment:* One commenter recommends that certificate holders use military surplus ARFF vehicles to help offset ARFF costs.

*FAA Response:* The FAA agrees. For many years, airport operators have been acquiring Federal surplus equipment through the surplus property programs of the U.S. General Services Administration and the DOD.

*Section as Adopted:* The section is adopted with changes. As discussed above, a new paragraph (e) has been added to allow certificate holders of a Class III Airport Operating Certificate to alternate means to comply with ARFF requirements. The new paragraph specifies that such alternate means must be included in the FAA-approved ACM and address four specific operational items, including type of rescue and firefighting equipment to be provided.

#### *Section 139.317 Aircraft Rescue and Firefighting: Equipment and Agents*

*Proposal:* This section contained existing standards for ARFF equipment and fire-extinguishing agents. Several modifications were made to these standards. The term "clean agent" was added to describe a new category of fire extinguishing agents that replace halon 1211. The phrase "unless otherwise authorized by the Administrator" was added to provide relief to airports waiting for Federal funds to purchase adequate equipment or to address other local circumstances that may require temporary use of alternative equipment or extinguishing agents.

In addition, standards for extinguishing agent substitutions were removed, leaving only the requirement that the FAA must authorize the use of alternate extinguishing agents. Likewise, language was deleted that provided relief to certain airport certificate holders whose ARFF vehicles were unable to comply with the standards required when the regulation was amended in 1987.

All certificate holders were required to comply with this section. A 2-year compliance date was proposed for those airport operators required for the first time to comply with § 139.317 (proposed Class II, III, and IV airports).

*Comment:* Many of the comments on this section recommend changes to specific standards, including the number of required ARFF vehicles, equipment carried on these vehicles, and the type and quantity of extinguishing agent.

*FAA Response:* As discussed above, the NPRM did not propose any major revision of ARFF standards, and the ARAC has since accepted the task to review part 139 ARFF standards. Comments received that address specific ARFF standards in this section will be forwarded to the ARAC for consideration. Otherwise, these comments will not be addressed as they are beyond the scope of the NPRM.

*Comment:* The National Transportation Safety Board (NTSB) comments that it issued Safety Recommendation A97-107 following an aircraft accident in Quincy, IL, on November 19, 1996 (see 65 FR 38652 for a summary of this accident). This safety recommendation asked the FAA "to develop ways to fund airports that are served by scheduled passenger operations on aircraft having 10 or more passenger seats and require these airports to ensure that ARFF units with trained personnel are available during commuter flight operations and are capable of timely response." The NTSB further states that this proposal is an acceptable approach to addressing this safety recommendation and that it supports the proposed revisions that require airport operators to provide ARFF coverage during scheduled operations of air carrier aircraft with 10 or more seats. The NTSB also affirms its position that commuter airline passengers are entitled to one level of safety.

*FAA Response:* The FAA agrees. However, comments received from operators of small airports indicate that they are unable to comply with part 139 in the same manner as large airports. The limited number of annual enplanements received by these facilities makes it difficult for them to collect enough revenue to allow them to comply with full Index A ARFF requirements. This is particularly the case at airports with fewer than 10,000 annual enplanements.

As discussed earlier, the FAA plans to use its exemption authority in instances where compliance with part 139 would be unduly burdensome, costly, or impractical. Additionally, the FAA will use its specific authority to grant limited exemptions from ARFF requirements under 49 U.S.C. 44706 to require safety measures at all airports serving small air carrier aircraft. Any airport operator that petitions for relief from ARFF



requirements must provide certain evidence that such requirements are unreasonably costly, burdensome, or impractical.

Regarding alternative funding sources, Congress recently directed the FAA to set aside a portion of existing AIP funds to assist airport operators in complying with the requirements of this rule (see 49 U.S.C. 47116(e)). Beyond that, the FAA has very limited options for developing new funding mechanisms, and Congress would have to appropriate any additional Federal funds.

*Comment:* Three commenters state that the quantity of water required to be carried for foam production by Index E vehicles under § 139.317(e)(2) was the same as the quantity of water required for Index D vehicles under § 139.317(d)(2). They note the current regulation requires more water for Index E vehicles than Index D and asked if this change was a typographical error.

*FAA Response:* The proposed change to § 139.317(e)(2) was an error. No change was intended, and this paragraph has been corrected. The total quantity of water for foam production still must be 6,000 gallons for Index E vehicles.

*Comment:* A commenter recommends eliminating the “grandfather” provisions for ARFF vehicles and to establish a date certain by which all ARFF vehicles used by certificate holders must meet the requirements of this section.

*FAA Response:* The FAA agrees and had intended to delete paragraph (f) in the proposal. A correction was issued on August 21, 2000 (65 FR 50669).

Proposed paragraph (g)(3) also contains a “grandfather” provision for ARFF vehicles. This paragraph has been deleted to be consistent with the removal of paragraph (f). Consequently, as of the effective date of this rule, most certificate holders are required to use ARFF vehicles that comply with the requirements of this section. Class II, III, and IV airport operators will have additional time to comply.

*Comment:* Four commenters recommend an extension of the deadline, ranging from an additional 1 to 3 years, for Class II, III, and IV airport operators to comply with this section. These commenters all state that airport operators need more time to acquire funding, and several noted that local government budget processes would not allow these airport operators to secure the necessary funds within the proposed 2-year deadline.

*FAA Response:* The FAA agrees that additional compliance time is warranted and has amended paragraph (k) to allow Class II, III, and IV airport operators an

additional year to comply. These airport operators now have 3 years from the effective date of this rule to comply with this section or request an exemption under § 139.111. The FAA has determined that 3 years is a reasonable period for most airport operators to apply for and receive Federal funds and acquire local funds. On a case-by-case basis, the FAA may consider granting additional time to those airport operators experiencing budgetary or procurement problems.

*Comment:* A commenter notes that the proposal states that the FAA will consider a time extension for airport operators unable to meet compliance dates proposed in §§ 139.317(l) and 139.319(m) but does not provide criteria by which it would evaluate such requests. This commenter states that, in contrast, proposed § 139.321 establishes criteria that airports must satisfy before the FAA would consider an exemption from some or all of ARFF equipment, extinguishing agent, and operational requirements. The commenter requests that the FAA make “clear in the final rule that it will not grant any extensions of time to the compliance dates, except in extraordinary circumstances that satisfy strict criteria that the FAA sets forth in the final rule.”

*FAA Response:* The FAA partly agrees. Statements made in the proposal regarding time extensions for airport operators unable to meet ARFF compliance dates (65 FR 38653 and 65 FR 38654) should have stated that the FAA would consider granting time extensions to those airport operators that petitioned for such relief as required under § 139.111. The FAA will consider granting exemptions based on criteria established in this section.

As discussed earlier, most of the “strict criteria” of proposed § 139.321 that the commenter referenced has been deleted from the rule. All requirements for petitions for relief from ARFF requirements, including compliance deadlines, are now contained in § 139.111.

The FAA may consider granting time extensions for compliance in situations other than extraordinary circumstances. For example, a certificate holder may petition for relief if it cannot comply with certain compliance dates because the ARFF vehicle manufacturer has delayed the delivery of a required vehicle for reasons beyond the control of the airport operator. Because every petition will be different due to varying airport size, operations, and organization, the FAA will consider each request for a time extension on its merits.

*Section as Adopted:* This section is adopted with changes. As noted in the August 21, 2000, correction (65 FR 50669), the deletion of proposed paragraph (f) resulted in the re-designation of § 139.317(g) through (l) as paragraphs (f) through (k).

For the reasons discussed above, the quantity of required water in paragraph (e)(2) has been corrected to read 6,000 gallons, and paragraph (f)(3) has been deleted. Paragraph (k) also has been modified to allow Class II, III, and IV airport operators an additional year to comply with the requirements of this section.

In addition, paragraph (j) has been changed. The phrase “in the 150 series” has been deleted and the word “standards” replaced by the word “methods.” As discussed in the proposal (65 FR 38643), similar changes were made throughout the rule to language referencing advisory circulars and should have been made to this paragraph as well.

#### *Section 139.319 Aircraft Rescue and Firefighting: Operational Requirements*

*Proposal:* This section contained existing standards for the training of ARFF personnel; ARFF vehicle marking, lighting, and readiness; and emergency access roads. This section also established criteria for a certificate holder for adjusting ARFF coverage to correspond to changes in air carrier operations.

Changes were proposed to clarify training requirements for rescue and firefighting personnel and emergency medical personnel, including requirements for training records. In addition, all references to specific series numbers within the AC system were deleted, and changes were made to reflect changes in terminology used to describe fire-extinguishing agents. Several changes also were proposed to require the certificate holder to equip ARFF vehicles with guidance material for responding to hazardous materials/dangerous goods incidents.

It was proposed that all certificate holders be required to comply with this section. A 2-year compliance date was proposed for those airports required to comply with this section for the first time (proposed Class II, III, and IV airports).

*Comment:* Many of the comments received on this section recommend changes to specific standards, including training requirements for ARFF and medical personnel, response times, and vehicle readiness. Some of these commenters also recommend that these standards be reconciled with other



Federal and industry firefighting standards.

*FAA Response:* As discussed previously, the NPRM did not propose any major revisions of ARFF standards and the ARAC has since accepted the task to review part 139 ARFF standards. Comments received that address specific ARFF standards in this section will be forwarded to the ARAC for consideration. Otherwise, these comments will not be addressed as they are beyond the scope of the NPRM.

*Comment:* Two commenters state that cross training of airport personnel could reduce the cost of complying with ARFF requirements. One of these commenters notes that if an airport operator has management and maintenance personnel, the actual number of staff required for ARFF would be low. This commenter reasons that the FAA's willingness to be flexible with airport operators currently required to comply with Index A requirements, particularly with staffing issues, overcomes the argument made by other commenters that ARFF requirements are too onerous. The commenter also states that small airport operators would not be that much more burdened if they must comply with existing requirements for ARFF response capability during air carrier operations for a defined period before and after air carrier aircraft operations. Noting that current airport staff or the local fire department could be used to meet ARFF response requirements, this commenter believes that the annual cost for initial compliance with ARFF equipment and training could be less than \$20,000, excluding the staffing costs, and half this amount annually thereafter.

*FAA Response:* The FAA agrees in part. This section does not require an airport operator to use only professional firefighters or limit the duties of personnel used to comply with this section. This section only requires certificate holders to use personnel to perform rescue and firefighting duties that have been trained in the subject areas specified in paragraph (i). Accordingly, the certificate holder could choose to train and use existing employees for ARFF duties, but each airport situation is unique. The FAA cannot make a general conclusion about the burdens imposed on any airport operator without more information.

*Comment:* Several commenters state that if they are required to comply with part 139 ARFF requirements, local laws would require them to hire professional firefighters.

*FAA Response:* The FAA agrees that local laws and ordinances may require the airport operator, in order to comply

with part 139 requirements, to go beyond what the FAA requires. If local laws make compliance with part 139 requirements unreasonably costly, burdensome, or impractical, the certificate holder can petition the FAA for relief, as specified under § 139.111. In addition, holders of Class III Airport Operating Certificate may propose under § 139.315(e) an alternative means of compliance with ARFF requirements that may better address local laws and ordinances.

*Comment:* Several commenters note that the FAA and the U.S. Occupational Safety and Health Administration (OSHA) have different standards for the number of personnel required for ARFF. Specifically, commenters questioned the applicability of the "two-in/two-out" policy contained in the Respiratory Protection Standard (29 CFR 1910.134) to aircraft firefighting scenarios. This standard requires that firefighters engaged in fighting interior structural fires work in a buddy system that requires at least two workers in the structure and at least two workers outside in case a rescue of the firefighters is needed. Commenters state that this standard would require them to hire additional personnel.

*FAA Response:* The FAA disagrees. The OSHA Respiratory Protection Standard does not require certificate holders to hire more ARFF personnel than normally would be required to comply with part 139. In a legal memorandum developed jointly by the FAA and the OSHA (dated July 7, 1999) and placed in the docket, it was determined that the respiratory standard is applicable only to personnel fighting a fire within a structure and not an outside aircraft fire. As the primary purpose of ARFF personnel is to suppress the external aircraft fire and establish an escape route for the aircraft crew and passengers, the "two-in/two-out" rule does not apply to ARFF.

*Comment:* A commenter states that neither the FAA nor an airport operator has the authority to require a private company to provide ARFF services without compensation.

*FAA Response:* The commenter misunderstood the provision that allows an airport operator to use non-airport personnel to comply with the part 139, including ARFF requirements. The FAA gives an airport operator the discretion to use personnel other than its own employees to comply with part 139 requirements. Accordingly, an airport operator may decide that the best approach to complying with ARFF requirements is to arrange for such a service through a tenant or a contractor. This approach is not required under

part 139, but it is an acceptable means of compliance as long as the tenant or contractor complies with the part 139 requirements. If compensation is required for such services, it is a matter for the airport operator to negotiate with the tenant or contractor.

*Comment:* Three commenters state that the requirement to have on-airport ARFF that must respond within a specified time period will be an unreasonable financial burden on a small town and would adversely affect the air carrier service into such communities. Depending on the location of the aircraft emergency, one commenter notes that off-airport emergency personnel might be in a better position to respond, especially if the incident is located off the airport.

*FAA Response:* The FAA disagrees. The requirement of paragraph (a) specifies that the certificate holder shall provide ARFF services on the airport during air carrier operations. This does not require the airport operator to ensure such services are on the airport at all times. Depending on the frequency of air carrier services, an airport operator may, and many do, arrange for ARFF services with the off-airport fire station. This type of arrangement is acceptable so long as off-airport ARFF services are on the airport 15 minutes prior to and 15 minutes after air carrier operations.

As noted in the proposal at 65 FR 38663, certain airport operators that have arranged for the local fire department to occasionally come to their facilities to cover infrequent large air carrier aircraft operations will have to arrange for additional ARFF coverage for small air carrier aircraft operations. Since small air carrier aircraft operations tend to be more frequent at such airports, ARFF services may be needed more often than the local fire department can provide.

If the certificate holder and the FAA cannot develop a reasonable alternative means of compliance, the certificate holder may ask the FAA to grant an exemption under § 139.111 or in the case of a Class III airport, propose an alternative means of compliance with ARFF requirements under § 139.315(e) that may eliminate the need for off-airport emergency to comply with a timed response.

*Comment:* A commenter states that part 139 airports should be required to have annual ARFF training at one of the regional training facilities funded by the FAA that use propane fire simulators. The commenter does not support airport operators using fossil fuel fires for such training because of the environmental impact and lack of repeatable training

scenarios needed to develop firefighting skills. The commenter also states that the cost of ARFF training for airports with less than 500,000 annual enplanements should be AIP eligible.

*FAA Response:* The FAA disagrees. Regional ARFF training centers are only one option available for complying with the fire training requirements of § 139.319(i)(3). Airport operators may have other alternatives to comply with this requirement that are less costly or more convenient.

Regarding the funding of ARFF training costs, Congress would have to amend the AIP authorizing statute before AIP funds may be used for ARFF training. As of the date of the publication of this final rule, ARFF equipment is AIP-eligible only if such equipment is required under part 139 or if the FAA has determined that it will contribute significantly to the safety or security of persons or property at an airport.

*Comment:* A commenter states that the amount of time to comply with the requirements of this section should be extended to allow airport operators to secure funds, hire personnel, purchase equipment, and build facilities.

*FAA Response:* The FAA agrees additional compliance time is warranted and has amended paragraph (m) to allow Class II, III, and IV airport operators an additional year to comply. These airport operators now have 3 years from the effective date of this rule to comply with this section or request an exemption under § 139.111(b). On a case-by-case basis, the FAA may consider granting additional time to those airport operators that petition under § 139.111(a) for additional time.

*Comment:* A Class III airport operator states that the cost of reconstructing the emergency access road required under § 139.319(k) would be unreasonable. This commenter explains that one section of the existing emergency access road surrounding the airfield is impassable for many months of the year due to washouts and drifted snow. The commenter states the cost of reconstructing the road so it can be maintained and plowed during winter months is estimated at \$500,000.

*FAA Response:* The FAA agrees that it is possible the commenter may have to renovate its emergency access road to comply with the requirements of this section. If the FAA determines such renovation is necessary for the purposes of part 139, 90 percent of the cost would be eligible for AIP funds. Should AIP funds not be readily available, or the airport operator does not have matching funds, the certificate holder could ask for an exemption under § 139.111. In

addition, the FAA has added language to § 139.315 that allows the holder of a Class III Airport Operating Certificate to comply with ARFF requirements by alternative means that may not require the commenter to maintain an emergency access road (see discussion under § 139.315(e), Aircraft Rescue and Firefighting: Index determination).

*Comment:* A commenter states that proposed training for emergency medical personnel is excessive. This commenter points out that such personnel in its State are only required to receive 40 hours of training every 3 years. The commenter questions the purpose of requiring more training than what is required by the local organization that regulates emergency medical personnel. The commenter requests that the recurrent training requirement be the same as required by the local organization.

*FAA Response:* The FAA agrees. The requirement for annual recurrent training for emergency medical personnel has been deleted from paragraph (i)(4). Language requiring such personnel to be trained and remain current in basic emergency medical services will remain the same. This will ensure emergency medical personnel receive recurrent training but at the same frequency required by the local regulating organization.

*Comment:* A Class I airport operator states that while it supports the continuous training of ARFF personnel, the proposal's statement regarding continuous training will affect how firefighters are trained at other certificated airports. This commenter explains that the current regulation could be interpreted to mean that an airport operator could comply with § 139.319(i) by training ARFF personnel only once a year. However, the proposal states that the FAA would not expect ARFF personnel to comply with training requirements with only a once-a-year training course. The commenter notes that it has a continuous training program for its ARFF personnel, but if continuous training is mandated, other airport operators may need more personnel and equipment.

*FAA Response:* The FAA disagrees. Continuous training is not required under § 139.319(i). The statement in the proposal (65 FR 38653) was intended only to encourage ongoing training. As long as ARFF personnel are trained on the subject areas specified under paragraph (i), the certificate holder has the discretion to provide this training in a manner that best suits its needs.

The FAA disagrees that in all instances continuous ARFF training will require additional personnel and

equipment. Many airport operators find this approach provides better training results and is more cost effective. These airport operators use their existing airport personnel, or a combination of airport personnel and those of the local fire department, to conduct training sessions throughout the year. This minimizes travel costs often associated with one-time training courses, and since training sessions are shorter, it reduces the time personnel are unavailable for ARFF duties.

*Comment:* A commenter requests clarification on the relationship between the response requirements of § 139.319(h) and those proposed in § 139.321, ARFF: Exemptions. Referring to prearranged firefighting and basic emergency medical response required as a condition for an exemption under proposed § 139.321, this commenter questions how the FAA will inspect for the response requirements of paragraph (h) if the airport operator was granted an exemption from ARFF requirements under proposed § 139.321.

*FAA Response:* The FAA agrees. The requirements for requesting an ARFF exemption have been moved to § 139.111 and modifications made to the conditions under which the FAA will consider granting an exemption (see section-by-section analysis of § 139.111).

The FAA will not require a certificate holder to comply with a part 139 requirement if the airport operator has been granted an exemption from that requirement. In granting an exemption from ARFF requirements, the FAA requires the certificate holder to provide certain data. The exemption, plus any conditions, would be included in the ACM. During an inspection, the FAA will verify that the circumstances that required the exemption are still applicable and that the certificate holder is complying with any conditions required by the exemption.

*Comment:* A commenter states that many of the small communities that operate Class III airports rely on volunteer firefighters and the proposed requirements would require these communities to recall volunteers, or to supplement regular full-time airport employees, several times a day to cover air carrier flights. The commenter believes this would be "a significant burden with questionable benefit" for such airports. As an alternative, the commenter suggests modifying required ARFF response times for Class III airport operators to allow all required ARFF vehicles at such airports to utilize the secondary response time specified in paragraph (h)(2)(ii) as their primary response time.

*FAA Response:* The FAA disagrees. The ARFF performance times that the commenter refers to require at least one mandatory ARFF vehicle to respond to the midpoint of the farthest air carrier runway within 3 minutes of an alarm and within 4 minutes of an alarm for all other required vehicles. This secondary time is what the commenter suggests should be the standard for all responding ARFF vehicles at Class III airports.

The FAA believes that the requirement for at least one ARFF vehicle to respond within 3 minutes of an alarm will not be burdensome for Class III airport operators. These airports typically have simple pavement configurations that allow ARFF vehicles to reach the midpoint of the farthest runway within the required time from their standby positions. It is from this standby position that ARFF performance times are measured.

Instead, Class III airport operators are more likely to have difficulty arranging for ARFF coverage to be available at a standby location 15 minutes before and after all covered air carrier operations.

As discussed previously, an airport operator that is unable to comply with any ARFF requirement, including vehicle readiness or performance times, may petition for an exemption from such requirements under § 139.111.

*Comment:* A commenter states that paragraph (i) that prescribes requirements for ARFF personnel contains vague language. This commenter recommends removing or clarifying this paragraph.

*FAA Response:* The FAA disagrees. The language of paragraph (i) ensures that ARFF personnel are trained in certain subjects and allows some flexibility to address the diversity of airports certificated under part 139. Training ARFF personnel at airports required to comply with Index E ARFF requirements may be more complex than training ARFF personnel at an airport that complies with Index A requirements. In addition, this flexibility allows the airport operator to incorporate training required by the state or local municipality.

However, the FAA will forward the commenter's concerns on ARFF training requirements to the ARAC. As discussed earlier, the ARAC has accepted the task to review part 139 ARFF standards.

*Section as Adopted:* This section is adopted with changes. For reasons discussed above, the requirement for annual recurrent training for emergency medical personnel has been deleted from proposed § 139.319(i)(4), and paragraph (m) has been modified to allow Class II, III, and IV airport

operators an additional year to comply with the requirements of this section.

Several additional modifications were made to this section. A new requirement for a vehicle communication method has been added to paragraph (e) that requires personnel to have contact with the common traffic advisory frequency when an air traffic control tower is not in operation or when there is no tower. This change is consistent with other radio communication requirements contained in part 139. Minor changes also were made to paragraphs (e)(1) and (4) for clarity, and the redundant phrase "if it is located on the airport" was deleted from paragraph (e)(2).

Additionally, the reference to proposed § 139.341, Airport condition reporting, in paragraph (g)(3) has been revised to correspond to revisions made to the section numbering throughout subpart D.

Modifications also were made to training requirements contained in paragraph (i). Language has been added to paragraph (i)(2)(i) to clarify that airport familiarization training shall cover airport signs, marking, and lighting. Paragraph (i)(3) was revised to clarify that training involving an actual fire must be completed prior to initial performance of ARFF duties, and paragraph (i)(4) was changed to allow an individual other than the required ARFF personnel to provide basic emergency medical services.

