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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No.: FAA-2010-0247; Amdt. No. 139-27]

RIN 2120-AJ70

Safety Enhancements, Certification of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends regulations pertaining to certification of airports to clarify that the applicability of these regulations is based only on passenger seats in passenger-carrying operations as determined by either the regulations or the aircraft type certificate. This final rule also adds a new section that prohibits fraudulent or intentionally false statements concerning an airport operating certificate. Finally, this final rule adopts administrative changes for internal consistency, or to codify existing industry practice. These changes are necessary to clarify the applicability language, and ensure the reliability of records maintained by a certificate holder and reviewed by the FAA. Lastly, this final rule changes the definition of joint-use airport to correspond with statutory authority.

DATES: Effective March 18, 2013.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kenneth Langert, Office of Airports Safety and Standards,

Airport Safety and Operations Division (AAS-300), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 493-4529; e-mail Kenneth.Langert@faa.gov. For legal questions concerning this action, contact Sabrina Jawed, AGC-240, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; fax (202) 267-7971; email Sabrina.Jawed@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44706, “Airport Operating Certificates”. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including issuing airport operating certificates that contain terms the Administrator finds necessary to ensure safety in air transportation. This regulation is within the scope of that authority because it would (i) enhance safety in airport operations by clarifying the applicability of part 139, and (ii) explicitly prohibit fraudulent or intentionally false statements in a certificate application or record required to be maintained by the certificate holder.

I. Overview of Final Rule

This final rule will:

- Clarify that the applicability of part 139 is based only on passenger seats in passenger-carrying operations, as determined by either the regulations or the aircraft type certificate (§ 139.1);
- Add a new § 139.115 that prohibits fraudulent or intentionally false statements concerning an airport operating certificate (AOC);
- Amend language in § 139.303 and § 139.329 for consistency, or to codify existing industry practice; and

- Amend the definition of joint-use airport in § 139.5 to correspond with statutory authority.

II. Summary of the Costs and Benefits of the Final Rule

Although the FAA cannot quantify the benefits of this final rule, the FAA believes that the benefits will exceed the minimal unquantifiable costs imposed by this final rule because this final rule will provide consistent rule language and accurate reporting.

III. Background

A. Summary of NPRM

Part 139 prescribes the minimum standards for maintaining and operating the physical airport environment. The FAA issues AOCs under part 139 to certain airports serving commercial passenger-carrying operations based on the type of commercial operations and size of aircraft served. As of December 31, 2012, 544 of the four classes of airports (I, II, III, and IV) defined in part 139 hold FAA-issued AOCs.

On February 1, 2011, the FAA published a notice of proposed rulemaking (NPRM) on Safety Enhancements Part 139, Certification of Airports (76 FR 5510). In the NPRM, the FAA proposed to amend the airport certification standards in part 139 by:

- (1) Clarifying the applicability of part 139,
- (2) Explicitly prohibiting fraudulent or intentionally false statements in a certificate application or record required to be maintained,
- (3) Requiring a Surface Movement Guidance Control System (SMGCS) plan if the certificate holder conducts low-visibility operations,
- (4) Establishing minimum standards for training of personnel who access the airport non-movement area, and
- (5) Requiring certificate holders to conduct pavement surface evaluations to ensure reliability of runway surfaces in wet weather conditions.

The comment period closed on April 4, 2011. On April 13, 2011, the FAA reopened the comment period until May 13, 2011, (76 FR 20570) because we learned that a number of airport operators were not aware that low-visibility approaches and departures had been approved for their airports. The FAA notified, by letter, those airports with approved low-visibility departures, and reopened the comment

period to allow time for affected airports to receive notice from the FAA, review this NPRM, and adequately assess, prepare, and submit comments on the possible impact of this NPRM.

On June 3, 2011, the FAA again reopened the comment period until July 5, 2011, (76 FR 32105) because several industry groups requested the full economic evaluation the FAA developed for this rule. The FAA posted the full economic evaluation in the docket to allow industry time to review it, and adequately assess, prepare, and submit comments on the possible impact of this NPRM.

