58949

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA-l 999-5924; SFAR No. 85–]

RIN 2120–AG83

Year 2000 Airport Safety Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) .

SUMMARY: This rulemaking proposes to require certain airport operators to conduct a one-time readiness check of certain airfield equipment and systems starting January 1, 2000, and report the results of these checks to the FAA. In addition, this proposal would temporarily revise the time period these airport operators have to repair or replace certain emergency equipment. This proposal is needed to ensure that airport operators identify and address any unforeseen problems with date-sensitive airfield equipment and systems. These proposed changes are intended to maintain the current level of airport safety on and after January 1, 2000.

DATES: Comments must be submitted on or before August 9, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-19995924,400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and / or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operations Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 2059 1; telephone (202) 267-872 1.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA- 1999–5924." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703-32 l-3339), the Government Printing *Office's* electronic bulletin board service (telephone: 202-5 12–166 1), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800)322–2722 or (202)267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm. htm or the *Government Printing* Office's WebPages at http: / / www.access.gpo.gov / nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-l, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 1 1–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

His tory

Since 1970, the FAA Administrator has had the statutory authority to issue airport operating certificates to airports serving certain air carriers and to establish safety standards for the operation of those airports. This authority is currently found in Title 49, United States Code (U.S.C.) § 44706, Airport operating certificates. The FAA has used this authority to issue requirements for the certification and operation of certain land airports. These requirements are contained in Title 14, Code of Federal Regulations part 139 (14 CFR part 139), Certification and Operations: Land Airports Serving Certain Air Carriers.

Under part 139, the FAA requires airports to comply with certain safety requirements prior to serving operations of large air carrier aircraft (aircraft with more than 30 passenger seats). When an airport satisfactorily complies with these requirements, the FAA issues to that facility an airport operating certificate that permits the airport to serve commercial operations using these aircraft. These safety requirements cover a broad range of airport operations, including the maintenance of runway pavement, markings, and lighting, notification to air carriers of unsafe or changed conditions, and preparedness for aircraft accidents and other emergencies. The FAA periodically inspects these airports to ensure continued compliance with part 139 safety requirements.

Many airport operators use computers or equipment with embedded microprocessors to meet certain part 139 requirements. For example, an operator of a certificated airport may have computer systems that control when airfield lighting is turned on, or that control access to the airfield through vehicle and passenger gates. Safety and maintenance vehicles, such fire fighting trucks, and emergency communications systems may likewise have computerized systems.

On January 1, 2000, many computers worldwide could malfunction or shut down because the year will change from 1999 to 2000. The problem, often referred to as the Year 2000 (Y2K) problem, is the result of how computers and other microprocessors have traditionally recorded and computed dates. Typically, these machines have used two digits to represent the year, such as "98" for 1998, to save electronic storage space and reduce operating costs. However, this format fails to distinguish the year 2000 (represented as "00") from the year 1900. Software

and computer experts are concerned that this could cause computers and equipment with internal microprocessors to malfunction in unforeseen ways or to fail completely.

FAA Y2K Monitoring and Compliance

In preparing for the year 2000. the FAA is working with airport operators to ensure that all airfield equipment and systems used to support compliance with part 139 requirements are Y2K compliant. or that the airport operator has developed an alternative means of complying with the part 139 requirements.

In June 1998. the FAA sent a letter to the operators of the approximately 5.300 public-use airports in the U. S. to alert them that they may have systems on their airports that could be affected by date change to January 1, 2000. A follow-on letter was subsequently sent in October 1998 to the operators of airports certificated under part 139. This letter emphasized the need for these operators to take the necessary steps to ensure that Y2K issues would not affect any equipment and systems containing computers or microprocessors that are used to comply with part 139. It also stated that airport operators could develop an alternative means of meeting the regulation's requirements that did not rely on systems with computers or microprocessors. and provided some criteria for determining Y2K compliance.

At the same time, the FAA also formed an airport Y2K airport team to contact operators of certificated airports to monitor the Y2K status of each of these operator's systems that are used to support compliance with part 139 requirements. The results of these contacts have shown that airport operators are working to address Y2K issues at their airports. The Y2K airport team will continue to work with the operators of certificated airports throughout the remainder of 1999 to ensure that the agency is kept informed of the Y2K status at each part 139 airport.

Current Requirements

Self-Inspection of Airport Safety Systems

Part 139 currently requires operators of certificated airports to conduct daily inspections of their facilities to ensure compliance with the regulation. Such inspections include a visual check of movement areas (areas used by air carriers to land. takeoff, and taxi) and operational tests of equipment and systems used to comply with part 139 requirements. However, these required inspections are conducted at times determined by the airport operator. Typically, various elements of the self-inspection are conducted throughout the day. As such. the existing inspection requirement does not require inspection early on January 1, before most operations begin. and does not necessarily require the kind of tests that would determine if there is a Y2K-related problem that was not detected by pre-January Y2K validation testing. Certain equipment required by part 139. unlike other aviation systems. is intended for use only in an emergency. If special early testing is not required, a Y2K problem might only be detected when the equipment was needed for an actual emergency

While part 139 also requires reporting of aircraft rescue and fire fighting (ARFF) equipment outages and conditions that affect air carrier operations. those reports would not be received until the equipment was tested or used, which could be after operations begin. The FAA believes that there is a substantial need for a system-wide reporting of Y2K testing results to quickly identify any effects of Y2K on the national airport system. This will permit the FAA to coordinate solutions at airports throughout the U.S. that use similar models of equipment, and to provide early assurances to the public that operations are normal. if in fact there are no Y2K problems.