Finally, a new sentence has been added to paragraph (j) noting that the certificate holder may contact the FAA's Regional Airports Division Manager about obtaining a copy of the "North American Emergency Response Guidebook." The FAA anticipates that this guidebook will be available in both hardcopy and electronic form.

#### *New Section 139.321 Handling and Storing of Hazardous Substances and Materials (Proposed § 139.323)*

*Proposal:* In the proposal, § 139.321, ARFF: Exemptions, contained procedures for requesting an exemption from ARFF requirements. As discussed earlier, proposed § 139.321 has been withdrawn and all requirements for petitions of exemption are now contained in § 139.111. Consequently, all following sections have been redesignated, and comments received on these sections are discussed under the new section numbers.

New § 139.321 (proposed § 139.323) contained existing requirements for certain airport operators to establish and implement procedures for the safe storage and handling of aviation fuel and, when the airport operator is acting as a cargo agent, of hazardous materials

regulated under 49 CFR part 171. This section also required the certificate holder to conduct quarterly inspections of certain fueling agents. Generally, the proposal did not change these requirements, and all classes of airports were required to comply.

Several minor changes were proposed. The term "grounded" was deleted from paragraph (b)(1), eliminating the need for fueling agents to connect aircraft to a static wire during fueling operations. Paragraph (b)(6) was modified to delete an implementation date that has already passed. In its place, a new requirement was proposed requiring operators of proposed Class III airports to complete specified training within 1 year.

Existing requirements in paragraph (e) also were modified to include requirements for recurrency training for fueling agent supervisors and employees, and paragraph (h) was deleted to clarify that the requirements of § 139.321 are applicable to air carrier fuel storage areas located on the airport. Subsequently, existing paragraph (i) became new paragraph (h). In addition, the reference to a specific AC series number in existing paragraph (i) (new paragraph (h)) was revised.

*Comment:* A commenter states its support for the deletion of the grounding requirement. This commenter, the National Fire Protection Association (NFPA), notes this change was the result of changes made 10 years ago to NFPA 407, Standard for Aircraft Fuel Serving. The NFPA recommends the FAA require compliance with NFPA consensus standards through periodic rulemakings to avoid similar delays and provide state-of-the-art safety for the traveling public.

*FAA Response:* The FAA partly agrees. The FAA will continue to review the NFPA standards for possible use as national standards under part 139. However, the FAA cannot commit to the adoption of a particular NFPA (or other) standard in advance of that review. Not all local governments use the NFPA standards, and the FAA will continue to review each NFPA standard for suitability for Federal use.

*Comment:* A commenter disagrees with the FAA's characterization of the ARAC working group's majority opinion regarding compliance with this section.

*FAA Response:* The FAA disagrees that it has mischaracterized the ARAC majority opinion. The majority of the ARAC Commuter Airport Certification Working Group recommended that airports serving small air carrier aircraft not be required to comply with this section (see ARAC Commuter Airport Certification Working Group Final

Report, page IV-3). As noted in the proposal (65 FR 38655), the ARAC majority recommended that the FAA only require smaller facilities to meet local fire codes pertaining to storage and handling of hazardous substances and materials.

*Comment:* A commenter recommends deleting requirements for an airport operator to oversee fueling operations, unless the airport operator is the fueling agent. Fueling operations at this commenter's airport are provided by the FBO and the commenter states that the airport staff are not trained in the operation and maintenance of fueling facilities or in aircraft fueling operations. This commenter also notes that the proposal contained no justification for airport operators to inspect fueling operations, and the cost to comply outweighs the benefit.

*FAA Response:* The FAA disagrees. Airport operators certificated under part 139 already comply with the requirements of this section and have not reported it to be burdensome or costly. As discussed in the proposal (65 FR 38655), the requirements of this section are common safety measures and were developed as a result of a cooperative effort between the FAA, airport operators, and FBO's, and have been successfully used for many years by airport operators and aircraft fuelers nationwide.

It is not necessary for airport personnel who conduct inspections of tenant fueling operations to be trained in fueling operations or maintenance. Such personnel need only to be familiar with the airport operator's standards for fuel fire safety. Such standards tend to be common housekeeping practices that airport personnel should already be familiar with as they are required by local fire codes and are often required by liability insurance carriers. For example, such standards could require fuel storage areas to be kept clean of litter, vegetation, and other combustibles and fire extinguishers to be fully charged.

*Comment:* A commenter states that additional training costs will be incurred for FBO personnel if the FBO's existing training does not comply with proposed training requirements.

*FAA Response:* The FAA agrees that a few airport operators may have to reimburse their tenants for training costs. The responsibility for such training costs will depend on the lease agreement between the airport operator and the FBO. Such agreements typically contain provisions that the FBO will ensure its employees are trained.

Most FBOs already use training programs that are approved by the FAA.

The FAA has evaluated available fuel safety training courses and publishes a list of approved courses. The FAA periodically evaluates these training courses to ensure they continue to meet certain teaching and testing criteria and, on request, will evaluate new training courses. Currently, 12 fuel safety training courses are acceptable to the FAA, including several courses sponsored by airport operators.

*Comment:* A commenter states that the industry should assist the FAA in developing guidance for recurrent training for fueling personnel to ensure such training does not become an unnecessary burden on fueling operations.

*FAA Response:* As noted in the proposal (65 FR 38655), fuel fire safety standards were developed as a result of a cooperative effort between the FAA, airport operators, and FBOs. If advisory material is needed during the implementation of new training requirements of this section, the FAA anticipates developing such materials in much the same manner.

However, the FAA does not anticipate that compliance with recurrent training requirements will be so complex as to require advisory materials. As required under paragraph (b), recurrent training need only cover the same subject areas as initial training. This would include any changes to fuel fire safety standards and procedures that have occurred since the individual's initial training.

*Comment:* A commenter requests the FAA change the requirement for recurrent training for employees who handle fueling operations to every 24 consecutive calendar months rather than the 12-month requirement proposed. This commenter states that there is no justification for a more restrictive requirement than that imposed on the fueling supervisor and would be more consistent with other FAA requirements for private pilots and mechanics.

*FAA Response:* The FAA agrees and has amended paragraph (e)(2) to require recurrent training every 24 months rather than every 12 months.

*Comment:* A commenter recommends that the FAA amend the last sentence of paragraph (e)(1) to include the phrase "or enrolled in an authorized aviation fuel training course that will be completed within 90 days." The commenter states that the proposed supervisor training requirement would not allow for loss of a trained supervisor due to normal attrition. The commenter reasons this modification would allow fueling operations to continue uninterrupted until a new supervisor could be trained.

*FAA Response:* The FAA agrees and has amended paragraph (e) as suggested.

*Comment:* Two commenters state their support of changes made to this section, particularly changes to enhance safety of air carrier fuel storage areas. However, both commenters note that the FAA does not hold air carriers accountable for the safety of their fuel storage areas and recommend that the FAA require air carriers to inspect and maintain these areas.

*FAA Response:* The FAA agrees that air carrier fuel storage areas should be safe. Under this revised section, the FAA holds the airport certificate holder responsible through its relationship with its tenant air carriers, for protecting against fire and explosion in air carrier fuel storage facilities.

Rather than have separate fuel storage requirements for air carriers and airport operators, the FAA has determined that existing part 139 fuel storage safety and inspection standards can be applied at all such storage facilities located at part 139 airports. This approach will ensure that all fuel storage facilities at part 139 airports are inspected in the same manner and held to the same standards.

*Comment:* A commenter recommends that the FAA should consider compliance with local fire codes and NFPA standards by fuel service providers as an alternate method of compliance. This commenter also recommends that the FAA should consider the role of the local fire marshal in performing inspections.

*FAA Response:* The FAA agrees. The FAA already allows for these methods of compliance. Under paragraph (b), the airport operator is required to incorporate the local fire code in its standards for protecting against fuel fires. If local fire codes do not address the subject areas specified in paragraph (b), the airport operator will have to develop additional procedures. The airport operator may develop procedures unique to its facility or adopt industry standards, such as NFPA standards.

In addition, the airport operator has the discretion to use either its own personnel to conduct inspections or an independent organization or person, such as the fire marshal. At some part 139 airports, the local fire department is actively involved in aircraft fuel fire safety and has arranged for ARFF personnel to conduct fuel fire safety inspections and to provide fire safety training for fueling and airport personnel.

*Section as Adopted:* This section has been adopted with changes. As discussed earlier, proposed § 139.321 has been deleted and the proposed

§ 139.323 has been redesignated as § 139.321. In addition, paragraphs (e)(1) and (2) have been modified to allow additional time for training of fueling personnel. Fueling agent supervisors now have 90 days to complete initial training, and fueling personnel need only to complete recurrent training every 24 months rather than every 12 months.

To clarify that the requirements of this section pertain to aircraft fueling operations, the words "lubricants" and "oxygen" have been deleted from paragraph (b). In addition, a requirement for using an independent organization to perform inspections has been moved to § 139.303, Personnel, and a new sentence was added to paragraph (f). This new sentence clarifies how long the certificate holder is required to maintain fueling agents' training records.

*New Section 139.323 Traffic and Wind Direction Indicators (Proposed § 139.325)*

*Proposal:* This section prescribed conditions that require a certificate holder to provide a wind cone, a traffic pattern indicator, and the standards for these devices. While changes were proposed to these standards, a certificate holder was still required to provide traffic and wind indicators (such as windsocks) at specific locations on the airport and for certain night and uncontrolled traffic operations. Operators of all proposed airport classes were required to comply with this proposed section.

References to Class B airspace were deleted and replaced by language requiring all certificate holders to install supplemental wind cones adjacent to runway ends where the primary wind cone is not visible to a pilot on final approach or during takeoff. In addition, standards for segmented circles and supplemental wind cones were revised, as well as standards for traffic indicators at airports without a control tower. Changes also were proposed to clarify that airport operators must comply with the requirements of this section in a manner satisfactory to the FAA and that ACs contain methods of compliance that are acceptable to the Administrator. Finally, the section number was changed to new § 139.325 from proposed § 139.323.

*Comment:* Several commenters support the changes to this section. One of these commenters fully supports the proposal for supplemental wind cones to be installed at runway ends at all certificated airports, rather than just at airports located within Class B airspace.

*FAA Response:* The FAA agrees.

*Comment:* Two commenters note a discrepancy between this section's criteria that determine if a certificate holder must light a wind direction indicator and the requirements of proposed § 139.311, Marking, signs, and lighting, for a lighting system. These commenters state that proposed § 139.311 requires a lighting system for air carriers during times when the airport is open at night while proposed § 139.325, Traffic and wind direction indicators, requires the lighting of wind direction indicators during hours of darkness.

*FAA Response:* The FAA agrees. The term "night" will be used in both sections, as defined in 14 CFR part 1. Section 139.323(a) has been amended to specify that if the airport is open for air carrier operations at night, rather than during hours of darkness, then wind direction indicators must be lighted.

*Section as Adopted:* This section is adopted with changes, and the section number was changed back to § 139.323. For the reason discussed above, the phrase "during hours of darkness" has been replaced by the term "night." In addition, the first sentence of this paragraph has been reordered, and the phrase "available for air carrier use" has been included to clarify that the requirements of this paragraph are applicable only to runways used by air carriers. The term "maintain" also has been added to the first sentence of this section to ensure consistency with the wording of paragraph (c).

Further, paragraph (b) has been modified. The last sentence of this paragraph was proposed in an effort to align part 139 requirements with the existing FAA guidance provided to pilots on visual indicators at airports without control towers. However, this change would have inadvertently required some airport operators to move their primary windsock if it was not located at the end of a runway. This was not intended. To correct this error, the last sentence of paragraph (b) has been deleted and the phrase "around a wind cone" has been added to the first sentence. This addition will ensure the required landing strip and traffic pattern indicator will be located around a wind cone, wherever that wind cone may be located.

A change also has been made to paragraph (c). The term "standards" has been replaced by the term "procedures." This change corresponds to changes made throughout the regulation to adjust language referring to ACs.

*New Section 139.325 Airport Emergency Plan (Proposed § 139.327)*

*Proposal:* This section contained existing standards for the development, implementation, and testing of an airport emergency plan. Requirements for Class I airport operators remained relatively unchanged. New requirements were proposed for Class II, III, and IV airport operators that would be required for the first time to develop and test an airport emergency plan.

Changes were made to update emergency response requirements to include large fuel fires and hazardous materials incidents and to ensure that all response measures accommodate the largest air carrier aircraft serving an airport. In addition, an alternative for an emergency alarm system was proposed, and clarifications were made to requirements pertaining to water rescue situations and coordination with the air traffic control tower.

Testing requirements for Class I airport operators remained the same. New testing requirements were proposed for Class II, III, and IV airport operators that did not require a triennial emergency exercise.

A new requirement was also proposed to allow Class II, III, and IV airport operators 1 year from the effective date of the rule to submit their emergency plans to the FAA for approval. Additionally, the section number was changed to new § 139.325 from proposed § 139.327, and references to advisory circulars were revised.

On July 17, 2001, the FAA published a final rule revising 14 CFR part 107, Airport Security (66 FR 37274). This final rule became effective November 14, 2001. The part 107 final rule contained a minor revision to current § 139.325, Airport emergency plan.

The part 107 final rule added a new paragraph (h) to § 139.325 and the existing paragraph (h) was redesignated as paragraph (i). This revision ensures that emergency response procedures to hijack and sabotage incidents contained in the airport emergency plan are consistent with the approved airport security program required under part 107. Comments on this revision were addressed in the part 107 final rule (66 FR 37308). [Note: Part 107 has been transferred to Transportation Security Administration (TSA) regulations under 49 CFR 1500 *et seq.*]

*Comment:* Five commenters support changes made to this section, particularly revisions requiring a response to large fuel fires and hazardous materials incidents.

*FAA Response:* The FAA agrees.

*Comment:* An airport association comments that the flexibility offered in

this section allows smaller airports the opportunity to develop and maintain an airport emergency plan that will be appropriate to the type of air carrier operations served.

*FAA Response:* The FAA agrees.

*Comment:* A commenter states it is reasonable to require Class II, III, and IV airport operators to conduct only annual tabletop reviews of their airport emergency plans. This commenter notes that "many small airports with limited funding appreciate recognition by the FAA and Air Transport Association that the cost of conducting triennial full-scale exercise can be unduly burdensome."

*FAA Response:* While the FAA agrees with the commenter's statement regarding annual tabletop reviews, it does not agree that triennial full-scale exercises are unduly burdensome for all small airport operators.

*Comment:* Four commenters request that all certificate holders be required to hold triennial full-scale emergency exercises. One of these commenters, the American Association of Airport Executives, states that "an emergency plan exercise every 36-months is a reasonable expectation in the testing of an airport emergency plan." Another commenter suggests that the FAA require Class II, III, and IV airports to conduct full-scale emergency exercises every 5 years and tabletop reviews every 2 years. This commenter states that annual reviews alone cannot satisfy emergency coordination and response.

*FAA Response:* The FAA agrees that triennial full-scale emergency exercises are beneficial, but disagrees that all certificate holders should be required to hold such exercises. The cost of such exercises for smaller airports, and the local community that participate in these exercises, must be considered in evaluating the benefit.

*Comment:* A Class I airport operator recommends that certificate holders should be required to include in their water rescue plans provisions for rescue vehicles that have a combined capacity for handling the maximum number of passengers on the largest aircraft serving the airport.

*FAA Response:* The FAA agrees. Paragraph (a)(3) was proposed to ensure that all emergency procedures, including water rescue, are appropriate to the largest air carrier aircraft the airport operator could be reasonably expected to serve. However, this paragraph will be revised to use ARFF Index as the criteria for determining emergency response capability rather than the largest aircraft that could be served. This change will ensure that emergency planning and response

requirements are consistent throughout part 139.

*Comment:* One commenter states support for the ARAC Commuter Airport Certification Working Group recommendation that Class II, III, and IV airport operators include in their annual tabletop review discussions of staging areas and perimeter security that will be used during emergency situations and to conduct an airfield tour.

*FAA Response:* The FAA agrees that staging areas and perimeter security should be discussed during an annual tabletop review. In most instances, airport operators must designate a staging area and arrange for perimeter security in order to comply with the requirements to paragraph (c). Accordingly, these issues are reviewed during both the annual review and, as appropriate, the triennial full-scale emergency exercise.

Similarly, a field tour may be accomplished, although not specifically required, during an annual review. Paragraph (g)(4) requires the certificate holder to review its emergency plan with all involved parties to ensure they know their responsibilities under the plan. A field tour may be one means of compliance used by the certificate holder to ensure that certain parties who would be required in an emergency to drive on the airport or respond to a pre-designated staging area understand their responsibilities.

*Comment:* Two commenters, both Class III airport operators, state that it may be difficult to comply with the requirements of this section. One of these commenters explains that the local community has an emergency preparedness plan, but the plan is not airport specific. If the requirements of this section and AC 150/5200-31, Airport Emergency Plan, require more than a modest update, this commenter estimates it would cost \$3,000 to \$5,000 to rewrite the plan. The other commenter states that without outside help or additional airport staff, the airport emergency plan required under this section and AC 150/5200-31 would be difficult to develop, maintain, and exercise.

*FAA Response:* The FAA partly agrees. Revising a local emergency preparedness plan may take some time, particularly to coordinate mutual aid agreements with local emergency and medical services. Likewise, staff time will be required to annually review the plan. How much time will, of course, vary from airport to airport and will depend on the availability of local emergency services. Such considerations were evaluated in the proposal's cost evaluation (see the

Regulatory Evaluation). This evaluation also assumed that all Class II, III, and IV airport operators would have no existing emergency plan from which to develop their own emergency plan.

Building upon an existing emergency preparedness plan will considerably reduce the time it takes to create an airport emergency plan. Further, such a revised plan does not need to conform to AC 150/5200-31. This AC merely provides guidance on the development of an airport emergency plan using Federal Emergency Management Administration's guidelines for emergency preparedness. Neither is mandatory. As long as such a revised community plan meets the requirements of this section, the airport operator may develop its plan in any manner that it chooses.

Additionally, the FAA is not requiring an airport operator to use a consultant to develop its airport emergency plan. If an airport operator decides to develop its own emergency plan, FAA resources are available to simplify this process. The FAA airport certification and safety inspectors are available via telephone or e-mail to provide guidance on the development and testing of an airport emergency plan, and they have samples of approved plans. For many years, these inspectors have assisted Class I airport operators in the development and testing of their emergency plans and have often served as evaluators during triennial full-scale emergency exercises. In addition, many states and local municipalities have emergency coordinators that may be able to assist airport operators develop their plans.

*Section as Adopted:* This section is adopted with changes. As discussed above, § 139.325(a)(3) has been modified. The phrase "that the airport reasonably can be expected to serve" has been changed to "in the Index required under § 139.315." In addition, the time allowed for compliance in paragraph (j) has been extended from 12 months to 24 months. The section number also has been changed to new § 139.325 from proposed § 139.327, and several administrative edits have been made throughout the section.

As discussed earlier, a new paragraph has been added to incorporate an amendment made to part 139 in the final rule revising 14 CFR part 107, Airport Security (66 FR 37274). This new paragraph is designated as paragraph (i) and references in the amendment to paragraph (b) that refer to hijack and sabotage incidents have been updated to reflect the changes made to paragraph (b). Subsequent proposed paragraphs (i) and (j) have been redesignated as new paragraphs (j) and

(k). In addition, references to 14 CFR part 107 have been revised to reflect changes made to FAA security regulations and the creation of the Transportation Security Administration.

*New Section 139.327 Self-inspection Program (Proposed § 139.329)*

*Proposal:* This section contained existing requirements for certificate holders to conduct daily inspections of the movement area to ensure the airport remains in compliance with part 139. Changes were made to how the certificate holder notifies air carriers of field conditions and document inspections. In addition, training requirements for individuals conducting airport inspections were revised, and language was added to permit airport inspections to be conducted by individuals other than employees of the airport operator. The section number also was redesignated from § 139.327 to § 139.329, and language that was no longer applicable was deleted.

All proposed airport classes were required to comply with this revised section. Class I, II, and IV airport operators were required to update existing self-inspection programs, and operators of proposed Class III airports were required to develop and implement a self-inspection program.

*Comment:* Two commenters support training requirements for personnel conducting self-inspections.

*FAA Response:* The FAA agrees.

*Comment:* Two commenters support changes that will allow an airport operator to designate a third party to conduct inspections. One of these commenters notes that neither this section nor proposed § 139.303, Personnel, provides guidance on using a third party.

*FAA Response:* The FAA agrees. Since the certificate holder can use a third party to comply with most part 139 requirements, a new paragraph has been added to § 139.303 that details the requirements a certificate holder must meet in order to use a third party (see section-by-section analysis of § 139.303). This new paragraph contains a requirement, found in existing § 139.321, Handling and storage of hazardous substances and materials, paragraph (d), that specifies that the certificate holder can use an independent organization to conduct inspections of tenant fueling facilities. This paragraph has been moved to § 139.303 and has been modified so that it now applies to any part 139 requirement. Consequently, the term “designee” has been deleted from § 139.327(a).

This new paragraph in § 139.303 still requires that the FAA approve any such arrangement. In addition, the certificate holder is required to ensure that the third party’s duties and responsibilities are included in the ACM and that records are maintained to document the third party’s compliance with part 139 and the ACM, including training activities.

*Comment:* A commenter states that paragraph (b)(3) detailing training subject areas is too vague and requires clarification. Specifically, the commenter is unclear if this paragraph requires additional training for airport operations staff and recommends additional clarification of recurrent training standards.

*FAA Response:* The FAA agrees that some training required under this section is redundant to training required under § 139.303. This overlap is intentional so that all requirements for conducting self-inspections are contained in one section. Training completed to comply with § 139.303 can be used to meet this section’s training requirements.

In addition, the FAA agrees that changes are needed to clarify the frequency of training. Modifications have been made to paragraph (b) to clarify that personnel must receive both initial and recurrent training in the specified subject areas and that recurrent training is required every 12 months.

*Comment:* A commenter notes that the recurrent training required for personnel conducting self-inspections is redundant for duties that its operations staff completes on a daily basis.

*FAA Response:* The FAA disagrees. As discussed in section-by-section analysis of § 139.303, the FAA believes personnel that perform their duties on a daily basis can benefit from recurrent training. Recurrent training helps ensure that all employees continue to perform their duties correctly and safely.