B. Summary of Comments

The FAA received 49 comment documents in response to the NPRM from the following commenters: Alaska DOT & PF; American Association of Airport Executives (AAAE); Airports Council International—North America (ACI-NA); Air Line Pilots Association, International (ALPA); Aircraft Owners and Pilots Association (AOPA); Broward County Aviation Department; Burlington International Airport; City of Atlanta Department of Aviation; City of Prescott; Clark County Department of Aviation; Dallas/Fort Worth International Airport; Denver International Airport; Experimental Aircraft Association (EAA); Fairbanks International Airport; Glynn County Airport Commission; Houston Airport System; Ithaca Tompkins Regional Airport; Kent County Department of Aeronautics; Lafayette Airport Commission; Los Angeles World Airport; Louisville Regional Airport Authority; Manchester-Boston Regional Airport; Maryland Aviation Administration; Mid Ohio Valley Airport; Municipal Airport Authority of the City of Fargo; Myrtle Beach International Airport; National Air Transportation Association (NATA); Omni Air International; Phoenix Sky Harbor International Airport; Port of Seattle; Portland International Airport; Rapid City Regional Airport; Salt Lake City International; Sarasota Manatee Airport Authority; Sioux Falls Regional Airport; Southwest Airlines; St. Petersburg-Clearwater International Airport; The Columbus Regional Airport Authority; The Port Authority of New York & New Jersey; Western Reserve Port Authority; and nine individuals. All of the commenters generally recommended changes to the proposal.

C. Differences Between the NPRM and the Final Rule

The table below shows the main topics covered by the proposals in the NPRM (indicated by a “YES”) and

whether or not the proposal for that topic is in this final rule (indicated by either a “YES” or a “NO”).

| Safety enhancements part 139 | NPRM | Final rule |
|--|--------------------|--------------|
| Applicability of Part 139 Certification and Falsification. | YES ... YES ... | YES. YES. |
| Surface Movement Guidance Control System (SMGCS). | YES ... | NO. |
| Non-Movement Area Safety Training. | YES ... | NO. |
| Runway Pavement Surface Evaluation. | YES ... | NO. |

In addition to the above, the FAA is adopting administrative changes and amending the definition of joint-use airport, as discussed below. The administrative changes will not require part 139 AOC holders to change their current operational practices.

IV. Discussion of Final Rule and Comments

A. Applicability of Part 139 (§ 139.1)

Currently, § 139.1(a)(1) states that an airport must be certificated under part 139 to host scheduled passenger carrying operations of an air carrier operating aircraft designed for more than nine passenger seats, as determined by the aircraft type certificate issued by a competent civil aviation authority. The current wording of § 139.1 has created confusion regarding the operation of a particular aircraft type, the Cessna 208B Caravan (the “Caravan”). The standard high-density airline configuration for the Caravan features four rows of 1–2 seating behind the two seats in the cockpit. The Caravan is certificated as a single-pilot aircraft, but has two pilot seats. In non-revenue service, the second pilot seat may be occupied by a passenger. However, in scheduled passenger-carrying operations, § 135.113 prohibits passengers from occupying the second pilot seat, which means there are not more than nine passenger seats during those operations.

In the NPRM, the FAA proposed to clarify § 139.1 to state that the applicability of part 139 is based only on passenger seats in passenger-carrying operations as determined by either the regulations under which the operation is conducted or the aircraft type certificate.

No comments specifically objected to the proposal to clarify the applicability of part 139. The final rule adopts the language as proposed.

B. Certification and Falsification (§ 139.115)

The FAA proposed a new § 139.115 that would prohibit fraudulent or intentionally false statements on an application for a certificate or other records required to be kept.

All comments regarding this section supported the FAA’s proposal. To ensure the reliability of records maintained by a certificate holder and reviewed by the FAA, the FAA is adding a new § 139.115 that prohibits:

(1) The making of any fraudulent or intentionally false statement on an application for a certificate;

(2) The making of any fraudulent or intentionally false statement on any record or report required by the FAA; and

(3) The reproduction or alteration, for a fraudulent purpose, of any FAA certificate or approval.

The final rule allows the FAA to suspend or revoke an AOC if an owner, operator, or other person acting on behalf of the certificate holder violates any of these prohibitions. The FAA may also suspend or revoke any other FAA certificate issued to the person committing the act. This requirement is similar to the falsification prohibitions in 14 CFR parts 43, 61, 65, and 67.

