

November 2, 2000

U.S. Department of Transportation Dockets
400 Seventh Street, SW
Room Plaza 401
Washington, DC 20590

RE: Docket Number FAA-2000-7479
Notice of Proposed Rulemaking – Certification of Airports
Federal Aviation Regulations (FAR) Part 139

To Whom It May Concern:

The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of more than 360,000 members nationwide. AOPA is committed to ensuring the continued safety, viability, growth, and development of aviation and airports in the United States.

AOPA provides the following comments on the proposed revisions to the current airport certification regulations under FAR Part 139, including the proposed certification requirements for airports serving scheduled air carrier operations in aircraft with 10-30 seats. These comments are in reference to the Notice of Proposed Rule Making (NPRM) published in the Federal Register on June 21, 2000, pages 38636 through 38682.

AOPA believes the proposed changes to airport certification regulations under Part 139 will have a significant adverse impact on many small airports where air carrier service is currently available, especially those airports with less than 10,000 annual enplanements. In the majority of instances these airports, many of which are classified as general aviation airports, are predominantly used by general aviation.¹ Typically, general aviation is responsible for approximately 80-90 percent of the total aircraft operations at those airports² and is consequently responsible for a significant share of the costs associated with operating them.

Historically, there has been a tendency for airport sponsors and operators to increase rates and charges applicable to general aviation in an attempt to absorb higher costs when confronted with requirements and projects associated with Part 139 certification and air carrier operations. Therein lies the impact on general aviation. As part of the 1996-1997 Aviation Rulemaking Advisory Committee (ARAC) working group that reviewed airport certification with an eye on possible enhancements, the majority view, of which AOPA was a part, found that a non-regulatory approach could accomplish the desired effect.³ The main reason behind the position taken by the majority view was the issue of increased airport certification costs. Some of these concerns still exist and are therefore an integral part of our comments.

¹ National Plan of Integrated Airport Systems (NPIAS), 1998-2002, 5, (see Section on Cost Transparency).

² FAA Airport Master Record (FAA Form 5010-1).

³ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, I-4.

The primary concern remains that additional airport certification costs would be passed on to all airport users, including general aviation, most of whom do not want or need the additional services.⁴ Many of these requirements or services will not add any tangible safety improvements to general aviation operations. In fact, some of the requirements, such as security requirements, are impediments to general aviation.

It is generally recognized that the type and extent of safety regulations has to be in balance with the level of airport activity, the type of activity, and the airport's ability to finance the required certification costs. While the argument can be made that certain airport projects, especially those dealing with safety, are beneficial to all sectors of aviation, other projects are not. AOPA's primary concern is to mitigate the costs for airports in implementing any rules issued as a result of this proposal, and therefore minimize the negative economic impact on general aviation.

Through flexibility, creative means, and by facilitating compliance, we believe the Federal Aviation Administration (FAA) should retain a critical role in minimizing the adverse economic impact the proposed new regulations will impose at certain airports. Such an approach will result in the lessening of the adverse impact these new regulations will have on the economics of airport and air carrier service as well as on the fragile economics that often govern general aviation.

General aviation is cost-sensitive. Additional costs can easily endanger its ability to efficiently operate or, in some cases, simply exist. AOPA recognizes that in aviation, safety and cost are not necessarily mutually exclusive. However, within the scope and authority of the FAA in formulating and implementing new airport certification regulations, we believe it is possible to significantly minimize the adverse economic impact on implementing these proposed changes. We believe more can be achieved beyond what is currently being accomplished by FAA and beyond what has been provided so far by the agency in the documentation associated with the proposed rule.

The following are areas of contention for general aviation, which we believe need additional consideration and mitigation as part of this proposal: Aircraft Rescue and Fire Fighting (ARFF) equipment requirements, wildlife hazard management, fueling requirements, and Part 107. Other related areas of concerns include impact on the Essential Air Service (EAS) and Airport Improvement Program (AIP)/Passenger Facility Charges (PFC) programs. We also provide comments on the concept of "Cost Transparency," which we view as an essential means of ensuring fair, reasonable, and not-unjustly discriminatory cost allocation of any new airport certification requirements. Primarily, we believe that flexibility as it relates to the proposed rule and its implementation, is by far the most important element in mitigating costs.