*Comment:* A commenter opposes new requirements for formalized training and recordkeeping, stating that these requirements are unnecessary and burdensome. This commenter states that the regulation already requires the certificate holder to ensure it remains compliant with the part 139 and the ACM. The commenter believes this requirement alone will ensure self-inspections are done correctly. In addition, this commenter believes that annual FAA inspections ensure compliance without the need for burdensome recordkeeping and recurrent training programs.

*FAA Response:* The FAA disagrees with the commenter that new self-

inspection training and recordkeeping requirements will be burdensome and unnecessary. The FAA believes most certificate holders already comply with this section and need only document existing training procedures.

Also, similar to § 139.303, training required under this section does not have to be “formalized.” Paragraph (b)(3) does not specify how training must be conducted. This is intended to allow the certificate holder some flexibility in complying with training requirements in a manner best suited for local circumstances. As long as training covers the subject areas specified in paragraph (b), it could consist of on-the-job training, formal classroom lectures, an industry training conference, or some combination thereof.

*Section as Adopted:* This section is adopted with changes. The section number has been changed back to § 139.327, and for the reasons discussed above, the term “designee” has been deleted from paragraph (a), and paragraph (b) has been modified to clarify that personnel must receive both initial training and annual recurrent training.

Several other changes were made throughout the section. Paragraph (b)(2) has been edited for clarity. Paragraph (b)(3)(iv) has been revised to reflect changes made to the title of § 139.329, and paragraphs (b)(3)(i) and (vi) have been combined. In addition, language deleted in the proposal was replaced in paragraph (b)(3). This language specifies that only qualified personnel can perform inspections and was unintentionally deleted.

Changes were made to paragraph (c). New language was added that requires the certificate holder to maintain records for 24 months of training required under paragraph (b)(3). While this requirement was not discussed in the proposal, other similar recordkeeping requirements were, and this addition to paragraph (c) mirrors these requirements and is a logical outgrowth of what was proposed. Further, the FAA has determined that records of self-inspections should be retained in the same manner as airport condition reports, as required under § 139.339. Therefore, the time airport operators must maintain self-inspection records has increased from 6 months to 12 months. Although not proposed, this change will ensure the recordkeeping requirements in the two sections are consistent.

In addition, the text “make available for inspection by the Administrator on request” has been deleted from paragraph (c). This requirement is redundant to the new recordkeeping



requirements of § 139.301 that specify the certificate holder shall furnish, upon request by the FAA, all records required to be maintained under this part.

*New Section 139.329 Pedestrians and Ground Vehicles (Proposed § 139.331)*

*Proposal:* This section contained requirements for the certificate holder to limit access to movement areas to those ground vehicles necessary for airport operations. This section also required the certificate holder to ensure that employees, tenants, or contractors who operate ground vehicles in the movement area are familiar with established ground vehicle operating procedures.

The requirements of this section remained relatively the same. Only minor modifications were proposed to clarify that the requirements of this section are implemented in a manner satisfactory to the FAA. All certificated airports serving scheduled air carrier operations (proposed Class I, II, and III airports) were required to comply with this section. The section number was changed from § 139.329 to proposed § 139.331.

*Comment:* A commenter supports the implementation of this section at smaller airports with the FAA's acknowledgement that existing § 139.329, Ground vehicles, paragraph (c) is only applicable at airports where an air traffic control tower is operational.

*FAA Response:* The FAA agrees that existing § 139.329(c) is applicable only at airports where an air traffic control tower is operational. This criteria is stated in the first sentence of paragraph (c) and did not change in the proposal.

However, the commenter's statement seems to imply that there is confusion regarding the requirements for two-way radio communications at airports without control towers or during times when the control tower is not operational. To clarify that in either instance prearranged signs or signals can be used in lieu of two-way radio communications, the first sentence of paragraph (d) has been modified to include the phrase "or there is no air traffic control." The phrase "two-way radio communications" also has been added to this paragraph to clarify that operators of such airports have the choice of using either two-way radios or prearranged signs or signals.

*Comment:* A commenter recommends revising paragraph (e) to require ground vehicle training that includes runway incursion prevention awareness. This commenter states that safe airside vehicle operations play a significant role

in decreasing the hazards of runway incursions.

*FAA Response:* The FAA agrees. Data collected by the FAA on runway incursions show that ground vehicles and pedestrians in movement and safety areas continue to be a cause of both runway incursions and surface incidents. To heighten awareness of this important safety matter, the FAA supports the commenter's recommendation and has modified paragraphs (e) and (f) to specify training, rather than just familiarization, on procedures for the safe and orderly access to and operation in the movement area and to require records of such training. Additionally, this section has been expanded to include safety areas and pedestrian activity to ensure a comprehensive approach to preventing runway incursions and surface incidents.

*Section as Adopted:* This section is adopted with changes. The section number has been changed back to § 139.329, and for the reasons discussed above, paragraph (e) has been modified to specify training on procedures for the safe and orderly access to and operation in movement areas and safety areas. Correspondingly, paragraph (f) has been changed to require records of such training and that these records be maintained for 24 months.

As discussed previously, the words "pedestrian" and "safety area" have been added throughout the section and to the section title. This change now requires the certificate holder to establish and implement procedures for access to, and operation on, movement areas and safety areas by both pedestrians and ground vehicles.

To clarify requirements for vehicle and pedestrian control at airports without control towers, paragraph (d) also has been modified to include the phrase "or there is no air traffic control" and "two-way radio communications."

*New Section 139.331 Obstructions (Proposed § 139.333)*

*Proposal:* This section contained requirements for the lighting, marking, or removal of obstructions. Except for a change to the section number, the requirements of this section remained substantially the same. Certificate holders were still required to ensure that each object within its area of authority that penetrates imaginary surfaces, as provided in part 77, Objects Affecting Navigable Airspace, is removed, marked, or lighted.

Changes were proposed to clarify that the requirements of this section must be implemented in a manner satisfactory to the FAA and that ACs contain some

methods of compliance that are acceptable to the Administrator. All certificated airports serving scheduled air carrier operations (proposed Class I, II, and III airports) were required to comply with this revised section. Also, a change to the section number, from § 139.331 to § 139.333, was proposed.

*Comment:* No comments were received on this section.

*Section as Adopted:* The section number has been changed to new § 139.331 from proposed § 139.333. In addition, references to the terms "imaginary surfaces" and "part 77" have been replaced by the phrase "determined by the FAA to be an obstruction." As noted in the proposal (65 FR 38650), references to 14 CFR part 77 should have been deleted throughout part 139 as part 77 is being revised and may be reorganized. Accordingly, references to part 77 in this section have been replaced with a general statement that the FAA will determine if an object is an obstruction. Also, the first and second sentence of this section have been combined for clarity.

*New Section 139.333 Protection of NAVAIDS (Proposed § 139.335)*

*Proposal:* This section contained standards for the protection of navigational aids (NAVAIDS). Except for a change to the section number, the requirements of this section remained substantially the same and required the certificate holder to protect against the derogation of electronic or visual navigational equipment and air traffic control facilities located on the airport. This included protection against vandalism, theft, and construction that may cause interference.

Changes were proposed to clarify that the requirements of this section must be implemented in a manner satisfactory to the FAA and that ACs contain some methods of compliance that are acceptable to the Administrator. All certificated airports serving scheduled air carrier operations (proposed Class I, II, and III airports) were required to comply with this revised section.

In addition, a change to the section number, from § 139.333 to § 139.335, was proposed.

*Comment:* No comments were received on this section.

*Section as Adopted:* The section number has been changed to new § 139.333 from § 139.335. Otherwise, the section is adopted as proposed.

*New Section 139.335 Public Protection (Proposed § 139.337)*

*Proposal:* This section contained existing requirements for a certificate holder to prevent the inadvertent entry



of persons or vehicles to the movement area and to provide reasonable protection of persons and property from aircraft blast. All certificated airports serving *scheduled* air carrier operations (Class I, II, and III airports) were required to comply with this section.

*Comment:* A commenter requests additional time for Class III airports to comply with this section. The commenter recommends that these airports be allowed 3 years after the effective date of the rule to comply because the cost of implementing this section will be high in small rural communities. No operational or financial data is provided to substantiate this claim.

*FAA Response:* The FAA disagrees. The requirements of the section are intended to prevent the *inadvertent* access by the public, which can be done quickly and for a relatively small cost. The FAA is unaware of any current certificate holders experiencing problems meeting this requirement, and the commenter did not provide any operational or cost data to suggest otherwise.

Elaborate fencing, automated access control points, closed-circuit cameras, guards, etc. are not required to comply with this section. Existing measures, used by airport operators for theft and liability purposes, to keep the public out of movement areas will usually suffice. For example, if a public road dead-ends at the airport, the certificate holder could use a sign and wood barricade to alert the public not to enter.

In addition, some airport operators that have accepted Federal funds may have obligations under their grant assurances to control the use of the airport in a manner that will eliminate hazards to aircraft and to people on the ground. Grant assurances require "an owner of an airport developed with Federal assistance to provide adequate controls such as fencing and other facilities to keep motorist, cyclists, pedestrians, and animals from inadvertently wandering onto the landing area or areas designated for aircraft for aircraft maneuvering."

*Comment:* Several commenters disagree with the FAA's statement that there will be minimal or no incremental compliance cost for this section. One of these commenters states that it would cost \$150,000 to comply with this section. This would include the cost to develop personnel identification media, provide personnel with security training, and install passenger-screening equipment in the terminal building.

Another commenter states that security is expensive and that fences, access gates, background checks, and

law enforcement personnel all combine to increase cost. This commenter provides two pages of justification why the FAA should not require certificate holders, particularly at Class III airports, to comply with the requirements of 14 CFR part 107, Airport Security.

*FAA Response:* This section does not require the certificate holder to comply with part 107 nor does it require the certificate holder to use any physical or personnel security measures to protect against criminal and terrorist acts.

As noted above, this section only requires the certificate holder to have appropriated safeguards against inadvertent entry to movement areas by unauthorized persons or vehicles. These safeguards may consist of a combination of natural barriers, fencing, and warning signs, which suffice to deter personnel or vehicles from accidentally entering the movement area.

The reference to part 107 (new 49 CFR part 1542, Airport Security) in paragraph (b) may have caused confusion. This reference merely alerts the certificate holder that any fencing used to comply with part 107 will automatically meet the requirements of this section. This is because any fencing used to comply with part 107 far exceeds the public protection requirements of part 139.

*Comment:* One commenter requests the FAA examine the impact of this section on smaller airports. This commenter, the American Association of Airport Executives, states that the fencing requirement alone could be very expensive and one of its airport members claims it would have to install 18 linear miles of fence to comply with this section.

*FAA Response:* The FAA disagrees. It is difficult to respond to this comment, as the FAA is not familiar with the referenced airport operator's situation. However, based on experience with current certificate holders, the FAA does not agree that an airport operator would need to purchase new fencing to encompass the entire airport property in order to comply with this section. Most likely the airport operator's existing fencing or safeguards to keep the public out of movement areas will be acceptable.

Again, the reference to fencing meeting access control requirements of part 107 in paragraph (b) may have caused confusion. As noted above, paragraph (b) does not require fencing, but merely alerts the certificate holder that any fencing used to comply with part 107 will automatically meet the requirements of this section.

*Section as Adopted:* The section is adopted with minor editorial changes.

The section number has been changed back to § 139.335, and paragraph (b) has been edited for clarity. In addition, references to 14 CFR part 107 have been revised to reflect changes made to FAA security regulations and the creation of the Transportation Security Administration.

#### *New Section 139.337 Wildlife Hazard Management (Proposed § 139.339)*

*Proposal:* This section contained existing requirements for the certificate holder to respond to wildlife hazards, including criteria for when a certificate holder is required to develop and implement a wildlife hazard management plan. The proposal made several changes to these requirements and clarified what is expected of the certificate holder when developing a wildlife hazard management plan. All operators of certificated airports serving scheduled air carrier operations were required to comply with this section.

Existing § 139.337 was redesignated as proposed § 139.339. Existing paragraph (f) was moved to the beginning of this section and became new paragraph (a). This paragraph required that an airport operator take immediate action to alleviate wildlife hazards. All other paragraph designations were changed accordingly.

Several changes were made to wildlife hazard assessment requirements. A new requirement was proposed specifying that a wildlife hazard assessment must be conducted by a wildlife damage management biologist who meets certain education and experience qualifications. Another new requirement was proposed mandating that any recommended actions for reducing the wildlife hazard made by the wildlife damage management biologist be included in the assessment. In addition, the existing requirement that an assessment include an analysis of the events prompting the assessment was modified to include an analysis of any circumstances that may have prompted the assessment as well.

Several modifications were made to the requirement to submit a wildlife hazard assessment for FAA approval. These changes included a new requirement for the FAA to take into consideration any actions recommended by the wildlife hazard assessment in determining the need for a certificate holder to have a wildlife hazard management plan. In addition, changes were made to requirements for the wildlife hazard management plan. A new requirement was added that directs the certificate holder to annually review the plan. Also, existing language from Subpart C, Airport Certification Manual,

was added to require that an approved wildlife hazard management plan be included in the airport operator's ACM.

Finally, specific references to AC series numbers were deleted, and several terms used throughout the section were revised, including the term "ecological study." A new paragraph was added to allow proposed Class II and III airports to implement less than full wildlife mitigation procedures if air carrier operations at these airports are so few or infrequent that any large expenditure would be unduly burdensome or costly.

*Comment:* Three commenters support the changes to this section. One of these commenters believes that such changes will reduce wildlife aircraft strikes at FAA-regulated airports.

*FAA Response:* The FAA agrees.

*Comment:* A commenter notes that the proposal did not mention the ARAC Commuter Airport Certification Working Group's majority view on wildlife hazard management. This commenter requests that the FAA review and consider these recommendations before issuing a final rule.

*FAA Response:* The FAA agrees that the proposal did not discuss the ARAC Commuter Airport Certification Working Group's majority view on wildlife hazard management. This omission was not intentional, and the FAA did consider both the working group's majority and minority views on this issue.

The working group's majority opinion stated that existing part 139 wildlife hazard management requirements would be economically burdensome for airports serving smaller air carrier operations. It recommended that such airport operators be required only to take immediate measures to alleviate wildlife hazards whenever detected and not be required to conduct an assessment and develop a wildlife hazard management plan.

The working group's majority stated the opinion that many airports serving small air carrier operations do not have complete perimeter fences or other measures to deter wildlife access to the movement area. Its opinion was that such airport operators do not have the financial resources to hire a consultant to study a potential wildlife hazard, and it would be too costly to require these airport operators to establish priorities for habitat modification. However, the ARAC majority did state that it is essential for the airport operator to have a plan to remove a wildlife hazard when detected.

In contrast, the working group's minority recommended that airports

serving small air carrier aircraft comply with all requirements of this section. This minority position, submitted by the Air Line Pilots Association (ALPA), stated that airport personnel "often do not have the expertise to develop effective measures for mitigating wildlife hazards." ALPA noted that wildlife hazards to aviation are a difficult and growing issue that should be taken seriously by all small airport operators and by requiring small airport operators to comply with this section it would "help ensure that professional wildlife management techniques are utilized to control wildlife problems at affected airports."

The FAA partly agrees with the working group's minority position and determined that all airports serving scheduled operations (Class I, II, and III airports) will comply with revised wildlife hazard management requirements. At airports that only serve unscheduled air carrier operations (Class IV airports), the FAA believes that compliance with wildlife mitigation requirements would be unduly burdensome since these airports serve covered air carrier operations on an infrequent basis. Changes to paragraph (d)(3) also allow the FAA to consider frequency and size of air carrier aircraft served in determining the need for Class I, II, and III airport operators to comply with certain wildlife hazard management requirements.

*Comment:* A commenter supports the proposed change to replace the term "ecological study" in paragraph (b) with the term "wildlife hazard assessment."

*FAA Response:* The FAA agrees.

*Comment:* Two commenters recommend modifying the events described in paragraph (b) that trigger the requirement for a wildlife hazard assessment. These commenters suggest that the term "damaging bird strike" be added to paragraph (b)(1). One of these commenters notes that the current language of paragraph (b)(1) does not require a wildlife hazard assessment if an aircraft experiences a single bird strike. This commenter states that a single bird strike should trigger an assessment because a single bird strike can be just as hazardous as some of the minor aircraft strikes involving mammals.

*FAA Response:* The FAA agrees that language in paragraph (b) is unclear regarding aircraft strikes by a single bird or engine ingestion of wildlife other than birds. To clarify, proposed paragraph (b)(1) has been broken into two subparagraphs in the final rule that specify that a wildlife hazard assessment is required if an air carrier aircraft experiences either multiple bird

strikes or an engine ingestion of wildlife.

To clarify what is required of the certificate holder if an air carrier aircraft experiences a strike by a single bird, paragraph (b)(2) also has been modified. In the proposal, this paragraph required the certificate holder to conduct a wildlife hazard assessment if an air carrier aircraft experiences a "damaging collision" with wildlife other than birds. This has been modified to require an assessment if an air carrier aircraft experiences substantial damage from striking any wildlife, and the term "substantial damage" has been defined. Consequently, the need for an assessment is now based on the type of damage sustained from a wildlife strike, rather than the type or numbers of wildlife strikes.

This change also mirrors how wildlife strikes are reported on FAA Form 5200-7, Bird/Other Wildlife Strike Report. This form is used by pilots and air traffic controllers to report wildlife strikes to the FAA. The information from Form 5200-7 is compiled into a national database to assist the FAA and other safety and wildlife organizations in learning more about the wildlife/aircraft strike problem. The database helps provide information about wildlife strike risk factors and possible risk reduction measures and to evaluate the effectiveness of these measures. The FAA and the U.S. Department of Agriculture (USDA) annually analyze this data and publish a report of their findings. This report, the national wildlife strike database, and FAA Form 5200-7 are available at the FAA's Internet site at <http://wildlife-mitigation.tc.faa.gov> or by calling (202) 267-3389.

*Comment:* A commenter recommends that proposed paragraph (f) be revised to require the certificate holder to include in its wildlife hazard management plan procedures for maintaining records of all reported wildlife strikes and all wildlife carcasses found within 200 feet of a runway. The commenter also suggests that the certificate holder use this information to periodically evaluate its wildlife hazard management plan and revise it if needed. The commenter notes that the maintenance of a local wildlife strike database is an essential part of the wildlife hazard management plan of any airport and that NTSB recommends that bird strike reporting be mandatory.

*FAA Response:* The FAA disagrees with the recommendation to require airport operators to document all wildlife strikes. Airport operators already are required to document wildlife hazards and strikes under self-

inspection requirements and to take appropriate action. Further, an airport operator may not know of all wildlife strike reports as such reports are typically made by pilots and air traffic controllers and sent directly to the FAA.

However, the FAA agrees in part that airport operators should use wildlife strike reports to periodically evaluate and revise their wildlife hazard management plan. Airport operators can access wildlife strike reports submitted to the FAA by calling the FAA at (202) 267-3389. Similarly, the FAA inspectors will use both the FAA wildlife strike database and an airport's self-inspection log to determine the need for a wildlife hazard assessment or to assess the effectiveness of an existing wildlife hazard management plan.

*Comment:* Several commenters express concerns over the potential cost for small airport operators to conduct a wildlife hazard assessment. These commenters state that the cost to conduct an assessment at a small airport could mean a significant long-term cost and an increase in personnel. One of these commenters remarks that the expense of a wildlife hazard assessment is not warranted unless there has been a strike or aircraft damage, as outlined in existing § 139.337. Another commenter, a Class III airport operator, states that it has received an estimate from an environmental contractor to conduct an assessment. Assuming no significant wildlife hazard, this contractor estimates the cost of an assessment at \$8,000.

*FAA Response:* The FAA agrees that a wildlife hazard assessment is only required under the conditions specified in paragraph (b).

In addition, the FAA agrees that an assessment could mean a long-term cost for an airport operator. The cost for an assessment will vary depending on the wildlife concerns at each airport. Typically, a survey of the airport and its surroundings should reveal that the cause of the wildlife hazard may be relatively simple to fix, such as exposed rafters in an aircraft hangar or a poorly maintained perimeter fence. There may be airports where an assessment could take longer, particularly if a wildlife census is needed or migratory patterns must be monitored.

Based on the wildlife aircraft strike data received from FAA Form 5200-7, the FAA has determined that 40 percent of those airports required to comply with this section for the first time (Class II and Class III airports) will be required to conduct a wildlife hazard assessment. Biologists at the FAA and the USDA Wildlife Services estimate that half of these airports could readily complete a

wildlife assessment within a few days for a nominal cost.

The services of the FAA, the USDA, and local sources are readily available, often free of charge, to airport operators initially seeking to mitigate wildlife issues. Wildlife biologists at both the FAA and the USDA offer free telephone consultations, guidance material and literature, on-site preliminary evaluations and suggested remedies. These experts work jointly to track airport wildlife problems and resolutions and serve as a clearing-house for such information. Further, they can direct airport operators to local help, including game wardens, animal control personnel, extension agencies, and college/university resources, as well as provide information on airport operators that have pooled their resources and share a wildlife biologist.

Most of the remaining airport operators required to conduct an assessment may need a few additional days to complete their wildlife assessments. These airports have more complex wildlife issues, and the FAA and the USDA estimate that in all but a few cases, assessments at these airports could be completed in 5 to 7 days. In such instances, the FAA and the USDA would probably require the airport operator to reimburse the cost of a biologist's wages, plus travel and expenses. If a consulting firm is used, the FAA estimates that the average cost for a consultant to conduct an assessment at such airports is approximately \$3,500 (based on the average cost of \$105 per staff hour).

In a few instances, an assessment would take longer than a week due to the magnitude or complexity of the wildlife problem. For example, a study of migratory birds may require a yearlong study. The average cost for a 1-year study involving monthly surveys is \$50,000 and a 1-year study requiring quarterly surveys costs approximately \$25,000. These fees usually include the cost to conduct a wildlife census, evaluate habitat, develop a wildlife hazard management plan, and train staff in wildlife control techniques.

While a wildlife hazard management plan may be eligible for AIP funding if it results in capital improvements to the airport, some airport operators may not be able to comply with this section if a complex assessment is required. In such cases, airport operators may petition for an exemption under § 139.111.

*Comment:* A commenter requests that Class III airports be allowed additional time to comply with this section. Specifically, the commenter requests that these airports be allowed 12 months to prepare a wildlife hazard assessment

and an additional 6 months to prepare a wildlife hazard management plan.

*FAA Response:* The FAA disagrees. No compliance dates were proposed in this section because not all certificated airports have experienced the triggering events that require an assessment, and for those required to conduct an assessment, there are many variables involved.