A RFF *Index*

In addition, part 139 provisions regarding the repair or replacement of inoperative ARFF vehicles are not well adapted to the unique circumstances of the Y2K effect on equipment. The provisions of § 139.319(h)(3) allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport's ARFF index. The ARFF index for an airport, which is determined by the sire of aircraft using the airport and number of daily departures, determines the number and size of ARFF trucks needed and. thereby, limits the size of aircraft that the airport can serve. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle.

Under normal operations, this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence. and parts can be obtained quickly. However, since some ARFF vehicles may have embedded computer chips, a Y2K-related problem. while highly unlikely, is possible. Since similar models of ARFF vehicles are widely used. a failure of even one model of ARFF equipment could affect many airports. Therefore, a delay in repairing a Y2K problem at a number of airports could have a system-wide impact.

Alternatives Considered by the FAA

The FAA considered four alternatives to this rulemaking. These alternatives would affect all currently certificated airports. including those considered to be small business entities (owned and operated by a municipality with less than 49,999 population). In analyzing these alternatives. the FAA addressed the concerns of airports of varying sizes and operations, including those classified as small business entities.

First, the FAA considered not making changes to part 139 for the January 1. 2000, date rollover. Under this alternative, operators of certificated airports would continue to comply with current part 139 requirements. Scheduled operations could be conducted before emergency equipment was checked, and could continue for 48 hours. even if ARFF equipment experiences a Y2K problem. Airport operators would rely exclusively on pre-January tests to predict Y2K compliance. and might only become aware of an unexpected Y2K problem when a piece of equipment was needed for an actual emergency. Also, this approach would make it significantly more difficult for individual airport operators and the FAA to react to outages of airfield safety equipment if the problems were identified only in the course of actual operations over several days or weeks. rather than in a pre-test conducted at a specified time.

Second. the FAA arguably could determine Y2K compliance an "unusual condition" under § 139.327(a)(2) and require all certificate holders to conduct an inspection within a specified time period to identify and correct any deficiencies. While this approach is within the scope of part 139. there is no regulatory provision that would address the possibility, however remote, of widespread failure of ARFF vehicles.

Third, the FAA considered requiring the inspections only at airports holding an airport operating certificate and serving scheduled operations of air carrier aircraft with more than 30 passenger seats (as opposed to a holder of a limited airport operating certificate that serves unscheduled air carrier operations). However, many operators of limited certificated airports serve scheduled operations by aircraft with 10–30 passenger seats. and persons using those airports could benefit from the confirmation that ARFF and other airfield safety equipment at the airport are not affected by Y2K.

Fourth, the FAA considered mandating both the self-inspection and reporting requirement. as well as the suspension of the 48-hour grace period for repair of ARFF vehicles. For the reasons discussed in the first three alternatives above, the FAA is proposing this alternative. Of the four alternatives considered to continue the current level of safety after January 1, 2000. the fourth alternative is the most comprehensive and the most costly. However, the costs are still minimal and only marginally greater than the other alternatives. and the benefits of the certainty of mandatory safety inspections fully justify this approach.

Discussion of the Proposal

This proposed rule would affect the approximately 566 civilian airports certificated under part 139, and would temporarily amend the regulation to require Y2K testing to determine the affects of the date rollover and to ensure adequate emergency support service as of January 1.2000.

Section 139.327(a) requires operators of certificated airports to conduct regular facility inspections to ensure compliance with the regulation. However, as noted above. this does not require inspections on January 1, 2000. prior to air carrier operations. and would not necessarily require the kind of tests that would determine if there was a Y2K-related problem that was not detected by pre-January Y2K validation testing. To address these concerns and provide for thorough Y2K testing. the proposed Special Federal Aviation Regulation (SFAR) would require specific equipment and systems tests.

This proposal also would temporarily modify reporting requirements of § 139.327. Currently, this section requires airport operators to have a reporting system that ensures prompt correction of any unsafe conditions found during the self-inspections. These records are checked by the FAA during periodic inspections. This proposal would temporarily modify this requirement by requiring operators of certificated airports to report to the FAA the results of Y2K inspections and testing and the steps to be taken to resolve any discrepancies. The FAA has determined that this would efficiently provide the FAA with information that the 566 certificated airports remain compliant with part 139 requirements immediately after the unique circumstances of the Y2K date rollover. This information cannot be obtained by FAA inspection. because it would be impossible for the small number of FAA airport certification safety inspectors to visit more than a very few of the 566 certificated airports on January 1.

This special testing would apply only to systems identified by the FAA at each airport as critical to airfield safety and efficiency, and used by the airport to meet part 139 requirements. Generally these systems include ARFF equipment. airfield communications, emergency alarm systems. and airfield lighting. The specific systems on each airport that the FAA considers to be covered by this proposed requirement will be provided to the airport operator by the FAA Y2K representative for the FAA region in which the airport is located, after consultation with the airport operator. no later than October 1999.

