

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AAL AK E5 Wales, AK [New]**

Wales Airport, AK

(Lat. 65°37'26" N., long. 168°05'57" W.)

That airspace extending upward from 700 feet above the surface within a 6.35-mile radius of the Wales Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 65°24'00" N 168°30'00" W to 65°53'00" N 168°30'00" W to 66°00'00" N 167°50'00" W to 65°24'00" N 167°50'00" W to point of beginning excluding that airspace within Tin City Class E airspace area.

\* \* \* \* \*

Issued in Anchorage, AK, April 22, 2004.

**Anthony M. Wylie,**

*Acting Manager, Air Traffic Division, Alaskan Region.*

[FR Doc. 04–9910 Filed 4–30–04; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 139**

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

RIN 2120–AG96

**Certification of Airports**

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** The Federal Aviation Administration (FAA) is making a minor technical change to a final rule published in the **Federal Register** on February 10, 2004 (69 FR 6380). That final rule revises the airport certification regulations and establishes certification requirements for certain airports. This technical change substitutes for the word “shall” the word “must” to reflect the current legal practice for mandatory language. It also provides consistent use of this word within the part. This correction is not a substantive change.

**EFFECTIVE DATES:** These technical changes are effective on June 9, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Linda Bruce; Airport Safety and Operations Division; Office of Airport Safety and Standards; FAA; 800 Independence Avenue, SW.; Washington, DC 20591; telephone (202) 267–8553; or e-mail [Linda.Bruce@faa.gov](mailto:Linda.Bruce@faa.gov).

**SUPPLEMENTARY INFORMATION:** The FAA published in the **Federal Register** of February 10, 2004 (69 FR 6380), a final rule revising the airport certification regulations and establishing certification requirements for airports serving scheduled air carrier operations in aircraft designed for more than 9 passenger seats, but less than 31 passenger seats. The final rule also amends the air carrier operation regulations to conform with changes to airport certification requirements. The final rule is necessary to ensure safety in air transportation at all certificated airports and becomes effective June 9, 2004.

In 14 CFR part 139, the final rule establishes a large number of requirements applicable to both airport and aircraft operators. The final rule uses both the word “shall” and the word “must” to establish the requirements. For example, compare final § 139.907(a)(3) “The full-strength surfaces *shall* be adequately compacted \* \* \*.” with final § 139.907(a)(4) “The full-strength surfaces *must* have no holes \* \* \*.” The FAA is concerned

that two different ways of establishing requirements may suggest separate meanings. It is simpler and clearer to establish requirements in a consistent manner. For this reason, we are using this technical correction to change all requirements to a consistent format. We have chosen to replace “shall” with “must” to avoid possible confusion over the meaning of “shall.” This action is consistent with the advice of legal drafting authorities. See Bryan A. Garner, *A Dictionary of Modern Legal Usage*, 939–42 (2nd ed. 1995) and Richard C. Wydick, *Plain English for Lawyers*, 66–67 (4th ed. 1998). This change is editorial in nature. We intend no substantive changes to any of the requirements established by the final rule. This correction does not impose any additional requirements on operators affected by these regulations.

**Justification for Expedited Rulemaking**

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today’s action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections and do not change the requirements of the rule. Thus, notice and public procedure are unnecessary.

**List of Subjects in 14 CFR Part 139**

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

**The Amendment**

■ Accordingly, the FAA amends Chapter 1 of Title 14 of the Code of Federal Regulations as follows:

**PART 139—CERTIFICATION OF AIRPORTS**

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

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

■ 2. Amend Part 139 by correcting all references to the word “shall” to read “must” in the following locations:

