
Monday
November 19, 1990

federal register

Part III

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 139
Airport Certification and Operations;
Clarification of Various Provisions; Final
Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. 25698; Amdt. No. 139-17]

RIN 2120-AD10

Airport Certification and Operations;
Clarification of Various ProvisionsAGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes two changes to the certification and operations regulations of land airports serving air carriers. The first change revises the certification requirements to provide that a person operating an uncertificated airport may serve, when authorized by the Administrator, unscheduled air carrier operations with aircraft having a seating capacity of more than 30 passengers. As revised, airport certification requirements and the regulations applicable to air carrier operations are consistent in this regard. The second change clarifies responsibility for the establishment of and compliance with rules for airport ground vehicle operations by tenants, contractors, and employees. This change is necessary to address the responsibility of certificate holders with regard to ground vehicle operations.

EFFECTIVE DATE: December 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Roman, Airport Safety and Operations Division (AAS-300), Office of Airport Safety and Standard, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 724-0356.

SUPPLEMENTARY INFORMATION:**Background**

Part 139 of the Federal Aviation Regulations (FAR) prescribes rules governing the certification and operation of land airports servicing certain air carrier operations conducted with aircraft having a seating capacity of more than 30 passengers. In 1987, FAA issued a final rule, Amendment No. 139-14 (52 FR 44276; November 18, 1987), that revised and reorganized part 139 to clarify it, to define certain requirements more specifically, and to impose additional safety requirements. After the issuance of the final rule, it became evident to the FAA that changes were necessary to make these regulatory requirements consistent with air carrier operations regulations and to further clarify the requirements of part 139. In addition, on October 11, 1988, FAA

received a joint petition for rulemaking from the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE) to clarify responsibility for regulatory violations concerning airport ground vehicle operations. As a result, FAA issued a Notice of Proposed Rulemaking (NPRM) No. 89-30 on October 10, 1989 (54 FR 42912; October 18, 1989).

The NPRM proposed two changes. First, it proposed to amend § 139.101(b) to allow the Administrator to authorize the operator of an uncertificated airport to serve unscheduled air carrier operations with aircraft having a seating capacity of more than 30 passengers. This change was proposed to make the certification regulations in part 139 consistent with the operations regulations in § 121.590 that permit such operations when authorized by the Administrator.

Second, in response to the AOCI/AAAE petition, the NPRM proposed to clarify the obligations of airport operators under § 139.329 with regard to the operation of ground vehicles where there is access to the airport movement areas. Section 139.329 currently states, in pertinent part, "Each certificate holder shall— * * * (e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport which has access to the movement area is familiar and complies with the airport's rules and procedures for the operation of ground vehicles * * *."

The petitioners raised the concern that the words "and complies" in paragraph (e) of § 139.329 could be interpreted to place strict liability on airport operators for any ground vehicle violations. The petitioners noted that the words "and complies," found in the 1987 final rule revising part 139, were not included in the proposed rule language of the antecedent NPRM published in 1985 (50 FR 43094; October 23, 1985). The petitioners noted also that the change in the wording of the rule provision from the 1985 NPRM to the 1987 final rule was not discussed in the preamble of that final rule.

A summary of the petition was published in the *Federal Register* on November 14, 1988 (53 FR 45771). In response to the petition, the FAA received approximately 20 comments supporting the request for change. No responses were received opposing the petition, although the Air Line Pilots Association (ALPA) has since stated that it submitted opposing comments in response to the petition summary. The FAA has no record of receipt of ALPA's comments at that time; however, its

comments were resubmitted in response to the NPRM in this rulemaking (NPRM No. 89-30), and have been considered and addressed in the discussion of comments below.

The FAA concurred with AOCI/AAAE that the language in § 139.329(e) should be revised, and the petitioners' issue was addressed in NPRM No. 89-30 issued last October. The preamble to the NPRM stated that it was not the intent of the FAA in the 1987 revision to establish strict liability on the part of the airport operators with regard to ground vehicle operations; rather, the intent was to require airport operators to have adequate procedures to control ground vehicle operations where there is access to the airport movement areas. The NPRM proposed to delete the words "and complies" from § 139.329(e) and to modify paragraphs (b) and (e) of § 139.329 to clarify the responsibilities of airport operators.

Discussion of Comments

The FAA received 194 comments in response to the NPRM. None of these comments addresses the proposed revision to § 139.101(b); hence, the revision is adopted as proposed. As revised, § 139.101(b) will permit the operator of an uncertificated airport, when authorized by the Administrator, to serve unscheduled air carrier operations with aircraft having a seating capacity of more than 30 passengers. This revision is designed to address emergency and unusual circumstances.