The FAA proposes that as of January 1, 2000. each operator of a certificated airport be required to complete readiness tests at least one hour before the first air carrier operation is scheduled to occur. For example. if the first air carrier operation is scheduled for 10:00 a.m. on Monday. January 3, 2000. the airport operator would have to complete all required tests by 9:00 a.m. on that date. The FAA recognizes that this may not be possible at those few airports were the first air carrier operation would occur before 2 a.m. on January 1, 2000. To accommodate those early flights that would not allow testing to be completed one hour prior to the operation. e.g.. an air carrier aircraft arrival at 12:30 a.m., the FAA proposes that the operators of these airports initiate required testing as soon as possible after 12:00 a.m. and be completed by 1:00 a.m. In any case, airport operators would be required to complete required tests before January 5, 2000. even if the airport operator does not serve air carrier operations (scheduled or unscheduled) before this date.

Finally, the provisions of § 139.319(h)(3) that allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles. with no effect on the airport?s ARFF index, would be temporarily suspended. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle. As noted above. under normal conditions this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence. and parts can be obtained quickly. However. some ARFF vehicles may rely on computers or microprocessors, and since similar models of ARFF vehicles are widely used. a failure of even one model of ARFF equipment could affect many airports.

A temporary suspension of the 48-hour grace period would effectively require that airports have a backup plan for ARFF coverage for the first few days of January 2000 if they want to ensure they will maintain their current ARFF index. This would serve both to handle actual Y2K problems and also to provide assurance to the public that ARFF coverage will continue on January 1, 2000. in the event of Y2K problems. If the ARFF equipment was needed to maintain the airport?s ARFF index. and the airport had not provided for backup coverage. a temporary reduction in the size of aircraft serving the airport would be required.

Paperwork Reduction Act

Information collection requirements in this proposal are small and have previously been approved for part 139 by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0063. This authorization was renewed in May 1999. and in anticipation of possible Y2K testing. the hour burden of this proposal's one-time, small information collection were included in the renewal. However. it should be noted that this proposal would not require new inspections or reports that are not already required by part 139. but would only require that those reports be done within a specified period.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with 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 proposed 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 authority. The JAR does not address airport certification.

Regulatory Evaluation Summary

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 regulationjustify its costs.

Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small business and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade.

However. if an agency determines that the expected impact is so minimal that the proposal does not warrant a full evaluation. a statement to that effect. and the basis for it, is included in the proposed regulation. The FAA has determined that this proposed rule meets this criteria. The expected impacts of this rule would be so minimal as to not warrant a full regulatory evaluation, and a full evaluation in the docket was not prepared.

This SFAR would establish a one-time self-test and reporting requirement that is essentially identical to the existing requirement. except for the timing. and would require that certain airports arrange for backup ARFF services or reduce their ARFF index if ARFF vehicles fail the test. Since self-inspection and reporting are already required under § 139.327(a). this regulation imposes little additional costs on airport operators. The FAA estimates that the tests required by this proposal may be completed in less than two hours, including reporting test results to the FAA. In addition. the expense of an ARFF backup requirement is both small and considered a low-probability event.

The proposed requirement that certificated airports provide immediate ARFF backup would require these airports to either maintain the current ARFF index or reduce their ARFF index. Operators of most certificated airports are required to maintain ARFF index to serve current scheduled air carrier operations. Many of these operators already provide for an ARFF backup plan. and if not, can relatively inexpensively and quickly make such arrangements. A satisfactory backup plan could be a prearranged plan with other local fire departments for auxiliary coverage.

An economic impact could occur in the following scenario. For those operators of certificated airports that are required to meet a specified ARFF index. this proposed rule does not allow the currently-permitted 4%hour grace period to repair or replace inoperative ARFF equipment. This rule may result in ARFF costs equal to the 48-hour expense of providing sufficient ARFF support. or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly. for such an expense to occur. all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass the Y2K readiness check.

2. No other ARFF equipment is readily available to maintain the ARFF index:

3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur. is calculated by multiplying across all events the probability assigned to each event. In this case. the probability of the first event. a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent. the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes that while an ARFF expense can occur. the expected likelihood is thought to be very low.

The FAA has determined that it is unlikely that all three events will occur. However, in the event an airport does incur the cost of having backup ARFF vehicles available, only the first 48-hours of that cost is attributable to this proposed rule because the current rule imposes the same requirement after a 48-hour grace period. The cost for an airport that might need to provide a backup vehicle could be zero. if the vehicle were obtained from other fire units of the airport owner, or from other local governments through a mutual aid agreement. Accordingly. the expected cost is very small that an airport operator would be required under the proposed rule to incur costs for obtaining one or more backup ARFF vehicles. Finally. if the ARFF index was affected. an airport operator could choose to accept a lower ARFF index temporarily. with no effect on scheduled service. if aircraft currently used for scheduled service at the airport do not require the higher index. Thus the FAA expects this element of the proposed rule to be minimal.

The benefit of the proposed rule is that it will provide assurance that airport operator's preparations for Y2K have been effective and that compliance with part 139 requirements is not compromised due to the January 1, 2000 date rollover. In the unlikely event that this date rollover were to interrupt systems that are used to comply with part 139. the proposal would ensure an early knowledge of such interruption and facilitate immediate action to maintain safety. if necessary.

The FAA solicits comments from affected entities with respect to the cost and benefit assessment in the regulatory evaluation and requests that commenters provide supporting data or analyses.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA). as amended, 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 governmentaljurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmentaljurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the determination is that it would. the agency must prepare a Regulatory Flexibility Analysis (RFA) 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. § 605(b) of the 1980 Act 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.