FAA Flexibility

FAA flexibility in granting airport certification to certain airports is an imperative component to this proposal. It should be the focal point for FAA in mitigating capital, operating, and maintenance costs associated with any new airport certification requirements. Furthermore, congressional intent, which is driven by consideration, moderation, and alternatives, has to be accounted for. Conformity with 49 U.S.C. Section 44706 (d) [cost-effective and least burdensome alternatives] and (e) [report on economic impact of the regulation] can only be achieved through the diligent use of adequate flexibility on the part of the FAA.

⁴ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, I-2.

In the NPRM, FAA states within the context of the Airport Certification Manual (ACM), *“every airport is unique and local circumstances vary, this written document [ACM] sets forth the site-specific procedures, equipment, and personnel that each airport operator uses to comply with part 139 requirements.”*⁵ Flexibility could be defined as FAA’s ability and willingness in using these “unique circumstances” in association with its “Exemption Authority” in helping affected airports comply with new regulations. This is in addition to FAA’s role in enforcing certification requirements and inspecting airports, and requires FAA to show and use adequate levels of flexibility, beyond what is exercised today, and in addition to FAA’s encouraging *“a cooperative relationship between the certificate holder and inspectors.”*⁶

Flexibility is important because it may, in some instances, be the only way to mitigate prohibitive certification costs and reduce the likelihood of air carrier service termination at certain airports or maintain costs within acceptable limits. FAA flexibility is necessary on a case-by-case basis and should imply that more flexibility be granted to airport inspectors and other individuals at the FAA regional and field office level. While mentioned in the NPRM, *flexibility* and what it would entail is not sufficiently expanded upon in the proposed regulatory language and associated preamble documentation published in the Federal Register.

AOPA believes granting relief to smaller airports from certain requirements requires further FAA policy and guidance beyond what has been published to date as regulatory evaluation.⁷ In many instances, published information is elusive, too basic, and does not clarify nor define the changes in FAA’s flexibility, if any, which will occur as a result of this proposal.

Airport sponsors and FAA airport certification personnel alike would need additional guidance if the process, once in place, is to provide both specific compliance alternatives for airports and the needed flexibility for FAA airport certification specialists to use. We think FAA should expand upon its statement that affected airport operators *“would be permitted some flexibility in complying with more burdensome requirements”*⁸ and issue more specifics, options, and alternatives as required to clarify the exemption and alternatives authority granted under 49 U.S.C. Section 44706 (c) and (d), respectively.

Therefore, we believe that additional policy and guidance must be developed and published before a final rule is published.

Aircraft Rescue and Fire Fighting (ARFF)

The main concern expressed by the majority position in the ARAC working group was that the *“budgets of many small commercial airports might not be sufficient for the recurring operations, personnel and maintenance costs associated with a certification program,”*⁹ especially ARFF equipment. This single issue of ARFF is by far the most significant under these proposed new rules. The ARFF requirement could single-handedly cause the termination of air service to several small airports or an unreasonable increase in rates and charges.

⁵ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking “Certification of Airports,” Page 38637.

⁶ Ibid.

⁷ Draft Initial Regulatory Evaluation, Initial Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment for NPRM, Title 14 CFR Parts 121, 139 “Certification of Airports,” Office of Aviation Policy and Plans, Aircraft Regulatory Analysis Branch, APO-320, March 9, 2000, 102, 103.

⁸ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking “Certification of Airports,” Page 38639.

⁹ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, I-2.