Of the 194 comments that addressed the issue of control of ground vehicles, 192 are in general agreement. Most of the comments received were from airport operators representing a broad spectrum of airports. Almost 90 percent of the comments received were similar letters that used text suggested by AAEE. This text urged adoption of the proposed revision. The text stated further that, on a broader level, there is concern about the FAA's apparent general policy of holding airport operators liable for violations of regulations by tenants, independent contractors, and others whose behavior the airport operator cannot reasonably control. Four commenters submitted essentially identical letters that used language developed by AOCI. These commenters state that, while they prefer the AOCI proposal to revise § 139.329(e) by simply deleting "and complies," they do not oppose the FAA's more extensive proposal to revise paragraph (b) as well. While applauding FAA's action to clarify the strict liability concerns raised by § 139.329(e), these commenters point out that airports are subject to strict

liability for violations of other regulations by tenants and contractors, e.g., certain security violations of FAR part 107; they urge FAA to change its policy of holding airports strictly liable under such regulations for the actions of others which these commenters believe they cannot reasonably control.

The two commenters who oppose this clarification of airport operator liability argue that responsibility for safe ground vehicle operations should reside with the airport operator and should not be abrogated. One, an aviation service company, a tenant on a public-use airport, adamantly disagrees with the proposed revision that it views as relieving airport operators from ground vehicle operation responsibility. This commenter states that mismanagement of operational aspects of an airport rightly should place the airport operator's certificate in jeopardy. The other, Air Line Pilots Association (ALPA), also opposes the clarification that limits airport operators' responsibility. In particular, ALPA notes that control of ground vehicles is a significant safety problem at many airports, and " * * * the airport is the proper authority to regulate and enforce the movement of ground vehicles."

Additionally, ALPA believes that the FAA should assist each airport operator in developing a program addressing every aspect of ground vehicle movement. In ALPA's view, such a program would include a requirement to train and license drivers and to establish and enforce penalties for noncompliance. It further suggests that the FAA incorporate the provisions of future advisory circulars (AC's) relating to ground vehicle operations into the pertinent regulatory text.

The FAA agrees with ALPA that ground vehicle operations in airport movement areas must adhere to established airport procedures. Indeed, the final rule clarifies the airport operator's obligation in this regard by requiring the airport operator to "establish and implement procedures" for ground vehicle operation, including "identifying the consequences of noncompliance." And, as ALPA further notes, there are several airports with noteworthy ground vehicle operations programs currently in effect. While the FAA acknowledges the necessity for each airport to develop comprehensive ground vehicle operations procedures, it also recognizes that such procedures must reflect the specific needs of each airport. The procedures may vary based upon airport size and complexity, the number and type of ground vehicle operations, and other differences among

airports. Therefore, while the FAA has not mandated a specific uniform program, it will continue to assist airport operators in developing procedures consistent with each airport's particular circumstances.

The National Air Transportation Association (NATA) in its comments does not object to the language proposed in the NPRM, but it does express concern about what it describes as a continuing effort by airport operators to avoid responsibility for activities occurring on airports. NATA favors airport operators establishing and implementing adequate procedures for the safe operation of ground vehicles. Not only is it in the tenant's best interest to operate ground vehicles safely, adds NATA, but the potential cost of unsafe operations is an economic incentive for employers of ground vehicle operators to ensure that their employees are properly trained.

Concurring with NATA's argument for retention of airport operators' responsibility for airport operations, the FAA is issuing this rule revision—not to relieve airport operators of responsibility—but rather to clarify the extent of their duties and obligations. FAA agrees also with NATA's focus on training regarding ground vehicle safety. It is the FAA's position that ground vehicle operation safety on airports can best be accomplished by developing comprehensive guidelines and appropriate training requirements for airport personnel, tenants, contractors and others who operate these vehicles. Consequently, a jointly developed FAA and industry report entitled "A Guide to Ground Vehicle Operations on the Airport," soon to be issued by the FAA, addresses employee instruction regarding safe ground vehicle operation, and includes information on signs, lights, markings and tower communications.

While supportive of this clarification of existing regulatory text, the Air Transport Association (ATA) believes that the revision should address "reasonableness" with regard to program establishment and implementation. The FAA finds that the "reasonableness" of any vehicle operations program is fostered by the exchange of information among the airport sponsor, tenants, air carriers and other operators on the airport who meet regularly with the airport sponsor to discuss operational and other matters. The FAA's review of ground vehicle control procedures when they are initially established, during the annual airport certification inspection, and during surveillance or other inspections

provides ample opportunities to address the reasonableness of an airport's program.

Another commenter suggests that additional language be added to § 139.329 (b) and (e) to specify in detail the consequence of violations, "including fines and/or temporary loss of driving privileges." The FAA does not agree that such specificity in the regulations is necessary. Because of the size, complexity, and diversity of airport operations, the specific consequences of violations are best addressed in each airport's procedures.