At airports where a triggering event has occurred, the time to conduct an assessment will vary for each airport operator. The length of time needed to complete a wildlife hazard assessment will depend on the complexity of the wildlife hazard and the circumstances that triggered the assessment. An assessment also may reveal that a wildlife hazard management plan is not needed. Similarly, the time to complete a wildlife hazard management plan will be different for each airport operator.

If the FAA determines there is a need for a wildlife hazard assessment or management plan, it will consult with the airport operator to determine a reasonable completion date.

*Comment:* A commenter notes that there are several typographical errors in paragraphs (c), (d), and (f).

*FAA Response:* The FAA agrees. These errors have been corrected.

*Comment:* A commenter questions whether the phrase "near the airport" in paragraph (b) should be more narrowly defined.

*FAA Response:* The term "near the airport" is not defined in paragraph (b). The conditions attracting wildlife to an airport are so varied that it is difficult to assign a specified distance from the airport within which the presence of a wildlife hazard would require an airport operator to conduct an assessment. The only defined distances are those specified by statute for the siting of landfills near certain public airports. In addition, other recommended distances for wildlife attractants are contained in AC 150/5200-33, Hazardous Wildlife Attractants On or Near Airports.

As is currently the case, the FAA will work with each airport operator to determine if a wildlife hazard is close enough to aircraft traffic patterns and the airport to trigger a wildlife hazard assessment.

*Comment:* Four commenters express concerns over the proposed requirement to use a qualified wildlife damage management biologist. Some of these commenters state that the required use of such a biologist would be cost prohibitive because it would require many airport operators to hire additional personnel or overburden USDA with requests for a qualified biologist. Another commenter suggests

that this section be modified to allow an airport operator to conduct an assessment according to a methodology prepared by a wildlife damage management biologist. The commenter argues that this approach would permit airport operators in the same geographic area to reduce costs by jointly contracting for the services of a qualified biologist.

*FAA Response:* The FAA agrees in part. The language of paragraph (c) has been modified so that the qualifications for a wildlife damage management biologist are not as restrictive. While the wildlife hazard assessment still must be conducted by a wildlife damage management biologist, the requirement for this individual to have a Bachelor of Science degree has been deleted. The required biologist need only have professional training or experience in wildlife hazards at airports. This change will give airport operators greater flexibility in selecting a qualified biologist.

The FAA disagrees with the recommendation that an airport operator be allowed to conduct its assessment under the guidance of a qualified biologist. As discussed in the proposal (65 FR 38659), the FAA has determined that the potential for loss of life and equipment resulting from wildlife aircraft strikes requires persons who conduct wildlife hazard assessments to have the education, training, and experience in conducting such assessments. However, this section does not prohibit airport operators from pooling resources and jointly contracting for the services of a qualified biologist. In addition, airport personnel can be used to assist the qualified biologist in conducting the assessment.

Regarding commenters' concerns that USDA will not be able to comply with additional requests for a qualified biologist to conduct assessments, the FAA disagrees that the USDA will be overburdened to a point that it will not be able to provide such services. The FAA works closely with USDA to ensure biologists are available for part 139 wildlife hazard assessments and has coordinated this rulemaking with them. The FAA does not anticipate that its biologist, or USDA's biologists, will be overburdened due to the additional airport operators needing to conduct an assessment because of changes to part 139.

*Comment:* A commenter disagrees with proposed new paragraph (c)(5) that would require an airport operator to include in its wildlife hazard assessment recommendations made by a qualified biologist for reducing wildlife

hazard. This commenter believes a biologist would be unfamiliar with airport operations and may make recommendations that would "not be feasible and therefore not necessary to include in the assessment."

*FAA Response:* The FAA disagrees. The specialized training and experience that is required of a qualified biologist under part 139 should result in wildlife hazard management recommendations that consider airport operations. Further, the FAA's review and approval of the assessment will determine the feasibility of such recommendations and ensure that they are appropriate for the type of air carrier operations served.

*Comment:* One commenter recommends that paragraph (f)(7) be changed to allow airport personnel to be trained by an individual other than the biologist required under paragraph (c). This commenter suggests that initial training of airport personnel be conducted by the required biologist using a "train-the-trainer" approach. The commenter believes this will allow airport personnel to conduct any subsequent training.

*FAA Response:* The FAA agrees. Paragraph (f)(7) does not prohibit the "train-the-trainer" approach so long as the required biologist conducts the initial training.

*Comment:* A commenter recommends that paragraph (c) be revised to include provisions to assist airport operators in contacting and working with USDA. This commenter noted that USDA's expertise and resources in assessing, monitoring, and mitigating wildlife hazards at airports is extensive and "constitutes the foundation upon which the FAA bases its expertise in the subject area." This commenter also suggests that the FAA "recognize the expertise and consider the resources of state wildlife agencies in meeting" the requirements of this section. The commenter believes this change would provide airport operators a cost-cutting alternative to hiring the services of a qualified wildlife damage management biologist.

*FAA Response:* The FAA disagrees that paragraph (c) should include information on using Federal or State wildlife services. The availability of State and local agencies varies from State to State, and information on these agencies would require frequent updates to keep it current. Therefore, it would be impractical to place this information in the regulation. As noted above, airport operators can contact the FAA for this information.

*Comment:* A commenter notes that there is no definition included in this section that accurately describes what

"qualified" means when used in connection with the term "wildlife damage management biologist."

*FAA Response:* A qualified wildlife damage management biologist is a biologist that has qualifications specified under § 139.337(c), as adopted.

*Comment:* A commenter questions the deletion of the term "observed" from paragraph (b)(3). The commenter states that the change from "is observed to have access to any airport flight pattern or aircraft movement area" to "has access to any airport flight pattern or aircraft movement area" would require all airport operators to conduct a wildlife hazard assessment, rather than just those airport operators that observe wildlife of a size or in numbers capable of causing an aircraft strike or engine ingestion.

*FAA Response:* The FAA agrees the term "observed" should be replaced in paragraph (b)(3). The original text of paragraph (b)(3) has been restored.

*Comment:* A commenter states that paragraph (b)(3) "appears to be a catchall justification subject to the interpretation of an inspector not qualified in wildlife assessment." This commenter recommends a "low-cost, initial overview validation" conducted by a qualified individual to determine if a hazard exists and the need for an assessment.

*FAA Response:* As discussed above, the restoration of the original text of paragraph (b)(3) narrows its scope. However, the FAA does not agree with the recommended alternative to a wildlife hazard assessment. As previously noted, many wildlife hazard assessments are the low-cost initial overview recommended by the commenter. Further, FAA airport certification safety inspectors are qualified to determine if an assessment is needed. The FAA trains these inspectors to determine if a potential wildlife hazard exists. The FAA's wildlife biologist also consults regularly with these inspectors, as well as with airport operators.

*Comment:* A commenter recommends that paragraph (h) include the following sentence: "Certificate holders are encouraged to discuss potential use of new or innovative wildlife hazard management methods with the Administrator, and to share results of experimental methods, in the interest of increasing public safety and wildlife hazard management efficiency."

*FAA Response:* The FAA disagrees. Such discussion of new or innovative wildlife hazard management methods already occurs when the FAA reviews wildlife hazard assessments or wildlife

hazard management plans. Additionally, the FAA's staff wildlife biologist participates with other professional wildlife managers in developing and revising wildlife hazard management standards and finding resolutions to aviation wildlife problems. This ongoing effort is discussed on the FAA Internet site at <http://wildlife-mitigation.tc.faa.gov>.

*Comment:* Two commenters express concerns over proposed paragraph (f)(6), which would require an airport operator to annually review its wildlife hazard management plan. One commenter states that the annual review is excessive, especially since it could take more than a year to develop. The other commenter requests clarification on whether an airport operator is allowed to conduct its own annual review rather than the qualified biologist.

*FAA Response:* Paragraph (f)(6) requires that the wildlife hazard management plan include procedures for an annual review of the plan. These procedures will not become effective until the plan is completed and approved by the FAA. Accordingly, an annual review will not be necessary until 1 year after the FAA has approved the plan.

The annual review of the wildlife hazard management plan must be conducted in the manner specified in the plan and as approved by the FAA. Approved procedures to conduct this review will depend on the complexity of the wildlife hazard and mitigation measures. In most instances, the FAA would permit the airport operator to conduct its own review. However, a qualified biologist may be required to review and evaluate certain aspects of the wildlife hazard assessment.

*Section as Adopted:* This section is adopted with changes. For the reasons discussed above, the events triggering a wildlife hazard assessment in § 139.337(b) have been revised. Editorial changes have been made to paragraph (c), and some of the requirements for a wildlife damage management biologist have been deleted. Similarly, editorial changes have been made to paragraphs (d), (e), and (f).

In addition, paragraph (g) has been deleted and the stipulation that the FAA will consider the frequency and size of air carrier aircraft in determining the need for a wildlife hazard plan has been added to paragraph (d)(3) and now applies to all airport classes. Subsequently, paragraph (h) has been redesignated as paragraph (g). Finally, the section number has been changed to new § 139.337 from proposed § 139.339.

#### *New Section 139.339 Airport Condition Reporting (Proposed § 139.341)*

*Proposal:* This section contained existing requirements for reporting changed airfield conditions to air carriers. Except for a change to the section number, the requirements of this section remained substantially the same. Certificate holders were still required to collect and disseminate information on the conditions of the airport, including any construction or maintenance activities, weather or animal hazards, and nonfunctional equipment and services. All certificated airports were required to comply with this section.

While reporting requirements remained the same, a minor change was made to clarify that a certificate holder can use notification systems other than the FAA's pilot notification system, the Notices to Airmen (NOTAM) System. Also, the term "safety area" was added to paragraph (c)(2) to ensure that airport users are notified of irregularities in the safety area, in addition to those in the movement area, loading ramps, and parking areas.

References to other section numbers and the term "Airport Certification Specifications" were changed to reflect proposed certification changes. Minor clarifications were proposed to clarify that the requirements of this section must be met in a manner satisfactory to the FAA and that the ACs contain some methods of compliance that are acceptable to the Administrator. In addition, the section number was changed to proposed § 139.341 from § 139.339.

*Comment:* A commenter, a Class I airport operator, states that it supports the changes to this section.

*FAA Response:* The FAA agrees.

*Comment:* A commenter states that the wording of proposed § 139.341(c)(6) could be interpreted to mean that the certificate holder must issue a NOTAM for each individual runway and taxiway sign that is found inoperative. The commenter notes that this is unrealistic and would place a burden on the NOTAM System and air traffic control personnel.

*FAA Response:* The FAA agrees that the language of paragraph (c)(6) is unclear. It could be interpreted to mean the certificate holder must report either the malfunction of any sign required under § 139.311 or the malfunction of the entire sign system.

The reporting of the malfunction of any required sign would quickly overwhelm the notification system. The vast majority of signs required under § 139.311 are location and direction

signs. These signs are periodically inoperative, mainly due to burned out lights. Because of their large number, particularly at Class I airports, a certificate holder frequently finds these signs inoperative during daily self-inspections and is required under § 139.311 to repair them promptly.

However, reporting a malfunctioning mandatory instruction sign to air carriers is another matter. These signs, holding position signs and ILS critical area signs, convey critical safety information, including where an aircraft should stop before entering an active runway and areas where an aircraft could block the transmission of navigational information to other aircraft. Accordingly, paragraph (c)(6) has been revised to require certificate holders to report to air carrier tenants the malfunction of holding position signs or ILS critical area signs. This change will ensure that air carriers are informed of either an individual or a systemic failure of these signs.

*Section as Adopted:* This section is adopted with changes. For the reasons discussed above, proposed § 139.341(c)(6) (new § 139.339(c)(6)) has been revised to limit the type of signs that a certificate holder must report if found malfunctioning. The word "sign" has been replaced by the terms "holding position signs" and "ILS critical area signs." The section number also has been changed to new § 139.339 from proposed § 139.341, and the reference to proposed § 139.321, ARFF: Exemptions, in paragraph (c)(8) has been deleted.

In addition, a new paragraph (d) has been added requiring certificate holders to maintain a record, for at least 12 consecutive months, of each airport condition report. While this requirement was not discussed in the proposal, other similar recordkeeping requirements were, and new paragraph (d) mirrors these requirements.

The FAA has determined that records of airport condition reports should be retained in the same manner as the records of self-inspections, as required under § 139.327. Although not proposed, this change is the logical outgrowth of similar recordkeeping requirements. Airport condition reports are typically the result of conditions found during a self-inspection, and this change will ensure the recordkeeping requirements in the two sections are consistent.

In accordance with AC 150/5200-28, Notices to Airmen (NOTAMS) for Airport Operators, most certificate holders already keep airport condition report records and have incorporated them into the follow-up process used to address discrepancies found during self-

inspections. Accordingly, the FAA already included the cost and hours to comply with this recordkeeping requirement in its estimate of initial and annual recordkeeping burden required under the Paperwork Reduction Act.

*New Section 139.341 Identifying, Marking, and Lighting Construction and Other Unserviceable Areas (Proposed § 139.343)*

*Proposal:* This section prescribed existing standards for the marking and lighting of construction and other unserviceable areas of the airfield. Except for a change to the section number, the requirements of this section remained the same. Certificate holders were still required to light and mark any construction or unserviceable areas and associated equipment that may create a hazard. All certificated airports serving scheduled air carrier operations (proposed Class I, II, and III airports) were required to comply with this section.

References to other section numbers and the term "Airport Certification Specifications" were changed to reflect proposed certification changes. Minor clarifications were proposed to clarify that the requirements of this section must be met in a manner satisfactory to the FAA and that ACs contain some methods of compliance that are acceptable to the Administrator. In addition, the section number was changed from § 139.341 to proposed § 139.343.

*Comment:* No comments were received on this section.

*Section as Adopted:* This section is adopted with two minor changes. The word "reporting" in the section title has been changed to "lighting" to more accurately reflect the requirements of this section. In addition, the section number was changed to new § 139.341 from proposed § 139.343.

*New Section 139.343 Noncomplying Conditions (Proposed § 139.345)*

*Proposal:* This section contained existing requirements for certificate holders to restrict air carrier operations in those areas of the airport that have become unsafe and no longer comply with the requirements of subpart D of part 139. Operators of all proposed airport classes were required to comply with this section. Except for a change to the section number, the requirements of this section remained the same. The section number was redesignated from § 139.343 to proposed § 139.345.

*Comment:* No comments were received on this section.

*Section as Adopted:* The section number has been changed to new

§ 139.343 from proposed § 139.345. Otherwise, the section is adopted as proposed.

#### Final Rule Compliance

This final rule becomes effective 120 days after its publication in the **Federal Register**.

#### Section 121.590 Compliance

In the conduct of operations at part 139 certificated airports, air carriers, and the pilots used by them, may continue to operate into part 139 airports until these airports have obtained new or revised AOCs, as required under new § 139.101, General requirements. However, at specified dates after the effective date of the rule, air carriers and their pilots can only use those airports that have been certificated under new part 139.

As specified in new § 121.590(a), air carriers and their pilots will be prohibited from operating at Class I airports 12 months after the effective date of the rule and at Class II, III, and IV airports 18 months after the effective date of the rule if the operators of these airports have not obtained a new or revised part 139 AOC. To assist air carriers in determining which airports have obtained a new or revised AOC, the FAA's Airport Safety and Operations Division (AAS-300) will provide information on the certification status of part 139 airports on its Web site at <http://www.faa.gov/arp/>.

#### Part 139 Compliance

Any airport operator that desires to serve applicable air carrier operations must comply with the requirements of this final rule. The action required by an airport operator to comply will vary depending on the type of air carrier operations served and whether the airport operator currently holds a part 139 AOC, as well as the individual airport's ACM.

Operators of currently certificated airports are not required to reapply for an AOC. The FAA will issue new part 139 AOCs to all current certificate holders, as appropriate. For most current certificate holders, this will involve updating their existing ACM to incorporate several new elements. The remaining certificate holders may be required to comply with certain requirements for the first time or to extend existing part 139 services to cover additional air carrier operations.

The final rule requires all covered airport operators to submit an ACM tailored to each airport for the FAA's approval. The ACM is a written document that details how the airport operator will comply with the

requirements of part 139. Airport operators that currently hold an AOC already have an ACM. Airport operators that currently hold a limited AOC have a modified version of an ACM, known as an airport certification specification (ACS). Under the final rule, all ACSs must be converted to ACMs.

Depending on existing operational procedures and emergency services, every ACM/ACS will be in varying stages of compliance with the final rule. Some airport operators may need only to document existing operational procedures to comply with the new requirements. This is the case for many Class I airport operators. Newly certificated airport operators (Class III) may also have to develop and document new operational and emergency procedures to comply with the new requirements. Class II and IV airport operators may be required to do both.

Once an airport operator submits its revised or new ACM, the FAA will work with the airport operator to tailor the document to ensure compliance with the final rule and may conduct an inspection of the airport to verify that the ACM reflects actual airport conditions. The FAA also may request changes to the ACM and any procedures it describes.

Airport operators may continue to serve air carrier operations as they currently do until the deadline for submitting new or revised ACM's to the FAA. After this date, airport operators that have not submitted their ACM for approval will no longer be able to serve applicable air carrier operations. Airport operators that have submitted either a new ACM or an update will be contacted by the FAA to determine if additional action is needed and to what extent they can continue to serve air carrier operations until a new certificate is issued.

#### Currently Certificated Airports

All airport operators that hold an existing AOC will be reclassified as Class I airports (airports serving scheduled operations of large air carrier aircraft). These airport operators have 6 months from the effective date of this final rule to submit revisions to their ACM's for FAA approval.

All airport operators that hold an existing Limited Airport Operating Certificate will be reclassified either as Class II airports (airports serving scheduled operations of small air carrier aircraft and unscheduled operations of large air carrier aircraft) or Class IV airports (airports serving unscheduled operations of large air carrier aircraft). The operators of these airports will have to convert their existing ACS into an

ACM. They will have 12 months from the effective date of this final rule to submit the revised document to the FAA for approval. In addition, operators of Class II and IV airports have additional time to comply with new sign, ARFF, and emergency planning requirements and may request additional compliance time.

#### *Uncertificated Airports*

Airports serving scheduled operations of small air carrier aircraft will be newly certificated as the result of this final rule. Operators of these airports, designated as Class III airports, that want to continue to serve such air carrier operations are now required to have an AOC and must initiate the application process as prescribed in § 139.103. This process is explained in more depth in the proposal (65 FR 38637). Operators of Class III airports have 12 months from the effective date of this final rule to submit their new ACM to the FAA for approval. Similar to Class II and IV airport operators, Class III airport operators have additional time to comply with new sign, ARFF, and emergency planning requirements and may request additional compliance time.

#### *Airports Located in the State of Alaska*

The statutory authority covering the certification of airports that serve scheduled operations of small air carrier aircraft is not applicable to Alaskan airports. As noted in the proposal (65 FR 38639), airports in the State of Alaska that serve large air carrier operations will continue to be certificated under part 139 as Class I or IV airports. Accordingly, the compliance dates in the final rule for these airport classifications will apply. Otherwise, there are no part 139 applications for those airports in the State of Alaska that only serve scheduled operations of small air carrier aircraft.

#### *Airports Operated by the U.S. Government*

Airports operated by the U.S. Government will no longer be certificated under part 139. However, they may still continue to serve air carriers operations, as set out in § 121.590. As stated in the proposal (65 FR 38641), the FAA does not have the statutory authority to regulate airports operated by U.S. Government agencies, and corresponding changes to § 121.590 will now permit air carriers to use U.S. Government operated airports that are not certificated under part 139.

#### **Paperwork Reduction Act**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120-0675.

This final rule revises current airport certification requirements in 14 CFR part 139 and establishes certification requirements for airports serving scheduled air carrier operations in aircraft with more than 9 passenger seats but less than 31 passenger seats. The final rule also clarifies existing requirements, incorporates existing industry practices, and responds to an outstanding petition for rulemaking and certain NTSB recommendations.

Similar to how the FAA currently certifies airports, this final rule requires airport operators that choose to be certificated under part 139 to document and implement procedures for complying with part 139 safety and operational requirements. To accommodate variations in airport layout, operations, air carrier service, and other local considerations, compliance procedures will be tailored to each airport operator when complying with more burdensome requirements.

Several sections of the proposal had recordkeeping and reporting requirements. Comments received on these requirements are addressed previously in the appropriate section-by-section analysis. Several modifications were made to recordkeeping and reporting requirements in the final rule as the result of comments received. As a result, the annual and recurring recordkeeping and reporting burdens have been adjusted accordingly.

The NPRM estimate of respondents has changed slightly from 606 airport operators to 603 airport operators. The likely respondents to recordkeeping and reporting requirements contained in the final rule are those civilian U.S. airport certificate holders who operate airports that serve scheduled and unscheduled operations of air carrier aircraft with more than 30 passenger seats (approximately 566 airports). These airport operators already hold a part 139 AOC and comply with most of the information collection requirements required in the final rule. Certain airport operators not currently certificated by the FAA also will be required to apply for a certificate under this rule if they want to continue to serve certain air carriers. These airports, approximately

37 airports, serve scheduled operations of air carrier aircraft designed for more than 9 passenger seats but less than 30 passenger seats.

While many part 139 reporting and recordkeeping requirements remain substantially unchanged, additional information collections have been adopted in this final rule. Both existing and new requirements are necessary to allow the FAA to verify compliance with proposed part 139 safety and operational requirements.

This final rule constitutes a recordkeeping and reporting burden for operators of airports certificated under part 139 because the FAA will continue to require operators of certificated airports to comply with certain safety requirements prior to serving certain air carrier aircraft. When an airport satisfactorily complies with these requirements, the FAA issues to that facility an AOC that permits an airport to serve large air carriers. The FAA periodically inspects these airports to ensure continued compliance safety requirements, including the maintenance of specified records. Both the application for an AOC and compliance inspections (typically conducted on an annual basis) require regulated airport operators to collect and report certain operational information.

In addition, this final rule requires operators of certificated airports to develop and comply with a FAA-approved ACM, in manner similar to what was previously required. The ACM details how an airport complies with the requirements of part 139 and includes other instructions and procedures to assist airport personnel in performing their duties and responsibilities.

Under this rule, the FAA continues to require that the AOC remain in effect as long as the need exists and the operator complies with the terms of the AOC and the ACM. Certain changes in the operation of the airport must be reported to the FAA for information or approval. If the airport operator believes that an exemption is needed to commence airport operations, justification for and the FAA's approval of the exemption is required for issuance of the AOC. The operator may request the FAA's approval of changes to the AOC or ACM, or an exemption from part 139 requirements, by submitting justification and documentation. Also, the FAA Administrator may propose changes to the AOC or ACM, and the airport operator may submit contrary evidence of argument concerning the proposed changes.



The frequency of collection would vary depending on the type of information collected, the size of the respondent's airport, and the type of air carrier operations served.