Although FAA seems to provide flexibility and exemptions in the NPRM text, the fact remains that the underlying concept is, for FAA, to standardize ARFF at certificated airports. The NPRM states *"the FAA proposes that all certificated airports serving both scheduled and unscheduled operations be required to comply with all ARFF requirements."*¹⁰

This is not realistic and FAA recognizes this fact in the subsequent text when it states that such requirements *"may pose a substantial cost for airports that do not currently provide at minimum ARFF coverage (index A)."*¹¹ FAA further *"recognizes that these airports typically are located in smaller communities that have limited resources and that the sporadic nature of unscheduled air carrier operations often makes it cost prohibitive for such communities to provide the same level of ARFF coverage provided by airports serving scheduled large air carrier aircraft."*¹²

At many of the small certificated airports, ARFF costs can account for a significant portion of their expenses.¹³ Total costs of ARFF services vary from airport to airport. On the high side of the Class III airport scale, an airport with an operating budget of \$600,000 may end up spending from \$150,000 to \$250,000 (25 to 41 percent of their budget) per year to meet the ARFF requirement.¹⁴ The percentages rise considerably if we use an operating budget range between \$250,000 and \$400,000, listed in Table 1 of the Cost Benefit Analysis in the ARAC Final Report, instead of the example of \$600,000.¹⁵ On the other side of the Class III scale, a small airport with barely 1,100 emplanements and an annual operating budget totaling \$40,000 will have a problem complying with any new ARFF requirement. For such an airport, even meeting "Index A" requirements could be prohibitive.

There seems to be a great disparity between the costs associated with ARFF for the average airport reported in the survey conducted as part of the ARAC working group and those same costs reported as part of FAA's regulatory evaluation. According to the ARAC survey, the costs averaged slightly over \$141,000 four years ago.¹⁶ The numbers presented by FAA in the initial regulatory evaluation were significantly lower. FAA listed an average annual recurring cost of the proposed extension of ARFF of \$46,000 for Class I airports, \$42,000 for Class II, and \$32,500 for Class III airports.¹⁷ Even if FAA's latest numbers are accepted, the impact on the small operating budgets of many general aviation airports will be devastating.

With time and planning, airport sponsors may find the resources to purchase ARFF equipment through the AIP or PFC programs, however, mitigating training and currency requirements will be an additional problem. The ARAC final report states that the average annual training cost was approximately \$4,000, while maintenance and supplies were approximately \$5,300.¹⁸ For small airports, regardless of which set of numbers is used, there are serious funding issues that must be taken into account and mitigated.

¹⁰ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking "Certification of Airports," Page 38651.

¹¹ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking "Certification of Airports," Page 38651.

¹² Ibid.

¹³ *Commuter Airports Should Participate in the Airport Certification Program*, General Accounting Office (GAO), Report GAO/RCED-88-41, November 1987, 5.

¹⁴ Brewer, Mark P., 139: *Unfunded Mandate*, Airport Business, September 2000, 50.

¹⁵ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, III-1.

¹⁶ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, Memorandum by Landrum & Brown, *Phone Survey of Selected Airports Not Required to Maintain a Full 139 Certification, But Have Chosen to Comply*, 2.

¹⁷ *Draft Initial Regulatory Evaluation, Initial Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment* for NPRM, Title 14 CFR Parts 121, 139 "Certification of Airports," Office of Aviation Policy and Plans, Aircraft Regulatory Analysis Branch, APO-320, March 9, 2000, page 56-57.

¹⁸ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, Memorandum by Landrum & Brown, *Phone Survey of Selected Airports Not Required to Maintain a Full 139 Certification, But Have Chosen to Comply*, 3.

Creative means of compliance are needed in order to provide airports with viable and economical options. Because of the vastly different circumstances and conditions at each airport, the number and types of options available to airports for compliance are the solution.

In some cases, we believe FAA could directly broker and assist airports in meeting training requirements by facilitating the use of Department of Defense (DOD) facilities when available. Furthermore, FAA could review the number and funding requirements for additional regional ARFF training centers, which are primarily funded by federal and state grants. The increased availability of ARFF centers can be an important step toward mitigating overall ARFF costs. Other possibilities are to authorize an airport operator to have part, or all, of its ARFF responsibilities performed by an air carrier or Fixed Base Operator (FBO) or to further facilitate an airport's ability to outsource ARFF services to private companies.