As detailed above in the regulatory evaluation there are two costs that may be incurred. First, the proposed inspection costs are expected to be minimal as the expected inspection time is thought to be two hours or less. Second, the probability that the proposed requirement may impose an ARFF cost is expected to be very low. Of the 566 certificated airports. 177 meet the criteria for small entities. Fully 135 of those 177 airports are approved for air carrier operations using mutual aid. or have other arrangements that do not require the airport operator to have

on the airfield ARFF equipment to meet a particular index requirement. These airports would not be financially affected by the suspension of the 48-hour ARFF grace period. The remaining 42 airports that are considered small entities do have an assigned ARFF index. and potentially could be affected by the proposed SFAR. The expected ARFF cost that this rule could impose on these 42 airports is expected to be minimal.

The proposed rule does not allow airports the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. Thus. the rule may impose an ARFF cost equal to a 48-hour expense of providing sufficient ARFF support. or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass theY2K readiness check.

2. No other ARFF equipment is readily available to maintain the ARFF index.

3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case. the probability of the first event. a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes, for reasons discussed above, that an ARFF expense can occur, but the expected likelihood is thought to be very low. In addition, the actual cost is expected to be low as mutual aid agreements with other fire departments and the potential of a lower ARFF index still permit the operation of scheduled flights.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b). the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination and requests that commenters provide supporting data or analyses.

International Trade Impact Analysis

The proposed rule would not constitute a barrier to international trade. including the export of U.S. goods and services to foreign countries, or the import of foreign goods and services into 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 rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act). codified as 2 U.S.C. 1501–1571, requires each Federal agency. to the extent permitted by law. to prepare a written assessment of 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.

Section 204(a) of the Act, 2 U.S.C. 1534(a). requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State. local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local. and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533. which supplements section 204(a). provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments. the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments. if any. and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050. ID defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 139 of Title 14. Code of Federal Regulations as follows:

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

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

Authority: 49 U.S.C 106(g), 40113, 44701–44706. 44709. and 44719.

2. Part 139 is amended by adding Special Federal Aviation Regulation No. to read as follows:

SFAR -YEAR 2000 AIRPORT SAFETY INSPECTIONS

1. *Test requirements.*

(a) Each certificate holder shall test each piece of equipment and system described in (b) and (c) of this paragraph to ensure that compliance with part 139 requirements has not been affected by the date change to January 1, 2000. Testing shall demonstrate that the equipment or system is sufficiently operational to continue to support the airport operator's compliance with the requirements of part 139.

(b) Equipment and systems to be tested include-

(1) Runway and taxiway lighting required under § 139.311:

(2) Emergency alarm/communication systems required under § 139.319(j)(6);

(3) ARFF vehicles and associated equipment required under §§ 139.213(b)(11), 139.317, and 139.319;

(4) Communication systems required under § 139.329: and (5) Any other system or unit of equipment that the Administrator determines-

(i) Relies on or contains a computer or microprocessor:

(ii) Is used in support of the holder's compliance with part 139 requirements: and

(iii) Is critical to the safety and efficiency of aircraft operations.

(c) Tests of ARFF vehicles shall include the discharge of fire extinguishing agents

(d) After consultation with each certificate holder. the Administrator will make a final determination of equipment and systems to be tested and provide written notification of this determination by October 3 1, 1999.

2. Reporting *Requirements.* No later than one hour following the completion of testing required under paragraph 1 of this SFAR. each certificate holder shall report the results of each test to the Regional Airports Division Manager.

3. *Test Schedule.*

(a) Each certificate holder shall complete the tests prescribed in paragraph 1 of this SFAR. as follows:

(1) By 1:00 a.m. on January 1.2000. if the first air carrier operation is scheduled to occur before 2:00 a.m. an this date.

(2) At least one hour before the first air carrier operation is scheduled to occur, if the operation is scheduled to occur after 2:00 a.m. an January 1, 2000.

(b) A,, required tests shall be completed before January 5. 2000, regardless of whether the airport has received air carrier operations from January 1 through January 4. ,999.

4. *Vehicle* readiness. Notwithstanding § 139.319(h)(3), until January 5. 2000. any required vehicle that becomes inoperative to the extent that it cannot perform as required by § 139.319(h)(1) shall be replaced immediately with equipment having at least equal capabilities. If the required Index level is not restored immediately after the testing required by this SFAR, the airport operator shall notify the Regional Airports Division Manager and limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and fire fighting equipment.

5. *Self-inspection requirements.* The requirements of this SFAR do not relieve the certificate holder from self-inspection obligations required under § 139.327. However. testing conducted in compliance with this SFAR may be used to fulfill applicable part 139 requirements.

6. *Effective times.* All of the times described in this SFAR are in local time at the airport.

7. *Expiration.* This Special Federal Aviation Regulation expires on January 5 2000.

Issued in Washington, DC, on July 1, ,999.

David L. Bennett.

Director. *Office of Airport Safety and Standards.*

[FR Dac. 99–17359 Filed 7–7–99; 8:45 am]

BILLINGCODE 4910-13-P

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA-1999-5924 ; SFAR No. 85

RIN 2120-AG83

Year 2000 Airport Safety Inspections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM)

SUMMARY: This rulemaking proposes to require certain airport operators to conduct a one-time readiness check of certain airfield equipment and systems starting January 1, 2000, and report the results of these checks to the FAA. In addition, this proposal would temporarily revise the time period these airport operators have to repair or replace certain emergency equipment. This proposal is needed to ensure that airport operators identify and address any unforeseen problems with date-sensitive airfield equipment and systems. These proposed changes are intended to maintain the current level of airport safety on and after January 1, 2000.