C. SMGCS (§ 139.203)

The FAA proposed to amend § 139.203 to require that airport certification manuals contain a SMGCS plan for airports approved for operations below 1,200 feet runway visual range. A SMGCS plan would facilitate the safe movement of aircraft and vehicles on the airport by establishing more rigorous control procedures and requiring enhanced visual aids. Additionally, the ability to conduct low visibility operations allows a certificate holder to stay open during poor weather conditions, thus reducing flight delays and cancellations.

The basis for approving low-visibility operations for each runway would be incorporated in the certificate holder’s SMGCS plan. Only certificate holders that conduct low-visibility operations would be required to develop and implement a SMGCS plan. These plans would vary among airports because of local conditions, and would be subject to FAA approval.

Twelve commenters stated that either the cost calculations in our proposal were not realistic, or the amount of time in low-visibility conditions did not warrant the investment. Additionally, several comments contended that the burden to airports would not be beneficial, and would require a large

infrastructure investment. Based on comments and further cost analysis, this section of the rule is not currently cost beneficial to implement and the FAA is withdrawing the SMGCS proposal. However, the FAA may propose rulemaking in the future if it is determined to be necessary.

D. Training (§§ 139.303 & 139.329)

i. Non-Movement Area

In the NPRM, the FAA proposed to require training for all persons authorized to access the non-movement area (with certain exceptions noted in the proposal). This training would complement the existing training for persons accessing the movement and safety areas, and could be combined with the training for persons accessing both the movement and non-movement areas.

Nearly all commenters expressed support for increasing safety. However, most commenters contended the proposal was unnecessary because airlines and ground servicing providers conduct safety training to satisfy the Occupational Safety and Health Administration (OSHA) requirements. They also stated the cost to the industry would be burdensome, and would take away time from other duties that produce greater safety benefits. Further, they stated the NPRM overstates the benefit and underestimates the lifecycle costs by not including costs for additional staff or facilities needed for training and record keeping. One airport included a cost case study, and other airports provided differing cost figures that were helpful in identifying all costs involved.

Based on comments and further analysis, the FAA is withdrawing the proposal covering non-movement area safety training. However, the FAA may propose rulemaking in the future if it is determined to be necessary.

ii. Substituting “Persons” for “Personnel”

The proposal also included substituting all “persons” for all “personnel” in § 139.303(c). We received no comments objecting to this change. The FAA adopts this change, and will also substitute all “persons” for “employee, tenant or contractor” in §§ 139.329 (b) and (e) for consistency. The FAA has determined this language provides greater clarity and is consistent with previous FAA interpretations.

iii. Annual Recurrent Training

Since 2007, the U.S. aviation community has initiated and completed significant short-term actions to

improve safety at U.S. airports based on the FAA’s “Call to Action.”¹ As part of the Call to Action, the FAA Office of Airport Safety and Standards issued a change to AC 150/5210–20, Ground Vehicle Operations on Airports, on March 31, 2008. The AC change strongly recommended regular recurrent driver training for all persons with access to the movement area. This included voluntarily conducting recurrent annual movement area driver’s training for all personnel who enter the movement area. All certificated airports voluntarily developed plans to require annual recurrent training for all individuals with access to the movement areas. As a result of the Call to Action, in 2010 the Office of Airports recorded that all airports were requiring recurrent training for non-airport employees such as Fixed-Base Operators (FBO) or airline mechanics.² The FAA intended to propose a requirement in the NPRM that would make the existing industry practice mandatory. Given the universality of the training, the FAA has determined that it would be contrary to the public interest to initiate a separate rulemaking action just for this provision in order to provide an opportunity to comment. The existing level of training indicates that as a group certificated airports are willing to conduct the training, and that codifying existing industry practice adds no further costs.

This final rule now requires annual recurrent training for all persons in the movement and safety areas for Classes I through IV airports. Regulatory text is being added to § 139.329 to further clarify that all persons that have access to, and operate in, movement areas and safety areas require initial and recurrent drivers training (at least once every 12 consecutive calendar months). Additionally, since Class IV airports will be required to comply with this regulation, an “X” will be added in the Class IV column in § 139.203(b) manual element number 22.