- a. Section 139.7;
- b. The introductory language of § 139.103;
- c. Section 139.105;
- d. The second and third sentences of § 139.113;

e. The introductory language of paragraph (b) and paragraph (c) of § 139.201;

f. Paragraphs (a) and (b) of § 139.203;

g. Paragraph (b) of § 139.205;

h. The introductory language of § 139.301;

i. The introductory language, the second and third sentences of paragraph (c), and the second sentence of paragraph (d) of § 139.303;

j. The introductory language of paragraph (a) and paragraphs (a)(1) through (a)(6) of § 139.305;

k. The introductory language of paragraph (a) and paragraphs (a)(1) through (a)(3) of § 139.307;

l. The introductory language of paragraphs (a) and (b) and paragraphs (b)(1) through (b)(4) of § 139.309;

m. The introductory language of paragraphs (a) and (b); paragraphs (b)(2) and (3); the first and second sentences of paragraph (c); and paragraphs (d), (e), and (g) of § 139.311;

n. Paragraph (a) and the introductory language of paragraph (b) of § 139.313;

o. The first and second sentences of the introductory language of paragraph (f), paragraph (f)(2), and paragraphs (i) and (k) of § 139.317;

p. Paragraphs (a) and (b); the introductory language of paragraphs (d) through (g); paragraphs (g)(1) and (2); the first, second, and third sentences of paragraph (g)(3); the introductory language of paragraph (h); the introductory language of paragraph (h)(2); paragraphs (h)(2)(i) and (ii); the introductory language of paragraph (i); the second and third sentences of paragraph (i)(2); paragraph (i)(3); the second and third sentences of paragraph (i)(4); paragraph (i)(5); and paragraphs (j), (k), and (m) of § 139.319;

q. The first and second sentences of paragraphs (a) and (b), paragraph (c) in two places, paragraph (d), the introductory language of paragraph (e), the first and second sentences of paragraph (e)(1), paragraph (e)(2), and the first and second sentences of paragraphs (f) and (g) of § 139.321;

r. The first and second sentences of the introductory language of paragraph (a); paragraph (e); the first and third sentences of paragraph (f); the introductory language of paragraph (g); and paragraphs (h), (i), and (k) of § 139.325;

s. The introductory language of paragraphs (a), (b), (b)(3), and (c) of § 139.327;

t. The introductory language and the second sentences of paragraph (f)(1) and (2) of § 139.329;

u. The first sentence of § 139.331;

v. The introductory language of § 139.333;

w. The introductory language of paragraph (a) of § 139.335;

x. Paragraph (a) and the introductory language of paragraphs (b) through (e) of § 139.337;

y. The introductory language and paragraph (d) of § 139.339;

z. The introductory language of paragraph (a) of § 139.341; and

aa. Section 139.343.

Issued in Washington, DC, on April 27, 2004.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 04-9912 Filed 4-30-04; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1

[Docket No. 2004D-0065]

#### Guidance for Industry: Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2); Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability of guidance.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled "Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2)." The guidance responds to various questions raised about section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States.

**DATES:** Submit written or electronic comments on the agency guidance at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Prior Notice Help Desk at 1-800-216-7331 or 301-575-0156, or FAX: 301-210-0247. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance to the Division of Dockets Management (HFA-

305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

#### FOR FURTHER INFORMATION CONTACT:

Domenic Veneziano, Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 866-521-2297.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA issued an interim final rule (IFR) to implement section 307 of the Bioterrorism Act. The prior notice regulation requires the submission to FDA beginning on December 12, 2003, of prior notice of food, including animal feed, that is imported or offered for import into the United States. On December 16, 2003, FDA issued the first edition of a guidance entitled "Prior Notice of Imported Food Questions and Answers (Edition 1)." This guidance entitled "Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2)" is a revision of the guidance published on December 16, 2003, and responds to additional questions about the prior notice IFR. It is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart I. FDA is issuing this guidance entitled "Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2)" as a level 1 guidance. Consistent with FDA's good guidance practices regulation (§ 10.115(g)(2) (21 CFR 10.115)(g)(2)), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the Bioterrorism Act requires prior notice submission to FDA starting on December 12, 2003. Clarifying the provisions of the IFR will facilitate timely and accurate prior notice submissions and thus, assist in the implementation of the IFR. FDA continues to receive a large number of questions regarding the prior notice IFR, and is responding to these inquiries under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning prior notice of imported food in a single document that is periodically updated as the agency receives and responds to additional