DATES: Comments must be submitted on or before AUG 9 1999 ~~publication in the Federal Register].~~

ADDRESS: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-1999-5924, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9-NPRM-CMTS@faa.gov.

Part 7/8/99 cmt 8/5/99 Part VI

Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operations Division (AAS-300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8721.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-tiled comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with

those comments on which the following statement is made: "Comments to Docket No. FAA-1999-5924." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703-321-3339), the Government Printing Office's electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800)322-2722 or (202)267-5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's WebPages at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM 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. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the **above** office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

History

Since 1970, the FAA Administrator has had the statutory authority to issue airport operating certificates to airports serving certain air carriers and to establish safety standards for the operation of those airports. This authority is currently found in Title 49, United States Code (U.S.C.) § 44706, Airport operating certificates. The FAA has used this authority to issue requirements for the certification and operation of certain land airports. These requirements are contained in Title 14, Code of Federal Regulations part 139 (14 CFR part 139), Certification and Operations: Land Airports Serving Certain Air Carriers.

Under part 139, the FAA requires airports to comply with certain safety requirements prior to serving operations of large air carrier aircraft (aircraft with more than 30 passenger seats). When an airport satisfactorily complies with these requirements, the FAA issues to that facility an airport operating certificate that permits the airport to serve commercial operations using these aircraft. These safety requirements cover a broad range of airport operations, including the maintenance of runway pavement, markings, and lighting, notification to air carriers of unsafe or changed conditions, and preparedness for aircraft accidents and other emergencies. The FAA periodically inspects these airports to ensure continued compliance with part 139 safety requirements.

Many airport operators use computers or equipment with embedded microprocessors to meet certain part 139 requirements. For example, an operator of a certificated airport may have computer systems that control when airfield lighting is

turned on, or that control access to the airfield through vehicle and passenger gates. Safety and maintenance vehicles, such tire fighting trucks, and emergency communications systems may likewise have computerized systems.

On January 1, 2000, many computers worldwide could malfunction or shut down because the year will change from 1999 to 2000. The problem, often referred to as the Year 2000 (Y2K) problem, is the result of how computers and other microprocessors have traditionally recorded and computed dates. Typically, these machines have used two digits to represent the year, such as "98" for 1998, to save electronic storage space and reduce operating costs. However, this format fails to distinguish the year 2000 (represented as "00") from the year 1900. Software and computer experts are concerned that this could cause computers and equipment with internal microprocessors to malfunction in unforeseen ways or to fail completely.

FAA Y2K Monitoring and Compliance

In preparing for the year 2000, the FAA is working with airport operators to ensure that all airfield equipment and systems used to support compliance with part 139 requirements are Y2K compliant, or that the airport operator has developed an alternative means of complying with the part 139 requirements.

In June 1998, the FAA sent a letter to the operators of the approximately 5,300 public-use airports in the U. S. to alert them that they may have systems on their airports that could be affected by date change to January 1, 2000. A follow-on letter was subsequently sent in October 1998 to the operators of airports certificated under part 139. This letter emphasized the need for these operators to take the necessary steps to ensure that Y2K issues would not affect any equipment and systems containing computers or

microprocessors that are used to comply with part 139. It also stated that airport operators could develop an alternative means of meeting the regulation's requirements that did not rely on systems with computers or microprocessors, and provided some criteria for determining Y2K compliance.

At the same time, the FAA also formed an airport Y2K airport team to contact operators of certificated airports to monitor the Y2K status of each of these operator's systems that are used to support compliance with part 139 requirements. The results of these contacts have shown that airport operators are working to address Y2K issues at their airports. The Y2K airport team will continue to work with the operators of certificated airports throughout the remainder of 1999 to ensure that the agency is kept informed of the Y2K status at each part 139 airport.

Current Requirements

Self-Inspection of Airport Safety Systems

Part 139 currently requires operators of certificated airports to conduct daily inspections of their facilities to ensure compliance with the regulation. Such inspections include a visual check of movement areas (areas used by air carriers to land, takeoff, and taxi) and operational tests of equipment and systems used to comply with part 139 requirements. However, these required inspections are conducted at times determined by the airport operator. Typically, various elements of the self-inspection are conducted throughout the day. As such, the existing inspection requirement does not require inspection early on January 1, before most operations begin, and does not necessarily require the kind of tests that would determine if there is a Y2K-related problem that was not detected by pre-January Y2K validation testing. Certain equipment required by

part 139, unlike other aviation systems, is intended for use only in an emergency. If special early testing is not required, a Y2K problem might only be detected when the equipment was needed for an actual emergency.

While part 139 also requires reporting of aircraft rescue and tire fighting (ARFF) equipment outages and conditions that affect air carrier operations, those reports would not be received until the equipment was tested or used, which could be after operations begin. The FAA believes that there is a substantial need for a system-wide reporting of Y2K testing results to quickly identify any effects of Y2K on the national airport system. This will permit the FAA to coordinate solutions at airports throughout the U.S. that use similar models of equipment, and to provide early assurances to the public that operations are normal, if in fact there are no Y2K problems.