Several commenters articulate concerns that are far broader than the issues presented for consideration in the NPRM. Some of these concerns—such as airport operators' liability for the actions of tenants and contractors in circumstances unrelated to ground vehicle operations—were incorporated in the text provided by AAAE and AOCI and used by the majority of commenters. For example, the Tupelo (Mississippi) Airport Authority's submission, after noting its support of the proposed revision, adds: "We also urge a review of FAA's policy of holding airport operators liable for an array of other tenant infractions * * *."

Other commenters make reference to fines imposed for regulatory infractions. For example, comments submitted by the Ocala (Florida) Municipal Airport note that, unlike the impact on larger airports such as those in Atlanta, Chicago or Orlando, imposition of significant fines on the Ocala Municipal Airport would "have a devastating impact."

In a similar vein, comments submitted by the New Orleans International Airport state that "airports already face liability for violations by tenants and others over which we have no control. These violations and the attendant fines are levied in spite of the fact that the airports have taken corrective action in an expeditious manner."

While expressing strongly held opinions, these comments are beyond the scope of this rulemaking action and, therefore, do not directly affect the issuance of this final rule. The FAA has worked and will continue to work cooperatively with airport operators to assure compliance with the requirements of Part 139.

This amendment to § 139.329 differs from the proposed rule in one minor respect. The word "procedures" is used in both paragraphs (b) and (e) in lieu of the words "program" and "rules and procedures" contained in the NPRM. This change is intended to maintain consistent terminology.

In summary, this final rule amending § 139.329(b) requires operators to establish and implement procedures for safe ground vehicle operation in airport movement and safety areas, including identifying and consequences of noncompliance with the procedures by employees, tenants, and contractors. In contrast, the text of this section prior to revision mandated that airport operators only provide procedures for such ground vehicle operations. Consequently, the final rule clearly holds airport operators responsible for developing and implementing procedures appropriate to the airport, as well as for identifying the consequences of noncompliance.

Additionally, this final rule changes § 139.329(e) to require that airport operators ensure that employees, tenants, and contractors operating ground vehicles where there is access to the movement areas are familiar with the consequences of noncompliance with the procedures. The requirement for the airport operator to ensure that employees, tenants, and contractors are familiar with the procedures remains unchanged. Prior to this revision, this section included language that an airport operator ensure that each individual who operates a ground vehicle "complies with" the airport's procedures for ground vehicle operations. The revised rule eliminates the language that created uncertainty about airport operators' liability and clearly establishes airport operators' responsibility for communicating the consequences for noncompliance.

Paperwork Reduction Act

The amendment to §§ 139.101 and 139.329 do not change any recordkeeping or reporting burden associated with those sections. Information collection requirements in part 139 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0063.

Regulatory Evaluation

The changes to Part 139 will likely result in some regulatory relief and impose negligible costs upon certificate holders. The amendment to § 139.329(e) will provide some regulatory relief through language clarification because the airport operator will no longer be misperceived as the guarantor of the compliance of all its tenants and contractors. The FAA has not quantified any specific economic benefits, although there are some perceived benefits, as reflected in the AOCI/AAAE petition. The amendment to § 139.329(b),

however, may impose negligible costs because the standard will require the certificate holder to also identify the consequences of noncompliance. In conclusion, the FAA has determined that the expected economic impact of the amendments are minimal and, therefore, a full Regulatory Evaluation is not warranted.

International Trade Impact Analysis

The amendments affect only airports subject to part 139 of the Federal Aviation Regulations. Accordingly, the amendments have no impact on trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the United States.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291 and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Additionally, it is certified that, under the criteria of the Regulatory Flexibility Act, this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 139

Air carriers, Aircraft, Airports, Airplanes, Air Safety, Aviation Safety, Air transportation, Safety, Transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 139 of the Federal Aviation Regulations (14 CFR part 139) as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

1. The authority citation for part 139 is revised to read as follows:

Authority: 49 U.S.C. App. 1354(a) and 1432; 49 U.S.C. section 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. Section 139.101 is revised to read as follows:

§ 139.101 Certification requirements: general.

(a) No person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any scheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without an airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport certification manual for that airport.

(b) Unless otherwise authorized by the Administrator, no person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any unscheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without a limited airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport specifications for that airport.

3. By amending § 139.329 by revising paragraphs (b) and (e) to read as follows:

§ 139.329 Ground vehicles.

* * * * *

(b) Establish and implement procedures for the safe and orderly access to, and operation on, the movement area and safety areas by ground vehicles, including provisions identifying the consequences of noncompliance with the procedures by an employee, tenant, or contractor;

* * * * *

(e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport that has access to the movement area is familiar with the airport's procedures for the operation of ground vehicles and the consequences of noncompliance; and

* * * * *

Issued in Washington, DC, on November 13, 1990.

James B. Busey,
Administrator.

[FR Doc. 90-27174 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-13-M