The FAA refined its NPRM estimate of initial and annual hourly burden to respondents, as detailed in the following table. Burden hours are listed separately for airports that currently

hold a part 139 AOC and for those airports that will be newly certificated:

New part 139 sections	Initial reporting hours		Initial recordkeeping hours		Annual reporting hours		Annual recordkeeping hours	
	Currently certificated	Newly certificated	Currently certificated	Newly certificated	Currently Certificated	Newly certificated	Currently certificated	Newly certificated
139.103 .....	0	296	0	0	0	16	0	0
139.111 .....	0	0	0	0	0	32	0	0
139.113 .....	0	0	0	0	0	5	0	0
139.201 .....	0	0	0	0	0	592	0	592
139.203 .....	0	1,480	0	0	0	0	0	0
139.205 .....	22,640	0	0	0	0	1,184	0	0
139.303 .....	0	0	9,056	592	0	0	13,569	340
139.313 .....	1,560	648	0	0	0	0	520	216
139.317 .....	0	0	0	0	0	0	0	2,035
139.319 .....	0	0	0	888	0	0	0	555
139.321 .....	0	0	260	296	0	0	2,264	148
139.325 .....	0	0	5,200	1,480	0	0	3,120	888
139.327 .....	0	0	2,080	592	0	0	13,520	3,848
139.329 .....	0	0	8,960	2,960	0	0	560	185
139.337 .....	0	0	0	0	16	16	3,424	1,173
139.339 .....	0	0	520	148	0	0	3,250	925
Subtotal .....	24,200	2,424	26,076	6,956	16	1,845	40,227	10,905
Totals .....	26,624		33,032		1,861		51,132	
	59,656				52,993			

The estimate of the total initial reporting and recordkeeping hourly burden for the final rule is 59,656 (an increase of 15,296 hours from the NPRM estimate). The annual hourly burden is 52,993 (an increase of 223 hours from the NPRM estimate). Burden hours are estimated as the number of reports and records made by each respondent. This figure varies yearly, as does the average time per response. These variations are largely due to disparities in airport size and aircraft operations served. The labor burden is estimated on an annual basis.

Operations/maintenance labor accounts for an estimated 70 percent of the hours, and clerical labor makes up the other 30 percent. Cost per hour is estimated at \$26 for operations/maintenance labor and \$14 for clerical labor. Other expenses, such as general and administrative costs, overhead costs, and other indirect costs are estimated at approximately 15 percent of the direct labor costs. The estimate of the total initial reporting and recordkeeping cost burden for the final rule is \$1,536,738 (an increase of \$394,025 from the NPRM estimate). The annual cost burden is \$1,356,098 (an increase of \$5,743 from the NPRM estimate).

An agency may not conduct or sponsor and a person is not required to respond to a collection of information

unless it displays a currently valid OMB control number.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

The Joint Aviation Authorities, an associated body of the European Civil Aviation Conference, develop Joint Aviation Requirements (JAR) in aircraft design, manufacture, maintenance, and operations for adoption by participating member civil aviation authorities. The JAR does not address airport certification.

**Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, Federalism, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act

of 1980, as amended, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that the economic impact of this rule will generate benefits that justify its costs, does meet the standards for a “significant regulatory action” as defined in the Executive Order, and is significant as defined by the Department of Transportation’s Regulatory Policies and Procedures. The rule, therefore, is subject to review by OMB. The FAA has determined that this rule will not constitute a barrier to



international trade and does not contain a significant intergovernmental or private sector mandate. The agency has concluded that the rule will have a significant impact on a substantial number of small entities and has prepared a final regulatory flexibility analysis. These analyses, available in the docket, are summarized below.

In 1995, the FAA issued regulations aimed at ensuring safety in scheduled air carrier operations in aircraft with 10 or more passenger seats. Since then, Congress has authorized the FAA to certificate airports serving scheduled air carrier operations, conducted in small aircraft. In 2000, the FAA issued an NPRM to revise the airport certification process and to establish certification requirements for these airports.

Under this revised certification process, certificated airports will be reclassified into four new classes, Class I–IV, based on the type of air carrier operations served. Class I, II, and IV airports will be those airports that currently hold AOCs, and Class III airports will be those airports being newly certificated. As specified in the authorizing statute, airport certification requirements will not be applicable to airports located in the State of Alaska that only serve scheduled operation of small air carrier aircraft.

Similar to how the FAA currently certifies airports, the rule requires airport operators choosing to be certificated under part 139 to document and implement procedures for complying with part 139 safety and operational requirements. To accommodate variations in airport layout, operations, air carrier service, and other local considerations, the rule requires that compliance procedures be tailored to each airport operator when complying with the more burdensome requirements.

### Benefits

The expected benefits of this rule include reducing fatalities, injuries, and property damage at airports with certain scheduled and unscheduled air carrier operations. This is expected to be particularly true at airports serving scheduled air carrier operations conducted in common carrier aircraft designed for more than 9 passenger seats but less than 31 passenger seats (smaller aircraft).

This rule affects all currently certificated airports and an estimated 37 additional airports that are currently uncertificated. Accordingly, benefits are expected to accrue at all four classes of certificated airports created under this rule. Several different types of safety

improvements are expected. These involve the:

(1) Prevention of accidents or collisions because of nonstandard or inadequate signs, markings, and lighting and traffic and wind direction indicators;

(2) Mitigation of accident damages by improving runway safety areas at certain airports;

(3) Mitigation of accidents as a result of expanding ARFF coverage to additional air carrier operations;

(4) Prevention and mitigation of fires at airport fuel farms;

(5) Prevention and mitigation of accidents caused by snow and ice accumulation; and

(6) Prevention and mitigation of wildlife problems as a result of improved procedures for wildlife hazard management.

A brief discussion of benefits is included below. A more extensive discussion is contained in the full regulatory evaluation in the docket.

### Runway Safety Areas

This rule will require that Class III airports meet safety area requirements for the first time. These airports have been encouraged to install safety areas for over 10 years, and many have done so through Federal airport funding programs. Although the rule will not require immediate installation of these safety facilities at any class of airports, over time the eventual installation of safety areas at certificated airports will result in more safety in air transportation.

The following is a good example of the potential benefits from runway safety areas. On May 8, 1999, a SAAB 340 aircraft overran a runway at New York's John F. Kennedy International Airport. The airport had recently installed arresting material in compliance with part 139 safety area requirements that resulted in the airplane stopping 50 feet short of Thurston Bay. The incident resulted in very little damage to the aircraft and one minor passenger injury. In sharp contrast, an accident occurred on the same runway in 1984, before the arresting material was installed, resulted in an SAS DC-10 aircraft running into the bay. This accident resulted in multiple passenger injuries and extensive airplane damage.

### Emergency Response Services and Equipment

An important safety benefit of this final rule is more widespread availability of emergency response services and equipment. These services are used to respond to airport

emergencies, including aircraft accidents, medical emergencies in the terminal building and aircraft fueling fires or spills.

Part 139 accident mitigation requirements provide a comprehensive response to aircraft accidents, and other emergencies. For example, required alarm and communication systems ensure that both ARFF and airport personnel are notified promptly of an accident, and alert other necessary emergency service providers in the local community (*i.e.*, paramedic, police, ambulance service and hospitals). Similarly, accident mitigation measures ensure other needed emergency services are provided, including security and crowd control, removal of disabled aircraft and other debris from movement areas, transportation and facilities for uninjured and injured persons, and storage of deceased persons. All of these measures contribute to a comprehensive emergency response that mitigates the loss of passenger lives and property, prevents injury to responding personnel, and protects air carrier aircraft and the public from unsafe conditions.

There is ample evidence that part 139 accident mitigation requirements can save lives and reduce injuries. Perhaps the clearest example of that was an accident that occurred at Los Angeles International Airport on February 1, 1991. This tragedy involved the collision of a U.S. AIR 737–300 and a Skywest Metro on Runway 24L. The crew and 10 passengers on the Metro were killed, as were some of the crew and 20 passengers on the 737–300. However, the NTSB credited the part 139-required emergency response for saving lives.

A major safety provision of the final rule is that it will extend the required availability of emergency response services and equipment at every landing and takeoff of scheduled air carrier aircraft with 10 to 30 seats. This capability is required now for air carrier operators with more than 30 seats, and, as discussed earlier, there is evidence that lives have been saved and injuries prevented or reduced as a result. In some cases, this protection may not currently be available for small aircraft operations at airports served by large air carrier aircraft. For example, an accident that occurred at Quincy, Illinois (a Class I airport) on November 19, 1996 might have been mitigated had ARFF been on site during the departure of a small air carrier aircraft.

This accident involved the collision of a United Express Beech 1900C (a small aircraft) and a Beech King Air (a general aviation aircraft) during the

ground operations of the two aircraft. These aircraft collided at the intersection of two runways. At the time of the accident, there were no large air carrier aircraft operations in progress or imminent, and, consequently, the airport operator was not required to provide emergency response services, and these services were not on the site. When required, emergency response services, including ARFF, were provided by the fire department, whose personnel would come to the airport from an offsite location to staff emergency equipment during the operations of large air carrier aircraft. All 10 passengers and 2 crew members aboard the United Express Beech 1900C and the two occupants aboard the King Air were killed as a result of post crash fires.

The NTSB found that the speed with which the fire enveloped the King Air, and the intensity of the fire, precluded the survivability of the occupants. However, the occupants of the Beech 1900C did have the opportunity to escape, but could not open external doors. The NTSB concluded, "if on-airport ARFF protection had been required for this operation at Quincy Airport, lives might have been saved." (NTSB Aircraft Accident Report—Runway Collision United Express Flight 5925 and Beechcraft King Air A90—Quincy Municipal Airport, Illinois—November 19, 1996—NTSB AAR-97/04, P.51.)

Based on this accident history, a risk assessment provides a reasonable quantified estimate of the potential value of part 139 emergency response requirements. The final rule will extend these emergency services to passengers traveling in air carrier aircraft with 10 to 30 passenger seats. For an accident in a 30 passenger seat aircraft occupied at 60 percent of capacity (the industry average), the expected benefits equal \$63 million based on 21 potentially prevented fatalities (18 passengers and three crew members) multiplied by \$3 million per prevented fatality. While \$63 million is the expected benefit over a ten year horizon, using the Poisson distribution with a mean of one accident over a ten-year period, there is a 26 percent chance of two or more such accidents with a value in excess of \$100 million.

#### *Fuel Storage Fires*

Another expected benefit of this rule is prevention/mitigation of fuel storage fires. The rule requires all classes of airports to address fuel storage fires in their disaster plans. This will better prepare airports to prevent and/or extinguish the kind of fire that occurred

at the Stapleton International Airport in Denver, CO, on November 25, 1990. That fire erupted on a fuel farm about 1.8 miles from the main terminal and burned for 48 hours, destroying about 3 million gallons of fuel. Flight operations of a major air carrier were disrupted due to the lack of fuel, and the air carrier estimated total damage to have reached between \$15 and \$20 million.

The NTSB concluded that the City and County of Denver (the airport certificate holder) and the fire department, in particular, apparently had not considered the possibility of a fire of this type since no procedures or contingency plans were in place. The FAA has determined that contingency plans that cover the possibility of a major fuel farm fire could result in similar fires being extinguished much sooner, perhaps resulting in considerably less damage.

#### *Snow and Ice Control*

Another safety benefit is expected from improved snow and ice control, which will reduce the potential for snow- and ice-related accidents. On March 17, 1993, a BAC-BA-Jetstream 3101 aircraft was making a night instrument approach to Raleigh County Memorial Airport in Beckley, WV. Because the runway was not properly plowed, and berms of snow concealed the runway lights at ground level, the captain lost control after touchdown, and the airplane sustained substantial damage.

This rule will require Class II and III airports to develop tailored snow and ice control plans. Class I airports are already required to have such plans, and Class IV airports are not required to have such plans. Although many of these classes of airports already have procedures for snow and ice removal, this rule will formalize consistent plans across all airports with scheduled air carrier services. The FAA concludes that this low-cost requirement to standardize responses to snow and ice conditions at certificated airports will significantly help prevent the kind of accident discussed above.

#### *Wildlife Hazard Management*

The expected benefit of this section of this final rule is the reduction of wildlife hazards to air carrier operations. Airports not currently certificated by the FAA are not required to meet part 139 wildlife hazard management requirements. At some of these airports, wildlife hazards already exist that under the final rule will require the airport operator to conduct a wildlife assessment and possibly the implementation of a wildlife hazard

management plan. The expansion of wildlife hazard management requirements to these airports is intended to ensure that all airport certificate holders serving scheduled air carriers address wildlife hazards in a consistent and effective manner. Accordingly, the FAA expects to reduce the number of wildlife strikes that will otherwise occur.

At Class III airports between 1991 and 1997, there were 10 reported wildlife strikes involving 19-passenger seat Beech-1900 aircraft (22 potential total occupants). The FAA values each prevented fatality to be \$3 million. FAA cost estimates for injuries range from \$38,500 for a minor injury to \$521,800 for a serious injury. It is likely that without mitigation the past 10 or more wildlife strikes to aircraft will reoccur at Class III airports, affecting 10 to 130 aircraft occupants. It is not unreasonable to expect that 10 percent of these occupants will incur minor to serious injury and that several may die as result of a wildlife strike. The FAA estimates that the minimum potential averted cost is several hundred thousand dollars; yet just one fatal accident raises the preventable cost to \$3 million.

With the structured approach of the final rule to resolving wildlife strikes to aircraft, it is very reasonable to expect that each airport solution will be one where the benefits exceed the costs, and in some cases, the net benefit may be substantial. Airport improvements to reduce wildlife hazards will ultimately provide a safer environment for all civil aircraft operations. Given the growing population of certain wildlife, the increasing number of aircraft operations and the history of reported wildlife strikes, potential benefits for just the newly certificated airports (37 Class III airports) range from a low of several million dollars (from damage and injuries avoided) to an estimate in excess of \$10 million.

The benefits of the wildlife strike provision of the final rule extend beyond all Class III airports to all certificated airports. However, the wide range of possible compliance methods forestall a reasonable range estimate of net benefits. It is very reasonable to expect that wildlife preventative action at each certificated airport will have benefits in excess of costs with system-wide benefits in the millions.

#### **Costs**

Some of the requirements of this rule that will impose costs—such as improved snow and ice control; marking, signs, and lighting; and wildlife hazard management—are intended to prevent accidents. Other

requirements, such as emergency planning and improved emergency response capability, are intended to mitigate accidents should they occur.

When the FAA published the NPRM the agency estimated that the present

value of the 10-year costs of the proposed rule was about \$46 million. Based on the comments received, the FAA increased the estimated costs for the final rule, primarily to allow for ARFF costs at airports that will be

newly certificated as a result of this rule.

The major items of this rule that are expected to impose costs are summarized below:

Major cost items	Initial/capital costs	Annual recurring costs
Risk Reduction Items (Subpart D—Operations): Personnel; Records; Marking, Signs, and Lighting; Snow and Ice Control; Handling and Storing of Hazardous Substances and Materials; Traffic and Wind Direction Indicators; Self-Inspection Program; Access to Movement Areas and Safety Areas; Wildlife Hazard Management .....	\$1,495,316	\$1,447,215
Mitigation Items (ARFF, Airport Emergency Plan) .....	2,719,242	8,405,105
Program Total—Current Dollars .....	\$4,214,558	\$9,852,320

The FAA estimates that the present value of the 10-year cost of this rule is \$73.4 million. A more detailed description of how these costs were estimated is contained in the full regulatory evaluation.

The FAA has made an effort not to underestimate costs. As a result, the estimated costs of this rule may be high because it is largely based on assumed average costs being applicable to all airports in each class, when in actuality each airport will have requirements tailored to its individual situation. In the application of this rule, each airport (particularly the new Class III airports) may have already complied with this rule, or may receive relief from certain aspects of this rule under the exemption provisions.

**Benefit-Cost Comparison**

The estimated benefits and costs herein assume that the average airport incurs the full compliance cost and that the traveling public and society receives the associated benefit. Much of the difficulty to accurately assess the expected benefit and cost of this regulation is the complex nature of compliance with part 139 requirements. Each airport is unique with potentially different methods used by the airport operator to comply with part 139 requirements. Further, there are very significant Federal policies in place to mitigate the economic impact of the final rule. These policies are discussed in length in a separate Report to Congress. This Report discusses the economic impact of the final rule on air service to Class III airports.

As discussed in the Report to Congress, several factors may help to mitigate part 139 compliance costs. First, Congress has directed the FAA to set aside \$15 million of AIP funds for certain capital expenditures that may be required by the final rule for four fiscal years. Second, the FAA will assist

airport operators to obtain additional Federal funds, as appropriate. Third, at approximately two-thirds of these newly certificated airports (Class III airports), air carriers also receive federal EAS subsidies, so the Federal government will probably absorb most, if not all of the cost of the rule through increased subsidies to air carriers. Fourth, if Federal, state and local funding is not adequate, the FAA will seek alternative means of compliance with part 139 requirements or will use its statutory authority to grant exemptions from requirements that would be too costly, burdensome, or impractical.

The FAA estimates that one or more accidents that will be mitigated by compliance with emergency response requirements of the final rule will result in an estimated benefit ranging from \$63 million to well in excess of \$100 million. The FAA is not providing a single dollar value for the total benefits of the final rule because the range of the possible compliance methods is too great and complying with risk reduction and accident mitigation requirements may require multiple actions. The FAA does note that the benefits estimate is conservative and the potential error in assessing the benefits will be to underestimate total benefits.

The FAA estimates that the present value of the 10-year cost of this final rule is about \$73.4 million. This estimate is likely to be high because it is based on assumed average costs across all airports in each airport class. In the application of this rule, each airport may already be in compliance with all or certain requirements of this final rule, or may receive relief from certain aspects of the rule through alternate means of compliance or the exemption process.

Thus, the FAA believes that numerous safety benefits will result from the multiple provisions in the final rule. These benefits will reduce the risk

of future accidents and mitigate loss if another accident occurs. As noted above, the total cost estimate is conservative and does not include a host of policies and available funding designed to reduce the compliance cost of the final rule. Consequently, in view of the moderate costs and potential benefits, the FAA concludes that the benefits of the final rule justify the costs.

**Final Regulatory Flexibility Analysis (FRFA)**

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to consider the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed, or final, rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this

determination, and the reasoning should be clear.

This rule will affect publicly owned airports. When the population of a public airport-owning entity is less than 50,000, it is considered a small entity. Based upon the above review, the FAA concludes that this final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the following final regulatory flexibility assessment was prepared as required by the RFA.

#### *Issues To Be Addressed in a Final Regulatory Flexibility Analysis*

The central focus of a final regulatory flexibility analysis, like the initial regulatory flexibility analysis (IRFA), is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economic impact on a substantial number of small entities.

The five requirements, outlined in section 604(a)(1-5) of the 1980 RFA, are listed and discussed below:

(1) *A succinct statement of the need for, and objectives of, the rule.* Before 1996, the FAA's statutory authority to certificate airports was limited to those airports serving air carrier operations using aircraft with more than 30 passenger seats. However, this authority (49 U.S.C. 44706) was broadened by the Federal Aviation Administration Reauthorization Act of 1996 to allow the FAA to certificate airports, with the exception of those located in the State of Alaska, that serve any scheduled passenger operation of an air carrier operating aircraft designed for more than 9 passenger seats but less than 31 passenger seats. The FAA's existing authority to certificate airports serving air carrier operations conducted in aircraft with more than 30 seats remained unchanged.

With this rule, the FAA intends to extend airport certification standards to airports serving scheduled air carrier operations conducted in aircraft designed for more than 9 passenger seats but less than 31 passenger seats.

The primary objective of this final rule is to ensure safety in air transportation by regulating the operation and maintenance of airports serving certain scheduled air carrier operations. The rule is necessary to prevent future accidents similar to those that have recently occurred and to mitigate fatalities and injuries when accidents do occur.

(2) *A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues,*

*and a statement of any changes made in the proposed rule as a result of such comments.* There were a substantial number of comments received from operators of airports serving small air carrier operations concerned about the financial burden that the proposed rule would place on them. In particular these commenters are concerned about personnel costs to comply with proposed ARFF requirements.

In response to public comments, several changes were made to the final rule. A primary change is that the sections of the proposed rule that dealt with obtaining an exemption from the ARFF requirements have been clarified for the final rule. The final rule is more explicit in describing how to apply for an exemption. The FAA believes that the exemption provision will result in actual compliance costs that are substantially less than those estimated in the final regulatory evaluation. The agency was not able to quantify the reduction in compliance costs resulting from possible exemptions. However, it should be noted that all requirements of part 139 will be tailored to each airport through the ACM. In addition, the time period to accomplish some requirements, such as the preparation of the ACM, was extended, especially for the smaller airports.

(3) *A description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available.* The Small Business Administration (SBA) classifies all airports that are operated under the airport ownership of a public entity with a population of 50,000 or less as small entities. Using the SBA's definition of a "small" public entity, there are more than 200 small entity airports that will be affected by this rule. Most of the small entities are expected to be Class I airports (more than 100 are small entities), which are already certificated under part 139. The largest economic impact is expected to occur to the Class III airports (approximately 25 are small entities), which would be newly certificated under the final rule.

(4) *A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.* The final rule will create additional reporting or recordkeeping requirements beyond those already specified in existing part 139. For each airport, the preparation of this documentation may involve the airport manager, operations and

maintenance personnel, and clerical staff. For each small entity, the FAA estimates the average initial hours required to set up a recordkeeping system will be 70 hours and expects a continuing additional paperwork requirement of about 90 hours annually.

(5) *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.* The FAA extensively considered several alternatives, described in the IRFA, and determined that the alternative chosen for the NPRM was the only alternative that was relatively affordable and achieved the safety objectives of the proposed rule. This initial alternative was subjected to public scrutiny during the comment period of the NPRM process. The comments received were responded to, as described above, and this final rule is the selected alternative.

#### *Extended Discussion of the Rule Comments on Affordability and Safety*

The last major revision of part 139 occurred in November 1987. Since then, industry practices and technology have changed significantly. Subsequently, the FAA monitored the effectiveness of part 139 and has taken this opportunity to update part 139 requirements.

The FAA initiated this rulemaking to ensure safety in air transportation at airports serving small air carrier operations, fully appreciating the financial limitations of these airports. In 1996, Congress authorized the FAA to certificate airports serving small air carrier operations to ensure further safety at airports providing scheduled air service. This was the same year that all occupants died in a collision of a United Express Beech 1900C (under 30 seat air carrier aircraft) and a Beech King Air (a general aviation aircraft). The NTSB concluded that " \* \* \* if on-airport ARFF protection had been required for this operation at Quincy Regional Airport, lives might have been saved."