While AIP funds can be used for the capital costs associated with ARFF equipment, deferring a significant amount of the operating and maintenance costs remains a serious obstacle. FAA should expand upon its current practices allowing local fire departments to operate and maintain AIP-funded ARFF equipment. Local fire departments could use the equipment in their daily routine, even outside the airport, but would have to be present at the airport when air carrier operations are to occur.

Additionally, and as stated in the NPRM, as an attempt to attract local fire departments near or at the airport, airport sponsors could work with FAA to make it easier for airport property to be used by the local fire department under very attractive terms in exchange for services rendered. Such actions would have to be done in close coordination with FAA's Airports Compliance Division. AIP/PFC funds could possibly be used to build an on-airport ARFF facility to be manned by a city/county fire department (not necessarily airport sponsor personnel) with both landside and airside access.¹⁹

It is imperative that FAA, based on submitted cost-related information and comments received on this issue, develop fully functional means and procedures by which the proposed section 139.321 would allow issuance of effective ARFF exemptions regarding level of coverage. The overall goal would be to provide exemptions under reasonable cost, operational terms, and conditions on a case-by-case basis, as mentioned in the preamble for the new proposed section 139.321 of the NPRM.²⁰

FAA should, therefore, provide additional guidance on alternative means of compliance and options on how flexible it will be in assisting airports in meeting ARFF requirements.

Wildlife Hazard Management Plan

The Wildlife Hazard Management Plan requirement under proposed regulation 139.339, paragraph (c) should include provisions to assist airport sponsors in contacting and working with local United States Department of Agriculture's (USDA) Animal Damage Control (ADC) offices. USDA expertise and resources in assessing, monitoring, and mitigating wildlife hazards at airports is very extensive and constitutes the foundation upon which FAA bases its expertise in the subject area.

¹⁹ Aviation Rulemaking Advisory Committee, Commuter Airport Certification Working Group Final Report, February 20, 1997, Memorandum by Landrum & Brown, *Phone Survey of Selected Airports Not Required to Maintain a Full 139 Certification, But Have Chosen to Comply*, 2-3.

²⁰ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking "Certification of Airports," Page 38651.

Furthermore, FAA could also recognize the expertise and consider the resources of state wildlife agencies in meeting this specific requirement.

We believe this is vital because it provides airport sponsors with a cost cutting alternative to hiring the services of a “qualified wildlife damage management biologist”, as required in the proposed regulation.

Fueling Requirements

Under the new Part 139.323 *“Handling and Storing of Hazardous Substances and Materials,”* FAA proposes that all revised airport classifications be required to comply with the requirements of this updated section. The adverse impact of this regulation will particularly be felt by Class III airports, which would be required for the first time to develop and implement such procedures. Contrary to what is stated in the initial regulatory evaluation, we believe for some small airports, especially those to be classified as Class III, the cost estimates in complying with this section will exceed the mere cost of hourly labor. In some instances, costs could include additional personnel and training.

A significant number of airport sponsors delegate fuel services to on-airport service providers or FBOs. In most instances, these entities, as part of their lease and insurance requirements, already assume responsibility for the safe handling of fuels and fueling operations. Many already receive initial and recurrent training and are, in many instances, better qualified to meet safe fuel storing and handling procedures. Furthermore, existing industry standards and procedures already incorporate compliance with local fire codes and applicable National Fire Protection Association (NFPA) guidelines, and we therefore believe that is sufficient in meeting acceptable safety guidelines. Similar views were also expressed by the 1996-1997 ARAC working group.

We urge FAA to exert flexibility and consider compliance with existing local fire codes and NFPA guidelines implemented by fuel service providers at airports as “alternate” methods of compliance with this section and include those alternative methods part of the proposed rule. Furthermore, it would be appropriate for FAA to recognize, as part of the rule, the role a local Fire Marshall could have in terms of performing and documenting the inspections stipulated in the proposed regulation in a manner acceptable to the Administrator. This constitutes an element of flexibility needed in achieving more affordable and less burdensome compliance for small airports.