ARFF Index

In addition, part 139 provisions regarding the repair or replacement of inoperative ARFF vehicles are not well adapted to the unique circumstances of the Y2K effect on equipment. The provisions of § 139.3 19(h)(3) allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport's ARFF index. The ARFF index for an airport, which is determined by the size of aircraft using the airport and number of daily departures, determines the number and size of ARFF trucks needed and, thereby, limits the size of aircraft that the airport can serve. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle.

Under normal operations, this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, since some

ARFF vehicles may have embedded computer chips. a Y2K-related problem, while highly unlikely, is possible. Since similar models of ARFF vehicles are widely used. a failure of even one model of ARFF equipment could affect many airports. Therefore, a delay in repairing a Y2K problem at a number of airports could have a system-wide impact.

Alternatives Considered by the FAA

The FAA considered four alternatives to this rulemaking. These alternatives would affect all currently certificated airports, including those considered to be small business entities (owned and operated by a municipality with less than 49,999 population). In analyzing these alternatives, the FAA addressed the concerns of airports of varying sizes and operations, including those classified as small business entities.

First, the FAA considered not making changes to part 139 for the January 1, 2000, date rollover. Under this alternative, operators of certificated airports would continue to comply with current part 139 requirements. Scheduled operations could be conducted before emergency equipment was checked, and could continue for 48 hours, even if ARFF equipment experiences a Y2K problem. Airport operators would rely exclusively on pre-January tests to predict Y2K compliance, and might only become aware of an unexpected Y2K problem when a piece of equipment was needed for an actual emergency. Also, this approach would make it significantly more difficult for individual airport operators and the FAA to react to outages of airfield safety equipment if the problems were identified only in the course of actual operations over several days or weeks, rather than in a pre-test conducted at a specified time.

Second. the FAA arguably could determine Y2K compliance an "unusual condition" under §139.327(a)(2) and require all certificate holders to conduct an inspection within a specified time period to identify and correct any deficiencies. While this approach is within the scope of part 139, there is no regulatory provision that would address the possibility, however remote, of widespread failure of ARFF vehicles.

Third, the FAA considered requiring the inspections only at airports holding an airport operating certificate and serving scheduled operations of air carrier aircraft with more than 30 passenger seats (as opposed to a holder of a limited airport operating certificate that serves unscheduled air carrier operations). However, many operators of limited certificated airports serve scheduled operations by aircraft with 10-30 passenger seats, and persons using those airports could benefit from the confirmation that ARFF and other airfield safety equipment at the airport are not affected by Y2K.

Fourth, the FAA considered mandating both the self-inspection and reporting requirement, as well as the suspension of the 48-hour grace period for repair of ARFF vehicles. For the reasons discussed in the first three alternatives above, the FAA is proposing this alternative. Of the four alternatives considered to continue the current level of safety after January 1, 2000, the fourth alternative is the most comprehensive and the most costly. However, the costs are still minimal and only marginally greater than the other alternatives, and the benefits of the certainty of mandatory safety inspections fully justify this approach.

Discussion of the Proposal

This proposed rule would affect the approximately 566 civilian airports certificated under part 139, and would temporarily amend the regulation to require Y2K testing to determine the affects of the date rollover and to ensure adequate emergency support service as of January 1, 2000.

Section 139.327(a) requires operators of certificated airports to conduct regular facility inspections to ensure compliance with the regulation. However, as noted above, this does not require inspections on January 1, 2000, prior to air carrier operations, and would not necessarily require the kind of tests that would determine if there was a Y2K-related problem that was not detected by pre-January Y2K validation testing. To address these concerns and provide for thorough Y2K testing, the proposed Special Federal Aviation Regulation (SFAR) would require specific equipment and systems tests.

This proposal also would temporarily modify reporting requirements of § 139.327. Currently, this section requires airport operators to have a reporting system that ensures prompt correction of any unsafe conditions found during the self-inspections. These records are checked by the FAA during periodic inspections. This proposal would temporarily modify this requirement by requiring operators of certificated airports to report to the FAA the results of Y2K inspections and testing and the steps to be taken to resolve any discrepancies. The FAA has determined that this would efficiently provide the FAA with information that the 566 certificated airports remain compliant with part 139 requirements immediately after the unique circumstances of the Y2K date rollover. This information cannot be obtained by FAA inspection, because it would be

impossible for the small number of FAA airport certification safety inspectors to visit more than a very few of the 566 certificated airports on January 1.

This special testing would apply only to systems identified by the FAA at each airport as critical to airfield safety and efficiency, and used by the airport to meet part 139 requirements. Generally these systems include ARFF equipment, airfield communications, emergency alarm systems, and airfield lighting. The specific systems on each airport that the FAA considers to be covered by this proposed requirement will be provided to the airport operator by the FAA Y2K representative for the FAA region in which the airport is located, after consultation with the airport operator, no later than October 1999.

The FAA proposes that as of January 1, 2000, each operator of a certificated airport be required to complete readiness tests at least one hour before the first air carrier operation is scheduled to occur. For example, if the first air carrier operation is scheduled for 10:00 a.m. on Monday, January 3, 2000, the airport operator would have to complete all required tests by 9:00 a.m. on that date. The FAA recognizes that this may not be possible at those few airports were the first air carrier operation would occur before 2 a.m. on January 1, 2000. To accommodate those early flights that would not allow testing to be completed one hour prior to the operation, e.g., an air carrier aircraft arrival at 12:30 a.m., the FAA proposes that the operators of these airports initiate required testing as soon as possible after 12:00 a.m. and be completed by 1:00 a.m. In any case, airport operators would be required to complete required tests before January 5, 2000, even if the airport operator does not serve air carrier operations (scheduled or unscheduled) before this date.