An industry/FAA evaluation of possible regulatory alternatives for the certification of airports serving small air carrier aircraft concluded that there exists a need to require at least some minimum level of both risk reduction and accident mitigation measures at airports during operations of smaller air carrier airplanes.

The FAA recognizes the need to provide some flexibility in the implementation of certain safety measures at airports with infrequent air carrier service or where local resources are severely limited. Airports in smaller communities do not always have the resources to support their airports at the same level as large metropolitan areas without adversely affecting other community services and infrastructure.

There are other mitigating factors. The FAA permits alternate means of compliance to accommodate local conditions and uses its statutory authority to grant exemptions from part 139 requirements, as appropriate. This statutory authority requires the FAA to ensure that an airport it certifies provides for the operation and maintenance of adequate safety equipment.

There are several methods available to small-entity airports to mitigate the economic impact of this rule. One is that the Airport Improvement Program (AIP) funding (often supplemented by state grants) is available for certain capital expenditures that may be required by the rule such as firefighting equipment, airport marking and signs. Another avenue is the Essential Air Service (EAS) Program. For Class III airports that are owned by small communities, serve a limited number of passengers, and operate at a loss, it is likely that much of the final actual costs to the airport would be passed on to the air carriers. At airports where carriers receive EAS subsidies (approximately two-thirds of all Class III airports) the Federal Government will probably absorb most, if not all, of the cost of the rule through increased subsidies.

By tailoring compliance to accommodate local conditions, and/or making use of the statutory exemption, the FAA will maintain the necessary oversight of ARFF, while ensuring that the ARFF requirements are appropriate for the airport size and type of air carrier operations. There will not be a blanket exemption for airports with infrequent or smaller air carrier operations, nor will the agency relieve an airport from the obligation to provide some level of ARFF coverage.

#### Summary

After considering the alternatives for the certification of airports serving small air carrier operations and alternatives for updating part 139 (as specified in the IFRA), the FAA determined that this rule is necessary to ensure safety in air transportation. However, to accommodate variations in airport size and operation, the FAA may allow alternative means of compliance with

part 139 requirements. This will allow the most cost effective and flexible method of ensuring safety to be employed at all covered airports while providing for the special needs of small entities.

#### International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of \$100 million or more (adjusted annually for inflation in any one year) by State, local, and tribal governments (in the aggregate) or by the private sector. Such a mandate is deemed to be a “significant regulatory action.”

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this rule are owned, operated, or regulated by a local governmental body (such as a city or county government), which is either incorporated by or part of a State. In a few cases, the airports are operated directly by the States. The FAA has determined that this rule would have minimal direct effect on the States and would not alter the relationship established by law between the airport certificate holders and the FAA. The FAA considers the annual costs of

compliance with this rule low compared with the resources available to the airports. Before issuing the NPRM leading to this rule, the FAA consulted with representatives of the airports through its ARAC. The FAA also consulted with the States through various national associations of state and local governments. In consulting with state governments, the FAA provided the opportunity for them to comment on the NPRM leading to this rule.

After due consideration of comments received, the FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this action does not have federalism implications.

#### Environmental Analysis

FAA Order 1050.1D defines the FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

#### Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### List of Subjects

##### 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

##### 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 2. Revise § 121.590 to read as follows:

### § 121.590 Use of certificated land airports in the United States.

(a) Except as provided in paragraphs (b) or (c) of this section, or unless authorized by the Administrator under 49 U.S.C. 44706(c), no air carrier and no pilot being used by an air carrier may operate, in the conduct of a domestic type operation, flag type operation, or supplemental type operation, an airplane at a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States unless that airport is certificated under part 139 of this chapter. Further, after June 9, 2005 for Class I airports and after December 9, 2005 for Class II, III, and IV airports, when an air carrier and a pilot being used by the air carrier are required to operate at an airport certificated under part 139 of this chapter, the air carrier and the pilot may only operate at that airport if the airport is classified under part 139 to serve the type airplane to be operated and the type of operation to be conducted.

(b) An air carrier and a pilot being used by the air carrier in the conduct of a domestic type operation, flag type operation, or supplemental type operation may designate and use as a required alternate airport for departure or destination an airport that is not certificated under part 139 of this chapter.

(c) An air carrier and a pilot used by the air carrier in conducting a domestic type operation, flag type operation, or supplemental type operation may operate an airplane at an airport operated by the U.S. Government that is not certificated under part 139 of this chapter, only if that airport meets the equivalent—

(1) Safety standards for airports certificated under part 139 of this chapter; and

(2) Airport classification requirements under part 139 to serve the type airplane to be operated and the type of operation to be conducted.

(d) An air carrier, a commercial operator, and a pilot being used by the air carrier or the commercial operator—when conducting a passenger-carrying airplane operation under this part that

is not a domestic type operation, a flag type operation, or a supplemental type operation—may operate at a land airport not certificated under part 139 of this chapter only when the following conditions are met:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be authorized by the Administrator.

(e) A commercial operator and a pilot used by the commercial operator in conducting a domestic type operation, flag type operation, or supplemental type operation may operate an airplane at an airport operated by the U.S. Government that is not certificated under part 139 of this chapter only if that airport meets the equivalent—

(1) Safety standards for airports certificated under part 139 of this chapter; and

(2) Airport classification requirements under part 139 of this chapter to serve the type airplane to be operated and the type of operation to be conducted.

(f) For the purpose of this section, the terms—

*Domestic type operation* means any domestic operation conducted with—

(1) An airplane designed for at least 31 passenger seats (as determined by the aircraft type certificate issued by a competent civil aviation authority) at any land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States; or

(2) An airplane designed for more than 9 passenger seats but less than 31 passenger seats (as determined by the aircraft type certificate issued by a competent civil aviation authority) at any land airport in any State of the United States (except Alaska), the District of Columbia, or any territory or possession of the United States.

*Flag type operation* means any flag operation conducted with—

(1) An airplane designed for at least 31 passenger seats (as determined by the aircraft type certificate issued by a

competent civil aviation authority) at any land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States; or

(2) An airplane designed for more than 9 passenger seats but less than 31 passenger seats (as determined by the aircraft type certificate issued by a competent civil aviation authority) at any land airport in any State of the United States (except Alaska), the District of Columbia, or any territory or possession of the United States.

*Supplemental type operation* means any supplemental operation (except an all-cargo operation) conducted with an airplane designed for at least 31 passenger seats (as determined by the aircraft type certificate issued by a competent civil aviation authority) at any land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States.

*United States* means the States of the United States, the District of Columbia, and the territories and possessions of the United States.

**Note:** Special Statutory Requirement to Operate to or From a Part 139 Airport. Each air carrier that provides—in an aircraft (*e.g.*, airplane, rotorcraft, etc.) designed for more than 9 passenger seats—regularly scheduled charter air transportation for which the public is provided in advance a schedule containing the departure location, departure time, and arrival location of the flight must operate to and from an airport certificated under part 139 of this chapter in accordance with 49 U.S.C. 41104(b). That statutory provision contains stand-alone requirements for such air carriers and special exceptions for operations in Alaska and outside the United States. Nothing in § 121.590 exempts the air carriers described in this note from the requirements of 49 U.S.C. 41104(b). Certain operations by air carriers that conduct public charter operations under 14 CFR part 380 are covered by the statutory requirements to operate to and from part 139 airports. See 49 U.S.C. 41104(b).

■ 3. Revise part 139 to read as follows:

## PART 139—CERTIFICATION OF AIRPORTS

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139.343 Noncomplying conditions.

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44706, 44709, 44719

#### Subpart A—General

##### § 139.1 Applicability.

(a) This part prescribes rules governing the certification and operation of airports in any State of the United States, the District of Columbia, or any territory or possession of the United States serving any—

(1) Scheduled passenger-carrying operations of an air carrier operating aircraft designed for more than 9 passenger seats, as determined by the aircraft type certificate issued by a competent civil aviation authority; and  
(2) Unscheduled passenger-carrying operations of an air carrier operating aircraft designed for at least 31 passenger seats, as determined by the aircraft type certificate issued by a competent civil aviation authority.

(b) This part applies to those portions of a joint-use or shared-use airport that are within the authority of a person serving passenger-carrying operations defined in paragraphs (a)(1) and (a)(2) of this section.

(c) This part does not apply to—

(1) Airports serving scheduled air carrier operations only by reason of being designated as an alternate airport;

(2) Airports operated by the United States;

(3) Airports located in the State of Alaska that only serve scheduled operations of small air carrier aircraft and do not serve scheduled or unscheduled operations of large air carrier aircraft;

(4) Airports located in the State of Alaska during periods of time when not serving operations of large air carrier aircraft; or

(5) Heliports.

##### § 139.3 Delegation of authority.

The authority of the Administrator to issue, deny, and revoke Airport Operating Certificates is delegated to the Associate Administrator for Airports, Director of Airport Safety and Standards, and Regional Airports Division Managers.

##### § 139.5 Definitions.

The following are definitions of terms used in this part:

*AFFF* means aqueous film forming foam agent.

*Air carrier aircraft* means an aircraft that is being operated by an air carrier and is categorized as either a large air carrier aircraft if designed for at least 31 passenger seats or a small air carrier aircraft if designed for more than 9 passenger seats but less than 31 passenger seats, as determined by the aircraft type certificate issued by a competent civil aviation authority.

*Air carrier operation* means the takeoff or landing of an air carrier aircraft and includes the period of time from 15 minutes before until 15 minutes after the takeoff or landing.

*Airport* means an area of land or other hard surface, excluding water, that is used or intended to be used for the landing and takeoff of aircraft, including any buildings and facilities.

*Airport Operating Certificate* means a certificate, issued under this part, for operation of a Class I, II, III, or IV airport.

*Average daily departures* means the average number of scheduled departures per day of air carrier aircraft computed on the basis of the busiest 3 consecutive calendar months of the immediately preceding 12 consecutive calendar months. However, if the average daily departures are expected to increase, then “average daily departures” may be determined by planned rather than current activity, in a manner authorized by the Administrator.

*Certificate holder* means the holder of an Airport Operating Certificate issued under this part.

*Class I airport* means an airport certificated to serve scheduled

operations of large air carrier aircraft that can also serve unscheduled passenger operations of large air carrier aircraft and/or scheduled operations of small air carrier aircraft.

*Class II airport* means an airport certificated to serve scheduled operations of small air carrier aircraft and the unscheduled passenger operations of large air carrier aircraft. A Class II airport cannot serve scheduled large air carrier aircraft.

*Class III airport* means an airport certificated to serve scheduled operations of small air carrier aircraft. A Class III airport cannot serve scheduled or unscheduled large air carrier aircraft.

*Class IV airport* means an airport certificated to serve unscheduled passenger operations of large air carrier aircraft. A Class IV airport cannot serve scheduled large or small air carrier aircraft.

*Clean agent* means an electrically nonconducting volatile or gaseous fire extinguishing agent that does not leave a residue upon evaporation and has been shown to provide extinguishing action equivalent to halon 1211 under test protocols of FAA Technical Report DOT/FAA/AR–95/87.

*Heliport* means an airport, or an area of an airport, used or intended to be used for the landing and takeoff of helicopters.

*Index* means the type of aircraft rescue and firefighting equipment and quantity of fire extinguishing agent that the certificate holder must provide in accordance with § 139.315.

*Joint-use airport* means an airport owned by the United States that leases a portion of the airport to a person operating an airport specified under § 139.1(a).

*Movement area* means the runways, taxiways, and other areas of an airport that are used for taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

*Regional Airports Division Manager* means the airports division manager for the FAA region in which the airport is located.

*Safety area* means a defined area comprised of either a runway or taxiway and the surrounding surfaces that is prepared or suitable for reducing the risk of damage to aircraft in the event of an undershoot, overshoot, or excursion from a runway or the unintentional departure from a taxiway.

*Scheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or its representatives offers in advance the departure location, departure time, and arrival location. It



does not include any operation that is conducted as a supplemental operation under 14 CFR part 121 or public charter operations under 14 CFR part 380.

*Shared-use airport* means a U.S. Government-owned airport that is collocated with an airport specified under § 139.1(a) and at which portions of the movement areas and safety areas are shared by both parties.

*Unscheduled operation* means any common carriage passenger-carrying operation for compensation or hire, using aircraft designed for at least 31 passenger seats, conducted by an air carrier for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative. It includes any passenger-carrying supplemental operation conducted under 14 CFR part 121 and any passenger-carrying public charter operation conducted under 14 CFR part 380.

*Wildlife hazard* means a potential for a damaging aircraft collision with wildlife on or near an airport. As used in this part, "wildlife" includes feral animals and domestic animals out of the control of their owners.

**Note:** *Special Statutory Requirement To Operate to or From a Part 139 Airport.* Each air carrier that provides—in an aircraft designed for more than 9 passenger seats—regularly scheduled charter air transportation for which the public is provided in advance a schedule containing the departure location, departure time, and arrival location of the flight must operate to and from an airport certificated under part 139 of this chapter in accordance with 49 U.S.C. 41104(b). That statutory provision contains stand-alone requirements for such air carriers and special exceptions for operations in Alaska and outside the United States. Certain operations by air carriers that conduct public charter operations under 14 CFR part 380 are covered by the statutory requirements to operate to and from part 139 airports. See 49 U.S.C. 41104(b).

### § 139.7 Methods and procedures for compliance.

Certificate holders shall comply with requirements prescribed by subparts C and D of this part in a manner authorized by the Administrator. FAA Advisory Circulars contain methods and procedures for compliance with this part that are acceptable to the Administrator.

### Subpart B—Certification

#### § 139.101 General requirements.

(a) Except as otherwise authorized by the Administrator, no person may operate an airport specified under § 139.1 of this part without an Airport Operating Certificate or in violation of

that certificate, the applicable provisions, or the approved Airport Certification Manual.

(b) Each certificate holder shall adopt and comply with an Airport Certification Manual as required under § 139.203.

(c) Persons required to have an Airport Operating Certificate under this part shall submit their Airport Certification Manual to the FAA for approval, in accordance with the following schedule:

(1) Class I airports—6 months after June 9, 2004.

(2) Class II, III, and IV airports—12 months after June 9, 2004.

#### § 139.103 Application for certificate.

Each applicant for an Airport Operating Certificate shall—

(a) Prepare and submit an application, in a form and in the manner prescribed by the Administrator, to the Regional Airports Division Manager.

(b) Submit with the application, two copies of an Airport Certification Manual prepared in accordance with subpart C of this part.

#### § 139.105 Inspection authority.

Each applicant for, or holder of, an Airport Operating Certificate shall allow the Administrator to make any inspections, including unannounced inspections, or tests to determine compliance with 49 U.S.C. 44706 and the requirements of this part.

#### § 139.107 Issuance of certificate.

An applicant for an Airport Operating Certificate is entitled to a certificate if—

(a) The applicant provides written documentation that air carrier service will begin on a date certain.

(b) The applicant meets the provisions of § 139.103.

(c) The Administrator, after investigation, finds the applicant is properly and adequately equipped and able to provide a safe airport operating environment in accordance with—

(1) Any limitation that the Administrator finds necessary to ensure safety in air transportation.

(2) The requirements of the Airport Certification Manual, as specified under § 139.203.

(3) Any other provisions of this part that the Administrator finds necessary to ensure safety in air transportation.

(d) The Administrator approves the Airport Certification Manual.

#### § 139.109 Duration of certificate.

An Airport Operating Certificate issued under this part is effective until the certificate holder surrenders it or the certificate is suspended or revoked by the Administrator.

#### § 139.111 Exemptions.

(a) An applicant or a certificate holder may petition the Administrator under 14 CFR part 11, General Rulemaking Procedures, of this chapter for an exemption from any requirement of this part.

(b) Under 49 U.S.C. 44706(c), the Administrator may exempt an applicant or a certificate holder that enplanes annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports from all, or part, of the aircraft rescue and firefighting equipment requirements of this part on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical.

(1) Each petition filed under this paragraph must—

(i) Be submitted in writing at least 120 days before the proposed effective date of the exemption;

(ii) Set forth the text of §§ 139.317 or 139.319 from which the exemption is sought;

(iii) Explain the interest of the certificate holder in the action requested, including the nature and extent of relief sought; and

(iv) Contain information, views, or arguments that demonstrate that the requirements of §§ 139.317 or 139.319 would be unreasonably costly, burdensome, or impractical.

(2) Information, views, or arguments provided under paragraph (b)(1) of this section shall include the following information pertaining to the airport for which the Airport Operating Certificate is held:

(i) An itemized cost to comply with the requirement from which the exemption is sought;

(ii) Current staffing levels;

(iii) The current annual financial report, such as a single audit report or FAA Form 5100–127, Operating and Financial Summary;

(iv) Annual passenger enplanement data for the previous 12 calendar months;

(v) The type and frequency of air carrier operations served;

(vi) A history of air carrier service;

(vii) Anticipated changes to air carrier service;

(c) Each petition filed under this section must be submitted in duplicate to the—

(1) Regional Airports Division Manager and

(2) U.S. Department of Transportation's Docket Management System, as specified under 14 CFR part 11.

**§ 139.113 Deviations.**

In emergency conditions requiring immediate action for the protection of life or property, the certificate holder may deviate from any requirement of subpart D of this part, or the Airport Certification Manual, to the extent required to meet that emergency. Each certificate holder who deviates from a requirement under this section shall, within 14 days after the emergency, notify the Regional Airports Division Manager of the nature, extent, and duration of the deviation. When requested by the Regional Airports Division Manager, the certificate holder shall provide this notification in writing.

**Subpart C—Airport Certification Manual**

**§ 139.201 General requirements.**

(a) No person may operate an airport subject to this part unless that person adopts and complies with an Airport Certification Manual, as required under this part, that—

(1) Has been approved by the Administrator;

(2) Contains only those items authorized by the Administrator;

(3) Is in printed form and signed by the certificate holder acknowledging the certificate holder's responsibility to operate the airport in compliance with the Airport Certification Manual approved by the Administrator; and

(4) Is in a form that is easy to revise and organized in a manner helpful to the preparation, review, and approval processes, including a revision log. In addition, each page or attachment must include the date of the Administrator's initial approval or approval of the latest revision.

(b) Each holder of an Airport Operating Certificate shall—

(1) Keep its Airport Certification Manual current at all times;

(2) Maintain at least one complete and current copy of its approved Airport Certification Manual on the airport, which will be available for inspection by the Administrator; and

(3) Furnish the applicable portions of the approved Airport Certification Manual to airport personnel responsible for its implementation.

(c) Each certificate holder shall ensure that the Regional Airports Division

Manager is provided a complete copy of its most current approved Airport Certification Manual, as specified under paragraph (b)(2) of this section, including any amendments approved under § 139.205.

(d) FAA Advisory Circulars contain methods and procedures for the development of Airport Certification Manuals that are acceptable to the Administrator.

**§ 139.203 Contents of Airport Certification Manual.**

(a) Except as otherwise authorized by the Administrator, each certificate holder shall include in the Airport Certification Manual a description of operating procedures, facilities and equipment, responsibility assignments, and any other information needed by personnel concerned with operating the airport in order to comply with applicable provisions of subpart D of this part and paragraph (b) of this section.

(b) Except as otherwise authorized by the Administrator, the certificate holder shall include in the Airport Certification Manual the following elements, as appropriate for its class:

**REQUIRED AIRPORT CERTIFICATION MANUAL ELEMENTS**

Manual elements	Airport certificate class			
	Class I	Class II	Class III	Class IV
1. Lines of succession of airport operational responsibility .....	X	X	X	X
2. Each current exemption issued to the airport from the requirements of this part .....	X	X	X	X
3. Any limitations imposed by the Administrator .....	X	X	X	X
4. A grid map or other means of identifying locations and terrain features on and around the airport that are significant to emergency operations .....	X	X	X	X
5. The location of each obstruction required to be lighted or marked within the airport's area of authority .....	X	X	X	X
6. A description of each movement area available for air carriers and its safety areas, and each road described in § 139.319(k) that serves it .....	X	X	X	X
7. Procedures for avoidance of interruption or failure during construction work of utilities serving facilities or NAVAIDS that support air carrier operations .....	X	X	X	
8. A description of the system for maintaining records, as required under § 139.301 .....	X	X	X	X
9. A description of personnel training, as required under § 139.303 .....	X	X	X	X
10. Procedures for maintaining the paved areas, as required under § 139.305 .....	X	X	X	X
11. Procedures for maintaining the unpaved areas, as required under § 139.307 .....	X	X	X	X
12. Procedures for maintaining the safety areas, as required under § 139.309 .....	X	X	X	X
13. A plan showing the runway and taxiway identification system, including the location and inscription of signs, runway markings, and holding position markings, as required under § 139.311 .....	X	X	X	X
14. A description of, and procedures for maintaining, the marking, signs, and lighting systems, as required under § 139.311 .....	X	X	X	X
15. A snow and ice control plan, as required under § 139.313 .....	X	X	X	
16. A description of the facilities, equipment, personnel, and procedures for meeting the aircraft rescue and firefighting requirements, in accordance with §§ 139.315, 139.317 and 139.319 .....	X	X	X	X
17. A description of any approved exemption to aircraft rescue and firefighting requirements, as authorized under § 139.111 .....	X	X	X	X

REQUIRED AIRPORT CERTIFICATION MANUAL ELEMENTS—Continued

Manual elements	Airport certificate class			
	Class I	Class II	Class III	Class IV
18. Procedures for protecting persons and property during the storing, dispensing, and handling of fuel and other hazardous substances and materials, as required under § 139.321 .....	X	X	X	X
19. A description of, and procedures for maintaining, the traffic and wind direction indicators, as required under § 139.323 .....	X	X	X	X
20. An emergency plan as required under § 139.325 .....	X	X	X	X
21. Procedures for conducting the self-inspection program, as required under § 139.327 .....	X	X	X	X
22. Procedures for controlling pedestrians and ground vehicles in movement areas and safety areas, as required under § 139.329 .....	X	X	X	
23. Procedures for obstruction removal, marking, or lighting, as required under § 139.331 .....	X	X	X	
24. Procedures for protection of NAVAIDS, as required under § 139.333 .....	X	X	X	
25. A description of public protection, as required under § 139.335 .....	X	X	X	
26. Procedures for wildlife hazard management, as required under § 139.337 .....	X	X	X	
27. Procedures for airport condition reporting, as required under § 139.339 .....	X	X	X	X
28. Procedures for identifying, marking, and lighting construction and other unserviceable areas, as required under § 139.341 .....	X	X	X	
29. Any other item that the Administrator finds is necessary to ensure safety in air transportation .....	X	X	X	X

**§ 139.205 Amendment of Airport Certification Manual.**

(a) Under § 139.3, the Regional Airports Division Manager may amend any Airport Certification Manual approved under this part, either—

(1) Upon application by the certificate holder or

(2) On the Regional Airports Division Manager's own initiative, if the Regional Airports Division Manager determines that safety in air transportation requires the amendment.