E. Runway Pavement Surface Evaluation (§ 139.305)

In the NPRM, the FAA proposed amending § 139.305 to require airports to establish and implement a runway friction testing program for each runway used by jet aircraft. Under the proposal, a certificate holder would schedule periodic friction evaluations of each runway that accommodates jet aircraft.

Components of the program would include a testing frequency that takes into consideration the volume and type of traffic as well as friction readings from continuous friction measuring equipment (CFME) operated by trained personnel. Corrective action would be required, as needed.

Ten commenters questioned whether the cost of the CFME or the tests required would provide significant benefit. Five commenters wanted to know who would be responsible for qualifying the trainers for the CFME operators. The remaining comments raised concerns about:

- (i) Non-jet traffic;
- (ii) The use of the CFME for winter operations;
- (iii) What constitutes acceptable friction levels;
- (iv) What is an acceptable testing frequency;
- (v) Are there any funding sources;
- (vi) What is the implementation time frame; and
- (vii) Consideration of new equipment.

The FAA also proposed for § 139.305 that airport operators be required to locate potential hydroplaning areas as well as measure the depth and width of a runway’s grooves to check for wear and damage. Airports would also establish and implement a program for testing performance of grooves and transverse slopes.

Four commenters stated that the NPRM did not provide enough detail for cross-slope inspection requirements. Three commenters felt that this issue was already considered in current part 139 regulations. Other commenters wanted the FAA to determine inspection specifics and acceptance levels. Two commenters thought that this proposal would increase costs.

Based on comments and further analysis, the FAA is withdrawing the proposals for § 139.305. The FAA notes that guidance currently exists addressing these issues and it will conduct outreach with certificate holders. Guidance on runway friction testing frequency and friction levels is in Advisory Circular 150/5320–12C Measurement, Construction, and Maintenance of Skid-Resistant Pavement Surfaces. Guidance on the use of CFME in contaminated conditions for operational purposes is found in Advisory Circular 150/5200–30C, Airport Winter Safety and Operations. Finally, the FAA notes that current part 139 requirements require airports to inspect runways for ponding problems. However, the FAA may propose rulemaking in the future if it is determined to be necessary.

¹ See FAA Fact Sheet at www.faa.gov/news/fact_sheets/news_story.cfm?newsId=10133.

² See FAA Annual Runway Safety Report 2010, at www.faa.gov/airports/runway_safety/news/publications/media/Annual_Runway_Safety_Report_2010.pdf.

F. Definition of Joint Use Airport
(§ 139.5)

The FAA is changing the definition of “joint use airport” in § 139.5 to correspond with the definition provided by Congress in the FAA Modernization and Reform Act of 2012 (49 U.S.C. 47175 (2012)). This change is not subject to notice and comment procedures because it meets the Administrative Procedure Act’s good cause exception (5 U.S.C. 553).

V. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct 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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) 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 requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 with base year of 1995). This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

In conducting these analyses, the FAA has determined that this final rule:

(1) Imposes no incremental costs and provides benefits,

(2) Is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866,

(3) Is not significant as defined in DOT’s Regulatory Policies and Procedures;

(4) Will not have a significant economic impact on a substantial number of small entities;

(5) Will not have a significant effect on international trade; and

(6) Will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified.

These analyses are summarized below.

In response to public comments, the FAA is withdrawing some proposed NPRM requirements. This section analyzes the economic impacts of the provisions of this final rule.

This final rule will:

- Clarify that the applicability of part 139 is based only on passenger seats in passenger-carrying operations, as determined by the regulations or the aircraft type certificate (§ 139.1);

- Add a new § 139.115 that prohibits fraudulent or intentionally false statements concerning an AOC or other record required to be maintained;

- Amend language in §§ 139.303 and 138.329 for consistency or to codify current industry practice; and

- Amend the definition of joint-use airport in § 139.5 to correspond with statutory authority.

The benefits and costs of each of these sections of this final rule are discussed below.

i. Applicability of Part 139 (§ 139.1)

This section of this final rule clarifies that the applicability of part 139 is based only on passenger seats in passenger-carrying operations, as determined by the regulations or the aircraft type certificate.