Finally, the provisions of §139.319(h)(3) that allow an airport operator a 48-hour grace period to repair or replace inoperative ARFF vehicles, with no effect on the airport's ARFF index, would be temporarily suspended. The 48-hour provision is intended to allow airport operators sufficient time to acquire parts to repair a required ARFF vehicle or arrange for a replacement vehicle. As noted above, under normal conditions this is an acceptable procedure as an inoperative ARFF vehicle is a rare occurrence, and parts can be obtained quickly. However, some ARFF vehicles may rely on computers or microprocessors, and since similar models of ARFF vehicles are widely used, a failure of even one model of ARFF equipment could affect many airports.

A temporary suspension of the 48-hour grace period would effectively require that airports have a backup plan for ARFF coverage for the first few days of January 2000 if they want to ensure they will maintain their current ARFF index. This would serve both to handle actual Y2K problems and also to provide assurance to the public that ARFF coverage will continue on January 1.2000, in the event of Y2K problems. If the ARFF equipment was needed to maintain the airport's ARFF index, and the airport had not provided for backup coverage, a temporary reduction in the size of aircraft serving the airport would be required.

Paperwork Reduction Act

Information collection requirements in this proposal are small and have previously been approved for part 139 by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120-0063. This authorization was renewed in May 1999, and in anticipation of possible Y2K testing, the hour burden of this

proposal's one-time, small information collection were included in the renewal. However, it should be noted that this proposal would not require new inspections or reports that are not already required by part 139, but would only require that those reports be done within a specified period.

Compatibility with ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with 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 proposed 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 authority. The JAR does not address airport certification.

Regulatory Evaluation Summary

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 requires agencies to analyze the economic effect of regulatory changes on small business and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade.

However, if an agency determines that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect, and the basis for it, is

included in the proposed regulation. The FAA has determined that this proposed rule meets this criteria. The expected impacts of this rule would be so minimal as to not warrant a full regulatory evaluation, and a full evaluation in the docket was not prepared.

This SFAR would establish a one-time self-test and reporting requirement that is essentially identical to the existing requirement, except for the timing, and would require that certain airports arrange for backup ARFF services or reduce their ARFF index if ARFF vehicles fail the test. Since self-inspection and reporting are already required under § 139.327(a), this regulation imposes little additional costs on airport operators. The FAA estimates that the tests required by this proposal may be completed in less than two hours, including reporting test results to the FAA. In addition, the expense of an ARFF backup requirement is both small and considered a low-probability event.

The proposed requirement that certificated airports provide immediate ARFF backup would require these airports to either maintain the current ARFF index or reduce their ARFF index. Operators of most certificated airports are required to maintain ARFF index to serve current scheduled air carrier operations. Many of these operators already provide for an ARFF backup plan, and if not, can relatively inexpensively and quickly make such arrangements. A satisfactory backup plan could be a prearranged plan with other local tire departments for auxiliary coverage.

An economic impact could occur in the following scenario. For those operators of certificated airports that are required to meet a specified ARFF index, this proposed rule does not allow the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. This rule may result in ARFF costs equal to the 48-hour expense of providing

sufficient ARFF support, or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur, all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass the Y2K readiness check.
2. No other ARFF equipment is readily available to maintain the ARFF index.
3. Air carrier aircraft serving the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event, a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes that while an ARFF expense can occur, the expected likelihood is thought to be very low.

The FAA has determined that it is unlikely that all three events will occur. However, in the event an airport does incur the cost of having backup ARFF vehicles available, only the first 48-hours of that cost is attributable to this proposed rule because the current rule imposes the same requirement after a 48-hour grace period. The cost for

an airport that might need to provide a backup vehicle could be zero, if the vehicle were obtained from other fire units of the airport owner, or from other local governments through a mutual aid agreement. Accordingly, the expected cost is very small that an airport operator would be required under the proposed rule to incur costs for obtaining one or more backup ARFF vehicles. Finally, if the ARFF index was affected, an airport operator could choose to accept a lower ARFF index temporarily, with no effect on scheduled service, if aircraft currently used for scheduled service at the airport do not require the higher index. Thus the FAA expects this element of the proposed rule to be minimal.

The benefit of the proposed rule is that it will provide assurance that airport operator's preparations for Y2K have been effective and that compliance with part 139 requirements is not compromised due to the January 1, 2000 date rollover. In the unlikely event that this date rollover were to interrupt systems that are used to comply with part 139, the proposal would ensure an early knowledge of such interruption and facilitate immediate action to maintain safety, if necessary.

The FAA solicits comments from affected entities with respect to the cost and benefit assessment in the regulatory evaluation and requests that commenters provide supporting data or analyses.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to tit regulatory and informational requirements to

the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act 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 would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a Regulatory Flexibility Analysis (RFA) 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, § 605(b) of the 1980 Act 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.

As detailed above in the regulatory evaluation there are two costs that may be incurred. First, the proposed inspection costs are expected to be minimal as the expected inspection time is thought to be two hours or less. Second, the probability that the proposed requirement may impose an ARFF cost is expected to be very low.