Part 107 – Proposed 139.337

Historically, airport implementation of security measures under Part 107 has been a significant problem for general aviation operators. FAA offices have in many instances allowed an unnecessary security burden on general aviation operations at small commercial service airports where general aviation has a predominantly large presence. This is due to the fact that many airports, especially small commercial ones, elect to literally fence off and restrict access to the majority, if not all, of the ramps, non-related movement areas, and public access areas well beyond what is reasonable and cost-effective. Many believe it is easier for airports to comply with Part 107 by over-restricting rather than by restricting access in an appropriate and reasonable manner.

In some cases, airports, with FAA approval, have required the entire air operations area (AOA) to be included in SIDs (Security Identification Display Areas).²¹ Actions such as excessive requirements on badges, background checks, automatic gates, and restrictive operating hours have severe implications on general aviation operations. For general aviation, the issue is associated costs, as well as inconvenience. In certain situations, rates and charges on general aviation have been increased in order to pay for unneeded security areas in and around general aviation areas, well beyond what is required to carry out congressional intent for protection of air carrier areas.

As supporting documentation for the proposed Part 139.337, we strongly disagree with FAA's statement that *"there will be minimal or no incremental compliance costs for this section."*²² Security is expensive, especially if it is excessive. Fences, access gates, background checks, and law enforcement support personnel all combine to increase costs immensely. The fact that it is *"common operating practice to control inadvertent entry into movement areas"*²³ does not eliminate costs, as it fails to consider how this is achieved in the field and in order to comply with Part 107.13.

Our experience demonstrates quite clearly that many small commercial service airports have controlled *"inadvertent entry into movement areas"* by excessively restricting all AOAs at the airport to the highest levels of security restrictions, not only those areas required for air carrier operations. This is generally achieved, as stated, by using fences, automatic and manual gates, and escorting people. Unfortunately, in many cases this is done with FAA's "blessing", without regard for cost.

FAA has not, in the past, properly addressed AOPA's concerns in this area. Therefore, any unjustified and excessive additional restriction imposed upon general aviation at airports, as prescribed in this proposal, must be avoided. The fundamental problem is that, as it relates to this proposal, mandating all airports meet the new requirement will have a significant impact on costs if, as is often the case, airports become overzealous in attempting to meet Part 107 requirements.

For that reason, we believe FAA - Civil Aviation Security at all levels must be extremely cautious in reviewing security plans and work with airport management on meeting these requirements. The simple assumption that an airport security measure meets or exceeds the requirement of Part 107 and therefore should be endorsed can have disastrous effects, not only for general aviation access, but also to the airport coffers. Excessive security will result in higher costs for all users and could in some situations exceed the airport's financial capabilities.

As stated in the NPRM, FAA's need *"to ensure a standard minimum level of public protection at all airports serving scheduled air carrier operations"*²⁴ should not result in excessive, unneeded, and expensive measures. If and when security is put in place at a typical Class III airport, it should not require fencing off the whole airport or installation of fences and gates to unnecessarily restrict access to general aviation ramps.

²¹ *Application of Security Measures to General Aviation Areas*, From ACS-1 to Managers, Civil Aviation Security Divisions, -700s, March 20, 1992. (Reply to Policy No. ACP-100-92-007).

²² *Draft Initial Regulatory Evaluation, Initial Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment* for NPRM, Title 14 CFR Parts 121, 139 "Certification of Airports," Office of Aviation Policy and Plans, Aircraft Regulatory Analysis Branch, APO-320, March 9, 2000, page 67.

²³ *Ibid*, 67.

²⁴ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking "Certification of Airports," Page 38659.

This is particularly true when a general aviation ramp is literally hundreds of feet from the terminal where one commuter aircraft arrives twice a day.

FAA must actively apply and expand upon ACS-1 policies, which are relevant to the case at hand in that they were designed to limit the adverse impact of implementing Part 107 on general aviation and would be a great contributor in reducing the costs associated with implementing the new regulations.