No quantitative benefits or costs are estimated for this section of the final rule because it simply clarifies existing FAA requirements.

ii. Certification and Falsification (§ 139.115)

This section of this final rule is intended to ensure the reliability of records maintained by a certificate holder and reviewed by the FAA by specifically prohibiting fraudulent or intentionally false statements concerning an AOC or other record required to be maintained.

This section of this final rule has positive qualitative benefits because it emphasizes the importance of accurate reporting of airport data. However, no

quantitative benefits are estimated for this section of this final rule.

There are no costs for this section of this final rule because it simply formalizes the keeping and reporting of accurate airport data.

This requirement is similar to the falsification prohibitions in 14 CFR parts 43, 61, 65, and 67.

iii. Amended Language in §§ 139.303 and 139.329

Currently, there are inconsistencies in the way people are referred to in these sections. This final rule will replace all references to people with the term persons. Additionally, the FAA will require annual recurrent training for all persons in the movement and safety areas and include Class IV airports to align with current industry practice.

The qualitative benefit of this portion of this final rule will be to provide consistent language within and between §§ 139.303 and 138.329. However, the FAA cannot provide a quantitative estimate of these benefits.

There are no costs for this portion of this final rule because this changed language is consistent with previous FAA interpretations.

Although the FAA cannot quantify the benefits of this final rule, the FAA believes that the benefits will exceed the minimal unquantifiable costs imposed by this final rule.

B. Regulatory Flexibility Determination

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 explain 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 agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

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 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.

i. Publicly Owned Airports

Size standards for small entities are published by the Small Business Administration (SBA). The small entity size standard for municipalities, including those owning publicly-owned airports, is a population less than 50,000 people.

The population of municipalities owning airports ranges from many millions to a few thousand. Many part 139 airport owners are small entities. Therefore, this final rule will affect a large number of small entities. However, this final rule will not have a significant economic impact on any small entity because the final rule imposes no incremental costs.

Therefore, as the acting FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of part 139 airport owners.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States.

Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 an 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." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. In the NPRM, we provided data on the information collection requirements associated with the proposals in that document. However, the proposals that created these information collection requirements are not in this final rule. Therefore, the FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

(2) Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in

Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. 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 government body (such as a city or county government), which, in turn, is incorporated by or is part of a State. Some airports are operated directly by a State.

This final rule, which modifies an existing regulatory requirement, imposes no incremental costs and would not alter the relationship between certificate holders and the FAA as established by law. This final rule is not a significant regulatory action under the Unfunded Mandates Reform Act of 1995. Accordingly, the FAA has determined that this action does not have a substantial direct effect on the States. This final rule makes administrative amendments to existing regulatory requirements for certificate holders. These requirements are under existing statutory authority to regulate airports for aviation safety. Accordingly, there is no change in either the relationship between the Federal Government and the States, or the distribution of power among the various levels of government.

The FAA mailed a copy of the NPRM to each State government specifically inviting comment on Federalism issues. No comments were received.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VII. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or

3. Access the Government Printing Office's Web page at <http://www.gpo.gov/fdsys>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. 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. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 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 139—CERTIFICATION OF AIRPORTS

■ 1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44709, 44719.

■ 2. Amend § 139.1 by revising paragraph (a) to read as follows:

§ 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 configured for more than 9 passenger seats, as determined by the regulations under which the operation is conducted or the aircraft type certificate issued by a competent civil aviation authority; and

(2) Unscheduled passenger-carrying operations of an air carrier operating aircraft configured for at least 31 passenger seats, as determined by the regulations under which the operation is conducted or the aircraft type certificate issued by a competent civil aviation authority.

* * * * *

■ 3. Amend § 139.5 to revise the definition of the term "Joint-use airport" to read as follows:

§ 139.5 Definitions.

* * * * *

Joint-use airport means an airport owned by the Department of Defense, at which both military and civilian aircraft make shared use of the airfield.

* * * * *

■ 4. Add § 139.115 to subpart B to read as follows:

§ 139.115 Falsification, reproduction, or alteration of applications, certificates, reports, or records.

(a) No person shall make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate or approval under this part.

(2) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

(3) Any reproduction, for a fraudulent purpose, of any certificate or approval issued under this part.

(4) Any alteration, for a fraudulent purpose, of any certificate or approval issued under this part.

(b) The commission by any owner, operator, or other person acting on behalf of a certificate holder of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any certificate or approval issued under this part and held by that certificate holder and any other certificate issued under this title and held by the person committing the act.