(b) A certificate holder shall submit in writing a proposed amendment to its Airport Certification Manual to the Regional Airports Division Manager at least 30 days before the proposed effective date of the amendment, unless a shorter filing period is allowed by the Regional Airports Division Manager.

(c) At any time within 30 days after receiving a notice of refusal to approve the application for amendment, the certificate holder may petition the Associate Administrator for Airports to reconsider the refusal to amend.

(d) In the case of amendments initiated by the FAA, the Regional Airports Division Manager notifies the certificate holder of the proposed amendment, in writing, fixing a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Airports Division Manager notifies the certificate holder within 30 days of any amendment adopted or rescinds the notice. The amendment

becomes effective not less than 30 days after the certificate holder receives notice of it, except that, prior to the effective date, the certificate holder may petition the Associate Administrator for Airports to reconsider the amendment, in which case its effective date is stayed pending a decision by the Associate Administrator for Airports.

(e) Notwithstanding the provisions of paragraph (d) of this section, if the Regional Airports Division Manager finds there is an emergency requiring immediate action with respect to safety in air transportation, the Regional Airports Division Manager may issue an amendment, effective without stay on the date the certificate holder receives notice of it. In such a case, the Regional Airports Division Manager incorporates the finding of the emergency and a brief statement of the reasons for the finding in the notice of the amendment. Within 30 days after the issuance of such an emergency amendment, the certificate holder may petition the Associate Administrator for Airports to reconsider either the finding of an emergency, the amendment itself, or both. This petition does not automatically stay the effectiveness of the emergency amendment.

**Subpart D—Operations**

**§ 139.301 Records.**

In a manner authorized by the Administrator, each certificate holder shall—

(a) Furnish upon request by the Administrator all records required to be maintained under this part.

(b) Maintain records required under this part as follows:

(1) *Personnel training.* Twenty-four consecutive calendar months for personnel training records, as required under §§ 139.303 and 139.327.

(2) *Emergency personnel training.* Twenty-four consecutive calendar months for aircraft rescue and firefighting and emergency medical service personnel training records, as required under § 139.319.

(3) *Airport fueling agent inspection.* Twelve consecutive calendar months for records of inspection of airport fueling agents, as required under § 139.321.

(4) *Fueling personnel training.* Twelve consecutive calendar months for training records of fueling personnel, as required under § 139.321.

(5) *Self-inspection.* Twelve consecutive calendar months for self-inspection records, as required under § 139.327.

(6) *Movement areas and safety areas training.* Twenty-four consecutive calendar months for records of training given to pedestrians and ground vehicle operators with access to movement areas and safety areas, as required under § 139.329.

(7) *Accident and incident.* Twelve consecutive calendar months for each accident or incident in movement areas and safety areas involving an air carrier aircraft and/or ground vehicle, as required under § 139.329.

(8) *Airport condition.* Twelve consecutive calendar months for records of airport condition information dissemination, as required under § 139.339.

(c) Make and maintain any additional records required by the Administrator, this part, and the Airport Certification Manual.

**§ 139.303 Personnel.**

In a manner authorized by the Administrator, each certificate holder shall—

(a) Provide sufficient and qualified personnel to comply with the requirements of its Airport Certification Manual and the requirements of this part.

(b) Equip personnel with sufficient resources needed to comply with the requirements of this part.

(c) Train all personnel who access movement areas and safety areas and perform duties in compliance with the requirements of the Airport Certification Manual and the requirements of this part. This training shall be completed prior to the initial performance of such duties and at least once every 12 consecutive calendar months. The curriculum for initial and recurrent training shall include at least the following areas:

(1) Airport familiarization, including airport marking, lighting, and signs system.

(2) Procedures for access to, and operation in, movement areas and safety areas, as specified under § 139.329.

(3) Airport communications, including radio communication between the air traffic control tower and personnel, use of the common traffic advisory frequency if there is no air traffic control tower or the tower is not in operation, and procedures for reporting unsafe airport conditions.

(4) Duties required under the Airport Certification Manual and the requirements of this part.

(5) Any additional subject areas required under §§ 139.319, 139.321, 139.327, 139.329, 139.337, and 139.339, as appropriate.

(d) Make a record of all training completed after June 9, 2004 by each individual in compliance with this section that includes, at a minimum, a description and date of training received. Such records shall be maintained for 24 consecutive calendar months after completion of training.

(e) As appropriate, comply with the following training requirements of this part:

(i) § 139.319, Aircraft rescue and firefighting: Operational requirements;

(ii) § 139.321, Handling and storage of hazardous substances and materials;

(iii) § 139.327, Self-inspection program;

(iv) § 139.329, Pedestrians and Ground Vehicles;

(v) § 139.337, Wildlife hazard management; and

(vi) § 139.339, Airport condition reporting.

(f) Use an independent organization, or designee, to comply with the requirements of its Airport Certification Manual and the requirements of this part only if—

(1) Such an arrangement is authorized by the Administrator;

(2) A description of responsibilities and duties that will be assumed by an independent organization or designee is specified in the Airport Certification Manual; and

(3) The independent organization or designee prepares records required under this part in sufficient detail to assure the certificate holder and the Administrator of adequate compliance with the Airport Certification Manual and the requirements of this part.

**§ 139.305 Paved areas.**

(a) In a manner authorized by the Administrator, each certificate holder shall maintain, and promptly repair the pavement of, each runway, taxiway, loading ramp, and parking area on the airport that is available for air carrier use as follows:

(1) The pavement edges shall not exceed 3 inches difference in elevation between abutting pavement sections and between pavement and abutting areas.

(2) The pavement shall have no hole exceeding 3 inches in depth nor any hole the slope of which from any point in the hole to the nearest point at the lip of the hole is 45 degrees or greater, as measured from the pavement surface plane, unless, in either case, the entire area of the hole can be covered by a 5-inch diameter circle.

(3) The pavement shall be free of cracks and surface variations that could impair directional control of air carrier aircraft. Any pavement crack or surface deterioration that produces loose aggregate or other contaminants shall be immediately repaired.

(4) Except as provided in paragraph (b) of this section, mud, dirt, sand, loose aggregate, debris, foreign objects, rubber deposits, and other contaminants shall be removed promptly and as completely as practicable.

(5) Except as provided in paragraph (b) of this section, any chemical solvent that is used to clean any pavement area shall be removed as soon as possible, consistent with the instructions of the manufacturer of the solvent.

(6) The pavement shall be sufficiently drained and free of depressions to prevent ponding that obscures markings or impairs safe aircraft operations.

(b) Paragraphs (a)(4) and (a)(5) of this section do not apply to snow and ice

accumulations and their control, including the associated use of materials, such as sand and deicing solutions.

(c) FAA Advisory Circulars contain methods and procedures for the maintenance and configuration of paved areas that are acceptable to the Administrator.

**§ 139.307 Unpaved areas.**

(a) In a manner authorized by the Administrator, each certificate holder shall maintain and promptly repair the surface of each gravel, turf, or other unpaved runway, taxiway, or loading ramp and parking area on the airport that is available for air carrier use as follows:

(1) No slope from the edge of the full-strength surfaces downward to the existing terrain shall be steeper than 2:1.

(2) The full-strength surfaces shall have adequate crown or grade to assure sufficient drainage to prevent ponding.

(3) The full-strength surfaces shall be adequately compacted and sufficiently stable to prevent rutting by aircraft or the loosening or build-up of surface material, which could impair directional control of aircraft or drainage.

(4) The full-strength surfaces must have no holes or depressions that exceed 3 inches in depth and are of a breadth capable of impairing directional control or causing damage to an aircraft.

(5) Debris and foreign objects shall be promptly removed from the surface.

(b) FAA Advisory Circulars contain methods and procedures for the maintenance and configuration of unpaved areas that are acceptable to the Administrator.

**§ 139.309 Safety areas.**

(a) In a manner authorized by the Administrator, each certificate holder shall provide and maintain, for each runway and taxiway that is available for air carrier use, a safety area of at least the dimensions that—

(1) Existed on December 31, 1987, if the runway or taxiway had a safety area on December 31, 1987, and if no reconstruction or significant expansion of the runway or taxiway was begun on or after January 1, 1988; or

(2) Are authorized by the Administrator at the time the construction, reconstruction, or expansion began if construction, reconstruction, or significant expansion of the runway or taxiway began on or after January 1, 1988.

(b) Each certificate holder shall maintain its safety areas as follows:

(1) Each safety area shall be cleared and graded and have no potentially

hazardous ruts, humps, depressions, or other surface variations.

(2) Each safety area shall be drained by grading or storm sewers to prevent water accumulation.

(3) Each safety area shall be capable under dry conditions of supporting snow removal and aircraft rescue and firefighting equipment and of supporting the occasional passage of aircraft without causing major damage to the aircraft.

(4) No objects may be located in any safety area, except for objects that need to be located in a safety area because of their function. These objects shall be constructed, to the extent practical, on frangibly mounted structures of the lowest practical height, with the frangible point no higher than 3 inches above grade.

(c) FAA Advisory Circulars contain methods and procedures for the configuration and maintenance of safety areas acceptable to the Administrator.

#### § 139.311 Marking, signs, and lighting.

(a) *Marking.* Each certificate holder shall provide and maintain marking systems for air carrier operations on the airport that are authorized by the Administrator and consist of at least the following:

(1) Runway markings meeting the specifications for takeoff and landing minimums for each runway.

(2) A taxiway centerline.

(3) Taxiway edge markings, as appropriate.

(4) Holding position markings.

(5) Instrument landing system (ILS) critical area markings.

(b) *Signs.* (1) Each certificate holder shall provide and maintain sign systems for air carrier operations on the airport that are authorized by the Administrator and consist of at least the following:

(i) Signs identifying taxiing routes on the movement area.

(ii) Holding position signs.

(iii) Instrument landing system (ILS) critical area signs.

(2) Unless otherwise authorized by the Administrator, the signs required by paragraph (b)(1) of this section shall be internally illuminated at each Class I, II, and IV airport.

(3) Unless otherwise authorized by the Administrator, the signs required by paragraphs (b)(1)(ii) and (b)(1)(iii) of this section shall be internally illuminated at each Class III airport.

(c) *Lighting.* Each certificate holder shall provide and maintain lighting systems for air carrier operations when the airport is open at night, during conditions below visual flight rules (VFR) minimums, or in Alaska, during periods in which a prominent unlighted

object cannot be seen from a distance of 3 statute miles or the sun is more than six degrees below the horizon. These lighting systems shall be authorized by the Administrator and consist of at least the following:

(1) Runway lighting that meets the specifications for takeoff and landing minimums, as authorized by the Administrator, for each runway.

(2) One of the following taxiway lighting systems:

(i) Centerline lights.

(ii) Centerline reflectors.

(iii) Edge lights.

(iv) Edge reflectors.

(3) An airport beacon.

(4) Approach lighting that meets the specifications for takeoff and landing minimums, as authorized by the Administrator, for each runway, unless provided and/or maintained by an entity other than the certificate holder.

(5) Obstruction marking and lighting, as appropriate, on each object within its authority that has been determined by the FAA to be an obstruction.

(d) *Maintenance.* Each certificate holder shall properly maintain each marking, sign, or lighting system installed and operated on the airport. As used in this section, to "properly maintain" includes cleaning, replacing, or repairing any faded, missing, or nonfunctional item; keeping each item unobscured and clearly visible; and ensuring that each item provides an accurate reference to the user.

(e) *Lighting interference.* Each certificate holder shall ensure that all lighting on the airport, including that for aprons, vehicle parking areas, roadways, fuel storage areas, and buildings, is adequately adjusted or shielded to prevent interference with air traffic control and aircraft operations.

(f) *Standards.* FAA Advisory Circulars contain methods and procedures for the equipment, material, installation, and maintenance of marking, sign, and lighting systems listed in this section that are acceptable to the Administrator.

(g) *Implementation.* The sign systems required under paragraph (b)(3) of this section shall be implemented by each holder of a Class III Airport Operating Certificate not later than 36 consecutive calendar months after June 9, 2004.

#### § 139.313 Snow and ice control.

(a) As determined by the Administrator, each certificate holder whose airport is located where snow and icing conditions occur shall prepare, maintain, and carry out a snow and ice control plan in a manner authorized by the Administrator.

(b) The snow and ice control plan required by this section shall include, at

a minimum, instructions and procedures for—

(1) Prompt removal or control, as completely as practical, of snow, ice, and slush on each movement area;

(2) Positioning snow off the movement area surfaces so all air carrier aircraft propellers, engine pods, rotors, and wing tips will clear any snowdrift and snowbank as the aircraft's landing gear traverses any portion of the movement area;

(3) Selection and application of authorized materials for snow and ice control to ensure that they adhere to snow and ice sufficiently to minimize engine ingestion;

(4) Timely commencement of snow and ice control operations; and

(5) Prompt notification, in accordance with § 139.339, of all air carriers using the airport when any portion of the movement area normally available to them is less than satisfactorily cleared for safe operation by their aircraft.

(c) FAA Advisory Circulars contain methods and procedures for snow and ice control equipment, materials, and removal that are acceptable to the Administrator.

#### § 139.315 Aircraft rescue and firefighting: Index determination.

(a) An index is required by paragraph (c) of this section for each certificate holder. The Index is determined by a combination of—

(1) The length of air carrier aircraft and

(2) Average daily departures of air carrier aircraft.

(b) For the purpose of Index determination, air carrier aircraft lengths are grouped as follows:

(1) Index A includes aircraft less than 90 feet in length.

(2) Index B includes aircraft at least 90 feet but less than 126 feet in length.

(3) Index C includes aircraft at least 126 feet but less than 159 feet in length.

(4) Index D includes aircraft at least 159 feet but less than 200 feet in length.

(5) Index E includes aircraft at least 200 feet in length.

(c) Except as provided in § 139.319(c), if there are five or more average daily departures of air carrier aircraft in a single Index group serving that airport, the longest aircraft with an average of five or more daily departures determines the Index required for the airport. When there are fewer than five average daily departures of the longest air carrier aircraft serving the airport, the Index required for the airport will be the next lower Index group than the Index group prescribed for the longest aircraft.

(d) The minimum designated index shall be Index A.

(e) A holder of a Class III Airport Operating Certificate may comply with this section by providing a level of safety comparable to Index A that is approved by the Administrator. Such alternate compliance must be described in the ACM and must include:

- (i) Pre-arranged firefighting and emergency medical response procedures, including agreements with responding services.
- (ii) Means for alerting firefighting and emergency medical response personnel.
- (iii) Type of rescue and firefighting equipment to be provided.
- (iv) Training of responding firefighting and emergency medical personnel on airport familiarization and communications.

**§ 139.317 Aircraft rescue and firefighting: Equipment and agents.**

Unless otherwise authorized by the Administrator, the following rescue and firefighting equipment and agents are the minimum required for the Indexes referred to in § 139.315:

(a) *Index A.* One vehicle carrying at least—

- (1) 500 pounds of sodium-based dry chemical, halon 1211, or clean agent; or
- (2) 450 pounds of potassium-based dry chemical and water with a commensurate quantity of AFFF to total 100 gallons for simultaneous dry chemical and AFFF application.

(b) *Index B.* Either of the following:

- (1) One vehicle carrying at least 500 pounds of sodium-based dry chemical, halon 1211, or clean agent and 1,500 gallons of water and the commensurate quantity of AFFF for foam production.
- (2) Two vehicles—

- (i) One vehicle carrying the extinguishing agents as specified in paragraphs (a)(1) or (a)(2) of this section; and

- (ii) One vehicle carrying an amount of water and the commensurate quantity of AFFF so the total quantity of water for foam production carried by both vehicles is at least 1,500 gallons.

(c) *Index C.* Either of the following:

(1) Three vehicles—

- (i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (a)(2) of this section; and

- (ii) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so the total quantity of water for foam production carried by all three vehicles is at least 3,000 gallons.

(2) Two vehicles—

- (i) One vehicle carrying the extinguishing agents as specified in paragraph (b)(1) of this section; and

- (ii) One vehicle carrying water and the commensurate quantity of AFFF so

the total quantity of water for foam production carried by both vehicles is at least 3,000 gallons.

(d) *Index D.* Three vehicles—

- (1) One vehicle carrying the extinguishing agents as specified in paragraphs (a)(1) or (a)(2) of this section; and

- (2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so the total quantity of water for foam production carried by all three vehicles is at least 4,000 gallons.

(e) *Index E.* Three vehicles—

- (1) One vehicle carrying the extinguishing agents as specified in paragraphs (a)(1) or (a)(2) of this section; and

- (2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so the total quantity of water for foam production carried by all three vehicles is at least 6,000 gallons.

(f) *Foam discharge capacity.* Each aircraft rescue and firefighting vehicle used to comply with Index B, C, D, or E requirements with a capacity of at least 500 gallons of water for foam production shall be equipped with a turret. Vehicle turret discharge capacity shall be as follows:

- (1) Each vehicle with a minimum-rated vehicle water tank capacity of at least 500 gallons, but less than 2,000 gallons, shall have a turret discharge rate of at least 500 gallons per minute, but not more than 1,000 gallons per minute.

- (2) Each vehicle with a minimum-rated vehicle water tank capacity of at least 2,000 gallons shall have a turret discharge rate of at least 600 gallons per minute, but not more than 1,200 gallons per minute.

(g) *Agent discharge capacity.* Each aircraft rescue and firefighting vehicle that is required to carry dry chemical, halon 1211, or clean agent for compliance with the Index requirements of this section must meet one of the following minimum discharge rates for the equipment installed:

- (1) Dry chemical, halon 1211, or clean agent through a hand line—5 pounds per second.

- (2) Dry chemical, halon 1211, or clean agent through a turret—16 pounds per second.

(h) *Extinguishing agent substitutions.* Other extinguishing agent substitutions authorized by the Administrator may be made in amounts that provide equivalent firefighting capability.

(i) *AFFF quantity requirements.* In addition to the quantity of water required, each vehicle required to carry AFFF shall carry AFFF in an appropriate amount to mix with twice

the water required to be carried by the vehicle.

(j) *Methods and procedures.* FAA Advisory Circulars contain methods and procedures for ARFF equipment and extinguishing agents that are acceptable to the Administrator.

(k) *Implementation.* Each holder of a Class II, III, or IV Airport Operating Certificate shall implement the requirements of this section no later than 36 consecutive calendar months after .

**§ 139.319 Aircraft rescue and firefighting: Operational requirements.**

(a) *Rescue and firefighting capability.* Except as provided in paragraph (c) of this section, each certificate holder shall provide on the airport, during air carrier operations at the airport, at least the rescue and firefighting capability specified for the Index required by § 139.317 in a manner authorized by the Administrator.

(b) *Increase in Index.* Except as provided in paragraph (c) of this section, if an increase in the average daily departures or the length of air carrier aircraft results in an increase in the Index required by paragraph (a) of this section, the certificate holder shall comply with the increased requirements.

(c) *Reduction in rescue and firefighting.* During air carrier operations with only aircraft shorter than the Index aircraft group required by paragraph (a) of this section, the certificate holder may reduce the rescue and firefighting to a lower level corresponding to the Index group of the longest air carrier aircraft being operated.

(d) *Procedures for reduction in capability.* Any reduction in the rescue and firefighting capability from the Index required by paragraph (a) of this section, in accordance with paragraph (c) of this section, shall be subject to the following conditions:

- (1) Procedures for, and the persons having the authority to implement, the reductions must be included in the Airport Certification Manual.

- (2) A system and procedures for recall of the full aircraft rescue and firefighting capability must be included in the Airport Certification Manual.

- (3) The reductions may not be implemented unless notification to air carriers is provided in the Airport/Facility Directory or Notices to Airmen (NOTAM), as appropriate, and by direct notification of local air carriers.

(e) *Vehicle communications.* Each vehicle required under § 139.317 shall be equipped with two-way voice radio communications that provide for contact with at least—

(1) All other required emergency vehicles;

(2) The air traffic control tower;

(3) The common traffic advisory frequency when an air traffic control tower is not in operation or there is no air traffic control tower, and

(4) Fire stations, as specified in the airport emergency plan.

(f) *Vehicle marking and lighting.* Each vehicle required under § 139.317 shall—

(1) Have a flashing or rotating beacon and

(2) Be painted or marked in colors to enhance contrast with the background environment and optimize daytime and nighttime visibility and identification.

(g) *Vehicle readiness.* Each vehicle required under § 139.317 shall be maintained as follows:

(1) The vehicle and its systems shall be maintained so as to be operationally capable of performing the functions required by this subpart during all air carrier operations.

(2) If the airport is located in a geographical area subject to prolonged temperatures below 33 degrees Fahrenheit, the vehicles shall be provided with cover or other means to ensure equipment operation and discharge under freezing conditions.

(3) Any required vehicle that becomes inoperative to the extent that it cannot perform as required by paragraph (h)(1) of this section shall be replaced immediately with equipment having at least equal capabilities. If replacement equipment is not available immediately, the certificate holder shall so notify the Regional Airports Division Manager and each air carrier using the airport in accordance with § 139.339. If the required Index level of capability is not restored within 48 hours, the airport operator, unless otherwise authorized by the Administrator, shall limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and firefighting equipment.

(h) *Response requirements.* (1) With the aircraft rescue and firefighting equipment required under this part and the number of trained personnel that will assure an effective operation, each certificate holder shall—

(i) Respond to each emergency during periods of air carrier operations; and

(ii) When requested by the Administrator, demonstrate compliance with the response requirements specified in this section.

(2) The response required by paragraph (h)(1)(ii) of this section shall achieve the following performance criteria:

(i) Within 3 minutes from the time of the alarm, at least one required aircraft rescue and firefighting vehicle shall reach the midpoint of the farthest runway serving air carrier aircraft from its assigned post or reach any other specified point of comparable distance on the movement area that is available to air carriers, and begin application of extinguishing agent.

(ii) Within 4 minutes from the time of alarm, all other required vehicles shall reach the point specified in paragraph (h)(2)(i) of this section from their assigned posts and begin application of an extinguishing agent.

(i) *Personnel.* Each certificate holder shall ensure the following:

(1) All rescue and firefighting personnel are equipped in a manner authorized by the Administrator with protective clothing and equipment needed to perform their duties.