These policies include or could include the following:

- FAA – Civil Aviation Security personnel should work and assist airport sponsors in meeting the requirements of Part 107 in a reasonable fashion, without excesses, and at reasonable costs.
- It is imperative that local FAA officials assist airport operators in focusing security resources on the most security critical areas.²⁵
- FAA should encourage each airport operator to review the treatment of general aviation in their security program and submit any relevant security program amendments to the CASFO if they believe these areas could be relieved of security requirements that would not adversely affect the overall security of the airport.²⁶
- FAA has to work with airports so they focus the limited security resources of an airport operator on the critical passenger air carrier areas of the airport. This should include allowing airport operators to exclude general aviation areas from the secured area required by FAR 107.14 and the SIDA required by FAR 107.25 where possible.²⁷
- Expand existing FAA policy on certain sections of FAR 107 in order to provide airport operators with flexibility to ensure that facilities such as fixed base operators need not be included within the secured area and SIDA definitions, subject to appropriate security controls and FAA approval. FAA should encourage local civil aviation field offices to apply such flexibility allowing relief to general aviation wherever possible.²⁸
- Re-emphasize the fact that the policy of the FAA is to encourage airport operators to limit, in accordance with existing guidance (Policy No. ACP-110-91-0025), the area of an airport included in the SIDA. Areas clearly defined in the security program which are, or can be, positively separated from air carrier or other security sensitive operations by specific security provisions, should be excluded from the SIDA.²⁹
- Secured areas required under FAR 107.14 should be carefully crafted to include only those areas which are most critical from the standpoint of good security balanced with reasonableness. Exert flexibility when considering requests for exceptions from the secured area or the SIDA.³⁰

²⁵ *Application of Security Measures to General Aviation Areas*, From ACS-1 to Managers, Civil Aviation Security Divisions, -700s, March 20, 1992. (Reply to Policy No. ACP-100-92-007).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

Essential Air Service (EAS) Program

While the FAA has the responsibility to formulate and implement changes to airport certification under FAR Part 139, the Department of Transportation (DOT) and EAS program cannot be ignored. Many small commercial service airports that are EAS communities will have to cope with the increase in costs associated with complying with these new Part 139 requirements.

Outside Alaska, there are 76 communities in 28 states that rely upon subsidized EAS for commercial air service. As stated in the comments to this docket, several communities operating airports served by EAS flights, may elect to discontinue Part 139 certification because of costs, in effect terminating EAS to those communities.³¹

In other cases, by attempting to retain airport certification and EAS, an airport may have to pass along some of the additional costs to the airline providing EAS. Existing EAS subsidies may not be sufficient to cover these increased costs, which in turn can lead to the need to renegotiate subsidy rates, eligibility, and the selection process.

Therefore, we believe the DOT, through the EAS program, has to consider and possibly assume certain responsibilities, especially financial responsibilities, associated with compliance with the new rules as they pertain to retaining EAS to many communities. This proposal has to take into account authorized congressional funding levels for EAS under 49 U.S.C. Section 41742, changes to 49 U.S.C. Section 41732-41735, and associated DOT regulations.

Unfortunately, in both the NPRM and the regulatory evaluation, FAA casually states that loss of air service or EAS because of the new Part 139 certification costs is a possibility.³² We do not believe the regulatory evaluation has addressed the economic impact to the local communities when they lose air service or EAS. We believe that an analysis of the economic impact associated with loss of certification and air carrier service should be conducted not only to fully cover and define "benefit," but also to comply with 49 U.S.C. 44706 (e) as stated in the NPRM. Local, state, and especially congressional EAS interests have not been covered in this proposal.

The relationship between this proposal and several sections of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), namely Section 203 *Improved Air Carrier Service to Airports Not Receiving Sufficient Service* and Section 206 *Report on Essential Air Service*, should also be examined closely.

FAA has to consider or state in writing if such consideration has been given, including the apparent negative implications the proposed rule has on this newly passed legislation. Section 206 is particularly important as it requires the Secretary to conduct an analysis of the difficulties faced by many smaller communities in retaining essential air service and to develop a plan to facilitate the retention of such service.³³ Therefore, we urge you to consider the implication this proposal will have on the EAS program and to address, before final rule, the required funding adjustments to the EAS program.