Of the 566 certificated airports, 177 meet the criteria for small entities. Fully 135 of those 177 airports are approved for air carrier operations using mutual aid. or have other arrangements that do not require the airport operator to have on the airfield ARFF equipment to meet a particular index requirement. These airports would not be

financially affected by the suspension of the 48-hour ARFF grace period. The remaining 42 airports that are considered small entities do have an assigned ARFF index, and potentially could be affected by the proposed SFAR. The expected ARFF cost that this rule could impose on these 42 airports is expected to be minimal.

The proposed rule does not allow airports the currently-permitted 48-hour grace period to repair or replace inoperative ARFF equipment. Thus, the rule may impose an ARFF cost equal to a 48-hour expense of providing sufficient ARFF support, or reducing the level of support to current scheduled service to the airport.

The FAA believes the cost of maintaining an airport ARFF index for 48 hours is very low in terms of airport overall expenses. Secondly, for such an expense to occur all of the following conditions must be met:

1. A vehicle necessary to maintain the ARFF index does not pass the Y2K readiness check.
2. No other ARFF equipment is readily available to maintain the ARFF index.
3. Air carrier aircraft sewing the airport that day do not allow the airport operator to temporarily step down to a lower ARFF index.

The probability of an outcome, which depends upon a series of connected events in which each event must occur, is calculated by multiplying across all events the probability assigned to each event. In this case, the probability of the first event, a required ARFF vehicle does not pass the Y2K readiness check, is multiplied by the probability assigned to the second, and then multiplied by the probability of the third event. If the probability of just two events each equal 10 percent, the probability assigned to an airport incurring an ARFF expense resulting from this rule cannot be higher than one percent. Thus the FAA believes, for reasons discussed above, that an ARFF

expense can occur. but the expected likelihood is thought to be very low. In addition, the actual cost is expected to be low as mutual aid agreements with other tire departments and the potential of a lower ARFF index still permit the operation of scheduled flights.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments. from affected entities with respect to this finding and determination and requests that comrnenters provide supporting data or analyses.

International Trade Impact Analysis

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries, or the import of foreign goods and services into 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 rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. §§1501-1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of 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.

Section 204(a) of the Act, 2 U.S.C. 1534(a). requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050. 1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050. ID, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94-163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 139 of Title 14, Code of Federal Regulations as follows:

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

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

Authority: 49 U.S.C 106(g), 40113, 44701-44706, 44709, and 44719

2. Part 139 is amended by adding Special Federal Aviation Regulation No. to read as follows:

SFAR -YEAR 2000 AIRPORT SAFETY INSPECTIONS

1. Test requirements.

(a) Each certificate holder shall test each piece of equipment and system described in (b) and (c) of this paragraph to ensure that compliance with part 139 requirements has not been affected by the date change to January 1, 2000. Testing shall

demonstrate that the equipment or system is sufficiently operational to continue to support the airport operator's compliance with the requirements of part 139.

(b) Equipment and systems to be tested include-

(1) Runway and taxiway lighting required under § 139.311;

(2) Emergency alarm/communication systems required under § 139.319(j)(6);

(3) ARFF vehicles and associated equipment required under §§ 139.213(b)(11), 139.317, and 139.319;

(4) Communication systems required under § 139.329; and

(5) Any other system or unit of equipment that the Administrator determines--

(i) Relies on or contains a computer or microprocessor;

(ii) Is used in support of the holder's compliance with part 139 requirements; and

(iii) Is critical to the safety and efficiency of aircraft operations.

(c) Tests of ARFF vehicles shall include the discharge of fire extinguishing agents.

(d) After consultation with each certificate holder, the Administrator will make a final determination of equipment and systems to be tested and provide written notification of this determination by October 31, 1999.

2. Reporting Requirements. No later than one hour following the completion of testing required under paragraph 1 of this SFAR, each certificate holder shall report the results of each test to the Regional Airports Division Manager.

3. Test Schedule.

(a) Each certificate holder shall complete the tests prescribed in paragraph 1 of this SFAR, as follows:

(1) By 1:00 a.m. on January 1, 2000, if the first air carrier operation is scheduled to occur before 2:00 a.m. on this date.

(2) At least one hour before the first air carrier operation is scheduled to occur, if the operation is scheduled to occur after 2:00 a.m. on January I, 2000.

(b) All required tests shall be completed before January 5, 2000, regardless of whether the airport has received air carrier operations from January 1 through January 4, 1999.

4. Vehicle readiness. Notwithstanding § 139.3 19(h)(3), until January 5, 2000, any required vehicle that becomes inoperative to the extent that it cannot perform as required by § 139.3 19(h)(1) shall be replaced immediately with equipment having at least equal capabilities. If the required Index level is not restored immediately after the testing required by this SFAR, the airport operator shall notify the Regional Airports Division Manager and limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and tire fighting equipment.

5. Self-inspection requirements. The requirements of this SFAR do not relieve the certificate holder from self-inspection obligations required under § 139.327. However, testing conducted in compliance with this SFAR may be used to fulfill applicable part 139 requirements.

6 . Effective times. All of the times described in this SFAR are in local time at the airport.

7. Expiration. This Special Federal Aviation Regulation expires on January 5, 2000.

Issued in Washington, DC, on July 1, 1999

David L. Bennett
Director, Office of Airport Safety & Standards