(2) All rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator. Such personnel shall be trained prior to initial performance of rescue and firefighting duties and receive recurrent instruction every 12 consecutive calendar months. The curriculum for initial and recurrent training shall include at least the following areas:

(i) Airport familiarization, including airport signs, marking, and lighting.

(ii) Aircraft familiarization.

(iii) Rescue and firefighting personnel safety.

(iv) Emergency communications systems on the airport, including fire alarms.

(v) Use of the fire hoses, nozzles, turrets, and other appliances required for compliance with this part.

(vi) Application of the types of extinguishing agents required for compliance with this part.

(vii) Emergency aircraft evacuation assistance.

(viii) Firefighting operations.

(ix) Adapting and using structural rescue and firefighting equipment for aircraft rescue and firefighting.

(x) Aircraft cargo hazards, including hazardous materials/dangerous goods incidents.

(xi) Familiarization with firefighters' duties under the airport emergency plan.

(3) All rescue and firefighting personnel shall participate in at least one live-fire drill prior to initial performance of rescue and firefighting duties and every 12 consecutive calendar months thereafter.

(4) At least one individual, who has been trained and is current in basic emergency medical services, is available

during air carrier operations. This individual shall be trained prior to initial performance of emergency medical services. Training shall be at a minimum 40 hours in length and cover the following topics:

(i) Bleeding.

(ii) Cardiopulmonary resuscitation.

(iii) Shock.

(iv) Primary patient survey.

(v) Injuries to the skull, spine, chest, and extremities.

(vi) Internal injuries.

(vii) Moving patients.

(viii) Burns.

(ix) Triage.

(5) A record is maintained of all training given to each individual under this section for 24 consecutive calendar months after completion of training. Such records shall include, at a minimum, a description and date of training received.

(6) Sufficient rescue and firefighting personnel are available during all air carrier operations to operate the vehicles, meet the response times, and meet the minimum agent discharge rates required by this part.

(7) Procedures and equipment are established and maintained for alerting rescue and firefighting personnel by siren, alarm, or other means authorized by the Administrator to any existing or impending emergency requiring their assistance.

(j) *Hazardous materials guidance.* Each aircraft rescue and firefighting vehicle responding to an emergency on the airport shall be equipped with, or have available through a direct communications link, the "North American Emergency Response Guidebook" published by the U.S. Department of Transportation or similar response guidance to hazardous materials/dangerous goods incidents. Information on obtaining the "North American Emergency Response Guidebook" is available from the Regional Airports Division Manager.

(k) *Emergency access roads.* Each certificate holder shall ensure that roads designated for use as emergency access roads for aircraft rescue and firefighting vehicles are maintained in a condition that will support those vehicles during all-weather conditions.

(l) *Methods and procedures.* FAA Advisory Circulars contain methods and procedures for aircraft rescue and firefighting and emergency medical equipment and training that are acceptable to the Administrator.

(m) *Implementation.* Each holder of a Class II, III, or IV Airport Operating Certificate shall implement the requirements of this section no later than 36 consecutive calendar months after June 9, 2004.



**§ 139.321 Handling and storing of hazardous substances and materials.**

(a) Each certificate holder who acts as a cargo handling agent shall establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of any material regulated by the Hazardous Materials Regulations (49 CFR 171 through 180) that is, or is intended to be, transported by air. These procedures shall provide for at least the following:

- (1) Designated personnel to receive and handle hazardous substances and materials.
- (2) Assurance from the shipper that the cargo can be handled safely, including any special handling procedures required for safety.
- (3) Special areas for storage of hazardous materials while on the airport.
- (b) Each certificate holder shall establish and maintain standards authorized by the Administrator for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel (other than articles and materials that are, or are intended to be, aircraft cargo) on the airport. These standards shall cover facilities, procedures, and personnel training and shall address at least the following:
  - (1) Bonding.
  - (2) Public protection.
  - (3) Control of access to storage areas.
  - (4) Fire safety in fuel farm and storage areas.
  - (5) Fire safety in mobile fuelers, fueling pits, and fueling cabinets.
  - (6) Training of fueling personnel in fire safety in accordance with paragraph (e) of this section. Such training at Class III airports must be completed within 12 consecutive calendar months after June 9, 2004.
  - (7) The fire code of the public body having jurisdiction over the airport.

(c) Each certificate holder shall, as a fueling agent, comply with, and require all other fueling agents operating on the airport to comply with, the standards established under paragraph (b) of this section and shall perform reasonable surveillance of all fueling activities on the airport with respect to those standards.

(d) Each certificate holder shall inspect the physical facilities of each airport tenant fueling agent at least once every 3 consecutive months for compliance with paragraph (b) of this section and maintain a record of that inspection for at least 12 consecutive calendar months.

(e) The training required in paragraph (b)(6) of this section shall include at least the following:

(1) At least one supervisor with each fueling agent shall have completed an aviation fuel training course in fire safety that is authorized by the Administrator. Such an individual shall be trained prior to initial performance of duties, or enrolled in an authorized aviation fuel training course that will be completed within 90 days of initiating duties, and receive recurrent instruction at least every 24 consecutive calendar months.

(2) All other employees who fuel aircraft, accept fuel shipments, or otherwise handle fuel shall receive at least initial on-the-job training and recurrent instruction every 24 consecutive calendar months in fire safety from the supervisor trained in accordance with paragraph (e)(1) of this section.

(f) Each certificate holder shall obtain a written confirmation once every 12 consecutive calendar months from each airport tenant fueling agent that the training required by paragraph (e) of this section has been accomplished. This written confirmation shall be maintained for 12 consecutive calendar months.

(g) Unless otherwise authorized by the Administrator, each certificate holder shall require each tenant fueling agent to take immediate corrective action whenever the certificate holder becomes aware of noncompliance with a standard required by paragraph (b) of this section. The certificate holder shall notify the appropriate FAA Regional Airports Division Manager immediately when noncompliance is discovered and corrective action cannot be accomplished within a reasonable period of time.

(h) FAA Advisory Circulars contain methods and procedures for the handling and storage of hazardous substances and materials that are acceptable to the Administrator.

**§ 139.323 Traffic and wind direction indicators.**

In a manner authorized by the Administrator, each certificate holder shall provide and maintain the following on its airport:

(a) A wind cone that visually provides surface wind direction information to pilots. For each runway available for air carrier use, a supplemental wind cone must be installed at the end of the runway or at least at one point visible to the pilot while on final approach and prior to takeoff. If the airport is open for air carrier operations at night, the wind direction indicators, including the required supplemental indicators, must be lighted.

(b) For airports serving any air carrier operation when there is no control tower operating, a segmented circle, a landing strip indicator and a traffic pattern indicator must be installed around a wind cone for each runway with a right-hand traffic pattern.

(c) FAA Advisory Circulars contain methods and procedures for the installation, lighting, and maintenance of traffic and wind indicators that are acceptable to the Administrator.

**§ 139.325 Airport emergency plan.**

(a) In a manner authorized by the Administrator, each certificate holder shall develop and maintain an airport emergency plan designed to minimize the possibility and extent of personal injury and property damage on the airport in an emergency. The plan shall—

(1) Include procedures for prompt response to all emergencies listed in paragraph (b) of this section, including a communications network;

(2) Contain sufficient detail to provide adequate guidance to each person who must implement these procedures; and

(3) To the extent practicable, provide for an emergency response for the largest air carrier aircraft in the Index group required under § 139.315.

(b) The plan required by this section must contain instructions for response to—

(1) Aircraft incidents and accidents;

(2) Bomb incidents, including designation of parking areas for the aircraft involved;

(3) Structural fires;

(4) Fires at fuel farms or fuel storage areas;

(5) Natural disaster;

(6) Hazardous materials/dangerous goods incidents;

(7) Sabotage, hijack incidents, and other unlawful interference with operations;

(8) Failure of power for movement area lighting; and

(9) Water rescue situations, as appropriate.

(c) The plan required by this section must address or include—

(1) To the extent practicable, provisions for medical services, including transportation and medical assistance for the maximum number of persons that can be carried on the largest air carrier aircraft that the airport reasonably can be expected to serve;

(2) The name, location, telephone number, and emergency capability of each hospital and other medical facility and the business address and telephone number of medical personnel on the airport or in the communities it serves who have agreed to provide medical assistance or transportation;

(3) The name, location, and telephone number of each rescue squad, ambulance service, military installation, and government agency on the airport or in the communities it serves that agrees to provide medical assistance or transportation;

(4) An inventory of surface vehicles and aircraft that the facilities, agencies, and personnel included in the plan under paragraphs (c)(2) and (3) of this section will provide to transport injured and deceased persons to locations on the airport and in the communities it serves;

(5) A list of each hangar or other building on the airport or in the communities it serves that will be used to accommodate uninjured, injured, and deceased persons;

(6) Plans for crowd control, including the name and location of each safety or security agency that agrees to provide assistance for the control of crowds in the event of an emergency on the airport; and

(7) Procedures for removing disabled aircraft, including, to the extent practical, the name, location, and telephone numbers of agencies with aircraft removal responsibilities or capabilities.

(d) The plan required by this section must provide for—

(1) The marshalling, transportation, and care of ambulatory injured and uninjured accident survivors;

(2) The removal of disabled aircraft;

(3) Emergency alarm or notification systems; and

(4) Coordination of airport and control tower functions relating to emergency actions, as appropriate.

(e) The plan required by this section shall contain procedures for notifying the facilities, agencies, and personnel who have responsibilities under the plan of the location of an aircraft accident, the number of persons involved in that accident, or any other information necessary to carry out their responsibilities, as soon as that information becomes available.

(f) The plan required by this section shall contain provisions, to the extent practicable, for the rescue of aircraft accident victims from significant bodies of water or marsh lands adjacent to the airport that are crossed by the approach and departure flight paths of air carriers. A body of water or marshland is significant if the area exceeds one-quarter square mile and cannot be traversed by conventional land rescue vehicles. To the extent practicable, the plan shall provide for rescue vehicles with a combined capacity for handling the maximum number of persons that can be carried on board the largest air

carrier aircraft in the Index group required under § 139.315.

(g) Each certificate holder shall—

(1) Coordinate the plan with law enforcement agencies, rescue and firefighting agencies, medical personnel and organizations, the principal tenants at the airport, and all other persons who have responsibilities under the plan;

(2) To the extent practicable, provide for participation by all facilities, agencies, and personnel specified in paragraph (g)(1) of this section in the development of the plan;

(3) Ensure that all airport personnel having duties and responsibilities under the plan are familiar with their assignments and are properly trained; and

(4) At least once every 12 consecutive calendar months, review the plan with all of the parties with whom the plan is coordinated, as specified in paragraph (g)(1) of this section, to ensure that all parties know their responsibilities and that all of the information in the plan is current.

(h) Each holder of a Class I Airport Operating Certificate shall hold a full-scale airport emergency plan exercise at least once every 36 consecutive calendar months.

(i) Each airport subject to applicable FAA and Transportation Security Administration security regulations shall ensure that instructions for response to paragraphs (b)(2) and (b)(7) of this section in the airport emergency plan are consistent with its approved airport security program.

(j) FAA Advisory Circulars contain methods and procedures for the development of an airport emergency plan that are acceptable to the Administrator.

(k) The emergency plan required by this section shall be submitted by each holder of a Class II, III, or IV Airport Operating Certificate no later than 24 consecutive calendar months after June 9, 2004.

#### § 139.327 Self-inspection program.

(a) In a manner authorized by the Administrator, each certificate holder shall inspect the airport to assure compliance with this subpart according to the following schedule:

(1) Daily, except as otherwise required by the Airport Certification Manual;

(2) When required by any unusual condition, such as construction activities or meteorological conditions, that may affect safe air carrier operations; and

(3) Immediately after an accident or incident.

(b) Each certificate holder shall provide the following:

(1) Equipment for use in conducting safety inspections of the airport;

(2) Procedures, facilities, and equipment for reliable and rapid dissemination of information between the certificate holder's personnel and air carriers; and

(3) Procedures to ensure qualified personnel perform the inspections. Such procedures shall ensure personnel are trained, as specified under § 139.303, and receive initial and recurrent instruction every 12 consecutive calendar months in at least the following areas:

(i) Airport familiarization, including airport signs, marking and lighting.

(ii) Airport emergency plan.

(iii) Notice to Airmen (NOTAM) notification procedures.

(iv) Procedures for pedestrians and ground vehicles in movement areas and safety areas.

(v) Discrepancy reporting procedures; and

(4) A reporting system to ensure prompt correction of unsafe airport conditions noted during the inspection, including wildlife strikes.

(c) Each certificate holder shall—

(1) Prepare, and maintain for at least 12 consecutive calendar months, a record of each inspection prescribed by this section, showing the conditions found and all corrective actions taken.

(2) Prepare records of all training given after June 9, 2004 to each individual in compliance with this section that includes, at a minimum, a description and date of training received. Such records shall be maintained for 24 consecutive calendar months after completion of training.

(d) FAA Advisory Circulars contain methods and procedures for the conduct of airport self-inspections that are acceptable to the Administrator.

#### § 139.329 Pedestrians and ground vehicles.

In a manner authorized by the Administrator, each certificate holder shall—

(a) Limit access to movement areas and safety areas only to those pedestrians and ground vehicles necessary for airport operations;

(b) Establish and implement procedures for the safe and orderly access to, and operation in, movement areas and safety areas by pedestrians and ground vehicles, including provisions identifying the consequences of noncompliance with the procedures by an employee, tenant, or contractor;

(c) When an air traffic control tower is in operation, ensure that each pedestrian and ground vehicle in movement areas or safety areas is controlled by one of the following:

(1) Two-way radio communications between each pedestrian or vehicle and the tower;

(2) An escort with two-way radio communications with the tower accompanying any pedestrian or vehicle without a radio; or

(3) Measures authorized by the Administrator for controlling pedestrians and vehicles, such as signs, signals, or guards, when it is not operationally practical to have two-way radio communications between the tower and the pedestrian, vehicle, or escort;

(d) When an air traffic control tower is not in operation, or there is no air traffic control tower, provide adequate procedures to control pedestrians and ground vehicles in movement areas or safety areas through two-way radio communications or prearranged signs or signals;

(e) Ensure that each employee, tenant, or contractor is trained on procedures required under paragraph (b) of this section, including consequences of noncompliance, prior to moving on foot, or operating a ground vehicle, in movement areas or safety areas; and

(f) Maintain the following records:

(1) A description and date of training completed after June 9, 2004 by each individual in compliance with this section. A record for each individual shall be maintained for 24 consecutive months after the termination of an individual's access to movement areas and safety areas.

(2) A description and date of any accidents or incidents in the movement areas and safety areas involving air carrier aircraft, a ground vehicle or a pedestrian. Records of each accident or incident occurring after the June 9, 2004 shall be maintained for 12 consecutive calendar months from the date of the accident or incident.

#### **§ 139.331 Obstructions.**

In a manner authorized by the Administrator, each certificate holder shall ensure that each object in each area within its authority that has been determined by the FAA to be an obstruction is removed, marked, or lighted, unless determined to be unnecessary by an FAA aeronautical study. FAA Advisory Circulars contain methods and procedures for the lighting of obstructions that are acceptable to the Administrator.

#### **§ 139.333 Protection of NAVAIDS.**

In a manner authorized by the Administrator, each certificate holder shall—

(a) Prevent the construction of facilities on its airport that, as

determined by the Administrator, would derogate the operation of an electronic or visual NAVAID and air traffic control facilities on the airport;

(b) Protect—or if the owner is other than the certificate holder, assist in protecting—all NAVAIDS on its airport against vandalism and theft; and

(c) Prevent, insofar as it is within the airport's authority, interruption of visual and electronic signals of NAVAIDS.

#### **§ 139.335 Public protection.**

(a) In a manner authorized by the Administrator, each certificate holder shall provide—

(1) Safeguards to prevent inadvertent entry to the movement area by unauthorized persons or vehicles; and

(2) Reasonable protection of persons and property from aircraft blast.

(b) Fencing that meets the requirements of applicable FAA and Transportation Security Administration security regulations in areas subject to these regulations is acceptable for meeting the requirements of paragraph (a)(1) of this section.

#### **§ 139.337 Wildlife hazard management.**

(a) In accordance with its Airport Certification Manual and the requirements of this section, each certificate holder shall take immediate action to alleviate wildlife hazards whenever they are detected.

(b) In a manner authorized by the Administrator, each certificate holder shall ensure that a wildlife hazard assessment is conducted when any of the following events occurs on or near the airport:

(1) An air carrier aircraft experiences multiple wildlife strikes;

(2) An air carrier aircraft experiences substantial damage from striking wildlife. As used in this paragraph, substantial damage means damage or structural failure incurred by an aircraft that adversely affects the structural strength, performance, or flight characteristics of the aircraft and that would normally require major repair or replacement of the affected component;

(3) An air carrier aircraft experiences an engine ingestion of wildlife; or

(4) Wildlife of a size, or in numbers, capable of causing an event described in paragraphs (b)(1), (b)(2), or (b)(3) of this section is observed to have access to any airport flight pattern or aircraft movement area.

(c) The wildlife hazard assessment required in paragraph (b) of this section shall be conducted by a wildlife damage management biologist who has professional training and/or experience in wildlife hazard management at

airports or an individual working under direct supervision of such an individual. The wildlife hazard assessment shall contain at least the following:

(1) An analysis of the events or circumstances that prompted the assessment.

(2) Identification of the wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences.

(3) Identification and location of features on and near the airport that attract wildlife.

(4) A description of wildlife hazards to air carrier operations.

(5) Recommended actions for reducing identified wildlife hazards to air carrier operations.

(d) The wildlife hazard assessment required under paragraph (b) of this section shall be submitted to the Administrator for approval and determination of the need for a wildlife hazard management plan. In reaching this determination, the Administrator will consider—

(1) The wildlife hazard assessment;

(2) Actions recommended in the wildlife hazard assessment to reduce wildlife hazards;

(3) The aeronautical activity at the airport, including the frequency and size of air carrier aircraft;

(4) The views of the certificate holder;

(5) The views of the airport users; and

(6) Any other known factors relating to the wildlife hazard of which the Administrator is aware.

(e) When the Administrator determines that a wildlife hazard management plan is needed, the certificate holder shall formulate and implement a plan using the wildlife hazard assessment as a basis. The plan shall—

(1) Provide measures to alleviate or eliminate wildlife hazards to air carrier operations;

(2) Be submitted to, and approved by, the Administrator prior to implementation; and

(3) As authorized by the Administrator, become a part of the Airport Certification Manual.

(f) The plan shall include at least the following:

(1) A list of the individuals having authority and responsibility for implementing each aspect of the plan.

(2) A list prioritizing the following actions identified in the wildlife hazard assessment and target dates for their initiation and completion:

(i) Wildlife population management;

(ii) Habitat modification; and

(iii) Land use changes.

(3) Requirements for and, where applicable, copies of local, State, and Federal wildlife control permits.

(4) Identification of resources that the certificate holder will provide to implement the plan.

(5) Procedures to be followed during air carrier operations that at a minimum includes—

(i) Designation of personnel responsible for implementing the procedures;

(ii) Provisions to conduct physical inspections of the aircraft movement areas and other areas critical to successfully manage known wildlife hazards before air carrier operations begin;

(iii) Wildlife hazard control measures; and

(iv) Ways to communicate effectively between personnel conducting wildlife control or observing wildlife hazards and the air traffic control tower.

(6) Procedures to review and evaluate the wildlife hazard management plan every 12 consecutive months or following an event described in paragraphs (b)(1), (b)(2), and (b)(3) of this section, including:

(i) The plan's effectiveness in dealing with known wildlife hazards on and in the airport's vicinity and

(ii) Aspects of the wildlife hazards described in the wildlife hazard assessment that should be reevaluated.

(7) A training program conducted by a qualified wildlife damage management biologist to provide airport personnel with the knowledge and skills needed to successfully carry out the wildlife hazard management plan required by paragraph (d) of this section.

(g) FAA Advisory Circulars contain methods and procedures for wildlife hazard management at airports that are acceptable to the Administrator.

**§ 139.339 Airport condition reporting.**

In a manner authorized by the Administrator, each certificate holder shall—

(a) Provide for the collection and dissemination of airport condition information to air carriers.

(b) In complying with paragraph (a) of this section, use the NOTAM system, as appropriate, and other systems and procedures authorized by the Administrator.

(c) In complying with paragraph (a) of this section, provide information on the following airport conditions that may affect the safe operations of air carriers:

(1) Construction or maintenance activity on movement areas, safety areas, or loading ramps and parking areas.

(2) Surface irregularities on movement areas, safety areas, or loading ramps and parking areas.

(3) Snow, ice, slush, or water on the movement area or loading ramps and parking areas.

(4) Snow piled or drifted on or near movement areas contrary to § 139.313.

(5) Objects on the movement area or safety areas contrary to § 139.309.

(6) Malfunction of any lighting system, holding position signs, or ILS critical area signs required by § 139.311.

(7) Unresolved wildlife hazards as identified in accordance with § 139.337.

(8) Nonavailability of any rescue and firefighting capability required in §§ 139.317 or 139.319.

(9) Any other condition as specified in the Airport Certification Manual or that may otherwise adversely affect the safe operations of air carriers.

(d) Each certificate holder shall prepare and keep, for at least 12 consecutive calendar months, a record of each dissemination of airport condition information to air carriers prescribed by this section.

(e) FAA Advisory Circulars contain methods and procedures for using the NOTAM system and the dissemination of airport information that are acceptable to the Administrator.

**§ 139.341 Identifying, marking, and lighting construction and other unserviceable areas.**

(a) In a manner authorized by the Administrator, each certificate holder shall—

(1) Mark and, if appropriate, light in a manner authorized by the Administrator—

(i) Each construction area and unserviceable area that is on or adjacent to any movement area or any other area of the airport on which air carrier aircraft may be operated;

(ii) Each item of construction equipment and each construction roadway, which may affect the safe movement of aircraft on the airport; and

(iii) Any area adjacent to a NAVAID that, if traversed, could cause derogation of the signal or the failure of the NAVAID; and

(2) Provide procedures, such as a review of all appropriate utility plans prior to construction, for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities.

(b) FAA Advisory Circulars contain methods and procedures for identifying and marking construction areas that are acceptable to the Administrator.

**§ 139.343 Noncomplying conditions.**

Unless otherwise authorized by the Administrator, whenever the requirements of subpart D of this part cannot be met to the extent that uncorrected unsafe conditions exist on the airport, the certificate holder shall limit air carrier operations to those portions of the airport not rendered unsafe by those conditions.

Issued in Washington, DC on January 28, 2004.

**Marion C. Blakey,**  
Administrator.

[FR Doc. 04-2255 Filed 2-9-04; 8:45 am]

BILLING CODE 4910-13-P