³¹ See comments to the Docket and *Handful of Smaller Airports Worry About Part 139 Costs*, Airports, August 22, 2000, 2, Brewer, Mark P., 139: *Unfunded Mandate*, Airport Business, September 2000, 50.

³² *Draft Initial Regulatory Evaluation, Initial Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment* for NPRM, Title 14 CFR Parts 121, 139 "Certification of Airports," Office of Aviation Policy and Plans, Aircraft Regulatory Analysis Branch, APO-320, March 9, 2000, page 101 and Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking "Certification of Airports," Page 38670.

³³ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Section 206.

AIP/PFC Contributions and Priority

As part of the regulatory evaluation prepared for this proposal, FAA states that in many cases federal aid in the form of AIP grants may defer some of the capitol costs associated with complying with the new regulations, including ARFF, fencing, and wildlife hazard management.³⁴ The General Accounting Office (GAO) made similar statements in 1987 when it conducted a study relating to the certification of all commuter airports.³⁵ FAA also mentions the role of state funding in meeting the additional costs.

However, throughout its findings, FAA fails to provide specifics and relies instead on statements such as *“may be financed through Federal and state programs”* and *“because an airport operator is eligible to receive AIP funds, does not guarantee that the airport operator would receive AIP funds.”* These statements are too lax and evasive to be of any real assistance to impacted airports. FAA has to not only specifically provide affected airports with clear documentation on how AIP or PFC funds can assist in funding some of the new requirements, but also provide such guidance to its field and regional offices so that proper assistance can be given. We believe FAA has to take a more active role in working and assisting airport sponsors with specific funding alternatives and options.

The other issue that has to be considered by FAA is the impact of the new requirements on the existing prioritization methodology associated with AIP funding of airport projects. This includes an in-depth review of how AIP-eligible items fit with the Part 139 required items. Similar concerns exist with regards to the PFC program.

Therefore, we urge FAA – Airport Safety and Certification Branch to internally coordinate their actions with FAA - Airport Planning and Programming. This is required in order to ensure that all additional AIP-eligible capital improvements related to these proposed airport certification regulations are properly addressed not only for the current fiscal year, but in synchronization with the implementation schedule as shown in the NPRM.

Cost Transparency

The increased costs for over 40 airports to comply with these new requirements are not only significant, but also must be met somehow. As mentioned before, the proposed changes to airport certification regulations will have a significant impact on many National Plan of Integrated Airport Systems (NPIAS)-designated general aviation airports, which have heavy general aviation activity and would be classified as Class III under the new proposed regulations. In some cases, general aviation is responsible for the vast majority of operations. For example, in Miles City, Montana, 8,000 of the 11,200 annual operations at the airport³⁶ are general aviation. Similar situations exist at Jonesboro, Arkansas, and Harve, Montana, where general aviation operations constitute over 82 and 76 percent of the total number of annual operations, respectively.³⁷

³⁴ *Draft Initial Regulatory Evaluation, Initial Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment* for NPRM, Title 14 CFR Parts 121, 139 “Certification of Airports,” Office of Aviation Policy and Plans, Aircraft Regulatory Analysis Branch, APO-320, March 9, 2000, page 36-37.

³⁵ *Commuter Airports Should Participate in the Airport Certification Program*, General Accounting Office (GAO), Report GAO/RCED-88-41, November 1987, 1, 5-6.

³⁶ FAA Airport Master Record (FAA Form 5010-1).

³⁷ *Ibid.*

At many of these airports, the number of based general aviation aircraft dictates that they are responsible for a significant amount of the airport's revenue and, hence, the airport's operating budget. This also means that if additional certification requirements were to occur, the airport sponsor will most likely elect to pass along those costs to its current revenue-producing tenants, which would be primarily general aviation.

While some additional costs could be passed on to all airport users if they are safety-related, the fact remains that certain airport projects or certification requirements are not beneficial to general aviation. In some instances, such as in cases where Part 107 requirements are overzealously applied, implementation of the certification requirement constitutes an impediment to general aviation operations.