■ 5. Amend § 139.203 by revising paragraph (b)(2) to read as follows:

§ 139.203 Contents of Airport Certification Manual.

* * * * *

(b) * * *

| Manual elements | Airport certificate class | | | |
|--|---------------------------|----------|-----------|----------|
| | Class I | Class II | Class III | Class IV |
| * * * * * | | | | |
| 22. Procedures for controlling pedestrians and ground vehicles in movement areas and safety areas, as required under § 139.329 | X | X | X | X |
| * * * * * | | | | |

■ 6. Amend § 139.303 by revising the introductory text of paragraph (c) to read as follows:

§ 139.303 Personnel.

* * * * *

(c) Train all persons 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 must 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 must include at least the following areas:

* * * * *

■ 7. Amend § 139.329 by revising paragraph (b) and paragraph (e) to read as follows:

§ 139.329 Pedestrians and ground vehicles.

* * * * *

(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 all persons;

* * * * *

(e) Ensure that all persons are trained on procedures required under paragraph (b) of this section prior to the initial performance of such duties and at least once every 12 consecutive calendar months, including consequences of noncompliance, prior to moving on foot, or operating a ground vehicle, in movement areas or safety areas; and

* * * * *

Issued in Washington, DC, on January 4, 2013.

Michael P. Huerta,
Acting Administrator.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 121113624-2624-01]

RIN 0694-AF82

Removal of Persons From the Entity List Based on Removal Request; Implementation of Entity List Annual Review Changes; and Implementation of Modifications and Corrections to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing two persons from the Entity List (Supplement No. 4 to Part 744), as the result of a request for removal submitted by these two persons. In addition, on the basis of the annual review conducted by the End User Review Committee, this rule amends the Entity List to remove two entries from the United Arab Emirates (U.A.E.). Finally, this rule modifies two existing entries to correct the scope of those entries, including removing a redundant entry that was inadvertently added in a final rule.

DATES: *Effective Date:* This rule is effective January 16, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce,

Phone: (202) 482-5991, Fax: (202) 482-3911, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported, or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the License Review Policy column on the Entity List and the availability of license exceptions is published in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Removal From the Entity List

This rule implements a decision of the ERC to remove two persons, Laurence Mattiucci and Toulouse Air Spares SAS, both located in France, from the Entity List as a result of a successful request for removal from the Entity List. Based upon the review of the information provided in the removal request in accordance with § 744.16 (Procedure for requesting removal or modification of an Entity List entity), and after review by the ERC's member agencies, the ERC determined that these persons should be removed from the Entity List.

The ERC's decision to remove these two persons took into account their

cooperation with the U.S. Government, as well as their assurances of future compliance with the EAR. In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to these two persons, informing these entities of the ERC's decision to remove them from the Entity List. This final rule implements the decision to remove the following two persons from the Entity List:

France

(1) *Laurence Mattiucci*, 8 Rue de la Bruyere, 31120 Pinsaguel, Toulouse, France; and

(2) *Toulouse Air Spares SAS*, 8 Rue de la Bruyere, 31120 Pinsaguel, Toulouse, France.

Annual Review of the Entity List

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List. This rule implements the results of the annual review for entities located in the United Arab Emirates (U.A.E.). The entities located Armenia, Cyprus, France, and Iran were also reviewed by the ERC, but no additional changes are being made to those entries as a result of the annual review of the Entity List.

Removals From the Entity List on the Basis of Annual Reviews

This rule removes two entries from the Entity List on the basis of the annual review of the Entity List. The persons removed were determined to no longer meet the criteria for inclusion on the Entity List. Specifically, this rule implements the decision of the ERC to remove two persons located in the U.A.E., as follows:

United Arab Emirates

(1) *Abubakr Abuelazm*, Dubai, U.A.E., 500100; and

(1) *Advanced Technology General Trading Company*, a.k.a, Advanced Technologies Emirates FZ-LLC, Office #124 1st Floor, Building #3, Dell Building, Sheikh Zayed Road, Dubai Internet City, Dubai, U.A.E.

The removal of the above-referenced two entities on the basis of annual review of the Entity List, and the removal of the two entities referenced