Historically, there has been a tendency for airport sponsors to increase or modify rates and charges applicable to general aviation in an attempt to absorb higher costs when confronted with requirements and projects associated with Part 139 certification and air carrier operations. The manner in which airport certification costs are allocated and eventually passed on to users is an important issue. While certain airport certification standards benefit more than just air carrier services, general aviation cannot assume any costs outside fair and reasonable terms.

Therefore, we believe FAA should create a specific cost allocation policy regarding Part 139 certification, which could be incorporated or specifically defined in the current Policy Regarding Airport Rates and Charges, dated June 21, 1996. This document contains guidance, with which small modifications could address the problem of airport certification cost allocation. Indeed, under the section entitled "Limitation of Airfield Rates to Land and Facilities Currently in Use," FAA's rates and charges policy states that "*when fees are based on cost, it is generally unreasonable to charge users for facilities they do not benefit from or use.*"³⁸

With regard to allocation of shared costs, the policy continues by stating that "*the share allocated to aeronautical use must reflect the purpose and proportionate use of the facility, and the allocation methodology must be reasonable, transparent and not unjustly discriminatory.*"³⁹

AOPA believes that an increase in general aviation airport rates and charges due to new airport certification costs must be avoided along these general policy lines. Furthermore, such information should be used in order to clarify FAA's statement in the NPRM that "*such airport operators may share costs related to part 139 certification with airports users, e.g., air carriers.*"⁴⁰

We believe that detailed information on Part 139 certification costs along with the allocation on those costs to users through rates and charges would lead to fair and reasonable allocation. Therefore, FAA's "Policy Regarding Airport Rates and Charges" should be revised, updated, or clarified in order to reflect allocation of airport certification costs under an allocation methodology that is reasonable, transparent, and not unjustly discriminatory. In addition, airports should, as part of the financial reporting requirement, include certification costs in the financial reports filed with the FAA.

³⁸ Federal Register/Vol. 61, No. 121, June 21, 1996, Policy Statement "Policy Regarding Airport Rates and Charges," Page 32002.

³⁹ Federal Register/Vol. 61, No. 121, June 21, 1996, Policy Statement "Policy Regarding Airport Rates and Charges," Page 32005.

⁴⁰ Federal Register/Vol. 65, No. 120, June 21, 2000, Notice of Proposed Rulemaking "Certification of Airports," Page 38663.

Accordingly, we request that as a result of any final rule, the Office of Airport Safety and Standards (AAS) issue specific guidance as part of both the "Policy Regarding Airport Rates and Charges" and the Airport Financial Reports guidelines in order to mitigate these important cost allocation concerns.

Conclusion

We urge you to take the appropriate steps to ensure that compliance with any new airport certification standard is closely associated with adequate cost mitigation. The benefits of providing additional clarification and guidance before any final rule is implemented would be immeasurable. It would be of great assistance to airport sponsors and airport users alike, and would more clearly meet Congressional intent as well as the upcoming Congressional review.

Therefore, we believe the above concerns are best addressed through the issuance of additional rule-making proceedings. This would allow for better consideration of the following summarized concerns:

- Publishing additional policy and guidance defining FAA's flexibility and its utilization.
- Providing additional guidance on alternative means of compliance and options in assisting airports in meeting the ARFF requirement.
- Providing guidance on how airports could use federal and state wildlife agencies in complying with the wildlife hazard requirements.
- Exerting more flexibility regarding the fueling requirements.
- Instituting cost mitigation as an important part of Part 107 review and implementation.
- Considering the implications of this proposal on the EAS program. Develop and publish potential solutions to prevent loss of EAS at critical airports.
- Specifically addressing the implications on, and role of, both the AIP and PFC programs.
- Instituting cost transparency procedures to ensure fair and reasonable cost allocations.

We appreciate your consideration of our views. Should you require any additional information on this or any other related issue, please contact Miguel Vasconcelos, AOPA's Director of Airports, at (301) 695-2206.

Sincerely,

Dennis E. Roberts
Vice President – Executive Director
Government & Technical Affairs